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112TH CONGRESS
1ST SESSION

H. R. 3139

To amend the Internal Revenue Code of 1986 to provide for the creation of disaster protection funds in the District of Columbia by property and casualty insurance companies for the payment of policyholders' claims arising from natural catastrophic events.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 2011

Ms. NORTON introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Internal Revenue Code of 1986 to provide for the creation of disaster protection funds in the District of Columbia by property and casualty insurance companies for the payment of policyholders' claims arising from natural catastrophic events.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''District of Columbia National Disaster Insurance Protection Act''.

SEC. 2. DISTRICT OF COLUMBIA NATURAL DISASTER PROTECTION FUNDS.

(a) CONTRIBUTIONS TO NATURAL DISASTER PROTECTION FUNDS.—Subsection (c) of section 832 of the Internal Revenue Code of 1986 (relating to the taxable income of insurance companies other than life insurance companies) is amended by striking "and" at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting "; and", and by adding at the end the following new paragraph:

"(14) the qualified contributions during the taxable year to a natural disaster protection fund."

(b) NATURAL DISASTER PROTECTION FUND GROSS INCOME.—Subsection (b) of section 832 of such Code is amended by adding at the end the following new paragraph:

"(9) SPECIAL RULE FOR ASSETS HELD IN NATURAL DISASTER PROTECTION FUND.—For purposes of determining gross income under this subsection, any items of income, gain, loss, or deduction derived from or attributable to any assets held in a natural disaster protection fund shall not be taken into account."

(c) DISTRIBUTIONS FROM NATURAL DISASTER PROTECTION FUNDS.—Paragraph (1) of section 832(b) of such Code is amended by striking "and" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting ", and", and by adding at the end the following new subparagraph:

"(F) the aggregate amount of all distributions during the taxable year from a natural disaster protection fund, except that a distribution made to return to the qualified insurance company any contribution that is not a qualified contribution for a taxable year shall not be included in gross income if such distribution is made prior to the filing by the qualified insurance company of its tax return for such taxable year."

(d) DEFINITIONS AND OTHER RULES RELATING TO NATURAL DISASTER PROTECTION FUNDS.—Section 832 of such Code is amended by adding at the end the following new subsection:

"(h) DEFINITIONS AND OTHER RULES RELATING TO NATURAL DISASTER PROTECTION FUNDS.—For purposes of this section—

"(1) NATURAL DISASTER PROTECTION FUND.— The term 'natural disaster protection fund' (hereafter in this subsection referred to as the 'fund') means any money, securities, or other property held by a qualified insurance company that is identified and maintained in a segregated account—

"(A) which is designated as a 'natural disaster protection fund' and held in a bank or bank branch located in the District of Columbia that is licensed and regulated by the Comptroller of the Currency or the District of Columbia Commissioner of Insurance, Securities, and Banking,

"(B) under the terms of which—

"(i) the assets in the fund are required to be invested in a manner consistent with the investment requirements applicable to all insurance companies under the laws of the District of Columbia,

"(ii) an excess balance drawdown amount is required to be distributed to the qualified insurance company no later than the close of the taxable year following the taxable year with respect to which such amount is determined, and

"(iii) no portion of the assets of the fund may be paid or distributed from the fund except for a qualified distribution.

"(2) QUALIFIED INSURANCE COMPANY.—The term 'qualified insurance company' means an insurer or reinsurer that—

"(A) is incorporated and domiciled in the District of Columbia,

"(B) is subject to supervision by the District of Columbia Commissioner of Insurance, Securities, and Banking,

"(C) maintains an office in the District of Columbia that employs no fewer than 10 full-time equivalent employees, of whom no fewer than 5 are residents of the District of Columbia,

"(D) is subject to any premium taxes and any other taxes and fees imposed by the District of Columbia on all domestic insurance companies, and

"(E) is subject to such additional tax as may be imposed by the District of Columbia—

"(i) on premiums charged for natural catastrophic risk coverage written through the fund, and

"(ii) at such rate—

"(I) as may be established by the District of Columbia, and

"(II) as does not exceed the rate of Federal excise tax imposed by section 4371(3) on a premium paid on a contract of reinsurance issued by any foreign insurer or reinsurer.

"(3) QUALIFIED CONTRIBUTION.—The term 'qualified contribution' means a contribution to a fund established by a qualified insurance company of not more than the total of net premiums or other payments received during a taxable year for coverage of qualified losses, but only to the extent such contribution, when added to all previous contributions to the fund (including net investment earnings of the fund) and after subtracting all qualified distributions from the fund, does not exceed the amount reasonably at risk for the payment of qualified losses insured through the fund, less reinsurance on those risks, as determined actuarially on a multi-year basis.

