

117TH CONGRESS
2D SESSION

S. 5178

To impose restrictions on the investment in Chinese companies by tax-exempt entities.

IN THE SENATE OF THE UNITED STATES

DECEMBER 1, 2022

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

A BILL

To impose restrictions on the investment in Chinese companies by tax-exempt entities.

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 “Dump Investments in
5 Troublesome Communist Holdings Act” or as the
6 “DITCH Act”.

1 **SEC. 2. RESTRICTION ON INVESTMENT IN CHINESE COMPA-**
 2 **NIES BY TAX-EXEMPT ENTITIES.**

3 (a) IN GENERAL.—Section 501 of the Internal Rev-
 4 enue Code of 1986 is amended by adding at the end the
 5 following new subsection:

6 “(s) RESTRICTION ON INVESTMENT IN CHINESE
 7 COMPANIES.—

8 “(1) IN GENERAL.—An organization shall not
 9 be treated as described in subsection (c) or (d) or
 10 section 401(a) for any taxable year if such organiza-
 11 tion—

12 “(A) holds any interest in a disqualified
 13 Chinese company at any time during such tax-
 14 able year, or

15 “(B) fails to timely transmit the annual re-
 16 port described in paragraph (5) for such tax-
 17 able year.

18 “(2) DISQUALIFIED CHINESE COMPANY.—For
 19 purposes of this subsection—

20 “(A) IN GENERAL.—The term ‘disqualified
 21 Chinese company’ means any corporation—

22 “(i) that is incorporated in China, or

23 “(ii) more than 10 percent of the
 24 stock of which (determined by vote or
 25 value) is held (directly or indirectly

1 through any chain of ownership) by any of
2 the following (or combination thereof):

3 “(I) 1 or more corporations de-
4 scribed in clause (i).

5 “(II) China or any governmental
6 agency thereof.

7 “(III) Provincial, regional, mu-
8 nicipal, Special Administrative Re-
9 gions, prefecture, county, township,
10 village, or any other Chinese sub-na-
11 tional governmental entity or agency.

12 “(IV) Any entity controlled (di-
13 rectly or indirectly) by the Chinese
14 Communist Party or any Chinese
15 Communist Party organ.

16 “(V) Any Chinese national.

17 “(B) APPLICATION TO ENTITIES OTHER
18 THAN CORPORATIONS.—In the case of any busi-
19 ness organization which is not a corporation,
20 subparagraph (A) shall apply to such organiza-
21 tion in the same manner as though such organi-
22 zation were a corporation.

23 “(C) APPLICATION TO INDIRECT, DERIVA-
24 TIVE, OR OTHER CONTRACTUAL INTERESTS,
25 ETC.—For purposes of this subsection, an orga-

nization shall be treated as holding an interest in a disqualified Chinese company if such organization—

“(i) holds such interest (or any instrument described in subparagraph (A)) directly or indirectly through any chain of ownership, or

“(ii) holds any derivative financial instrument or other contractual arrangement with respect to such interest or company (including any financial instrument or other contract which seeks to replicate any financial return with respect to such interest or such company).

“(D) PUBLICATION OF LIST BY SECRETARY.—The Secretary shall, not later than 120 days after the date of the enactment of this subsection, establish a process for the periodic publishing of a list of certified pooled investments, including exchange traded funds and mutual funds, that do not have exposure to disqualified Chinese companies.

“(3) WAIVERS.—

“(A) IN GENERAL.—Paragraph (1) shall not apply with respect to any interest in a dis-

1 qualified Chinese company held by any organi-
2 zation during any taxable year if the Secretary
3 issues a waiver to such organization with re-
4 spect to such interest for such taxable year
5 under this paragraph. Any waiver issued under
6 this paragraph shall be subject to renewal or
7 expiration on a biannual basis.

8 “(B) WAIVER PROCESS.—

9 “(i) APPLICATION.—Not later than 60
10 days after the date of the enactment of
11 this subsection, the Secretary shall estab-
12 lish a process under which an organization
13 may submit a written application for a
14 waiver under this paragraph. Such applica-
15 tion shall be made publicly available and
16 shall include the following:

17 “(I) An explanation of the need
18 for such waiver and the reasons that
19 the need for such waiver outweigh the
20 threat posed to the United States by
21 China and the lack of separation be-
22 tween China and the disqualified Chi-
23 nese company involved.

