

118TH CONGRESS
1ST SESSION

H. R. 5109

To impose restrictions on the investment in Chinese companies by tax-exempt entities.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 2023

Mr. GALLAGHER (for himself, Mr. LAHOOD, Mr. WITTMAN, and Mr. MOOLENAAR) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Foreign Affairs, 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 impose restrictions on the investment in Chinese companies by tax-exempt entities.

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 “Dump Investments in
5 Troublesome Communist Holdings Act” or as the
6 “DITCH Act”.

1 **SEC. 2. RESTRICTION ON INVESTMENT IN CHINESE COMPA-**
2 **NIES BY TAX-EXEMPT ENTITIES.**

3 (a) IN GENERAL.—Section 501 of the Internal Rev-
4 enue Code of 1986 is amended by adding at the end the
5 following new subsection:

6 “(s) RESTRICTION ON INVESTMENT IN CHINESE
7 COMPANIES.—

8 “(1) IN GENERAL.—An organization shall not
9 be treated as described in subsection (c) or (d) or
10 section 401(a) for any taxable year if—

11 “(A) such organization holds any interest
12 in a disqualified Chinese company at any time
13 during such taxable year, or

14 “(B) fails to timely transmit the annual re-
15 port described in paragraph (5) for such tax-
16 able year.

17 “(2) DISQUALIFIED CHINESE COMPANY.—For
18 purposes of this subsection—

19 “(A) IN GENERAL.—The term ‘disqualified
20 Chinese company’ means any corporation—

21 “(i) that is incorporated in China, or

22 “(ii) more than 10 percent of the
23 stock of which (determined by vote or
24 value) is held (directly or indirectly
25 through any chain of ownership) by any of
26 the following (or combination thereof):

1 “(I) 1 or more corporations de-
2 scribed in clause (i).

3 “(II) China or any governmental
4 agency thereof.

5 “(III) Provincial, regional, mu-
6 nicipal, Special Administrative Re-
7 gions, prefecture, county, township,
8 village, or any other Chinese sub-na-
9 tional governmental entity or agency.

10 “(IV) Any entity controlled (di-
11 rectly or indirectly) by the Chinese
12 Communist Party or any Chinese
13 Communist Party organ.

14 “(V) Any Chinese national.

15 “(B) APPLICATION TO ENTITIES OTHER
16 THAN CORPORATIONS.—In the case of any busi-
17 ness organization which is not a corporation,
18 subparagraph (A) shall apply to such organiza-
19 tion in the same manner as though such organi-
20 zation were a corporation.

21 “(C) APPLICATION TO INDIRECT, DERIVA-
22 TIVE, OR OTHER CONTRACTUAL INTERESTS,
23 ETC.—For purposes of this subsection, an orga-
24 nization shall be treated as holding an interest

1 in a disqualified Chinese company if such orga-
2 nization—

3 “(i) holds such interest (or any instru-
4 ment described in subparagraph (A)) di-
5 rectly or indirectly through any chain of
6 ownership, or

7 “(ii) holds any derivative financial in-
8 strument or other contractual arrangement
9 with respect to such interest or company
10 (including any financial instrument or
11 other contract which seeks to replicate any
12 financial return with respect to such inter-
13 est or such company).

14 “(D) PUBLICATION OF LIST BY SEC-
15 RETARY.—The Secretary shall, not later than
16 120 days after the date of the enactment of this
17 Act, establish a process for the periodic pub-
18 lishing of a list of certified pooled investments,
19 including exchange traded funds and mutual
20 funds, that do not have exposure to disqualified
21 Chinese companies.

22 “(3) WAIVERS.—

23 “(A) IN GENERAL.—Paragraph (1) shall
24 not apply with respect to any interest in a dis-
25 qualified Chinese company held by any organi-

1 zation during any taxable year if the Secretary
2 issues a waiver to such organization with re-
3 spect to such interest for such taxable year
4 under this paragraph. Any waiver issued under
5 this paragraph shall be subject to renewal or
6 expiration on a biannual basis.

