

111TH CONGRESS  
1ST SESSION

# H. R. 3424

To amend the Internal Revenue Code of 1986 to disallow the deduction for excess non-taxed reinsurance premiums with respect to United States risks paid to affiliates.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2009

Mr. NEAL of Massachusetts introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to disallow the deduction for excess non-taxed reinsurance premiums with respect to United States risks paid to affiliates.

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. DISALLOWANCE OF DEDUCTION FOR EXCESS**  
4 **NON-TAXED REINSURANCE PREMIUMS PAID**  
5 **TO AFFILIATES.**

6 (a) IN GENERAL.—Subsection (b) of section 832 of  
7 the Internal Revenue Code of 1986 is amended by adding  
8 at the end the following new paragraph:

1           “(9) LIMITATION ON DEDUCTION FOR EXCESS  
2 NON-TAXED REINSURANCE PREMIUMS PAID TO AF-  
3 FILIATES.—

4           “(A) IN GENERAL.—No deduction shall be  
5 allowed under paragraph (4) for so much of the  
6 affiliated non-taxed reinsurance premiums paid  
7 by a covered insurance company during the tax-  
8 able year as exceeds the sum of—

9           “(i) the premium limitation for such  
10 taxable year, plus

11           “(ii) the qualified ceding commissions  
12 with respect to such premiums.

13           “(B) AFFILIATED NON-TAXED REINSUR-  
14 ANCE PREMIUMS.—For purposes of this para-  
15 graph—

16           “(i) IN GENERAL.—The term ‘affili-  
17 ated non-taxed reinsurance premium’  
18 means any reinsurance premium paid di-  
19 rectly or indirectly to an affiliated corpora-  
20 tion if, with respect to such affiliated cor-  
21 poration, such premium is neither subpart  
22 F income (as defined in section 952) nor  
23 subject to tax under this subtitle.

24           “(ii) NETTING OF PREMIUMS PAID TO  
25 COVERED INSURANCE COMPANY BY AFFILI-

1           ATES.—The amount of premiums which  
2           would (but for this clause) be treated as  
3           affiliated non-taxed reinsurance premiums  
4           with respect to any affiliated corporation  
5           for any taxable year shall be reduced (but  
6           not below zero) by any reinsurance pre-  
7           miums paid directly or indirectly to the  
8           covered insurance company by such affili-  
9           ated corporation during such taxable year.

10           “(iii) PREMIUMS TREATED AS NON-  
11           TAXED TO EXTENT OF TREATY REDUC-  
12           TION.—Rules similar to the rules of section  
13           163(j)(5)(B) shall apply for purposes of  
14           determining the extent to which tax is im-  
15           posed by this subtitle with respect to any  
16           premium.

17           “(C) PREMIUM LIMITATION.—For pur-  
18           poses of this paragraph—

19           “(i) IN GENERAL.—The term ‘pre-  
20           mium limitation’ means, with respect to  
21           any covered insurance company for any  
22           taxable year, the excess of—

23           “(I) the product of the gross pre-  
24           miums written by such covered insur-  
25           ance company on insurance contracts

1 during the taxable year multiplied by  
2 the industry fraction for such taxable  
3 year, over

4 “(II) the aggregate reinsurance  
5 premiums paid by such covered insur-  
6 ance company during the taxable year  
7 which are not affiliated non-taxed re-  
8 insurance premiums.

9 Such limitation shall not be less than zero.

10 “(ii) INDUSTRY FRACTION.—In the  
11 case of any taxable year beginning in a cal-  
12 endar year, the term ‘industry fraction’  
13 means the fraction, determined by the Sec-  
14 retary on the basis of published aggregate  
15 data from annual statements of insurance  
16 companies—

17 “(I) the numerator of which is  
18 the aggregate reinsurance premiums  
19 paid by covered insurance companies  
20 to non-affiliated corporations during  
21 the second preceding calendar year,  
22 and

23 “(II) the denominator of which is  
24 the aggregate gross premiums written  
25 by covered insurance companies dur-

1                   ing such second preceding calendar  
2                   year.

3                   “(iii) SEPARATE APPLICATION TO  
4                   EACH LINE OF BUSINESS.—With respect to  
5                   each line of business—

6                   “(I) the Secretary shall deter-  
7                   mine a separate industry fraction with  
8                   respect to each such line of business,  
9                   and

10                  “(II) subparagraph (A) shall be  
11                  applied separately to each such line of  
12                  business by taking into account the  
13                  industry fraction determined with re-  
14                  spect to such line of business.

15                  “(D) QUALIFIED CEDING COMMISSION.—  
16                  For purposes of this paragraph, the term  
17                  ‘qualified ceding commission’ means, with re-  
18                  spect to the affiliated non-taxed reinsurance  
19                  premiums paid by a covered insurance company  
20                  during any taxable year, the product of—

21                  “(i) the ceding commissions which are  
22                  paid to such company with respect to such  
23                  premiums and which are included in in-  
24                  come of such company, multiplied by

25                  “(ii) a fraction—

1                   “(I) the numerator of which is so  
2                   much of such premiums as exceeds  
3                   the premium limitation for such tax-  
4                   able year, and

5                   “(II) the denominator of which is  
6                   the aggregate amount of such pre-  
7                   miums.

