

AMENDMENT TO RULES COMMITTEE PRINT 115-

39

OFFERED BY MR. BUDD OF NORTH CAROLINA

Add at the end the following:

1 **TITLE VI—PREVENTION OF**
2 **AVOIDANCE OF TAX**
3 **THROUGH REINSURANCE**
4 **WITH NON-TAXED AFFILIATES**

5 **SEC. 6001. PREVENTION OF AVOIDANCE OF TAX THROUGH**
6 **REINSURANCE WITH NON-TAXED AFFILIATES.**

7 (a) IN GENERAL.—Part III of subchapter L of chap-
8 ter 1 is amended by adding at the end the following new
9 section:

10 **“SEC. 849. SPECIAL RULES FOR REINSURANCE OF NON-**
11 **LIFE CONTRACTS WITH NON-TAXED AFFILI-**
12 **ATES.**

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

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

18 “(2) any additional amount paid by such insur-
19 ance company with respect to the reinsurance for

1 which such non-taxed reinsurance premium is paid,
2 to the extent such additional amount is properly al-
3 locable to such non-taxed reinsurance premium, and
4 “(3) any return premium, ceding commission,
5 reinsurance recovered, or other amount received by
6 such insurance company with respect to the reinsur-
7 ance for which such non-taxed reinsurance premium
8 is paid, to the extent such return premium, ceding
9 commission, reinsurance recovered, or other amount
10 is properly allocable to such non-taxed reinsurance
11 premium.

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

14 “(1) IN GENERAL.—The term ‘non-taxed rein-
15 surance premium’ means any reinsurance premium
16 paid directly or indirectly to an affiliated corporation
17 with respect to reinsurance of risks (other than ex-
18 cepted risks), to the extent that the income attrib-
19 utable to the premium is not subject to tax under
20 this subtitle (either as the income of the affiliated
21 corporation or as amounts included in gross income
22 by a United States shareholder under section 951).

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

1 “(c) **AFFILIATED CORPORATIONS.**—For purposes of
2 this section, a corporation shall be treated as affiliated
3 with an insurance company if both corporations would be
4 members of the same controlled group of corporations (as
5 defined in section 1563(a)) if section 1563 were applied—

6 “(1) by substituting ‘at least 50 percent’ for ‘at
7 least 80 percent’ each place it appears in subsection
8 (a)(1), and

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

11 “(d) **ELECTION TO TREAT REINSURANCE INCOME AS**
12 **EFFECTIVELY CONNECTED.**—

13 “(1) **IN GENERAL.**—A specified affiliated cor-
14 poration may elect for any taxable year to treat
15 specified reinsurance income as—

16 “(A) income effectively connected with the
17 conduct of a trade or business in the United
18 States, and

19 “(B) for purposes of any treaty between
20 the United States and any foreign country, in-
21 come attributable to a permanent establishment
22 in the United States.

23 “(2) **EFFECT OF ELECTION.**—In the case of
24 any specified reinsurance income with respect to
25 which the election under this subsection applies—

1 “(A) DEDUCTION ALLOWED FOR REINSUR-
2 ANCE PREMIUMS.—For exemption from sub-
3 section (a), see definition of non-taxed reinsur-
4 ance premiums in subsection (b).

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

10 “(C) TAXATION UNDER THIS SUB-
11 CHAPTER.—Such income shall be subject to tax
12 under this subchapter to the same extent and
13 in the same manner as if such income were the
14 income of a domestic insurance company.

15 “(D) COORDINATION WITH FOREIGN TAX
16 CREDIT PROVISIONS.—For purposes of subpart
17 A of part III of subchapter N and sections 78
18 and 960—

19 “(i) such specified reinsurance income
20 shall be treated as derived from sources
21 without the United States, and

22 “(ii) subsections (a), (b), and (c) of
23 section 904, and section 960, shall be ap-
24 plied separately with respect to each item
25 of such income.

1 The Secretary may issue regulations or other
2 guidance which provide that related items of
3 specified reinsurance income may be aggregated
4 for purposes of applying clause (ii).

5 “(3) SPECIFIED AFFILIATED CORPORATION.—
6 For purposes of this subsection, the term ‘specified
7 affiliated corporation’ means any affiliated corpora-
8 tion which is a foreign corporation and which meets
9 such requirements as the Secretary shall prescribe to
10 ensure that tax on the specified reinsurance income
11 of such corporation is properly determined and paid.

12 “(4) SPECIFIED REINSURANCE INCOME.—For
13 purposes of this paragraph, the term ‘specified rein-
14 surance income’ means all income of a specified af-
15 filiated corporation which is attributable to reinsur-
16 ance with respect to which subsection (a) would (but
17 for the election under this subsection) apply.

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

20 “(A) be made at such time and in such
21 form and manner as the Secretary may provide,
22 and

23 “(B) apply for the taxable year for which
24 made and all subsequent taxable years unless
25 revoked with the consent of the Secretary.

1 “(e) EXCEPTION FOR AMOUNTS SUBJECT TO FOR-
2 EIGN TAX.—An amount shall not be treated as described
3 in paragraph (1), (2), or (3) of subsection (a) if the tax-
4 payer demonstrates to the satisfaction of the Secretary
5 that such amount was subject to an effective rate of in-
6 come tax imposed by a foreign country which is not less
7 than 100 percent of the maximum rate of tax specified
8 in section 11.

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

17 (b) CLERICAL AMENDMENT.—The table of sections
18 for part III of subchapter L of chapter 1 is amended by
19 adding at the end the following new item:”.

20 (c) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to taxable years beginning after
22 December 31, 2017.

