

112TH CONGRESS  
1ST SESSION

# S. 1693

To amend the Internal Revenue Code of 1986 to prevent the avoidance of tax by insurance companies through reinsurance with non-taxed affiliates.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 12, 2011

Mr. MENENDEZ 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 prevent the avoidance of tax by insurance companies through reinsurance with non-taxed 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. PREVENTION OF AVOIDANCE OF TAX THROUGH**  
4 **REINSURANCE WITH NON-TAXED AFFILIATES.**

5 (a) IN GENERAL.—Part III of subchapter L of chap-  
6 ter 1 of the Internal Revenue Code of 1986 is amended  
7 by adding at the end the following new section:

1 **“SEC. 849. SPECIAL RULES FOR REINSURANCE OF NON-**  
 2 **LIFE CONTRACTS WITH NON-TAXED AFFILI-**  
 3 **ATES.**

4 “(a) IN GENERAL.—The taxable income under sec-  
 5 tion 831(a) or the life insurance company taxable income  
 6 under section 801(b) (as the case may be) of an insurance  
 7 company shall be determined by not taking into account—

8 “(1) any non-taxed reinsurance premium,

9 “(2) any additional amount paid by such insur-  
 10 ance company with respect to the reinsurance for  
 11 which such non-taxed reinsurance premium is paid,  
 12 to the extent such additional amount is properly al-  
 13 locable to such non-taxed reinsurance premium, and

14 “(3) any return premium, ceding commission,  
 15 reinsurance recovered, or other amount received by  
 16 such insurance company with respect to the reinsur-  
 17 ance for which such non-taxed reinsurance premium  
 18 is paid, to the extent such return premium, ceding  
 19 commission, reinsurance recovered, or other amount  
 20 is properly allocable to such non-taxed reinsurance  
 21 premium.

22 “(b) NON-TAXED REINSURANCE PREMIUMS.—For  
 23 purposes of this section—

24 “(1) IN GENERAL.—The term ‘non-taxed rein-  
 25 surance premium’ means any reinsurance premium  
 26 paid directly or indirectly to an affiliated corporation

1 with respect to reinsurance of risks (other than ex-  
 2 cepted risks), to the extent that the income attrib-  
 3 utable to the premium is not subject to tax under  
 4 this subtitle (either as the income of the affiliated  
 5 corporation or as amounts included in gross income  
 6 by a United States shareholder under section 951).

7 “(2) EXCEPTED RISKS.—The term ‘excepted  
 8 risks’ means any risk with respect to which reserves  
 9 described in section 816(b)(1) are established.

10 “(c) AFFILIATED CORPORATIONS.—For purposes of  
 11 this section, a corporation shall be treated as affiliated  
 12 with an insurance company if both corporations would be  
 13 members of the same controlled group of corporations (as  
 14 defined in section 1563(a)) if section 1563 were applied—

15 “(1) by substituting ‘at least 50 percent’ for ‘at  
 16 least 80 percent’ each place it appears in subsection  
 17 (a)(1), and

18 “(2) without regard to subsections (a)(4),  
 19 (b)(2)(C), (b)(2)(D), and (e)(3)(C).

20 “(d) ELECTION TO TREAT REINSURANCE INCOME AS  
 21 EFFECTIVELY CONNECTED.—

22 “(1) IN GENERAL.—A specified affiliated cor-  
 23 poration may elect for any taxable year to treat  
 24 specified reinsurance income as—

1           “(A) income effectively connected with the  
2           conduct of a trade or business in the United  
3           States, and

4           “(B) for purposes of any treaty between  
5           the United States and any foreign country, in-  
6           come attributable to a permanent establishment  
7           in the United States.

8           “(2) EFFECT OF ELECTION.—In the case of  
9           any specified reinsurance income with respect to  
10          which the election under this subsection applies—

11           “(A) DEDUCTION ALLOWED FOR REINSUR-  
12          ANCE PREMIUMS.—For exemption from sub-  
13          section (a), see definition of non-taxed reinsur-  
14          ance premiums in subsection (b).

15           “(B) EXCEPTION FROM EXCISE TAX.—The  
16          tax imposed by section 4371 shall not apply  
17          with respect to any income treated as effectively  
18          connected with the conduct of a trade or busi-  
19          ness in the United States under paragraph (1).

20           “(C) TAXATION UNDER THIS SUB-  
21          CHAPTER.—Such income shall be subject to tax  
22          under this subchapter to the same extent and  
23          in the same manner as if such income were the  
24          income of a domestic insurance company.

1           “(D) COORDINATION WITH FOREIGN TAX  
2 CREDIT PROVISIONS.—For purposes of subpart  
3 A of part III of subchapter N and sections 78  
4 and 960—

5           “(i) such specified reinsurance income  
6 shall be treated as derived from sources  
7 without the United States, and

8           “(ii) subsections (a), (b), and (c) of  
9 section 904 and sections 902, 907, and  
10 960 shall be applied separately with re-  
11 spect to each item of such income.

12           The Secretary may issue regulations or other  
13 guidance which provide that related items of  
14 specified reinsurance income may be aggregated  
15 for purposes of applying clause (ii).

16           “(3) SPECIFIED AFFILIATED CORPORATION.—  
17 For purposes of this subsection, the term ‘specified  
18 affiliated corporation’ means any affiliated corpora-  
19 tion which is a foreign corporation and which meets  
20 such requirements as the Secretary shall prescribe to  
21 ensure that tax on the specified reinsurance income  
22 of such corporation is properly determined and paid.

23           “(4) SPECIFIED REINSURANCE INCOME.—For  
24 purposes of this paragraph, the term ‘specified rein-  
25 surance income’ means all income of a specified af-

1       filiated corporation which is attributable to reinsur-  
2       ance with respect to which subsection (a) would (but  
3       for the election under this subsection) apply.

4               “(5) RULES RELATED TO ELECTION.—Any  
5       election under paragraph (1) shall—

6                       “(A) be made at such time and in such  
7                       form and manner as the Secretary may provide,  
8                       and

9                       “(B) apply for the taxable year for which  
10                      made and all subsequent taxable years unless  
11                      revoked with the consent of the Secretary.

12       “(e) REGULATIONS.—The Secretary shall prescribe  
13       such regulations or other guidance as may be appropriate  
14       to carry out, or to prevent the avoidance of the purposes  
15       of, this section, including regulations or other guidance  
16       which provide for the application of this section to alter-  
17       native reinsurance transactions, fronting transactions,  
18       conduit and reciprocal transactions, and any economically  
19       equivalent transactions.”.

20       (b) CLERICAL AMENDMENT.—The table of sections  
21       for part III of subchapter L of chapter 1 of such Code  
22       is amended by adding at the end the following new item:

      “Sec. 849. Special rules for reinsurance of non-life contracts with non-taxed af-  
          filiates.”.

1       (c) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2011.

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