

113TH CONGRESS
2D SESSION

S. 2786

To amend the Internal Revenue Code of 1986 to prevent earnings stripping of domestic corporations which are members of a worldwide group of corporations which includes an inverted corporation and to require agreements with respect to certain related party transactions with those members.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 2014

Mr. SCHUMER (for himself, Mr. DURBIN, Mr. BROWN, Mr. COONS, Mr. ROCKEFELLER, Ms. STABENOW, Mr. CARDIN, Mr. REED, Mr. MENENDEZ, Mr. MARKEY, Mr. MERKLEY, Ms. BALDWIN, Mr. LEVIN, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to prevent earnings stripping of domestic corporations which are members of a worldwide group of corporations which includes an inverted corporation and to require agreements with respect to certain related party transactions with those members.

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. SHORT TITLE.**

2 This Act may be cited as the “Corporate Inverters
3 Earnings Stripping Reform Act of 2014”.

4 **SEC. 2. ADDITIONAL RULES RELATED TO INVERTED COR-**
5 **PORATIONS.**

6 (a) IN GENERAL.—Section 7874 of the Internal Rev-
7 enue Code of 1986 is amended by redesignating subsection
8 (g) as subsection (h) and by inserting after subsection (f)
9 the following new subsection:

10 “(g) SPECIAL RULES APPLICABLE TO EARNINGS
11 STRIPPING AND RELATED PARTY TRANSACTIONS.—

12 “(1) MODIFICATIONS OF LIMITATION ON INTER-
13 EST DEDUCTION.—

14 “(A) IN GENERAL.—In the case of any ad-
15 ditional limitation year of a corporation which
16 is an applicable entity, section 163(j) shall be
17 applied with the modifications described in sub-
18 paragraph (B).

19 “(B) MODIFICATIONS FOR ADDITIONAL
20 LIMITATION YEARS.—For purposes of subpara-
21 graph (A), the modifications described in this
22 subparagraph are as follows:

23 “(i) NO CARRYOVER.—No
24 carryforward to any other taxable year
25 shall be allowed under section 163(j)(1)(B)
26 for interest paid or accrued during any ad-

1 ditional limitation year with respect to
2 which a deduction was disallowed to the
3 corporation under section 163(j).

4 “(ii) RULES FOR DETERMINING
5 WHETHER INTEREST LIMITATION RULES
6 APPLY.—In applying section 163(j)(2) to
7 determine whether section 163(j) applies to
8 the corporation for any additional limita-
9 tion year—

10 “(I) subparagraph (A)(ii) shall
11 be disregarded, and

12 “(II) subparagraph (B)(i)(II)
13 shall be applied by substituting ‘25
14 percent of the adjusted taxable income
15 of the corporation’ for ‘the sum of 50
16 percent of the adjusted taxable income
17 of the corporation plus any excess lim-
18 itation carryforward under clause (ii)’
19 for purposes of determining the cor-
20 poration’s excess interest expense for
21 the year.

22 “(C) ADDITIONAL LIMITATION YEAR.—For
23 purposes of this paragraph, the term ‘additional
24 limitation year’ means, with respect to any cor-
25 poration which is an applicable entity, any tax-

1 able year beginning on or after the first day of
2 the later of the corporation's—

3 “(i) first taxable year beginning on or
4 after the date of enactment of this sub-
5 paragraph, or

6 “(ii) first taxable year for which the
7 corporation is an applicable entity.

8 “(2) ANNUAL APPLICATION FOR AGREEMENTS
9 ON RETURN POSITIONS.—

10 “(A) IN GENERAL.—Each applicable entity
11 shall file with the Secretary an application for
12 an approval agreement under subparagraph (C)
13 for each approval year. Such application shall
14 be filed at such time and manner, and shall
15 contain such information, as the Secretary may
16 prescribe.

17 “(B) FAILURES TO COMPLY.—If an appli-
18 cable entity fails to file an application under
19 subparagraph (A), or the approval agreement
20 does not contain the necessary provisions de-
21 scribed in subparagraph (C), for any taxable
22 year, then for such taxable year—

23 “(i) there shall not be allowed any de-
24 duction, or addition to basis or cost of
25 goods sold, for amounts paid or incurred,

1 or losses incurred, by reason of a trans-
2 action between the entity and a foreign re-
3 lated person,

4 “(ii) any transfer or license of intan-
5 gible property (as defined in section
6 936(h)(3)(B)) between the entity and a
7 foreign related person shall be disregarded,
8 and

9 “(iii) any cost-sharing arrangement
10 between the entity and a foreign related
11 person shall be disregarded.

12 “(C) APPROVAL AGREEMENT.—For pur-
13 poses of subparagraph (A), the term ‘approval
14 agreement’ means a prefilling, advance pricing,
15 or other agreement specified by the Secretary
16 which contains such provisions as the Secretary
17 determines necessary to ensure that the require-
18 ments of sections 163(j), 267(a)(3), 367, 482,
19 and 845, and any other provision of this title
20 applicable to transactions between related per-
21 sons and specified by the Secretary, are met.

22 “(D) APPROVAL YEAR.—For purposes of
23 this paragraph, the term ‘approval year’ means,
24 with respect to any applicable entity, any tax-
25 able year beginning on or after the date of en-

1 actment of this subparagraph if such taxable
2 year is within the 10-taxable-year period begin-
3 ning with the first taxable year for which the
4 entity is an applicable entity.

5 “(3) APPLICABLE ENTITY.—For purposes of
6 this subsection—

7 “(A) IN GENERAL.—The term ‘applicable
8 entity’ means any corporation which is a mem-
9 ber of an expanded affiliated group which in-
10 cludes an entity which—

11 “(i) is a surrogate foreign corporation,
12 determined by applying subsection
13 (a)(2)(B)—

14 “(I) by substituting ‘more than
15 50 percent’ for ‘at least 60 percent’ in
16 clause (ii) thereof,

17 “(II) by substituting ‘before, on,
18 or after’ for ‘after’ in clause (i) there-
19 of, and

20 “(III) by disregarding the matter
21 following clause (iii) thereof, and

22 “(ii) is not treated as a domestic cor-
23 poration by reason of subsection (b).

24 “(B) SPECIAL RULE FOR INCLUSION OF
25 NONCORPORATE ENTITIES.—For purposes of

1 subparagraph (A), a partnership or other entity
2 (other than a corporation) shall be treated as a
3 member of an expanded affiliated group if such
4 entity controls (as determined under section
5 954(d)(3)), or is controlled by (as so deter-
6 mined), members of such group (including any
7 entity treated as a member of such group by
8 reason of this sentence).”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall apply with respect to taxable years begin-
11 ning after the date of enactment of this Act.

○