

116TH CONGRESS
2D SESSION

S. 4067

To prohibit certain assistance for inverted domestic corporations.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2020

Mr. DURBIN (for himself, Ms. DUCKWORTH, and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To prohibit certain assistance for inverted domestic 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 “American Assistance
5 for American Companies Act”.

6 **SEC. 2. PROHIBITION ON APPLICATION OF CERTAIN AS-**
7 **SISTANCE TO INVERTED DOMESTIC COR-**
8 **PORATIONS.**

9 (a) PROHIBITION ON USE OF CERTAIN TAX INCEN-
10 TIVES.—

(1) NET OPERATING LOSS CARRYBACKS.—

(A) IN GENERAL.—Section 172(b)(1)(D) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

“(vi) SPECIAL RULE FOR INVERTED DOMESTIC CORPORATIONS.—Clause (i) shall not apply to any foreign corporation for any taxable year in which such corporation is an inverted domestic corporation (as defined in section 7701(p)(2)), or to any member of the expanded affiliated group (as defined in section 7874(c)(1)) of such a foreign corporation, unless such foreign corporation has made an election under section 7701(p)(1).”.

(B) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in section 2303(b) of the CARES Act.

(2) INCREASED LIMITATION ON BUSINESS INTEREST.—

(A) IN GENERAL.—Section 163(j)(10) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

1 “(C) SPECIAL RULE FOR INVERTED DO-
 2 MESTIC CORPORATIONS.—Subparagraphs (A)
 3 and (B) shall not apply to any foreign corpora-
 4 tion for any taxable year in which such corpora-
 5 tion is an inverted domestic corporation (as de-
 6 fined in section 7701(p)(2)), or to any member
 7 of the expanded affiliated group (as defined in
 8 section 7874(c)(1)) of such a foreign corpora-
 9 tion, unless such foreign corporation has made
 10 an election under section 7701(p)(1).”.

11 (B) EFFECTIVE DATE.—The amendment
 12 made by this section shall take effect as if in-
 13 cluded in section 2306 of the CARES Act.

14 (3) FEDERAL RESERVE EMERGENCY LENDING
 15 FACILITIES.—

16 (A) IN GENERAL.—No inverted domestic
 17 corporation, as defined in section 7701(p)(2) of
 18 the Internal Revenue Code of 1986, or any
 19 member of the expanded affiliated group (as de-
 20 fined in section 7874(c)(1) of such Code) of
 21 such inverted domestic corporation, may partici-
 22 pate in any program or facility established by
 23 the Board of Governors of the Federal Reserve
 24 System under the authority of section 13(3) of
 25 the Federal Reserve Act (12 U.S.C. 343) and

with funding authorized under section 4003 of the CARES Act (Public Law 116–136), including the Primary Market Corporate Credit Facility and the Secondary Market Corporate Credit Facility.

(B) EXCEPTION.—Subparagraph (A) shall not apply if the inverted domestic corporation makes an election under section 7701(p)(1) of the Internal Revenue Code of 1986.

(C) APPLICABILITY.—This paragraph shall apply to participation in any program or facility described in subparagraph (A) established before, on, or after the date of enactment of this Act.

(b) ELECTION TO TREAT INVERTED DOMESTIC CORPORATIONS AS DOMESTIC CORPORATIONS.—

(1) INVERTED DOMESTIC CORPORATIONS.—Section 7701 of the Internal Revenue Code of 1986 is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

“(p) INVERTED DOMESTIC CORPORATIONS.—

“(1) ELECTION TO BE TREATED AS A DOMESTIC CORPORATION.—

“(A) IN GENERAL.—Notwithstanding paragraphs (4) and (5) of subsection (a), an inverted domestic corporation may elect to be treated as a domestic corporation for taxable years beginning with the last taxable year which begins before January 1, 2018.

“(B) ELECTION.—An election under this subsection—

“(i) shall be made not later than 30 days after the date of the enactment of this subsection, and

“(ii) once made, shall be irrevocable.

“(C) TIME FOR FILING RETURNS AND PAYMENT OF TAXES.—Notwithstanding sections 6072 and 6151, any return for any taxable year ending before the date described in subparagraph (B)(i), and any payment of taxes or penalties, shall not be considered due before January 1, 2021.

“(2) INVERTED DOMESTIC CORPORATION.—For purposes of this subsection, the term ‘inverted domestic corporation’ means any foreign corporation which, pursuant to a plan (or a series of related transactions)—

1 “(A) completes after March 4, 2003, the
2 direct or indirect acquisition of—

3 “(i) substantially all of the properties
4 held directly or indirectly by a domestic
5 corporation, or

6 “(ii) substantially all of the assets of,
7 or substantially all of the properties consti-
8 tuting a trade or business of, a domestic
9 partnership, and

10 “(B) after the acquisition, either—

11 “(i) more than 50 percent of the stock
12 (by vote or value) of the corporation is
13 held—

14 “(I) in the case of an acquisition
15 with respect to a domestic corpora-
16 tion, by former shareholders of the
17 domestic corporation by reason of
18 holding stock in the domestic corpora-
19 tion, or

20 “(II) in the case of an acquisition
21 with respect to a domestic partner-
22 ship, by former partners of the do-
23 mestic partnership by reason of hold-
24 ing a capital or profits interest in the
25 domestic partnership, or

1 “(ii) the management and control of
2 the expanded affiliated group which in-
3 cludes the corporation occurs, directly or
4 indirectly, primarily within the United
5 States, and such expanded affiliated group
6 has significant domestic business activities.

7 “(3) EXCEPTION FOR CORPORATIONS WITH
8 SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN
9 COUNTRY OF ORGANIZATION.—Such term shall not
10 include a foreign corporation described in paragraph
11 (2) if after the acquisition the expanded affiliated
12 group which includes the corporation has substantial
13 business activities in the foreign country in which or
14 under the law of which the corporation is created or
15 organized when compared to the total business ac-
16 tivities of such expanded affiliated group. For pur-
17 poses of the preceding sentence, the term ‘substan-
18 tial business activities’ shall have the meaning given
19 such term under regulations in effect on January
20 18, 2017, except that the Secretary may issue regu-
21 lations increasing the threshold percent in any of the
22 tests under such regulations for determining if busi-
23 ness activities constitute substantial business activi-
24 ties for purposes of this paragraph.

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

3 “(A) IN GENERAL.—The Secretary shall
4 prescribe regulations for purposes of deter-
5 mining cases in which the management and
6 control of an expanded affiliated group is to be
7 treated as occurring, directly or indirectly, pri-
8 marily within the United States. The regula-
9 tions prescribed under the preceding sentence
10 shall apply to periods after March 4, 2003.

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

1 cers and senior management regardless of their
2 title.

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

7 “(A) the employees of the group are based
8 in the United States,

9 “(B) the employee compensation incurred
10 by the group is incurred with respect to employ-
11 ees based in the United States,

12 “(C) the assets of the group are located in
13 the United States, or

14 “(D) the income of the group is derived in
15 the United States,

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

1 significant domestic business activities for purposes
2 of this paragraph.

3 “(6) DEFINITIONS AND OTHER RULES.—

4 “(A) EXPANDED AFFILIATED GROUP.—

5 The term ‘expanded affiliated group’ has the
6 meaning give such term under section
7 7874(c)(1).

8 “(B) OTHER RULES.—Rules similar to the
9 rules of paragraphs (2), (3), (5), and (6) of sec-
10 tion 7874(c) shall apply for purposes of this
11 subsection.”.

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