AMENDMENT TO NATIONAL DEFENSE AUTHORIZATION BILL
OFFERED BY MS. SPEIER OF CALIFORNIA

At the appropriate place in title XXVIII, add the following new section:

SEC. 28. PROHIBITION ON INVERTED CORPORATIONS
THAT AVOID UNITED STATES TAXES FROM OPERATING ON MILITARY INSTALLATIONS.

(a) PROHIBITION.—Chapter 159 of title 10, United States Code, is amended by inserting after section 2671 the following new section:

“§ 2672. Military reservations and facilities: prohibition on use by inverted corporations

“(a) PROHIBITION.—With respect to each military installation or facility under the jurisdiction of a military department, the Secretary concerned may not permit an inverted corporation, including any franchise of an inverted corporation, from operating from a physical location within the installation or facility.

“(b) INVERTED CORPORATION DEFINED.—

“(1) IN GENERAL.—In this section, the term ‘inverted corporation’ means any foreign corporation which—
“(A) would be a surrogate foreign corporation under subsection (a)(2) of section 7874 of the Internal Revenue Code of 1986 if such subsection were applied by substituting ‘80 percent’ for ‘60 percent’, or

“(B) is an inverted domestic corporation described in paragraph (2).

“(2) Inverted Domestic Corporation.—For purposes of this subsection, a foreign corporation shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

“(A) the entity completes after May 8, 2014, the direct or indirect acquisition of—

“(i) substantially all of the properties held directly or indirectly by a domestic corporation, or

“(ii) substantially all of the assets of, or substantially all of the properties constituting a trade or business of, a domestic partnership, and

“(B) after the acquisition, either—

“(i) more than 50 percent of the stock (by vote or value) of the entity is held—
“(I) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

“(II) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, or

“(ii) the management and control of the expanded affiliated group which includes the entity occurs, directly or indirectly, primarily within the United States, and such expanded affiliated group has significant domestic business activities.

“(3) Exception for corporations with substantial business activities in foreign country of organization.—A foreign corporation described in paragraph (2) shall not be treated as an inverted domestic corporation if after the acquisition the expanded affiliated group which includes the entity has substantial business activities in the foreign
country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group. For purposes of applying section 7874(a)(2)(B)(iii) of the Internal Revenue Code of 1986 and the preceding sentence, the term ‘substantial business activities’ shall have the meaning given such term under Treasury regulations in effect on May 8, 2014, except that the Secretary of the Treasury may issue regulations increasing the threshold percent in any of the tests under such regulations for determining if business activities constitute substantial business activities for purposes of this paragraph.

“(4) MANAGEMENT AND CONTROL.—

“(A) IN GENERAL.—For purposes of paragraph (2)(B)(ii), the Secretary of the Treasury shall prescribe regulations for purposes of determining cases in which the management and control of an expanded affiliated group is to be treated as occurring, directly or indirectly, primarily within the United States. The regulations prescribed under the preceding sentence shall apply to periods after May 8, 2014.
“(B) EXECUTIVE OFFICERS AND SENIOR MANAGEMENT.—The regulations required by subparagraph (A) shall provide that the management and control of an expanded affiliated group shall be treated as occurring, directly or indirectly, primarily within the United States if substantially all of the executive officers and senior management of the expanded affiliated group who exercise day-to-day responsibility for making decisions involving strategic, financial, and operational policies of the expanded affiliated group are based or primarily located within the United States. Individuals who in fact exercise such day-to-day responsibilities shall be treated as executive officers and senior management regardless of their title.

“(5) SIGNIFICANT DOMESTIC BUSINESS ACTIVITIES.—

“(A) IN GENERAL.—For purposes of paragraph (2)(B)(ii), an expanded affiliated group has significant domestic business activities if at least 25 percent of—

“(i) the employees of the group are based in the United States,
“(ii) the employee compensation incurred by the group is incurred with respect to employees based in the United States,

“(iii) the assets of the group are located in the United States, or

“(iv) the income of the group is derived in the United States.

“(B) Determination.—A determination required by subparagraph (A) shall be made in the same manner as such determinations are made for purposes of determining substantial business activities under regulations referred to in paragraph (3) as in effect on May 8, 2014, but applied by treating all references in such regulations to ‘foreign country’ and ‘relevant foreign country’ as references to ‘the United States’. The Secretary of the Treasury may issue regulations decreasing the threshold percent in any of the tests under such regulations for determining if business activities constitute significant domestic business activities for purposes of this paragraph.

“(6) Other Definitions.—In this subsection, the terms ‘domestic corporation’, ‘foreign corpora-
tion’, and ‘expanded affiliated group’ shall each have the same meaning as when used in section 7874 of the Internal Revenue Code of 1986.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 159 of such title is amended by inserting after the item relating to section 2671 the following new item:

“2672. Military reservations and facilities: prohibition on use by inverted corporations.”.