7 “(B) WAIVER PROCESS.—

8 “(i) APPLICATION.—Not later than 60
9 days after the date of the enactment of
10 this subsection, the Secretary shall estab-
11 lish a process under which an organization
12 may submit a written application for a
13 waiver under this paragraph. Such applica-
14 tion shall be made publicly available and
15 shall include:

16 “(I) An explanation of the need
17 for such waiver and the reasons that
18 the need for such waiver outweigh the
19 threat posed to the United States by
20 China and the lack of separation be-
21 tween China and the disqualified Chi-
22 nese company involved.

23 “(II) The type (including sector
24 of the economy), amount, and dura-

1 tion of the investment in the disquali-
2 fied Chinese company.

3 “(III) The relationship between
4 the disqualified Chinese company and
5 China.

6 “(IV) The extenuating cir-
7 cumstances justifying the applicant’s
8 need to invest in the disqualified Chi-
9 nese company.

10 “(ii) RESPONSE.—The Secretary shall
11 provide a written response to each com-
12 pleted application under clause (i) not later
13 than 60 days after receipt of such applica-
14 tion. Such written response shall be made
15 publicly available and shall include:

16 “(I) A statement of whether the
17 waiver has been provided or withheld.

18 “(II) The reasons for providing
19 or withholding the waiver.

20 “(III) The identification of any
21 future investments with respect to
22 which such waiver applies.

23 “(IV) The date on which such
24 waiver expires (which may not be later
25 than the earlier of the termination of

1 the extenuating circumstances re-
2 ferred to in clause (i)(IV) or the end
3 of the biannual period referred to in
4 subparagraph (A)).

5 “(C) STANDARDS FOR DETERMINING IF
6 WAIVER IS PROVIDED.—The Secretary may pro-
7 vide a waiver under this paragraph only if the
8 Secretary independently determines that—

9 “(i) the need for such waiver, and the
10 reasons for the need for such waiver, out-
11 weigh the threat posed to the United
12 States by China and the lack of separation
13 between China and the disqualified Chinese
14 company involved, and

15 “(ii) extenuating circumstances justify
16 the applicant’s need to invest in the dis-
17 qualified Chinese company.

18 For purposes of this subparagraph, the Sec-
19 retary shall not consider the past or future fi-
20 nancial returns of any investment in any dis-
21 qualified Chinese company, or any other jus-
22 tification based on the applicant’s own financial
23 needs, as an extenuating circumstance justi-
24 fying such an investment.

1 “(D) PUBLICATION OF WAIVERS PRO-
2 VIDED.—With respect to each calendar quarter,
3 the Secretary shall publish and make publicly
4 available a list of the waivers provided by the
5 Secretary under this paragraph during such
6 quarter.

7 “(4) CHINA.—For purposes of this section, the
8 term ‘China’ means the People’s Republic of China
9 and includes any subordinate Special Administrative
10 Regions thereof.

11 “(5) ANNUAL REPORT.—Each organization de-
12 scribed in paragraph (1) with respect to each taxable
13 year shall, not later than the due date for the return
14 of tax for such taxable year, transmit to the Sec-
15 retary a written report including—

16 “(A) a description of each interest in a dis-
17 qualified Chinese company held by such organi-
18 zation during such taxable year,

19 “(B) the period for any such interest that
20 was so held, and

21 “(C) whether such organization has a
22 waiver under paragraph (3) to hold such inter-
23 est during such period.”.

24 (b) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply to taxable years ending after
3 the date of the enactment of this Act, except that
4 only periods after the date that is 270 days after the
5 date of the enactment of this Act shall be taken into
6 account in determining whether the requirement of
7 section 501(s) of the Internal Revenue Code of 1986
8 (as added by this section) is met with respect to any
9 taxable year.

10 (2) 1-YEAR GRACE PERIOD UNDER CERTAIN
11 CIRCUMSTANCES.—In the case of any organization
12 that, after intensive due diligence, is unaware of the
13 failure to satisfy the requirement of such section
14 501(s), paragraph (1) shall be applied by sub-
15 stituting “1 year” for “270 days”.

16 (c) PUBLIC REPORT.—Not later than 360 days after
17 the date of the enactment of this Act, and annually there-
18 after, the Secretary of the Treasury (or the Secretary’s
19 delegate) shall publicly release a report describing the pat-
20 terns of United States outbound investment in China, in-
21 cluding such investment by organizations described in sec-
22 tion 501(s)(1) of the Internal Revenue Code of 1986 (as
23 added by this section). Such report shall detail the sectoral
24 breakdown of such investments.

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