

111TH CONGRESS
1ST SESSION

H. R. 3424

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.

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2009

Mr. NEAL of Massachusetts 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 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 if, with respect to such affiliated cor-
21 poration, such premium is neither subpart
22 F income (as defined in section 952) nor
23 subject to tax under this subtitle.

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 TO TREAT REINSURANCE
9 INCOME AS EFFECTIVELY CONNECTED.—

10 “(i) IN GENERAL.—A specified affili-
11 ated corporation may elect for any taxable
12 year—

13 “(I) to treat specified reinsurance
14 income as income effectively connected
15 with the conduct of a trade or busi-
16 ness in the United States, and

17 “(II) to be treated as carrying on
18 an insurance business within the
19 United States.

20 “(ii) SPECIFIED AFFILIATED COR-
21 PORATION.—For purposes of this subpara-
22 graph, the term ‘specified affiliated cor-
23 poration’ means any affiliated corporation
24 which—

1 “(I) is a foreign corporation
2 which would qualify under part I or
3 this part for the taxable year if it
4 were a domestic corporation,

5 “(II) waives all benefits granted
6 by the United States under any treaty
7 between the United States and any
8 foreign country with respect to speci-
9 fied reinsurance income with respect
10 to which the election under clause (i)
11 applies, and

12 “(III) meets such requirements
13 as the Secretary shall prescribe to en-
14 sure that tax on such income is prop-
15 erly determined and paid.

16 “(iii) SPECIFIED REINSURANCE IN-
17 COME.—For purposes of this subpara-
18 graph, the term ‘specified reinsurance in-
19 come’ means, with respect to any specified
20 affiliated corporation for any taxable
21 year—

22 “(I) all reinsurance premiums
23 which would (but for the election
24 made under this subparagraph) be af-
25 filiated non-taxed reinsurance pre-

1 miums and which are received by such
2 corporation during such taxable year
3 directly or indirectly from covered in-
4 surance companies with respect to
5 which such corporation is affiliated,
6 and

7 “(II) so much of the net invest-
8 ment income (within the meaning of
9 section 842(b)) for such taxable year
10 as is allocable to reinsurance pre-
11 miums with respect to which an elec-
12 tion under clause (i) applies for such
13 taxable year or any prior taxable year.

14 “(iv) RULES RELATED TO ELEC-
15 TION.—Any election under clause (i)
16 shall—

17 “(I) be made at such time and in
18 such form and manner as the Sec-
19 retary may provide, and

20 “(II) apply for the taxable year
21 for which made and all subsequent
22 taxable years unless revoked with the
23 consent of the Secretary.

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

1 “(i) COVERED INSURANCE COM-
2 PANY.—The term ‘covered insurance com-
3 pany’ means any insurance company sub-
4 ject to the tax imposed by section 831.

5 “(ii) TREATMENT OF CONTROLLED
6 GROUP.—All domestic members of a con-
7 trolled group of corporations (as defined in
8 section 1563) of which a covered insurance
9 company is a member shall be treated as
10 one corporation.

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

17 “(I) ‘more than 25 percent’ shall
18 be substituted for ‘at least 80 percent’
19 each place it appears in section
20 1563(a)(1), and

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

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

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

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to taxable years beginning after
19 December 31, 2009.

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