

118TH CONGRESS
2D SESSION

S. _____

To amend the Internal Revenue Code of 1986 to end the tax-free treatment of certain corporate reorganizations that involve large corporations.

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 end the tax-free treatment of certain corporate reorganizations that involve large corporations.

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. SHORT TITLE.**

4 This Act may be cited as the “_____ Act of
5 _____”.

1 **SEC. 2. MODIFICATION OF RULES RELATING TO COR-**
2 **PORATE REORGANIZATIONS FOR CERTAIN**
3 **LARGE CORPORATIONS.**

4 (a) ACQUISITIVE REORGANIZATIONS.—Section
5 368(a)(2) of the Internal Revenue Code of 1986 is amend-
6 ed by adding at the end the following new subparagraph:

7 “(I) SPECIAL RULES WITH RESPECT TO
8 CERTAIN ACQUISITIVE REORGANIZATIONS DE-
9 SCRIBED IN PARAGRAPH (1)(A), (1)(B), (1)(C),
10 AND (1)(D).—

11 “(i) IN GENERAL.—A merger, consoli-
12 dation, acquisition, or transfer which is de-
13 scribed in clause (ii) shall not be treated as
14 a merger, consolidation, acquisition, or
15 transfer described in paragraph (1)(A),
16 (1)(B), (1)(C), or (1)(D).

17 “(ii) TRANSACTIONS DESCRIBED.—A
18 merger, consolidation, acquisition, or
19 transfer is described in this clause if—

20 “(I) such merger, consolidation,
21 acquisition, or transfer is, or is treat-
22 ed as, the acquisition of the stock or
23 assets of another corporation,

24 “(II) such merger, consolidation,
25 acquisition, or transfer is not excepted
26 under clause (iii), and

1 “(III) the combined average an-
2 nual gross receipts of the acquiring
3 corporation and the acquired corpora-
4 tion for the 3-taxable year period
5 which precedes the taxable year in
6 which the merger, consolidation, ac-
7 quisition, or transfer is completed ex-
8 ceeds \$500,000,000.

9 “(iii) EXCEPTIONS.—A merger, con-
10 solidation, acquisition, or transfer is ex-
11 cepted under this clause if—

12 “(I) either corporation involved
13 controls the other corporation involved
14 both before and after the date of the
15 merger, consolidation, acquisition, or
16 transfer (as the case may be),

17 “(II) any other corporation con-
18 trols both corporations involved in the
19 merger, consolidation, acquisition, or
20 transfer (as the case may be), or

21 “(III) either corporation involved
22 meets the gross receipts test of sec-
23 tion 448(c)(1) for the taxable year in
24 which the merger, consolidation, ac-
25 quisition, or transfer is completed.

1 “(iv) AGGREGATION AND OTHER SPE-
2 CIAL RULES.—Rules similar to the rules of
3 paragraphs (2) and (3) of section 448(c)
4 shall apply for purposes of clause (i)(II),
5 except that (unless otherwise provided by
6 the Secretary) the rules of section
7 448(c)(2) shall not apply in determining
8 the average annual gross receipts of the
9 acquired corporation.

10 “(v) INFLATION ADJUSTMENT.—In
11 the case of any taxable year beginning
12 after 2024, the dollar amount in clause
13 (ii)(III) shall be increased by an amount
14 equal to—

15 “(I) such dollar amount, multi-
16 plied by

17 “(II) the cost-of-living adjust-
18 ment determined under section 1(f)(3)
19 for the calendar year in which such
20 taxable year begins, determined by
21 substituting ‘calendar year 2023’ for
22 ‘calendar year 2016’ in subparagraph
23 (A)(ii) thereof.

24 If any amount as increased under the pre-
25 ceding sentence is not a multiple of

1 \$1,000,000, such amount shall be rounded
2 to the nearest multiple of \$1,000,000.

3 “(vi) REGULATIONS AND GUID-
4 ANCE.—The Secretary may prescribe such
5 regulations and other guidance as are nec-
6 essary or appropriate to carry out, and to
7 prevent the abuse of the purposes of, this
8 subparagraph, including rules—

9 “(I) to prevent the avoidance of
10 the application of this subparagraph
11 through the use of a series of trans-
12 actions designed and executed as
13 parts of a unitary plan, and

14 “(II) for the nonapplication of
15 the rules of clause (i) in cases which
16 are consistent with the purposes of
17 this subparagraph.”.

18 (b) TRANSFERS TO CORPORATIONS CONTROLLED BY
19 TRANSFERORS.—Section 351 is amended by redesignating
20 subsection (h) as subsection (i) and by inserting after sub-
21 section (g) the following new subsection:

22 “(h) SPECIAL RULE WITH RESPECT TO MULTIPLE
23 TRANSFERORS.—

24 “(1) IN GENERAL.—Subsection (a) shall not
25 apply to any transfer of property by two or more

1 persons which are corporations if the combined aver-
2 age annual gross receipts of such persons for the 3-
3 taxable year period which precedes the taxable year
4 of the transfer exceeds \$500,000,000.

5 “(2) EXCEPTION.—Clause (i) shall not apply
6 if—

7 “(A) such persons control the corporation
8 immediately before the transfer,

9 “(B) another corporation controls all such
10 persons and the corporation to which the prop-
11 erty is transferred immediately before the
12 transfer, or

13 “(C) all such persons meet the gross re-
14 ceipts test of section 448(c)(1) for the taxable
15 year in which the transfer is made.

16 “(3) AGGREGATION AND OTHER SPECIAL
17 RULES.—Rules similar to the rules of paragraphs
18 (2) and (3) of section 448(c) shall apply for pur-
19 poses of paragraph (1).

20 “(4) INFLATION ADJUSTMENT.—In the case of
21 any taxable year beginning after 2024, the dollar
22 amount in paragraph (1) shall be increased by an
23 amount equal to—

24 “(A) such dollar amount, multiplied by

1 “(B) the cost-of-living adjustment deter-
2 mined under section 1(f)(3) for the calendar
3 year in which such taxable year begins, deter-
4 mined by substituting ‘calendar year 2023’ for
5 ‘calendar year 2016’ in subparagraph (A)(ii)
6 thereof.

7 If any amount as increased under the preceding sen-
8 tence is not a multiple of \$1,000,000, such amount
9 shall be rounded to the nearest multiple of
10 \$1,000,000.

11 “(5) REGULATIONS AND GUIDANCE.—The Sec-
12 retary may prescribe such regulations and other
13 guidance as are necessary or appropriate to carry
14 out, and to prevent the abuse of the purposes of,
15 this subparagraph, including rules—

16 “(A) to prevent the avoidance of the appli-
17 cation of this subsection through the use of a
18 series of transactions designed and executed as
19 parts of a unitary plan, and

20 “(B) for the nonapplication of the rules of
21 paragraph (1) in cases which are consistent
22 with the purposes of this subsection.”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to transfers after the date of the
25 enactment of this Act.