

118TH CONGRESS
2D SESSION

S. 4011

To amend the Internal Revenue Code of 1986 to end the tax-free treatment of certain corporate reorganizations that involve large corporations.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 2024

Mr. WHITEHOUSE (for himself and Mr. VANCE) 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 end the tax-free treatment of certain corporate reorganizations that involve large 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 Subsidizing Giant
5 Mergers Act”.

1 **SEC. 2. MODIFICATION OF RULES RELATING TO COR-**
 2 **PORATE REORGANIZATIONS FOR CERTAIN**
 3 **LARGE CORPORATIONS.**

4 (a) ACQUISITIVE REORGANIZATIONS.—Section
 5 368(a)(2) of the Internal Revenue Code of 1986 is amend-
 6 ed by adding at the end the following new subparagraph:

7 “(I) SPECIAL RULES WITH RESPECT TO
 8 CERTAIN ACQUISITIVE REORGANIZATIONS DE-
 9 SCRIBED IN PARAGRAPH (1)(A), (1)(B), (1)(C),
 10 AND (1)(D).—

11 “(i) IN GENERAL.—A merger, consoli-
 12 dation, acquisition, or transfer which is de-
 13 scribed in clause (ii) shall not be treated as
 14 a merger, consolidation, acquisition, or
 15 transfer described in paragraph (1)(A),
 16 (1)(B), (1)(C), or (1)(D).

17 “(ii) TRANSACTIONS DESCRIBED.—A
 18 merger, consolidation, acquisition, or
 19 transfer is described in this clause if—

20 “(I) such merger, consolidation,
 21 acquisition, or transfer is, or is treat-
 22 ed as, the acquisition of the stock or
 23 assets of another corporation,

24 “(II) such merger, consolidation,
 25 acquisition, or transfer is not excepted
 26 under clause (iii), and

1 “(III) the combined average an-
2 nual gross receipts of the acquiring
3 corporation and the acquired corpora-
4 tion for the 3-taxable year period
5 which precedes the taxable year in
6 which the merger, consolidation, ac-
7 quisition, or transfer is completed ex-
8 ceeds \$500,000,000.

9 “(iii) EXCEPTIONS.—A merger, con-
10 solidation, acquisition, or transfer is ex-
11 cepted under this clause if—

12 “(I) either the acquiring corpora-
13 tion or the acquired corporation con-
14 trols the other immediately before
15 (and, if both corporations continue to
16 exist, after) the merger, consolidation,
17 acquisition, or transfer (as the case
18 may be),

19 “(II) any other corporation con-
20 trols both the acquiring corporation
21 and the acquired corporation imme-
22 diately before (and, if both corpora-
23 tions continue to exist, after) the
24 merger, consolidation, acquisition, or
25 transfer (as the case may be), or

1 “(III) either the acquiring cor-
2 poration or the acquired corporation
3 meets the gross receipts test of sec-
4 tion 448(c)(1) for the taxable year in
5 which the merger, consolidation, ac-
6 quisition, or transfer is completed.

7 “(iv) AGGREGATION AND OTHER SPE-
8 CIAL RULES.—Rules similar to the rules of
9 paragraphs (2) and (3) of section 448(c)
10 shall apply for purposes of clause (i)(II),
11 except that (unless otherwise provided by
12 the Secretary) the rules of section
13 448(c)(2) shall not apply in determining
14 the average annual gross receipts of the
15 acquired corporation.

16 “(v) INFLATION ADJUSTMENT.—In
17 the case of any taxable year beginning
18 after 2024, the dollar amount in clause
19 (ii)(III) shall be increased by an amount
20 equal to—

21 “(I) such dollar amount, multi-
22 plied by

23 “(II) the cost-of-living adjust-
24 ment determined under section 1(f)(3)
25 for the calendar year in which such

1 taxable year begins, determined by
2 substituting ‘calendar year 2023’ for
3 ‘calendar year 2016’ in subparagraph
4 (A)(ii) thereof.

5 If any amount as increased under the pre-
6 ceding sentence is not a multiple of
7 \$1,000,000, such amount shall be rounded
8 to the nearest multiple of \$1,000,000.

9 “(vi) REGULATIONS AND GUID-
10 ANCE.—The Secretary may prescribe such
11 regulations and other guidance as are nec-
12 essary or appropriate to carry out, and to
13 prevent the abuse of the purposes of, this
14 subparagraph, including rules—

15 “(I) to prevent the avoidance of
16 the application of this subparagraph
17 through the use of a series of trans-
18 actions designed and executed as
19 parts of a unitary plan, and

20 “(II) for the nonapplication of
21 the rules of clause (i) where such non-
22 application is consistent with the pur-
23 poses of this subparagraph.”.

24 (b) TRANSFERS TO CORPORATIONS CONTROLLED BY
25 TRANSFERORS.—Section 351 is amended by redesignating

1 subsection (h) as subsection (i) and by inserting after sub-
2 section (g) the following new subsection:

3 “(h) SPECIAL RULE WITH RESPECT TO MULTIPLE
4 TRANSFERORS.—

5 “(1) IN GENERAL.—Subsection (a) shall not
6 apply to any transfer of property by two or more
7 persons which are corporations if the combined aver-
8 age annual gross receipts of such persons for the 3-
9 taxable year period which precedes the taxable year
10 of the transfer exceeds \$500,000,000.

11 “(2) EXCEPTION.—Clause (i) shall not apply
12 if—

13 “(A) such persons control the corporation
14 to which the property is transferred imme-
15 diately before the transfer,

16 “(B) another corporation controls all such
17 persons and the corporation to which the prop-
18 erty is transferred immediately before the
19 transfer, or

20 “(C) all such persons meet the gross re-
21 ceipts test of section 448(c)(1) for the taxable
22 year in which the transfer is made.

23 “(3) AGGREGATION AND OTHER SPECIAL
24 RULES.—Rules similar to the rules of paragraphs

1 (2) and (3) of section 448(c) shall apply for pur-
2 poses of paragraph (1).

3 “(4) INFLATION ADJUSTMENT.—In the case of
4 any taxable year beginning after 2024, the dollar
5 amount in paragraph (1) shall be increased by an
6 amount equal to—

7 “(A) such dollar amount, multiplied by

8 “(B) the cost-of-living adjustment deter-
9 mined under section 1(f)(3) for the calendar
10 year in which such taxable year begins, deter-
11 mined by substituting ‘calendar year 2023’ for
12 ‘calendar year 2016’ in subparagraph (A)(ii)
13 thereof.

14 If any amount as increased under the preceding sen-
15 tence is not a multiple of \$1,000,000, such amount
16 shall be rounded to the nearest multiple of
17 \$1,000,000.

18 “(5) REGULATIONS AND GUIDANCE.—The Sec-
19 retary may prescribe such regulations and other
20 guidance as are necessary or appropriate to carry
21 out, and to prevent the abuse of the purposes of,
22 this subparagraph, including rules—

23 “(A) to prevent the avoidance of the appli-
24 cation of this subsection through the use of a

1 series of transactions designed and executed as
2 parts of a unitary plan, and

3 “(B) for the nonapplication of the rules of
4 paragraph (1) where such nonapplication is
5 consistent with the purposes of this sub-
6 section.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to transfers after the date of the
9 enactment of this Act.

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