

115TH CONGRESS  
1ST SESSION

# S. 638

To amend the Internal Revenue Code of 1986 to provide appropriate rules for the application of the deduction for income attributable to domestic production activities with respect to certain contract manufacturing or production arrangements.

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## IN THE SENATE OF THE UNITED STATES

MARCH 15, 2017

Mr. PORTMAN (for himself, Ms. STABENOW, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide appropriate rules for the application of the deduction for income attributable to domestic production activities with respect to certain contract manufacturing or production arrangements.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Promoting More Amer-  
5 ican Manufacturing Jobs Act”.

1 **SEC. 2. APPLICATION OF DEDUCTION FOR INCOME ATTRIB-**  
 2 **UTABLE TO DOMESTIC PRODUCTION ACTIVI-**  
 3 **TIES TO CERTAIN CONTRACT MANUFAC-**  
 4 **TURING OR PRODUCTION ARRANGEMENTS.**

5 (a) IN GENERAL.—Section 199(d) of the Internal  
 6 Revenue Code of 1986 is amended—

7 (1) by inserting “the same qualified production  
 8 activities income derived from” before “any activity”  
 9 in paragraph (10),

10 (2) by redesignating paragraph (10) (as amend-  
 11 ed by paragraph (1)) as paragraph (11), and

12 (3) by inserting after paragraph (9) the fol-  
 13 lowing new paragraph:

14 “(10) CONTRACT MANUFACTURING OR PRODUC-  
 15 TION ARRANGEMENTS.—

16 “(A) IN GENERAL.—Except as provided in  
 17 subparagraph (B), in the case of a contract  
 18 manufacturing or production arrangement  
 19 under which any person makes a substantial  
 20 contribution through the activities of its em-  
 21 ployees within the United States to the manu-  
 22 facture, production, growth, or extraction of  
 23 qualifying production property, taking into ac-  
 24 count the factors set forth in subparagraph  
 25 (D)—

1 “(i) such person shall be treated as  
 2 engaging in the manufacturing, produc-  
 3 tion, growth, or extraction of such quali-  
 4 fying production property, and

5 “(ii) the domestic production gross re-  
 6 ceipts of such person shall include the  
 7 gross receipts of such person received  
 8 under such arrangement for such activities.

9 “(B) TREATMENT OF CERTAIN WRITTEN  
 10 AGREEMENTS.—In the case of a contract manu-  
 11 facturing or production arrangement, if all par-  
 12 ties to such arrangement agree in writing that  
 13 only one such person shall be eligible for the de-  
 14 duction under this section, such person shall be  
 15 treated as performing the activities described in  
 16 subclauses (I) and (II) of subsection  
 17 (c)(4)(A)(i) under such arrangement and no  
 18 other person shall be treated for purposes of  
 19 this section as performing such activities.

20 “(C) CONTRACT MANUFACTURING OR PRO-  
 21 Duction ARRANGEMENT.—For purposes of this  
 22 paragraph, the term ‘contract manufacturing or  
 23 production arrangement’ means any arrange-  
 24 ment under which—

1 “(i) a person contracts with one or  
 2 more unrelated persons for the manufac-  
 3 ture, production, growth or extraction of  
 4 an item of qualifying production property  
 5 or a qualified film, and

6 “(ii) in the case of qualifying produc-  
 7 tion property, such item of qualifying pro-  
 8 duction property is manufactured, pro-  
 9 duced, grown or extracted in whole or sig-  
 10 nificant part within the United States pur-  
 11 suant to subsection (c)(4)(A)(i)(I).

12 “(D) FACTORS FOR DETERMINING SUB-  
 13 STANTIAL CONTRIBUTION.—The Secretary shall  
 14 prescribe regulations setting forth activities to  
 15 be taken into account in determining whether a  
 16 person makes a substantial contribution  
 17 through the activities of its employees within  
 18 the United States to the manufacture, produc-  
 19 tion, growth or extraction of qualifying produc-  
 20 tion property for purposes of subparagraph (A).  
 21 Such factors shall include—

22 “(i) oversight and direction of the ac-  
 23 tivities or process pursuant to which the  
 24 property is manufactured, produced, grown  
 25 or extracted;

1           “(ii) physical transformation of per-  
2           sonal property, or assembly or conversion  
3           of component parts into qualifying produc-  
4           tion property, that does not by itself con-  
5           stitute manufacturing, production, growth  
6           or extraction pursuant to subsection  
7           (c)(4)(A)(i)(I);

8           “(iii) material selection, vendor selec-  
9           tion, or ownership and control of the raw  
10          materials, work-in-process or finished  
11          goods;

12          “(iv) management of risk of loss, cost  
13          reduction or efficiency initiatives associated  
14          with the manufacturing process, demand  
15          planning, production scheduling, hedging  
16          raw material costs and other manufac-  
17          turing costs or capacities;

18          “(v) control of manufacturing related  
19          logistics;

20          “(vi) sample testing, establishment of  
21          quality control standards and other quality  
22          control activities;

23          “(vii) developing, or directing the use  
24          or development of, product design and de-  
25          sign specifications, as well as trade secrets,

1 technology, and other intellectual property  
2 for the purpose of manufacturing, pro-  
3 ducing, growing or extracting the quali-  
4 fying production property; and

5 “(viii) such other activities as shall be  
6 determined by the Secretary.

7 “(E) SAFE HARBOR FOR DETERMINING  
8 SUBSTANTIAL CONTRIBUTION.—

9 “(i) IN GENERAL.—A person which  
10 has economic risk of loss with respect to  
11 greater than 50 percent of the direct mate-  
12 rial costs necessary to the manufacture,  
13 production, growth, or extraction of the  
14 qualifying production in whole or in signifi-  
15 cant part within the United States shall be  
16 deemed for purposes of subparagraph (A)  
17 to make a substantial contribution through  
18 the activities of its employees within the  
19 United States to the manufacture, produc-  
20 tion, growth, or extraction of such quali-  
21 fying production property.

22 “(ii) ECONOMIC RISK OF LOSS.—For  
23 purposes of this subparagraph, a person  
24 has economic risk of loss if such person  
25 bears the ultimate economic responsibility

for the direct material cost. The following factors shall not affect the determination of economic risk of loss:

“(I) Contractual requirements to insure the direct materials.

“(II) Contractual liability for breach of performance.

“(iii) DIRECT MATERIAL COST.—For purposes of this subparagraph, the term ‘direct material cost’ includes the cost of materials that become an integral part of qualifying production property and materials that are consumed in the ordinary course of production and that can be identified or associated with particular units or groups of units of property produced.”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(2) ELECTION FOR RETROACTIVE APPLICATION.—If all of the persons entering into a written agreement described in section 199(d)(10)(B) of the Internal Revenue Code of 1986 (as amended by this Act) elect to have this paragraph apply to taxable

1       years beginning on or before the date of the enact-  
2       ment of this Act and can demonstrate, by providing  
3       copies of timely filed tax returns (including amended  
4       returns) or otherwise, that only one person claimed  
5       the deduction under section 199 of such Code in  
6       such taxable years with respect to the property de-  
7       scribed in the agreement, then the amendments  
8       made by this section shall apply to such taxable  
9       years of such persons.

10       (c) NO INFERENCE.—The amendments made by this  
11       section are intended as safe harbors and shall not be con-  
12       strued as adversely affecting the eligibility for a deduction  
13       under section 199 of the Internal Revenue Code of 1986  
14       of any person who contracts with another person to manu-  
15       facture, produce, grow or extract property described in  
16       subsection (c)(5) or (c)(6) of such section.

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