

113TH CONGRESS  
2D SESSION

# S. 2360

To amend the Internal Revenue Code of 1986 to modify the rules relating to inverted corporations.

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## IN THE SENATE OF THE UNITED STATES

MAY 20, 2014

Mr. LEVIN (for himself, Mr. WHITEHOUSE, Mr. ROCKEFELLER, Mr. CARDIN, Mrs. BOXER, Mr. NELSON, Mr. JOHNSON of South Dakota, Mrs. FEINSTEIN, Mr. KAINE, Ms. HIRONO, Mr. KING, Ms. STABENOW, Mr. SCHATZ, Ms. WARREN, Mr. REED, Mr. HARKIN, Mr. FRANKEN, Mr. DURBIN, Mr. WALSH, and Ms. KLOBUCHAR) 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 modify the rules relating to inverted 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 “Stop Corporate Inver-  
5 sions Act of 2014”.

1 **SEC. 2. MODIFICATIONS TO RULES RELATING TO IN-**  
2 **VERTED CORPORATIONS.**

3 (a) IN GENERAL.—Subsection (b) of section 7874 of  
4 the Internal Revenue Code of 1986 is amended to read  
5 as follows:

6 “(b) INVERTED CORPORATIONS TREATED AS DO-  
7 MESTIC CORPORATIONS.—

8 “(1) IN GENERAL.—Notwithstanding section  
9 7701(a)(4), a foreign corporation shall be treated for  
10 purposes of this title as a domestic corporation if—

11 “(A) such corporation would be a surro-  
12 gate foreign corporation if subsection (a)(2)  
13 were applied by substituting ‘80 percent’ for  
14 ‘60 percent’, or

15 “(B) such corporation is an inverted do-  
16 mestic corporation.

17 “(2) INVERTED DOMESTIC CORPORATION.—For  
18 purposes of this subsection, a foreign corporation  
19 shall be treated as an inverted domestic corporation  
20 if, pursuant to a plan (or a series of related trans-  
21 actions)—

22 “(A) the entity completes after May 8,  
23 2014, and before May 9, 2016, the direct or in-  
24 direct acquisition of—

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

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

8 “(B) after the acquisition, either—

9 “(i) more than 50 percent of the stock  
10 (by vote or value) of the entity is held—

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

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

23 “(ii) the management and control of  
24 the expanded affiliated group which in-  
25 cludes the entity occurs, directly or indi-

1           rectly, primarily within the United States,  
2           and such expanded affiliated group has  
3           significant domestic business activities.

4           “(3) EXCEPTION FOR CORPORATIONS WITH  
5           SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN  
6           COUNTRY OF ORGANIZATION.—A foreign corporation  
7           described in paragraph (2) shall not be treated as an  
8           inverted domestic corporation if after the acquisition  
9           the expanded affiliated group which includes the en-  
10          tity has substantial business activities in the foreign  
11          country in which or under the law of which the enti-  
12          ty is created or organized when compared to the  
13          total business activities of such expanded affiliated  
14          group. For purposes of subsection (a)(2)(B)(iii) and  
15          the preceding sentence, the term ‘substantial busi-  
16          ness activities’ shall have the meaning given such  
17          term under regulations in effect on May 8, 2014, ex-  
18          cept that the Secretary may issue regulations in-  
19          creasing the threshold percent in any of the tests  
20          under such regulations for determining if business  
21          activities constitute substantial business activities for  
22          purposes of this paragraph.

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

1           “(A) IN GENERAL.—The Secretary shall  
2 prescribe regulations for purposes of deter-  
3 mining cases in which the management and  
4 control of an expanded affiliated group is to be  
5 treated as occurring, directly or indirectly, pri-  
6 marily within the United States. The regula-  
7 tions prescribed under the preceding sentence  
8 shall apply to periods after May 8, 2014.

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

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

5                   “(A) the employees of the group are based  
6                   in the United States,

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

10                  “(C) the assets of the group are located in  
11                  the United States, or

12                  “(D) the income of the group is derived in  
13                  the United States,

14           determined in the same manner as such determina-  
15           tions are made for purposes of determining substan-  
16           tial business activities under regulations referred to  
17           in paragraph (3) as in effect on May 8, 2014, but  
18           applied by treating all references in such regulations  
19           to ‘foreign country’ and ‘relevant foreign country’ as  
20           references to ‘the United States’. The Secretary may  
21           issue regulations decreasing the threshold percent in  
22           any of the tests under such regulations for deter-  
23           mining if business activities constitute significant  
24           domestic business activities for purposes of this  
25           paragraph.”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Clause (i) of section 7874(a)(2)(B) of such  
3 Code is amended by striking “after March 4, 2003,”  
4 and inserting “after March 4, 2003, and before May  
5 9, 2014, or after May 8, 2016,”.

6 (2) Subsection (c) of section 7874 of such Code  
7 is amended—

8 (A) in paragraph (2)—

9 (i) by striking “subsection  
10 (a)(2)(B)(ii)” and inserting “subsections  
11 (a)(2)(B)(ii) and (b)(2)(B)(i)”, and

12 (ii) by inserting “or (b)(2)(A)” after  
13 “(a)(2)(B)(i)” in subparagraph (B),

14 (B) in paragraph (3), by inserting “or  
15 (b)(2)(B)(i), as the case may be,” after  
16 “(a)(2)(B)(ii)”,

17 (C) in paragraph (5), by striking “sub-  
18 section (a)(2)(B)(ii)” and inserting “sub-  
19 sections (a)(2)(B)(ii) and (b)(2)(B)(i)”, and

20 (D) in paragraph (6), by inserting “or in-  
21 verted domestic corporation, as the case may  
22 be,” after “surrogate foreign corporation”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years ending after May  
3 8, 2014.

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