

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.

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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

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## 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

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

3 “(iii) FINANCIAL GUARANTY INSUR-  
4 ANCE COMPANY.—For purposes of this  
5 subparagraph, the term ‘financial guaranty  
6 insurance company’ means any insurance  
7 company the sole business of which is writ-  
8 ing or reinsuring financial guaranty insur-  
9 ance (as defined in subsection (A) of sec-  
10 tion 1 of the Financial Guaranty Insurance  
11 Guideline) which is permitted under sub-  
12 section (B) of section 4 of such Guideline.

13 “(iv) FINANCIAL GUARANTY EXPO-  
14 SURE.—For purposes of this subpara-  
15 graph, the term ‘financial guaranty expo-  
16 sure’ means the ratio of—

17 “(I) the net debt service out-  
18 standing insured or reinsured by the  
19 company that is within the single risk  
20 limits set forth in the Financial Guar-  
21 anty Insurance Guideline (as reported  
22 on such company’s applicable financial  
23 statement), to

24 “(II) the company’s total assets  
25 (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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