110TH CONGRESS  
1ST SESSION

To amend the Internal Revenue Code of 1986 to provide for the treatment of certain foreign nonqualified deferred compensation.

IN THE SENATE OF THE UNITED STATES

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Internal Revenue Code of 1986 to provide for the treatment of certain foreign nonqualified deferred compensation.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Offshore Deferred Compensation Reform Act of 2007”.

SEC. 2. SPECIAL RULE FOR CERTAIN FOREIGN NON-
QUALIFIED DEFERRED COMPENSATION.

(a) In General.—Subpart B of part II of sub-
chapter E of chapter 1 of the Internal Revenue Code of
1986 (relating to taxable year for which items of gross
income included) is amended by inserting after section 457
the following new section:

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“SEC. 457A. CERTAIN FOREIGN NONQUALIFIED DEFERRED
COMPENSATION.

“(a) IN GENERAL.—Any compensation which is de-
ferred under a nonqualified deferred compensation plan
(within the meaning of section 409A(d)) of a nonqualified
foreign corporation is includible in gross income for pur-
poses of this chapter when there is no substantial risk of
forfeiture of the rights to such amount.

“(b) NONQUALIFIED FOREIGN CORPORATION.—For
purposes of this section, the term ‘nonqualified foreign
corporation’ means any foreign corporation unless sub-
stantially all of the income of such corporation—

“(1) is effectively connected with the conduct of
a trade or business in the United States, or

“(2) is subject to an income tax imposed by a
foreign country, but only if—

“(A)(i) such corporation is eligible for ben-
efits of a comprehensive income tax treaty
which such country has with the United States
which the Secretary determines is satisfactory
for purposes of this section and which includes
an exchange of information program, or
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“(ii) the Secretary determines that such income tax is a comprehensive income tax satisfactory for purposes of this section, and

“(B) a deduction is allowed for compensation described in subsection (a) under rules substantially similar to the rules of this title.

“(c) APPLICATION OF CERTAIN RULES.—Rules similar to the rules of paragraphs (4), (5), and (6) of section 409A(d) shall apply for purposes of this section.

“(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.”.

(b) CLERICAL AMENDMENT.—The table of sections of subpart B of part II of subchapter E of chapter 1 of such Code is amended by inserting after the item relating to section 457 the following new item:

“Sec. 457A. Certain foreign nonqualified deferred compensation.”.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to amounts deferred in taxable years beginning after December 31, 2007.

(2) EARNINGS.—The amendments made by this section shall apply to earnings on deferred com-
pensation only to the extent that such amendments apply to such compensation.