24 “(II) The type (including sector
25 of the economy), amount, and dura-

tion of the investment in the disqualified Chinese company.

“(III) The relationship between the disqualified Chinese company and China.

“(IV) The extenuating circumstances justifying the applicant’s need to invest in the disqualified Chinese company.

“(ii) RESPONSE.—The Secretary shall provide a written response to each completed application under clause (i) not later than 60 days after receipt of such application. Such written response shall be made publicly available and shall include the following:

“(I) A statement of whether the waiver has been provided or withheld.

“(II) The reasons for providing or withholding the waiver.

“(III) The identification of any future investments with respect to which such waiver applies.

“(IV) The date on which such waiver expires (which may not be later

1 than the earlier of the termination of
2 the extenuating circumstances re-
3 ferred to in clause (i)(IV) or the end
4 of the biannual period referred to in
5 subparagraph (A)).

6 “(C) STANDARDS FOR DETERMINING IF
7 WAIVER IS PROVIDED.—The Secretary may pro-
8 vide a waiver under this paragraph only if the
9 Secretary independently determines that—

10 “(i) the need for such waiver, and the
11 reasons for the need for such waiver, out-
12 weigh the threat posed to the United
13 States by China and the lack of separation
14 between China and the disqualified Chinese
15 company involved, and

16 “(ii) extenuating circumstances justify
17 the applicant’s need to invest in the dis-
18 qualified Chinese company.

19 For purposes of this subparagraph, the Sec-
20 retary shall not consider the past or future fi-
21 nancial returns of any investment in any dis-
22 qualified Chinese company, or any other jus-
23 tification based on the applicant’s own financial
24 needs, as an extenuating circumstance justi-
25 fying such an investment.

1 “(D) PUBLICATION OF WAIVERS PRO-
 2 VIDED.—With respect to each calendar quarter,
 3 the Secretary shall publish and make publicly
 4 available a list of the waivers provided by the
 5 Secretary under this paragraph during such
 6 quarter.

7 “(4) CHINA.—For purposes of this section, the
 8 term ‘China’ means the People’s Republic of China
 9 and includes any subordinate Special Administrative
 10 Regions thereof.

11 “(5) ANNUAL REPORT.—Each organization de-
 12 scribed in paragraph (1) with respect to each taxable
 13 year shall, not later than the due date for the return
 14 of tax for such taxable year, transmit to the Sec-
 15 retary a written report including—

16 “(A) a description of each interest in a dis-
 17 qualified Chinese company held by such organi-
 18 zation during such taxable year,

19 “(B) the period during which such interest
 20 was so held, and

21 “(C) whether such organization has a
 22 waiver under paragraph (3) to hold such inter-
 23 est during such period.”.

24 (b) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendment made by
 2 this section shall apply to taxable years ending after
 3 the date of the enactment of this Act, except that
 4 only periods after the date that is 270 days after the
 5 date of the enactment of this Act shall be taken into
 6 account in determining whether the requirement of
 7 section 501(s) of the Internal Revenue Code of 1986
 8 (as added by this section) is met with respect to any
 9 taxable year.

10 (2) 1-YEAR GRACE PERIOD UNDER CERTAIN
 11 CIRCUMSTANCES.—In the case of organization that,
 12 after intensive due diligence, is unaware of the fail-
 13 ure to satisfy the requirement of such section
 14 501(s), paragraph (1) shall be applied by sub-
 15 stituting “1 year” for “270 days”.

16 (c) PUBLIC REPORT.—Not later than 360 days after
 17 the date of the enactment of this Act, and annually there-
 18 after, the Secretary of the Treasury (or the Secretary’s
 19 delegate) shall publicly release a report describing the pat-
 20 terns of United States outbound investment in China, in-
 21 cluding such investment by organizations described in sec-
 22 tion 501(s)(1) of the Internal Revenue Code of 1986 (as
 23 added by this section). Such report shall detail the sectoral
 24 breakdown of such investments.

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