

116TH CONGRESS
2D SESSION

H. R. 7309

To prohibit certain assistance for inverted domestic corporations.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2020

Mr. DOGGETT introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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”.

1 **SEC. 2. PROHIBITION ON APPLICATION OF CERTAIN AS-**
2 **SISTANCE TO INVERTED DOMESTIC COR-**
3 **PORATIONS.**

4 (a) PROHIBITION ON USE OF CERTAIN TAX INCEN-
5 TIVES.—

6 (1) NET OPERATING LOSS CARRYBACKS.—

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

11 “(vi) SPECIAL RULE FOR INVERTED
12 DOMESTIC CORPORATIONS.—Clause (i)
13 shall not apply to any foreign corporation
14 for any taxable year in which such corpora-
15 tion is an inverted domestic corporation
16 (as defined in section 7701(p)(2)), or to
17 any member of the expanded affiliated
18 group (as defined in section 7874(c)(1)) of
19 such a foreign corporation, unless such for-
20 eign corporation has made an election
21 under section 7701(p)(1).”.

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

25 (2) INCREASED LIMITATION ON BUSINESS IN-
26 TEREST.—

1 (A) IN GENERAL.—Section 163(j)(10) of
 2 the Internal Revenue Code of 1986 is amended
 3 by adding at the end the following new sub-
 4 paragraph:

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

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

18 (3) FEDERAL RESERVE EMERGENCY LENDING
 19 FACILITIES.—

20 (A) IN GENERAL.—No inverted domestic
 21 corporation, as defined in section 7701(p)(2) of
 22 the Internal Revenue Code of 1986, or any
 23 member of the expanded affiliated group (as de-
 24 fined in section 7874(c)(1) of such Code) of
 25 such inverted domestic corporation, may partici-

1 pate in any program or facility established by
2 the Board of Governors of the Federal Reserve
3 System under the authority of section 13(3) of
4 the Federal Reserve Act (12 U.S.C. 343) and
5 with funding authorized under section 4003 of
6 the CARES Act (Public Law 116–136), includ-
7 ing the Primary Market Corporate Credit Facil-
8 ity and the Secondary Market Corporate Credit
9 Facility.

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

14 (C) APPLICABILITY.—This paragraph shall
15 apply to participation in any program or facility
16 described in subparagraph (A) established be-
17 fore, on, or after the date of enactment of this
18 Act.

19 (b) ELECTION TO TREAT INVERTED DOMESTIC COR-
20 PORATIONS AS DOMESTIC CORPORATIONS.—

21 (1) INVERTED DOMESTIC CORPORATIONS.—Sec-
22 tion 7701 of the Internal Revenue Code of 1986 is
23 amended by redesignating subsection (p) as sub-
24 section (q) and by inserting after subsection (o) the
25 following new subsection:

1 “(p) INVERTED DOMESTIC CORPORATIONS.—

2 “(1) ELECTION TO BE TREATED AS A DOMES-
3 TIC CORPORATION.—

4 “(A) IN GENERAL.—Notwithstanding pa-
5 ragraphs (4) and (5) of subsection (a), an in-
6 verted domestic corporation may elect to be
7 treated as a domestic corporation for taxable
8 years beginning with the last taxable year which
9 begins before January 1, 2018.

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

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

15 “(ii) once made, shall be irrevocable.

16 “(C) TIME FOR FILING RETURNS AND PAY-
17 MENT OF TAXES.—Notwithstanding sections
18 6072 and 6151, any return for any taxable year
19 ending before the date described in subpara-
20 graph (B)(i), and any payment of taxes or pen-
21 alties, shall not be considered due before Janu-
22 ary 1, 2021.

23 “(2) INVERTED DOMESTIC CORPORATION.—For
24 purposes of this subsection, the term ‘inverted do-
25 mestic corporation’ means any foreign corporation

1 which, pursuant to a plan (or a series of related
2 transactions)—

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

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

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

12 “(B) after the acquisition, either—

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

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

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

1 ing a capital or profits interest in the
2 domestic partnership, or

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

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

1 ness activities constitute substantial business activi-
2 ties for purposes of this paragraph.

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

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

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

1 sponsibilities shall be treated as executive offi-
2 cers and senior management regardless of their
3 title.

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

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

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

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

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

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

1 tions for determining if business activities constitute
2 significant domestic business activities for purposes
3 of this paragraph.

4 “(6) DEFINITIONS AND OTHER RULES.—

5 “(A) EXPANDED AFFILIATED GROUP.—

6 The term ‘expanded affiliated group’ has the
7 meaning give such term under section
8 7874(c)(1).

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

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