

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

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TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, opposes H.R. 5893, the "Investing in American Jobs and Closing Tax Loopholes Act of 2010," which would impose draconian tax increases on American worldwide companies that would hinder job creation, decrease the competitiveness of American businesses, and deter economic growth.

This legislation contains numerous changes to longstanding U.S. international tax law which are severely detrimental to American worldwide companies. For example:

- **Denial of foreign tax credit with respect to foreign income not subject to U.S. taxation by reason of covered asset acquisitions** – This provision relates primarily to §338, which allows taxpayers the ability to characterize stock acquisitions as asset acquisitions for U.S. tax purposes. An acquisition can be concluded as either a share acquisition or an asset acquisition. Acquisitions by American worldwide companies are good for the U.S. economy – they provide additional jobs and broaden the U.S. tax base. Section 338 recognizes the inherent challenges and obstacles to asset acquisitions and, in effect, levels the playing field, allowing taxpayers the ability to choose the tax implications of an acquisition, regardless of the willingness of a seller to agree to one form or the other of a particular deal. Moreover, §338 unquestionably serves to encourage acquisitions by American worldwide companies by minimizing the competitive advantage that certain foreign competitors enjoy due to the participation exemption systems in which most are headquartered. This legislation would significantly strip away the benefits of §338 and would likely serve to further impede any competitive advantages of American worldwide companies in their bids for foreign targets.
- **Limitation on the use of §956 for foreign tax credit planning (i.e., the "hopscotch" rule)** – Section 956, a longstanding provision of the Code, allows companies to repatriate cash to the United States in a tax efficient manner. Foreign business acquisitions generally result in a series of intermediate foreign holding companies which block the repatriation of earnings for a variety of reasons such as local statutory earnings deficits or other local restrictions on actual dividends. American worldwide companies have had the ability to

overcome such obstacles through the use of §956. This provision was particularly beneficial during the recent economic downturn and ensuing credit crunch when it was necessary for American worldwide companies to repatriate significant funds in order to meet the financial needs of their U.S. businesses. The revenue raising estimate for this provision seems to assume that taxpayers would simply bear the additional cost of the provision. However, the Chamber believes that most taxpayers, given the choice, would choose simply to not repatriate the earnings. Therefore, the legislation's proposed change to §956 would significantly reduce the repatriation of foreign earnings that otherwise might have been repatriated to the United States. That is a poor option if Congress seeks to enact provisions which stimulate economic growth and drive job creation.

The Chamber strongly opposes H.R. 5893 because this legislation would make significant changes to U.S. international tax law which would stifle job creation and stunt economic growth. **The Chamber may consider votes on, or in relation to, this issue in our annual *How They Voted* scorecard.**

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten", written in a cursive style.

R. Bruce Josten