"(4) QUALIFIED DISTRIBUTION.—The term 'qualified distribution' means any amount paid or distributed for—

"(A) any payment of a qualified loss pursuant to an insurance contract or contract of reinsurance issued by the qualified insurance company,

“(B) any payment made to reinsure or otherwise spread the risk of catastrophe loss written by the qualified insurance company,

“(C) any excess balance drawdown amount,

“(D) any administrative expenses directly related to the maintenance and investment of the fund, and

“(E) any claims investigation and adjustments relating to a qualified loss.

“(5) QUALIFIED LOSS.—The term ‘qualified loss’ means an insured loss on a United States risk that satisfies subparagraphs (A) and (B).

“(A) EVENT.—An insured loss satisfies this subparagraph if the loss is attributable to one or more of the following events:

“(i) Wind (including hurricanes and tornados).

“(ii) Earthquake (including any fire following).

“(iii) Flood.

“(iv) Tsunami or tidal wave.

“(v) Volcanic eruption.

"(vi) Fire.

"(vii) Hail.

"(viii) Snow, ice, freezing, or other winter catastrophes.

"(ix) Pandemic or other public health catastrophe.

"(B) CATASTROPHE DESIGNATION OR MINIMUM AGGREGATE INSURED LOSS.—An insured loss, with respect to an event described in subparagraph (A), satisfies this subparagraph if at least one of the following occurs:

"(i) Total insured losses from the event, or from more than one event happening simultaneously or immediately following, exceeds $1,000,000,000 on an industry-wide basis.

"(ii) The President of the United States declares a disaster or state of emergency because of the event.

"(iii) The Governor or chief executive of a State, possession or territory of the United States, or of the District of Columbia, declares a disaster or state of emergency because of such event.

"(iv) The Property Claims Services unit of Insurance Services Office, Inc., declares a catastrophic industry-wide loss because of one or more events.

"(6) EXCESS BALANCE DRAWDOWN AMOUNT.—The term 'excess balance drawdown amount' means the excess (if any) of—

"(A) the amount of the fund balance as of the end of the taxable year, over

"(B) the total amount of exposure of the fund to qualified losses at the end of the taxable year under contracts issued by the qualified insurance company, as determined actuarially on a multi-year basis.

"(7) UNITED STATES RISK.—The term 'United States risk' means any hazard, risk, loss, or liability attributable to property situated, or an activity conducted, in the United States, or its territories or possessions.

"(8) EXCLUSION OF PREMIUMS AND LOSSES ON CERTAIN PUERTO RICAN RISKS.—Notwithstanding any other provision of this subsection, premiums and losses with respect to risks covered by a catastrophe reserve established under the laws or regulations of the Commonwealth of Puerto Rico shall not be taken into account under this subsection in determining the amount of the qualified contributions allowed or the amount of qualified losses.

"(9) CONTRIBUTIONS IN KIND.—A transfer of property other than money to a fund shall be treated as a sale or exchange of such property for an amount equal to its fair market value as of the date of transfer, and appropriate adjustment shall be made to the basis of such property. Section 267 shall apply to any loss realized upon such a transfer.

"(10) DISTRIBUTIONS IN KIND.—A distribution of property other than money from a fund to a qualified insurance company shall be treated as a sale or exchange of such property, and any gain or loss realized on such sale or exchange shall be excluded from the gross income of the qualified insurance company.

"(11) REGULATIONS.—The Secretary shall prescribe regulations as may be necessary or appropriate to carry out the purposes of this subsection."

(e) ADDITIONAL TAX ON CERTAIN DISTRIBUTIONS FROM A NATURAL DISASTER PROTECTION FUND.—Subsection (d) of section 831 of such Code (relating to the tax on insurance companies other than life insurance companies) is amended by redesignating subsection (d) as subsection (e) and inserting after subsection (c) the following new subsection:

"(d) TAX ON NONQUALIFIED DISTRIBUTIONS.—

"(1) IN GENERAL.—In the case of a qualified insurance company, the tax imposed by this section for the current year shall be increased by an amount equal to 20 percent of the aggregate amount of nonqualified distributions made by such company during such year from a natural disaster protection fund.

"(2) DEFINITIONS.—

"(A) NONQUALIFIED DISTRIBUTIONS.— The term 'nonqualified distributions' means any distribution from a natural disaster protection fund other than a qualified distribution (as defined in section 832(h)(4)).

"(B) OTHER DEFINITIONS.—The terms 'qualified insurance company' and 'natural disaster protection fund' shall have the meanings ascribed to such terms in section 832(h)."

(f) EFFECTIVE DATE.—The amendments made by this bill shall apply to taxable years beginning after December 31, 2011.

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