

116TH CONGRESS
2D SESSION

H. R. 5746

To amend the Internal Revenue Code of 1986 to provide special rules for purposes of determining if financial guaranty insurance companies are qualifying insurance corporations under the passive foreign investment company rules.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 2020

Ms. MOORE (for herself and Mr. SMITH of Nebraska) 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 provide special rules for purposes of determining if financial guaranty insurance companies are qualifying insurance corporations under the passive foreign investment company rules.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. TREATMENT OF FINANCIAL GUARANTY INSUR-**
2 **ANCE COMPANIES AS QUALIFYING INSUR-**
3 **ANCE CORPORATIONS UNDER PASSIVE FOR-**
4 **EIGN INVESTMENT COMPANY RULES.**

5 (a) IN GENERAL.—Section 1297(f)(3) of the Internal
6 Revenue Code of 1986 is amended by adding at the end
7 the following new subparagraph:

8 “(C) SPECIAL RULE FOR FINANCIAL GUAR-
9 ANTY INSURANCE COMPANIES.—

10 “(i) IN GENERAL.—Notwithstanding
11 subparagraphs (A)(ii) and (B), the applica-
12 ble insurance liabilities of a financial guar-
13 anty insurance company shall include its
14 unearned premium reserves if—

15 “(I) such company is prohibited
16 under generally accepted accounting
17 principles from reporting on its appli-
18 cable financial statements reserves for
19 losses and loss adjustment expenses
20 with respect to a financial guaranty
21 insurance or reinsurance contract ex-
22 cept to the extent that such reserve
23 amounts are expected to exceed the
24 unearned premium reserves on the
25 contract,

1 “(II) the applicable financial
2 statement of such company reports fi-
3 nancial guaranty exposure of at least
4 15-to-1, and

5 “(III) such company includes in
6 its insurance liabilities only its un-
7 earned premium reserves relating to
8 insurance written or assumed that is
9 within the single risk limits set forth
10 in subsection (D) of section 4 of the
11 Financial Guaranty Insurance Guide-
12 line (modified by using total share-
13 holder’s equity as reported on the ap-
14 plicable financial statement of the
15 company rather than aggregate of the
16 surplus to policyholders and contin-
17 gency reserves).

18 “(ii) FINANCIAL GUARANTY INSUR-
19 ANCE COMPANY.—For purposes of this
20 subparagraph, the term ‘financial guaranty
21 insurance company’ means any insurance
22 company the sole business of which is writ-
23 ing or reinsuring financial guaranty insur-
24 ance (as defined in subsection (A) of sec-
25 tion 1 of the Financial Guaranty Insurance

Guideline) which is permitted under subsection (B) of section 4 of such Guideline.

“(iii) FINANCIAL GUARANTY EXPOSURE.—For purposes of this subparagraph, the term ‘financial guaranty exposure’ means the ratio of—

“(I) the net debt service outstanding insured or reinsured by the company that is within the single risk limits set forth in the Financial Guaranty Insurance Guideline (as reported on such company’s applicable financial statement), to

“(II) the company’s total assets (as so reported).

“(iv) FINANCIAL GUARANTY INSURANCE GUIDELINE.—For purposes of this subparagraph, the term ‘Financial Guaranty Insurance Guideline’ means the October 2008 model regulation that was adopted by the National Association of Insurance Commissioners on December 4, 2007.”.

1 (b) REPORTING OF CERTAIN ITEMS.—Section
2 1297(f)(4) of such Code is amended by adding at the end
3 the following new subparagraph:

4 “(C) CLARIFICATION THAT CERTAIN ITEMS
5 ON APPLICABLE FINANCIAL STATEMENT BE
6 SEPARATELY REPORTED WITH RESPECT TO
7 CORPORATION.—An amount described in para-
8 graph (1)(B) or clause (i)(II), (i)(III), (iii)(I),
9 or (iii)(II) of paragraph (3)(C) shall not be
10 treated as reported on an applicable financial
11 statement for purposes of this section unless
12 such amount is separately reported on such
13 statement with respect to the corporation re-
14 ferred to in paragraph (1).

15 “(D) AUTHORITY OF SECRETARY TO RE-
16 QUIRE REPORTING.—

17 “(i) IN GENERAL.—Each United
18 States person who owns an interest in a
19 specified non-publicly traded foreign cor-
20 poration and who takes the position that
21 such corporation is not a passive foreign
22 investment company shall report to the
23 Secretary such information with respect to
24 such corporation as the Secretary may re-
25 quire.

“(ii) SPECIFIED NON-PUBLICLY TRADED FOREIGN CORPORATION.—For purposes of this subparagraph, the term ‘specified non-publicly traded foreign corporation’ means any foreign corporation—

“(I) which would be a passive foreign investment company if subsection (b)(2)(B) did not apply, and

“(II) no interest in which is traded on an established securities market.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect as if included in section 14501 of Public Law 115–97.

(2) REPORTING.—The amendment made by subsection (b) shall apply to reports made after the date of the enactment of this Act.

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