

117TH CONGRESS
1ST SESSION

S. 3217

To amend the Internal Revenue Code of 1986 to provide special rules for purposes of determining if financial guaranty insurance companies are qualifying insurance corporations under the passive foreign investment company rules.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2021

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide special rules for purposes of determining if financial guaranty insurance companies are qualifying insurance corporations under the passive foreign investment company rules.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. TREATMENT OF FINANCIAL GUARANTY INSUR-**
 2 **ANCE COMPANIES AS QUALIFYING INSUR-**
 3 **ANCE CORPORATIONS UNDER PASSIVE FOR-**
 4 **EIGN INVESTMENT COMPANY RULES.**

5 (a) IN GENERAL.—Section 1297(f)(3) of the Internal
 6 Revenue Code of 1986 is amended by adding at the end
 7 the following new subparagraph:

8 “(C) SPECIAL RULES FOR FINANCIAL
 9 GUARANTY INSURANCE COMPANIES.—

10 “(i) IN GENERAL.—Notwithstanding
 11 subparagraphs (A)(ii) and (B), the applica-
 12 ble insurance liabilities of a financial guar-
 13 anty insurance company shall include its
 14 unearned premium reserves if—

15 “(I) such company is prohibited
 16 under generally accepted accounting
 17 principles from reporting on its appli-
 18 cable financial statements reserves for
 19 losses and loss adjustment expenses
 20 with respect to a financial guaranty
 21 insurance or reinsurance contract ex-
 22 cept to the extent that losses and loss
 23 adjustment expenses are expected to
 24 exceed the unearned premium reserves
 25 on the contract,

1 “(II) the applicable financial
2 statement of such company reports fi-
3 nancial guaranty exposure of at least
4 15-to-1 or State or local bond expo-
5 sure of at least 9-to-1 (8-to-1 in the
6 case of a taxable year of such com-
7 pany which ends on or before Decem-
8 ber 31, 2018), and

9 “(III) such company includes in
10 its insurance liabilities only its un-
11 earned premium reserves relating to
12 insurance written or assumed that is
13 within the single risk limits set forth
14 in subsection (D) of section 4 of the
15 Financial Guaranty Insurance Guide-
16 line (modified by using total share-
17 holder’s equity as reported on the ap-
18 plicable financial statement of the
19 company rather than aggregate of the
20 surplus to policyholders and contin-
21 gency reserves).

22 “(ii) APPLICATION OF ALTERNATIVE
23 FACTS AND CIRCUMSTANCES TEST.—A fi-
24 nancial guaranty insurance company shall

be treated as satisfying the requirements of paragraph (2)(B).

“(iii) FINANCIAL GUARANTY INSURANCE COMPANY.—For purposes of this subparagraph, the term ‘financial guaranty insurance company’ means any insurance company the sole business of which is writing or reinsuring financial guaranty insurance (as defined in subsection (A) of section 1 of the Financial Guaranty Insurance Guideline) which is permitted under subsection (B) of section 4 of such Guideline.

“(iv) FINANCIAL GUARANTY EXPOSURE.—For purposes of this subparagraph, the term ‘financial guaranty exposure’ means the ratio of—

“(I) the net debt service outstanding insured or reinsured by the company that is within the single risk limits set forth in the Financial Guaranty Insurance Guideline (as reported on such company’s applicable financial statement), to

“(II) the company’s total assets (as so reported).

1 “(v) STATE OR LOCAL BOND EXPO-
 2 SURE.—For purposes of this subpara-
 3 graph, the term ‘State or local bond expo-
 4 sure’ means the ratio of—

5 “(I) the net unpaid principal of
 6 State or local bonds (as defined in
 7 section 103(c)(1)) insured or rein-
 8 sured by the company that is within
 9 the single risk limits set forth in the
 10 Financial Guaranty Insurance Guide-
 11 line (as reported on such company’s
 12 applicable financial statement), to

13 “(II) the company’s total assets
 14 (as so reported).”

15 “(vi) FINANCIAL GUARANTY INSUR-
 16 ANCE GUIDELINE.—For purposes of this
 17 subparagraph—

18 “(I) IN GENERAL.—The term
 19 ‘Financial Guaranty Insurance Guide-
 20 line’ means the October 2008 model
 21 regulation that was adopted by the
 22 National Association of Insurance
 23 Commissioners on December 4, 2007.

24 “(II) DETERMINATIONS MADE BY
 25 SECRETARY.—The determination of

1 whether any provision of the Financial
 2 Guaranty Insurance Guideline has
 3 been satisfied shall be made by the
 4 Secretary.”.

5 (b) REPORTING OF CERTAIN ITEMS.—Section
 6 1297(f)(4) of such Code is amended by adding at the end
 7 the following new subparagraph:

8 “(C) CLARIFICATION THAT CERTAIN ITEMS
 9 ON APPLICABLE FINANCIAL STATEMENT BE
 10 SEPARATELY REPORTED WITH RESPECT TO
 11 CORPORATION.—An amount described in para-
 12 graph (1)(B) or clause (i)(II), (i)(III), (iv)(I),
 13 (iv)(II), (v)(I), or (v)(II) of paragraph (3)(C)
 14 shall be treated as reported on an applicable fi-
 15 nancial statement for purposes of this section
 16 if—

17 “(i) such amount is separately re-
 18 ported on such statement with respect to
 19 the corporation referred to in paragraph
 20 (1), or

21 “(ii) such amount is separately deter-
 22 mined for purposes of calculating an
 23 amount which is reported on such state-
 24 ment.

1 “(D) AUTHORITY OF SECRETARY TO RE-
2 QUIRE REPORTING.—

3 “(i) IN GENERAL.—Each United
4 States person who owns an interest in a
5 specified non-publicly traded foreign cor-
6 poration and who takes the position that
7 such corporation is not a passive foreign
8 investment company shall report to the
9 Secretary such information with respect to
10 such corporation as the Secretary may re-
11 quire.

12 “(ii) SPECIFIED NON-PUBLICLY TRAD-
13 ED FOREIGN CORPORATION.—For purposes
14 of this subparagraph, the term ‘specified
15 non-publicly traded foreign corporation’
16 means any foreign corporation—

17 “(I) which would be a passive
18 foreign investment company if sub-
19 section (b)(2)(B) did not apply, and

20 “(II) no interest in which is trad-
21 ed on an established securities mar-
22 ket.”.

23 (c) EFFECTIVE DATE.—

24 (1) IN GENERAL.—Except as otherwise pro-
25 vided in this subsection, the amendments made by

1 this section shall take effect as if included in section
2 14501 of Public Law 115–97.

3 (2) REPORTING.—The amendment made by
4 subsection (b) shall apply to reports made after the
5 date of the enactment of this Act.

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