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Comments to the Department of the Treasury and Internal Revenue Service on Proposed Regulations to Prevent Corporate Inversions

Re: Proposed Rulemaking on Inversions and Related Transactions (REG-135734-14)

I am writing in support of the temporary regulations issued to prevent serial corporate inversions under Internal Revenue Code Section 7874. This temporary rule caused the pharmaceutical giant Pfizer to cancel its planned inversion, which would have allowed that company to avoid an incredible $35 billion in taxes according to one estimate.

Corporate inversions are essentially a type of legalized tax fraud. An American corporation suddenly claims to the IRS that it is now a foreign company for tax purposes, even though it continues to be managed from the U.S. and its ownership is mostly unchanged. This is an absurd fiction used to bilk the U.S. Treasury out of billions of dollars.

In 2004 Congress put up a roadblock to prevent the most blatant abuses. Under the 2004 law, the IRS will not recognize the acquisition of an American corporation by a foreign one if the former shareholders of the American corporation own 80 percent or more of the combined company and no substantial business is carried out in the foreign country. Unfortunately, the 2004 law, Section 7874, has proven entirely too weak. An American company can still arrange to be "acquired" by a foreign company, and sidestep existing limitations. The former shareholders of the American firm own the majority (but not 80 percent) of the resulting company, and the company can continue to be managed from the U.S. Section 7874 does not prevent such a corporation from characterizing itself as foreign-controlled.

Stopping these corporate inversions is common sense. A U.S. company should not be allowed to pretend to be a foreign firm for tax purposes even as it continues to enjoy all the benefits of being an American business.

The Corporate Tax Dodging Prevention Act, which I introduced in the Senate last year, includes a provision that would lower the 80 percent ownership threshold to 50 percent, meaning the combined company resulting from an American-foreign merger will be taxed as a U.S. one if it continues to be majority-owned by the shareholders of the American corporation. Another provision would tax the resulting company as an American one if it is managed from the U.S.

But given Congress's failure to enact my legislation or any of the other bills that would address inversions, the Department of the Treasury is appropriately focused on enforcing Section 7874 effectively and forcefully.

The temporary rule sensibly says that the IRS, in applying the ownership threshold tests, will not count the stock of American companies acquired in mergers and inversions during the previous three years. This common sense rule was alone enough to cause Pfizer to cancel its planned merger with Allergan, which had no real purpose other than to avoid taxes through inversion.

To my mind, the Department of the Treasury still has not come close to using all of its untapped authority under existing law to address corporate inversions and other types of tax avoidance. But I nonetheless support this temporary regulation as a common sense step to address a crisis in our tax system.

Sincerely,

Bernard Sanders,

United States Senator