

110TH CONGRESS  
2D SESSION

# H. R. 6969

To amend the Internal Revenue Code of 1986 to disallow the deduction for excess non-taxed reinsurance premiums with respect to United States risks paid to affiliates.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 2008

Mr. NEAL of Massachusetts introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to disallow the deduction for excess non-taxed reinsurance premiums with respect to United States risks paid to affiliates.

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. DISALLOWANCE OF DEDUCTION FOR EXCESS**  
4 **NON-TAXED REINSURANCE PREMIUMS PAID**  
5 **TO AFFILIATES.**

6 (a) IN GENERAL.—Subsection (b) of section 832 of  
7 the Internal Revenue Code of 1986 is amended by adding  
8 at the end the following new paragraph:

1           “(9) LIMITATION ON DEDUCTION FOR EXCESS  
2 NON-TAXED REINSURANCE PREMIUMS PAID TO AF-  
3 FILIATES.—

4           “(A) IN GENERAL.—No deduction shall be  
5 allowed under paragraph (4) for so much of the  
6 affiliated non-taxed reinsurance premiums paid  
7 by a covered insurance company during the tax-  
8 able year as exceeds the sum of—

9           “(i) the premium limitation for such  
10 taxable year, plus

11           “(ii) the qualified ceding commissions  
12 with respect to such premiums.

13           “(B) AFFILIATED NON-TAXED REINSUR-  
14 ANCE PREMIUMS.—For purposes of this para-  
15 graph—

16           “(i) IN GENERAL.—The term ‘affili-  
17 ated non-taxed reinsurance premium’  
18 means any reinsurance premium paid di-  
19 rectly or indirectly to an affiliated corpora-  
20 tion (other than a controlled foreign cor-  
21 poration (as defined in section 957)) if no  
22 tax is imposed by this subtitle with respect  
23 to such premium.

24           “(ii) NETTING OF PREMIUMS PAID TO  
25 COVERED INSURANCE COMPANY BY AFFILI-

1           ATES.—The amount of premiums which  
2           would (but for this clause) be treated as  
3           affiliated non-taxed reinsurance premiums  
4           with respect to any affiliated corporation  
5           for any taxable year shall be reduced (but  
6           not below zero) by any reinsurance pre-  
7           miums paid directly or indirectly to the  
8           covered insurance company by such affili-  
9           ated corporation during such taxable year.

10           “(iii) PREMIUMS TREATED AS NON-  
11           TAXED TO EXTENT OF TREATY REDUC-  
12           TION.—Rules similar to the rules of section  
13           163(j)(5)(B) shall apply for purposes of  
14           determining the extent to which tax is im-  
15           posed by this subtitle with respect to any  
16           premium.

17           “(C) PREMIUM LIMITATION.—For pur-  
18           poses of this paragraph—

19           “(i) IN GENERAL.—The term ‘pre-  
20           mium limitation’ means, with respect to  
21           any covered insurance company for any  
22           taxable year, the excess of—

23           “(I) the product of the gross pre-  
24           miums written by such covered insur-  
25           ance company on insurance contracts

1 during the taxable year multiplied by  
2 the industry fraction for such taxable  
3 year, over

4 “(II) the aggregate reinsurance  
5 premiums paid by such covered insur-  
6 ance company during the taxable year  
7 which are not affiliated non-taxed re-  
8 insurance premiums.

9 Such limitation shall not be less than zero.

10 “(ii) INDUSTRY FRACTION.—In the  
11 case of any taxable year beginning in a cal-  
12 endar year, the term ‘industry fraction’  
13 means the fraction, determined by the Sec-  
14 retary on the basis of published aggregate  
15 data from annual statements of insurance  
16 companies—

17 “(I) the numerator of which is  
18 the aggregate reinsurance premiums  
19 paid by covered insurance companies  
20 to non-affiliated corporations during  
21 the second preceding calendar year,  
22 and

23 “(II) the denominator of which is  
24 the aggregate gross premiums written  
25 by covered insurance companies dur-

1                   ing such second preceding calendar  
2                   year.

