

117TH CONGRESS  
2D SESSION

# H. R. 9385

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

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 1, 2022

Mr. GALLAGHER introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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—

11 “(A) such organization holds any interest  
12 in a disqualified Chinese company at any time  
13 during such taxable year, or

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

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

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

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

22 “(ii) more than 10 percent of the  
23 stock of which (determined by vote or  
24 value) is held (directly or indirectly  
25 through any chain of ownership) by any of  
26 the following (or combination thereof):

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

3 “(II) China or any governmental  
4 agency thereof.

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

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

14 “(V) Any Chinese national.

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

21 “(C) APPLICATION TO INDIRECT, DERIVA-  
22 TIVE, OR OTHER CONTRACTUAL INTERESTS,  
23 ETC.—For purposes of this subsection, an orga-  
24 nization shall be treated as holding an interest

1 in a disqualified Chinese company if such orga-  
2 nization—

3 “(i) holds such interest (or any instru-  
4 ment described in subparagraph (A)) di-  
5 rectly or indirectly through any chain of  
6 ownership, or

7 “(ii) holds any derivative financial in-  
8 strument or other contractual arrangement  
9 with respect to such interest or company  
10 (including any financial instrument or  
11 other contract which seeks to replicate any  
12 financial return with respect to such inter-  
13 est or such company).

14 “(D) PUBLICATION OF LIST BY SEC-  
15 RETARY.—The Secretary shall, not later than  
16 120 days after the date of the enactment of this  
17 Act, establish a process for the periodic pub-  
18 lishing of a list of certified pooled investments,  
19 including exchange traded funds and mutual  
20 funds, that do not have exposure to disqualified  
21 Chinese companies.

22 “(3) WAIVERS.—

23 “(A) IN GENERAL.—Paragraph (1) shall  
24 not apply with respect to any interest in a dis-  
25 qualified Chinese company held by any organi-

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

7            “(B) WAIVER PROCESS.—

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

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

23           “(II) The type (including sector  
24           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:

“(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 than the earlier of the termination of

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

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

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

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

18                  For purposes of this subparagraph, the Sec-  
19                  retary shall not consider the past or future fi-  
20                  nancial returns of any investment in any dis-  
21                  qualified Chinese company, or any other jus-  
22                  tification based on the applicant’s own financial  
23                  needs, as an extenuating circumstance justi-  
24                  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 for any such interest that  
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 amendments 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 any organization  
12          that, after intensive due diligence, is unaware of the  
13          failure 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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