

114TH CONGRESS
1ST SESSION

H. R. 3934

To amend the Internal Revenue Code of 1986 to limit the interest deduction for excessive interest of members of financial reporting groups.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 5, 2015

Mr. POCAN (for himself, Ms. NORTON, Mr. GARAMENDI, Ms. LEE, Mr. ELLISON, and Mr. NADLER) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to limit the interest deduction for excessive interest of members of financial reporting groups.

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 “Corporate Fair Share
5 Tax Act”.

1 **SEC. 2. LIMITATION ON INTEREST DEDUCTION FOR EXCES-**
2 **SIVE INTEREST OF MEMBERS OF FINANCIAL**
3 **REPORTING GROUPS.**

4 (a) IN GENERAL.—Section 163 of the Internal Rev-
5 enue Code of 1986 is amended by redesignating subsection
6 (n) as subsection (o) and by inserting after subsection (m)
7 the following:

8 “(n) LIMITATION ON EXCESSIVE INTEREST OF MEM-
9 BERS OF FINANCIAL REPORTING GROUPS.—

10 “(1) LIMITATION.—

11 “(A) IN GENERAL.—If this subsection ap-
12 plies to any corporation for any taxable year, no
13 deduction shall be allowed under this chapter
14 for the taxable year for interest expense to the
15 extent that such expense exceeds the sum of—

16 “(i) the amount of interest on indebt-
17 edness of the corporation includible in the
18 corporation’s gross income for the taxable
19 year, plus

20 “(ii) the corporation’s proportionate
21 share of the financial reporting group’s net
22 interest expense for the taxable year com-
23 puted under United States income tax
24 principles.

1 “(B) PROPORTIONATE SHARE OF NET IN-
2 TEREST EXPENSE.—For purposes of subpara-
3 graph (A)(ii)—

4 “(i) IN GENERAL.—A corporation’s
5 proportionate share of the financial report-
6 ing group’s net interest expense means the
7 amount equal to the percentage of the
8 group’s net interest expense which bears
9 the same percentage as the corporation’s
10 earnings bears to the group’s earnings.

11 “(ii) EARNINGS.—For purposes of
12 clause (i), earnings shall be the sum of net
13 earnings plus net interest expense, taxes,
14 depreciation, and amortization.

15 “(iii) DETERMINATIONS RELATING TO
16 EARNINGS.—For purposes of clause (ii),
17 earnings, net interest expense, taxes, de-
18 preciation, and amortization with respect
19 to a financial reporting group shall be as
20 reflected on the financial reporting group’s
21 financial statements for the taxable year
22 ending in the taxable year of the corpora-
23 tion.

24 “(C) ALTERNATIVE DETERMINATION.—In
25 lieu of the limitation in subparagraph (A), if—

1 “(i) a corporation fails to substantiate
 2 the corporation’s proportionate share of
 3 the financial reporting group’s net interest
 4 expense for a taxable year, or

5 “(ii) a corporation so elects,
 6 no deduction shall be allowed under this chap-
 7 ter for the taxable year for interest expense to
 8 the extent that such expense exceeds 10 percent
 9 of the corporation’s adjusted taxable income (as
 10 defined under subsection (j)(6)(A)).

11 “(2) CORPORATIONS TO WHICH SUBSECTION
 12 APPLIES.—

13 “(A) IN GENERAL.—This subsection shall
 14 apply to any corporation for any taxable year if
 15 the corporation is a member of a financial re-
 16 porting group.

17 “(B) CERTAIN CORPORATIONS NOT IN-
 18 CLUDED.—This subsection shall not apply to
 19 any corporation which—

20 “(i) is a corporation predominantly
 21 engaged in the active conduct of a bank-
 22 ing, financing, or similar business, or

23 “(ii) has less than \$5,000,000 of net
 24 interest expense for the taxable year.

1 “(C) FINANCIAL REPORTING GROUP.—For
2 purposes of subparagraph (A), the term ‘finan-
3 cial reporting group’ means a group that pre-
4 pares consolidated financial statements in ac-
5 cordance with United States generally accepted
6 accounting principles, international financial re-
7 porting standards, or other method authorized
8 by the Secretary of the Treasury under regula-
9 tions. Such term shall not include any corpora-
10 tion described in subparagraph (B)(i).

11 “(D) SUBGROUPS.—For purposes of this
12 subsection, all members of an expanded affili-
13 ated group (as defined in section 7874(c)(1))
14 shall be treated as 1 corporation.

15 “(3) NET INTEREST EXPENSE.—The term ‘net
16 interest expense’ has the meaning given such term
17 by subsection (j)(6)(B).

18 “(4) CARRYFORWARD.—

19 “(A) DISALLOWED INTEREST.—Any
20 amount disallowed under subparagraph (A) or
21 (C) for any taxable year shall be treated as an
22 interest expense in the next taxable year, and
23 such amount shall not be taken into account for
24 purposes of applying subsection (j)(2)(A)(ii) for
25 such taxable year.

1 “(B) EXCESS LIMITATION.—The excess (if
2 any) of the sum determined under paragraph
3 (1)(A) (i) and (ii) for a taxable year over the
4 amount of interest expense deducted under this
5 subsection for the taxable year shall be added
6 to the limitation determined under paragraph
7 (1) for the next taxable year (determined with-
8 out regard to this subparagraph). No excess
9 limitation may be carried to more than 3 tax-
10 able years.

11 “(5) ELECTION.—The election under paragraph
12 (1)(C)(ii) shall be made at such time and in such
13 manner as the Secretary may prescribe by regula-
14 tions.

15 “(6) REGULATIONS.—The Secretary shall pre-
16 scribe such regulations and other guidance as may
17 be necessary to carry out the purposes of this sub-
18 section, including regulations to—

19 “(A) coordinate the application of this sub-
20 section with other interest deductibility rules,

21 “(B) define financial services entities,

22 “(C) permit financial reporting groups to
23 compute the group’s non-United States net in-
24 terest expense without making certain adjust-

1 ments required under United States income tax
2 principles,

3 “(D) provide for the treatment of pass-
4 through entities, and

5 “(E) allow the use of financial statements
6 prepared under other countries’ generally ac-
7 cepted accounting principles in appropriate cir-
8 cumstances where a financial reporting group
9 does not prepare financial statements under
10 United States generally accepted accounting
11 principles or international financial reporting
12 standards.”.

13 (b) COORDINATION WITH 163(j).—Section
14 163(j)(2)(A) of the Internal Revenue Code of 1986 is
15 amended by adding at the end the following flush sen-
16 tence: “This subsection shall not apply to any corporation
17 which is a member of a financial reporting group to which
18 subsection (n) applies.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to taxable years beginning after
21 December 31, 2015.

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