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114TH CONGRESS
1ST SESSION

S. 1687

To amend the Internal Revenue Code of 1986 to restrict the insurance business exception to passive foreign investment company rules.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2015

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Internal Revenue Code of 1986 to restrict the insurance business exception to passive foreign investment company rules.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Offshore Reinsurance Tax Fairness Act''.

SEC. 2. RESTRICTION ON INSURANCE BUSINESS EXCEPTION TO PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) IN GENERAL.—Section 1297(b)(2)(B) of the Internal Revenue Code of 1986 is amended to read as follows:

''(B) derived in the active conduct of an insurance business by a qualifying insurance corporation (as defined in subsection (f)),''.

(b) QUALIFYING INSURANCE CORPORATION DEFINED.—Section 1297 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(f) QUALIFYING INSURANCE CORPORATION.—For purposes of subsection (b)(2)(B)—

''(1) IN GENERAL.—The term 'qualifying insurance corporation' means, with respect to any taxable year, a foreign corporation—

''(A) which would be subject to tax under subchapter L if such corporation were a domestic corporation, and

''(B) the applicable insurance liabilities of which constitute more than 25 percent of its total assets, determined on the basis of such liabilities and assets as reported on the corpora-

tion's applicable financial statement for the last year ending with or within the taxable year.

"(2) ALTERNATIVE FACTS AND CIRCUMSTANCES TEST FOR CERTAIN CORPORATIONS.—If a corporation fails to qualify as a qualified insurance corporation under paragraph (1) solely because the percentage determined under paragraph (1)(B) is 25 percent or less, a United States person that owns stock in such corporation may elect to treat such stock as stock of a qualifying insurance corporation if—

"(A) the percentage so determined for the corporation is at least 10 percent, and

"(B) under regulations provided by the Secretary, based on the applicable facts and circumstances—

"(i) the corporation is predominantly engaged in an insurance business, and

"(ii) such failure is due solely to temporary circumstances involving such insurance business.

"(3) APPLICABLE INSURANCE LIABILITIES.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'applicable insurance liabilities' means, with respect to any

life or property and casualty insurance business—

"(i) loss and loss adjustment expenses, and

"(ii) reserves (other than deficiency, contingency, or unearned premium reserves) for life and health insurance risks and life and health insurance claims with respect to contracts providing coverage for mortality or morbidity risks.

"(B) LIMITATIONS ON AMOUNT OF LIABILITIES.—Any amount determined under clause (i) or (ii) of subparagraph (A) shall not exceed the lesser of such amount—

"(i) as reported to the applicable insurance regulatory body in the applicable financial statement described in paragraph (4)(A) (or, if less, the amount required by applicable law or regulation), or

"(ii) as determined under regulations prescribed by the Secretary.

"(4) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

"(A) APPLICABLE FINANCIAL STATEMENT.—The term 'applicable financial state-

ment' means a statement for financial reporting purposes which—

"(i) is made on the basis of generally accepted accounting principles,

"(ii) is made on the basis of international financial reporting standards, but only if there is no statement that meets the requirement of clause (i), or

"(iii) except as otherwise provided by the Secretary in regulations, is the annual statement which is required to be filed with the applicable insurance regulatory body, but only if there is no statement which meets the requirements of clause (i) or (ii).

"(B) APPLICABLE INSURANCE REGULATORY BODY.—The term 'applicable insurance regulatory body' means, with respect to any insurance business, the entity established by law to license, authorize, or regulate such business and to which the statement described in subparagraph (A) is provided.".

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

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