3                   “(iii) SEPARATE APPLICATION TO  
4                   EACH LINE OF BUSINESS.—With respect to  
5                   each line of business—

6                   “(I) the Secretary shall deter-  
7                   mine a separate industry fraction with  
8                   respect to each such line of business,  
9                   and

10                  “(II) subparagraph (A) shall be  
11                  applied separately to each such line of  
12                  business by taking into account the  
13                  industry fraction determined with re-  
14                  spect to such line of business.

15                  “(D) QUALIFIED CEDING COMMISSION.—  
16                  For purposes of this paragraph, the term  
17                  ‘qualified ceding commission’ means, with re-  
18                  spect to the affiliated non-taxed reinsurance  
19                  premiums paid by a covered insurance company  
20                  during any taxable year, the product of—

21                  “(i) the ceding commissions which are  
22                  paid to such company with respect to such  
23                  premiums and which are included in in-  
24                  come of such company, multiplied by

25                  “(ii) a fraction—

1                   “(I) the numerator of which is so  
2                   much of such premiums as exceeds  
3                   the premium limitation for such tax-  
4                   able year, and

5                   “(II) the denominator of which is  
6                   the aggregate amount of such pre-  
7                   miums.

8                   “(E) ELECTION BY FOREIGN CORPORA-  
9                   TION TO BE TREATED AS DOMESTIC CORPORA-  
10                  TION.—

11                  “(i) IN GENERAL.—If a foreign cor-  
12                  poration is paid a premium by a covered  
13                  insurance company which would (but for  
14                  this subparagraph) be a affiliated non-  
15                  taxed reinsurance premium, then such for-  
16                  eign corporation may make an election to  
17                  be treated as a domestic corporation for  
18                  purposes of this subtitle.

19                  “(ii) REVOCATION ONLY WITH CON-  
20                  SENT.—Any election under clause (i), once  
21                  made, may be revoked only with the con-  
22                  sent of the Secretary.

23                  “(iii) TREATMENT OF LOSSES.—Ex-  
24                  cept as otherwise provided by the Sec-  
25                  retary, rules similar to the rules of sections

1           953(d)(3) and 362(e) shall apply in the  
2           case of a corporation making an election  
3           under clause (i).

4           “(F) OTHER DEFINITIONS AND SPECIAL  
5           RULES.—For purposes of this paragraph—

6                   “(i) COVERED INSURANCE COM-  
7                   PANY.—The term ‘covered insurance com-  
8                   pany’ means any insurance company sub-  
9                   ject to the tax imposed by section 831.

10                   “(ii) TREATMENT OF CONTROLLED  
11                   GROUP.—All domestic members of a con-  
12                   trolled group of corporations (as defined in  
13                   section 1563) of which a covered insurance  
14                   company is a member shall be treated as  
15                   one corporation.

16                   “(iii) AFFILIATED CORPORATIONS.—A  
17                   corporation shall be treated as affiliated  
18                   with a covered insurance company if both  
19                   corporations are members of the same con-  
20                   trolled group of corporations, as defined in  
21                   section 1563(a) except that—

22                           “(I) ‘more than 25 percent’ shall  
23                           be substituted for ‘at least 80 percent’  
24                           each place it appears in section  
25                           1563(a)(1), and

1                   “(II) the determination shall be  
2                   made without regard to subsections  
3                   (a)(4), (b)(2)(C), (b)(2)(D), and  
4                   (e)(3)(C) of section 1563.

5                   “(iv) TREATMENT OF REINSURANCE  
6                   ASSUMED BY COVERED INSURANCE COM-  
7                   PANY.—Reinsurance ceded by a non-affili-  
8                   ated corporation to a covered insurance  
9                   company shall be taken into account in the  
10                  same manner as premiums written by such  
11                  covered insurance company.

12                  “(G) REGULATIONS.—The Secretary shall  
13                  prescribe such regulations as may be appro-  
14                  priate to carry out or to prevent the avoidance  
15                  of the purposes of this paragraph, including  
16                  regulations which provide for the application of  
17                  this section to alternative reinsurance trans-  
18                  actions, fronting transactions, conduit and re-  
19                  ciprocal transactions, and any economically  
20                  equivalent transactions.”.

21                  (b) EFFECTIVE DATE.—The amendment made by  
22                  this section shall apply to taxable years beginning after  
23                  December 31, 2008.

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