

110TH CONGRESS
2D SESSION

S. _____

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 SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

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 BY FOREIGN CORPORA-
9 TION TO BE TREATED AS DOMESTIC CORPORA-
10 TION.—

11 “(i) IN GENERAL.—If a foreign cor-
12 poration is paid a premium by a covered
13 insurance company which would (but for
14 this subparagraph) be a affiliated non-
15 taxed reinsurance premium, then such for-
16 eign corporation may make an election to
17 be treated as a domestic corporation for
18 purposes of this subtitle.

19 “(ii) REVOCATION ONLY WITH CON-
20 SENT.—Any election under clause (i), once
21 made, may be revoked only with the con-
22 sent of the Secretary.

23 “(iii) TREATMENT OF LOSSES.—Ex-
24 cept as otherwise provided by the Sec-
25 retary, rules similar to the rules of sections

1 953(d)(3) and 362(e) shall apply in the
2 case of a corporation making an election
3 under clause (i).

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

6 “(i) COVERED INSURANCE COM-
7 PANY.—The term ‘covered insurance com-
8 pany’ means any insurance company sub-
9 ject to the tax imposed by section 831.

10 “(ii) TREATMENT OF CONTROLLED
11 GROUP.—All domestic members of a con-
12 trolled group of corporations (as defined in
13 section 1563) of which a covered insurance
14 company is a member shall be treated as
15 one corporation.

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

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

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

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

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

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to taxable years beginning after
23 December 31, 2008.