



**American Federation  
of Labor and  
Congress of Industrial  
Organizations**

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# AFL-CIO

AMERICA'S UNIONS

July 6, 2016

Submitted by e-mail to [www.regulations.gov](http://www.regulations.gov)

CC:PA:LPD:PR (REG-135734-14)

Mr. John Koskinen  
Commissioner  
Internal Revenue Service,  
1111 Constitution Avenue,  
Washington, D.C. 20224

***Re: Inversions and Related Transactions (REG-135734-14)***

Dear Commissioner Koskinen:

On behalf of the American Federation of Labor and Congress of Industrial Organizations (the "AFL-CIO"), I appreciate the opportunity to comment on the Treasury Department's proposed rule on inversions and related transactions under Section 7874 of the tax code. The AFL-CIO strongly supports the aggressive efforts by the Treasury Department ("Treasury") and the Internal Revenue Service ("IRS") to curb tax dodging by American companies that move their legal residence offshore after merging with a smaller company in a low tax country.

The AFL-CIO is the umbrella federation for U.S. labor unions, including 56 unions representing 12.5 million union members. Tax dodging hurts the economy because it reduces corporate contributions to the federal budget and decreases federal funds available for building and maintaining the nation's roads, bridges, schools and other infrastructure, and providing essential public services.

Federal revenue from corporate income tax receipts as a percentage of the total receipts has dropped dramatically to half of that in the 1950s.<sup>1</sup> The flight of U.S. corporations to foreign countries to avoid paying taxes has exacerbated that trend. The Joint Committee on

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<sup>1</sup> Office of Management and Budget, Table 2.2—Percentage Composition of Receipts by Source: 1932-2021. Available at <https://www.whitehouse.gov/omb/budget/Historicals>.

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Taxation estimates that corporate inversions could result in a loss of \$41 billion of revenue over 10 years.<sup>2</sup>

We are also concerned that tax dodging enables corporations to boost their profits and pad the pay of their chief executives.<sup>3</sup>

We therefore support the proposal of the IRS to implement the most recent effort by the Obama administration, following earlier proposals in September 2014 and November 2015, to curtail corporate flight to other low-tax countries through inversions.

Congress sought to block inversions by enacting Section 7874 of the tax code in 2004.<sup>4</sup> At the time, corporate inversions typically involved a U.S. company merging with a smaller foreign company in a tax haven where it had virtually no presence or employees. More recently U.S. companies have found ways to circumvent Section 7874, moving their legal address to a low tax country for tax purposes while maintaining operations and management in the U.S.

The proposed regulation correctly combats one means by which companies get around the current law through serial inversions or multistep acquisitions.

Serial inversions occur when a foreign company, often a former U.S. firm itself, acquires multiple U.S. companies in succession over a short period of time. The value of the foreign company increases to the extent it issues stock in connection with each successive acquisition, enabling it to complete another potentially larger, acquisition of an American company.<sup>5</sup> As it gets bigger, it is able to acquire a larger U.S. firm without tripping the provisions of Section 7874, which prohibits certain tax advantages when the new foreign parent company is at least 60 percent owned by the original shareholders of the former U.S. company. By avoiding the anti-inversion rules, the new foreign parent company then seeks to strip the remaining U.S. firm of income and access the U.S. company's untaxed foreign profits without paying U.S. taxes.

The proposal disregards U.S. assets acquired by such companies over the previous three years. Stripping those deals out mitigates companies' ability to game regulations intended to prevent inversions.

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<sup>2</sup> Revenue estimate by the Joint Committee on Taxation, July 14, 2015. Available at: <https://democrats-waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/JCT%20Score%20July%202015.pdf>.

<sup>3</sup> AFL-CIO 2016 PayWatch, available at: <http://www.aflcio.org/Corporate-Watch/Paywatch-2016>

<sup>4</sup> American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (2004). Available at: <https://www.gpo.gov/fdsys/pkg/PLAW-108publ357/html/PLAW-108publ357.htm>

<sup>5</sup> Treasury Department Fact Sheet: Treasury Issues Inversion Regulations and Proposed Earnings Stripping Regulations, April 4, 2016. Available at: <https://www.treasury.gov/press-center/press-releases/Pages/jl0404.aspx>

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We encourage Treasury to go beyond this narrowly tailored rule that just applies to serial inverters. We recommend Treasury expand on its earlier action in Notice 2014-52, Rules Regarding Inversions and Related Transactions, pertaining to the indirect use of untaxed foreign earnings, particularly through “hopscotch” loans. These allow U.S. corporations to get tax-free access to their existing offshore profits and permanently avoid paying U.S. taxes on them.

Specifically, we recommend expanding that notice’s guidance under Section 956 of the tax code, beyond the corporate inversion context as defined in Section 7874. Stephen Shay, a Harvard Law School senior lecturer who previously served as Deputy Assistant Secretary for International Tax Affairs at Treasury, argued recently that the existing Section 956 anti-abuse regulation should apply to any use, direct or indirect, of the untaxed earnings of a Controlled Foreign Corporation (“CFC”) by a foreign parent that owns U.S. property, including 25 percent or more of the voting stock of a U.S. shareholder of a CFC, regardless of whether the existence of the foreign parent arises due to an inversion.<sup>6</sup>

Shay and his co-authors also pointed out a loophole that enables CFCs to avoid the reach of the anti-abuse regulation by “decontrolling” the foreign affiliate.<sup>7</sup> We agree with their recommendation and urge Treasury to close this loophole.

We appreciate the opportunity to comment on this rulemaking. If the AFL-CIO can be of further assistance, please contact me at (202) 637-5318.

Sincerely,



Heather Slavkin Corzo, Director  
Office of Investment

HSC/sdw  
opeiu #2, afl-cio

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<sup>6</sup> Stephen E. Shay, J. Clifton Fleming Jr. and Robert J. Peroni, *Treasury’s Unfinished Work on Corporate Expatriations*, Tax Notes, February 22, 2016. Available at: [https://dash.harvard.edu/bitstream/handle/1/25499324/Shay\\_Fleming\\_Peroni%20Treasury\\_s%20Unfinished%20Work%20on%20Corporate%20Expatriations%20150tn0933%5B1%5D.pdf?sequence=1](https://dash.harvard.edu/bitstream/handle/1/25499324/Shay_Fleming_Peroni%20Treasury_s%20Unfinished%20Work%20on%20Corporate%20Expatriations%20150tn0933%5B1%5D.pdf?sequence=1)

<sup>7</sup> Stephen E. Shay, J. Clifton Fleming Jr. and Robert J. Peroni, *Treasury’s Unfinished Work on Corporate Expatriations*, Tax Notes, February 22, 2016. Available at: [https://dash.harvard.edu/bitstream/handle/1/25499324/Shay\\_Fleming\\_Peroni%20Treasury\\_s%20Unfinished%20Work%20on%20Corporate%20Expatriations%20150tn0933%5B1%5D.pdf?sequence=1](https://dash.harvard.edu/bitstream/handle/1/25499324/Shay_Fleming_Peroni%20Treasury_s%20Unfinished%20Work%20on%20Corporate%20Expatriations%20150tn0933%5B1%5D.pdf?sequence=1)