

116TH CONGRESS
1ST SESSION

S. 2140

To amend the Internal Revenue Code of 1986 to modify the rules relating to inverted corporations.

IN THE SENATE OF THE UNITED STATES

JULY 17, 2019

Mr. DURBIN (for himself, Mr. REED, Ms. WARREN, Mr. BROWN, Ms. BALDWIN, Mr. WHITEHOUSE, Mr. MERKLEY, Mrs. FEINSTEIN, Ms. DUCKWORTH, Mr. SANDERS, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to modify the rules relating to inverted corporations.

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 “Stop Corporate Inver-
5 sions Act of 2019”.

1 **SEC. 2. MODIFICATIONS TO RULES RELATING TO IN-**
2 **VERTED CORPORATIONS.**

3 (a) **IN GENERAL.**—Subsection (b) of section 7874 of
4 the Internal Revenue Code of 1986 is amended to read
5 as follows:

6 “(b) **INVERTED CORPORATIONS TREATED AS DO-**
7 **MESTIC CORPORATIONS.**—

8 “(1) **IN GENERAL.**—Notwithstanding section
9 7701(a)(4), a foreign corporation shall be treated for
10 purposes of this title as a domestic corporation if—

11 “(A) such corporation would be a surro-
12 gate foreign corporation if subsection (a)(2)
13 were applied by substituting ‘80 percent’ for
14 ‘60 percent’, or

15 “(B) such corporation is an inverted do-
16 mestic corporation.

17 “(2) **INVERTED DOMESTIC CORPORATION.**—For
18 purposes of this subsection, a foreign corporation
19 shall be treated as an inverted domestic corporation
20 if, pursuant to a plan (or a series of related trans-
21 actions)—

22 “(A) the entity completes after May 8,
23 2014, the direct or indirect acquisition of—

24 “(i) substantially all of the properties
25 held directly or indirectly by a domestic
26 corporation, or

1 “(ii) substantially all of the assets of,
2 or substantially all of the properties consti-
3 tuting a trade or business of, a domestic
4 partnership, and

5 “(B) after the acquisition, either—

6 “(i) more than 50 percent of the stock
7 (by vote or value) of the entity is held—

8 “(I) in the case of an acquisition
9 with respect to a domestic corpora-
10 tion, by former shareholders of the
11 domestic corporation by reason of
12 holding stock in the domestic corpora-
13 tion, or

14 “(II) in the case of an acquisition
15 with respect to a domestic partner-
16 ship, by former partners of the do-
17 mestic partnership by reason of hold-
18 ing a capital or profits interest in the
19 domestic partnership, or

20 “(ii) the management and control of
21 the expanded affiliated group which in-
22 cludes the entity occurs, directly or indi-
23 rectly, primarily within the United States,
24 and such expanded affiliated group has
25 significant domestic business activities.

1 “(3) EXCEPTION FOR CORPORATIONS WITH
2 SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN
3 COUNTRY OF ORGANIZATION.—A foreign corporation
4 described in paragraph (2) shall not be treated as an
5 inverted domestic corporation if after the acquisition
6 the expanded affiliated group which includes the en-
7 tity has substantial business activities in the foreign
8 country in which or under the law of which the enti-
9 ty is created or organized when compared to the
10 total business activities of such expanded affiliated
11 group. For purposes of subsection (a)(2)(B)(iii) and
12 the preceding sentence, the term ‘substantial busi-
13 ness activities’ shall have the meaning given such
14 term under regulations in effect on January 18,
15 2017, except that the Secretary may issue regula-
16 tions increasing the threshold percent in any of the
17 tests under such regulations for determining if busi-
18 ness activities constitute substantial business activi-
19 ties for purposes of this paragraph.

20 “(4) MANAGEMENT AND CONTROL.—For pur-
21 poses of paragraph (2)(B)(ii)—

22 “(A) IN GENERAL.—The Secretary shall
23 prescribe regulations for purposes of deter-
24 mining cases in which the management and
25 control of an expanded affiliated group is to be

1 treated as occurring, directly or indirectly, pri-
2 marily within the United States. The regula-
3 tions prescribed under the preceding sentence
4 shall apply to periods after May 8, 2014.

5 “(B) EXECUTIVE OFFICERS AND SENIOR
6 MANAGEMENT.—Such regulations shall provide
7 that the management and control of an ex-
8 panded affiliated group shall be treated as oc-
9 ccurring, directly or indirectly, primarily within
10 the United States if substantially all of the ex-
11 ecutive officers and senior management of the
12 expanded affiliated group who exercise day-to-
13 day responsibility for making decisions involving
14 strategic, financial, and operational policies of
15 the expanded affiliated group are based or pri-
16 marily located within the United States. Indi-
17 viduals who in fact exercise such day-to-day re-
18 sponsibilities shall be treated as executive offi-
19 cers and senior management regardless of their
20 title.

21 “(5) SIGNIFICANT DOMESTIC BUSINESS ACTIVI-
22 TIES.—For purposes of paragraph (2)(B)(ii), an ex-
23 panded affiliated group has significant domestic
24 business activities if at least 25 percent of—

1 “(A) the employees of the group are based
2 in the United States,

3 “(B) the employee compensation incurred
4 by the group is incurred with respect to employ-
5 ees based in the United States,

6 “(C) the assets of the group are located in
7 the United States, or

8 “(D) the income of the group is derived in
9 the United States,

10 determined in the same manner as such determina-
11 tions are made for purposes of determining substan-
12 tial business activities under regulations referred to
13 in paragraph (3) as in effect on January 18, 2017,
14 but applied by treating all references in such regula-
15 tions to ‘foreign country’ and ‘relevant foreign coun-
16 try’ as references to ‘the United States’. The Sec-
17 retary may issue regulations decreasing the thresh-
18 old percent in any of the tests under such regula-
19 tions for determining if business activities constitute
20 significant domestic business activities for purposes
21 of this paragraph.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) Clause (i) of section 7874(a)(2)(B) of such
24 Code is amended by striking “after March 4, 2003,”

1 and inserting “after March 4, 2003, and before May
2 8, 2014,”.

3 (2) Subsection (c) of section 7874 of such Code
4 is amended—

5 (A) in paragraph (2)—

6 (i) by striking “subsection
7 (a)(2)(B)(ii)” and inserting “subsections
8 (a)(2)(B)(ii) and (b)(2)(B)(i)”; and

9 (ii) by inserting “or (b)(2)(A)” after
10 “(a)(2)(B)(i)” in subparagraph (B);

11 (B) in paragraph (3), by inserting “or
12 (b)(2)(B)(i), as the case may be,” after
13 “(a)(2)(B)(ii)”;

14 (C) in paragraph (5), by striking “sub-
15 section (a)(2)(B)(ii)” and inserting “sub-
16 sections (a)(2)(B)(ii) and (b)(2)(B)(i)”; and

17 (D) in paragraph (6), by inserting “or in-
18 verted domestic corporation, as the case may
19 be,” after “surrogate foreign corporation”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to taxable years ending after May
22 8, 2014.

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