

AMENDMENT TO H.R. 5278

OFFERED BY MR. POLIS OF COLORADO

At the end of the bill, add the following:

1 **TITLE VII—TAX TREATMENT OF**
2 **ACTIVE PUERTO RICO INCOME**

3 **SEC. 701. TAX TREATMENT OF ACTIVE PUERTO RICO IN-**
4 **COME.**

5 (a) ACTIVE PUERTO RICO INCOME DEFINED.—Sub-
6 part D of part III of subchapter N of chapter 1 of the
7 Internal Revenue Code of 1986 is amended by inserting
8 after section 933 the following new section:

9 **“SEC. 933A. ACTIVE PUERTO RICO INCOME DEFINED.**

10 “For purposes of this part, the term ‘active Puerto
11 Rico income’ means income that, by applying rules sub-
12 stantially similar to the rules of section 864 for deter-
13 mining whether income is effectively connected with the
14 conduct of a trade or business within the United States
15 (without regard to whether the person deriving the income
16 is a domestic or foreign corporation), is effectively con-
17 nected with the conduct of a trade or business in Puerto
18 Rico.”.

19 (b) ACTIVE PUERTO RICO INCOME TREATED AS
20 PREVIOUSLY TAXED INCOME.—Subpart F of part III of

1 subchapter N of chapter 1 of such Code is amended by
2 inserting after section 959 the following new section:

3 **“SEC. 959A. EXCLUSION FROM GROSS INCOME OF ACTIVE**
4 **PUERTO RICO INCOME.**

5 “(a) IN GENERAL.—The earnings and profits of a
6 foreign corporation attributable to active Puerto Rico in-
7 come (as define din section 933A) which have not been
8 included in the gross income of a United States share-
9 holder under section 951(a) shall not when distributed
10 through a chain of corporate ownership to a domestic cor-
11 poration owning directly or indirectly at least 10 percent
12 (by vote and value) of the stock of the foreign corporation,
13 be includible in the income of such domestic corporation
14 until received by it as a dividend. The preceding sentence
15 shall apply only to such domestic corporation’s share of
16 such earnings and profits.

17 “(b) SPECIAL RULES.—Earnings and profits to
18 which subsection (a) applies shall be taken into account
19 in applying section 902 (relating to deemed paid credits)
20 to the domestic corporation to which subsection (a) ap-
21 plies. Earnings and profits to which subsection (a) applies
22 shall be taken into account under section 959(c) (relating
23 to allocation of distributions) by the domestic corporation
24 to which subsection (a) applies after earnings and profits
25 described in paragraphs (1) and (2) of section 959(c) but

1 before any other earnings and profits described in section
2 959(c)(3).”.

3 (c) DIVIDENDS RECEIVED DEDUCTION FOR DIVI-
4 DENDS OF ACTIVE PUERTO RICO INCOME.—Section 245
5 of such Code is amended by adding at the end the fol-
6 lowing new subsection:

7 “(d) DIVIDENDS OF ACTIVE PUERTO RICO IN-
8 COME.—In the case of a dividend attributable to active
9 Puerto Rico income (as defined in section 933A) received
10 by a domestic corporation from or in respect of a foreign
11 corporation (other than a passive foreign investment com-
12 pany) at least 10 percent of the stock of which foreign
13 corporation (by vote and value) is owned directly or indi-
14 rectly by such domestic corporation, there shall be allowed
15 as a deduction an amount equal to 85 percent of such
16 dividend.”.

17 (d) TAX RATE ON ACTIVE PUERTO RICO INCOME.—
18 Section 11(b) of such Code is amended by adding at the
19 end the following new paragraph:

20 “(3) ACTIVE PUERTO RICO INCOME.—In the
21 case of any active Puerto Rico income (as defined in
22 section 933A) derived by a domestic corporation, in-
23 cluding dividends attributable to active Puerto Rico
24 income under section 245(d), the amount of tax in
25 respect of such income shall be determined by using

1 50 percent of the percentages contained in sub-
2 section (b)(1).”.

3 (e) PUERTO RICO FOREIGN TAX CREDIT.—

4 (1) IN GENERAL.—Section 901(b)(1) of such
5 Code is amended by adding at the end the following:
6 “Any such taxes paid or accrued with respect to ac-
7 tive Puerto Rico income (as defined in section 933A)
8 to the Commonwealth of Puerto Rico in taxable
9 years beginning on or after the first taxable year in
10 which this sentence is in effect shall be creditable
11 only to the extent of 50 percent of the amount paid
12 or accrued (or 7.5 percent of the amount paid or ac-
13 crued in the case of dividends eligible for the divi-
14 dends received deduction of section 245(d)).”.

15 (2) SEPARATE FOREIGN TAX CREDIT LIMITA-
16 TION FOR ACTIVE PUERTO RICO INCOME.—

17 (A) IN GENERAL.—Section 904(d)(1) of
18 such Code is amended by striking “and” at the
19 end of subparagraph (A), by striking the period
20 at the end of subparagraph (B) and inserting “,
21 and”, and by adding at the end the following
22 new subparagraph:

23 “(C) active Puerto Rico income (as defined
24 in section 933A), including dividends attrib-

1 utable to active Puerto Rico income under sec-
2 tion 245(d).”.

3 (B) CONFORMING AMENDMENT.—Section
4 904(d)(2)(A)(ii) of such Code is amended by
5 striking “passive category income” and insert-
6 ing “income described in subparagraph (B) or
7 (C) of paragraph (1)”.

8 (f) CLERICAL AMENDMENTS.—

9 (1) The table of sections for subpart D of part
10 III of subchapter N of chapter 1 of such Code is
11 amended by inserting after item relating to section
12 933 the following new item:

“Sec. 933A. Active Puerto Rico income defined.”.

13 (2) The table of sections for subpart F of part
14 III of subchapter N of chapter 1 of such Code is
15 amended by inserting after the item relating to sec-
16 tion 959 the following new item:

“Sec. 959A. Exclusion from gross income of active Puerto Rico income.”.

17 (g) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years ending after the
19 date of the enactment of this Act.