8                   “(E) ELECTION TO TREAT REINSURANCE  
9                   INCOME AS EFFECTIVELY CONNECTED.—

10                   “(i) IN GENERAL.—A specified affili-  
11                   ated corporation may elect for any taxable  
12                   year—

13                   “(I) to treat specified reinsurance  
14                   income as income effectively connected  
15                   with the conduct of a trade or busi-  
16                   ness in the United States, and

17                   “(II) to be treated as carrying on  
18                   an insurance business within the  
19                   United States.

20                   “(ii) SPECIFIED AFFILIATED COR-  
21                   PORATION.—For purposes of this subpara-  
22                   graph, the term ‘specified affiliated cor-  
23                   poration’ means any affiliated corporation  
24                   which—

1           “(I) is a foreign corporation  
2           which would qualify under part I or  
3           this part for the taxable year if it  
4           were a domestic corporation,

5           “(II) waives all benefits granted  
6           by the United States under any treaty  
7           between the United States and any  
8           foreign country with respect to speci-  
9           fied reinsurance income with respect  
10          to which the election under clause (i)  
11          applies, and

12          “(III) meets such requirements  
13          as the Secretary shall prescribe to en-  
14          sure that tax on such income is prop-  
15          erly determined and paid.

16          “(iii) SPECIFIED REINSURANCE IN-  
17          COME.—For purposes of this subpara-  
18          graph, the term ‘specified reinsurance in-  
19          come’ means, with respect to any specified  
20          affiliated corporation for any taxable  
21          year—

22          “(I) all reinsurance premiums  
23          which would (but for the election  
24          made under this subparagraph) be af-  
25          filiated non-taxed reinsurance pre-

1 miums and which are received by such  
2 corporation during such taxable year  
3 directly or indirectly from covered in-  
4 surance companies with respect to  
5 which such corporation is affiliated,  
6 and

7 “(II) so much of the net invest-  
8 ment income (within the meaning of  
9 section 842(b)) for such taxable year  
10 as is allocable to reinsurance pre-  
11 miums with respect to which an elec-  
12 tion under clause (i) applies for such  
13 taxable year or any prior taxable year.

14 “(iv) RULES RELATED TO ELEC-  
15 TION.—Any election under clause (i)  
16 shall—

17 “(I) be made at such time and in  
18 such form and manner as the Sec-  
19 retary may provide, and

20 “(II) apply for the taxable year  
21 for which made and all subsequent  
22 taxable years unless revoked with the  
23 consent of the Secretary.

24 “(F) OTHER DEFINITIONS AND SPECIAL  
25 RULES.—For purposes of this paragraph—

1           “(i) COVERED INSURANCE COM-  
2           PANY.—The term ‘covered insurance com-  
3           pany’ means any insurance company sub-  
4           ject to the tax imposed by section 831.

5           “(ii) TREATMENT OF CONTROLLED  
6           GROUP.—All domestic members of a con-  
7           trolled group of corporations (as defined in  
8           section 1563) of which a covered insurance  
9           company is a member shall be treated as  
10          one corporation.

11          “(iii) AFFILIATED CORPORATIONS.—A  
12          corporation shall be treated as affiliated  
13          with a covered insurance company if both  
14          corporations are members of the same con-  
15          trolled group of corporations, as defined in  
16          section 1563(a) except that—

17                 “(I) ‘more than 25 percent’ shall  
18                 be substituted for ‘at least 80 percent’  
19                 each place it appears in section  
20                 1563(a)(1), and

21                 “(II) the determination shall be  
22                 made without regard to subsections  
23                 (a)(4), (b)(2)(C), (b)(2)(D), and  
24                 (e)(3)(C) of section 1563.

1                   “(iv) TREATMENT OF REINSURANCE  
2                   ASSUMED BY COVERED INSURANCE COM-  
3                   PANY.—Reinsurance ceded by a non-affili-  
4                   ated corporation to a covered insurance  
5                   company shall be taken into account in the  
6                   same manner as premiums written by such  
7                   covered insurance company.

8                   “(G) REGULATIONS.—The Secretary shall  
9                   prescribe such regulations as may be appro-  
10                  priate to carry out or to prevent the avoidance  
11                  of the purposes of this paragraph, including  
12                  regulations which provide for the application of  
13                  this section to alternative reinsurance trans-  
14                  actions, fronting transactions, conduit and re-  
15                  ciprocal transactions, and any economically  
16                  equivalent transactions.”.

17                  (b) EFFECTIVE DATE.—The amendment made by  
18                  this section shall apply to taxable years beginning after  
19                  December 31, 2009.

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