

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

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

1 **SEC. 28__ . PROHIBITION ON INVERTED CORPORATIONS**
2 **THAT AVOID UNITED STATES TAXES FROM**
3 **OPERATING ON MILITARY INSTALLATIONS.**

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

7 **“§ 2672. Military reservations and facilities: prohibi-**
8 **tion on use by inverted corporations**

9 “(a) PROHIBITION.—With respect to each military
10 installation or facility under the jurisdiction of a military
11 department, the Secretary concerned may not permit an
12 inverted corporation, including any franchise of an in-
13 verted corporation, from operating from a physical loca-
14 tion within the installation or facility.

15 “(b) INVERTED CORPORATION DEFINED.—

16 “(1) IN GENERAL.—In this section, the term
17 ‘inverted corporation’ means any foreign corporation
18 which—

1 “(A) would be a surrogate foreign corpora-
2 tion under subsection (a)(2) of section 7874 of
3 the Internal Revenue Code of 1986 if such sub-
4 section were applied by substituting ‘80 per-
5 cent’ for ‘60 percent’, or

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

8 “(2) INVERTED DOMESTIC CORPORATION.—For
9 purposes of this subsection, a foreign corporation
10 shall be treated as an inverted domestic corporation
11 if, pursuant to a plan (or a series of related trans-
12 actions)—

13 “(A) the entity completes after May 8,
14 2014, the direct or indirect acquisition of—

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

18 “(ii) substantially all of the assets of,
19 or substantially all of the properties consti-
20 tuting a trade or business of, a domestic
21 partnership, and

22 “(B) after the acquisition, either—

23 “(i) more than 50 percent of the stock
24 (by vote or value) of the entity is held—

1 “(I) in the case of an acquisition
2 with respect to a domestic corpora-
3 tion, by former shareholders of the
4 domestic corporation by reason of
5 holding stock in the domestic corpora-
6 tion, or

7 “(II) in the case of an acquisition
8 with respect to a domestic partner-
9 ship, by former partners of the do-
10 mestic partnership by reason of hold-
11 ing a capital or profits interest in the
12 domestic partnership, or

13 “(ii) the management and control of
14 the expanded affiliated group which in-
15 cludes the entity occurs, directly or indi-
16 rectly, primarily within the United States,
17 and such expanded affiliated group has
18 significant domestic business activities.

19 “(3) EXCEPTION FOR CORPORATIONS WITH
20 SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN
21 COUNTRY OF ORGANIZATION.—A foreign corporation
22 described in paragraph (2) shall not be treated as an
23 inverted domestic corporation if after the acquisition
24 the expanded affiliated group which includes the en-
25 tity has substantial business activities in the foreign

1 country in which or under the law of which the enti-
2 ty is created or organized when compared to the
3 total business activities of such expanded affiliated
4 group. For purposes of applying section
5 7874(a)(2)(B)(iii) of the Internal Revenue Code of
6 1986 and the preceding sentence, the term ‘substan-
7 tial business activities’ shall have the meaning given
8 such term under Treasury regulations in effect on
9 May 8, 2014, except that the Secretary of the Treas-
10 ury may issue regulations increasing the threshold
11 percent in any of the tests under such regulations
12 for determining if business activities constitute sub-
13 stantial business activities for purposes of this para-
14 graph.

15 “(4) MANAGEMENT AND CONTROL.—

16 “(A) IN GENERAL.—For purposes of para-
17 graph (2)(B)(ii), the Secretary of the Treasury
18 shall prescribe regulations for purposes of de-
19 termining cases in which the management and
20 control of an expanded affiliated group is to be
21 treated as occurring, directly or indirectly, pri-
22 marily within the United States. The regula-
23 tions prescribed under the preceding sentence
24 shall apply to periods after May 8, 2014.

1 “(B) EXECUTIVE OFFICERS AND SENIOR
2 MANAGEMENT.—The regulations required by
3 subparagraph (A) shall provide that the man-
4 agement and control of an expanded affiliated
5 group shall be treated as occurring, directly or
6 indirectly, primarily within the United States if
7 substantially all of the executive officers and
8 senior management of the expanded affiliated
9 group who exercise day-to-day responsibility for
10 making decisions involving strategic, financial,
11 and operational policies of the expanded affili-
12 ated group are based or primarily located with-
13 in the United States. Individuals who in fact
14 exercise such day-to-day responsibilities shall be
15 treated as executive officers and senior manage-
16 ment regardless of their title.

17 “(5) SIGNIFICANT DOMESTIC BUSINESS ACTIVI-
18 TIES.—

19 “(A) IN GENERAL.—For purposes of para-
20 graph (2)(B)(ii), an expanded affiliated group
21 has significant domestic business activities if at
22 least 25 percent of—

23 “(i) the employees of the group are
24 based in the United States,

1 “(ii) the employee compensation in-
2 curred by the group is incurred with re-
3 spect to employees based in the United
4 States,

5 “(iii) the assets of the group are lo-
6 cated in the United States, or

7 “(iv) the income of the group is de-
8 rived in the United States.

9 “(B) DETERMINATION.—A determination
10 required by subparagraph (A) shall be made in
11 the same manner as such determinations are
12 made for purposes of determining substantial
13 business activities under regulations referred to
14 in paragraph (3) as in effect on May 8, 2014,
15 but applied by treating all references in such
16 regulations to ‘foreign country’ and ‘relevant
17 foreign country’ as references to ‘the United
18 States’. The Secretary of the Treasury may
19 issue regulations decreasing the threshold per-
20 cent in any of the tests under such regulations
21 for determining if business activities constitute
22 significant domestic business activities for pur-
23 poses of this paragraph.

24 “(6) OTHER DEFINITIONS.—In this subsection,
25 the terms ‘domestic corporation’, ‘foreign corpora-

1 tion’, and ‘expanded affiliated group’ shall each have
2 the same meaning as when used in section 7874 of
3 the Internal Revenue Code of 1986.”.

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

“2672. Military reservations and facilities: prohibition on use by inverted cor-
 porations.”.

