

113TH CONGRESS
1ST SESSION

S. 952

To amend the Internal Revenue Code of 1986 to clarify the treatment of church pension plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 14, 2013

Mr. CARDIN (for himself and Mr. PORTMAN) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to clarify the treatment of church pension plans, and for other purposes.

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 “Church Plan Clarifica-
5 tion Act of 2013”.

6 **SEC. 2. CHURCH PLAN CLARIFICATION.**

7 (a) APPLICATION OF CONTROLLED GROUP RULES TO
8 CHURCH PLANS.—

9 (1) IN GENERAL.—Section 414(c) of the Inter-
10 nal Revenue Code of 1986 is amended—

1 (A) by striking “For purposes” and insert-
 2 ing the following:

3 “(1) IN GENERAL.—For purposes”, and

4 (B) by adding at the end the following new
 5 paragraph:

6 “(2) CHURCH PLANS.—

7 “(A) GENERAL RULE.—Except as provided
 8 in subparagraphs (B) and (C), for purposes of
 9 this subsection and subsection (m), an organi-
 10 zation that is otherwise eligible to participate in
 11 a church plan as defined in subsection (e) shall
 12 not be aggregated with another such organiza-
 13 tion and treated as a single employer with such
 14 other organization unless—

15 “(i) one such organization provides di-
 16 rectly or indirectly at least 80 percent of
 17 the operating funds for the other organiza-
 18 tion during the preceding tax year of the
 19 recipient organization, and

20 “(ii) there is a degree of common
 21 management or supervision between the or-
 22 ganizations.

23 For purposes of this subparagraph, a degree of
 24 common management or supervision exists only
 25 if the organization providing the operating

1 funds is directly involved in the day-to-day op-
2 erations of the other organization.

3 “(B) NONQUALIFIED CHURCH-CON-
4 TROLLED ORGANIZATIONS.—Notwithstanding
5 the provisions of subparagraph (A), for pur-
6 poses of this subsection and subsection (m), an
7 organization that is a nonqualified church-con-
8 trolled organization shall be aggregated with
9 one or more other nonqualified church-con-
10 trolled organizations, or with an organization
11 that is not exempt from tax under section 501,
12 and treated as a single employer with such
13 other organizations, if at least 80 percent of the
14 directors or trustees of such organizations are
15 either representatives of, or directly or indi-
16 rectly controlled by, the first organization. For
17 purposes of this subparagraph, a ‘nonqualified
18 church controlled organization’ shall mean a
19 church-controlled organization described in sec-
20 tion 501(c)(3) that is not a qualified church-
21 controlled organization described in section
22 3121(w)(3)(B).

23 “(C) PERMISSIVE AGGREGATION AMONG
24 CHURCH-RELATED ORGANIZATIONS.—Organiza-
25 tions described in subparagraph (A) may elect

1 to be treated as under common control for pur-
2 poses of this subsection. Such election shall be
3 made by the church or convention or association
4 of churches with which such organizations are
5 associated within the meaning of subsection
6 (e)(3)(D), or by an organization determined by
7 such church or convention or association of
8 churches to be the appropriate organization for
9 making such election.

10 “(D) PERMISSIVE DISAGGREGATION OF
11 CHURCH-RELATED ORGANIZATIONS.—For pur-
12 poses of subparagraph (A), in the case of a
13 church plan (as defined in subsection (e)), any
14 employer may permissively disaggregate those
15 entities that are not churches (as defined in
16 section 403(b)(12)(B)) separately from those
17 entities that are churches, even if such entities
18 maintain separate church plans.

19 “(E) ANTI-ABUSE RULE.—For purposes of
20 subparagraphs (A) and (B), the anti-abuse rule
21 in Treasury Regulation section 1.414(c)-5(f)
22 shall apply.”.

23 (2) EFFECTIVE DATE.—The amendments made
24 by this subsection shall apply to taxable years begin-

1 ning before, on, or after the date of the enactment
2 of this Act.

3 (b) APPLICATION OF CONTRIBUTION AND FUNDING
4 LIMITATIONS TO 403(b) GRANDFATHERED DEFINED
5 BENEFIT PLANS.—

6 (1) IN GENERAL.—Section 251(e)(5) of the Tax
7 Equity and Fiscal Responsibility Act of 1982 (Public
8 Law 97–248), is amended—

9 (A) by striking “403(b)(2)” and inserting
10 “403(b)”, and

11 (B) by inserting before the period at the
12 end the following: “, and shall be subject to the
13 applicable limitations of section 415(b) of such
14 Code as if it were a defined benefit plan under
15 section 401(a) of such Code and not the limita-
16 tions of section 415(c) of such Code (relating to
17 limitation for defined contribution plans).”.

18 (2) EFFECTIVE DATE.—The amendments made
19 by this subsection shall apply as if included in the
20 enactment of the Tax Equity and Fiscal Responsi-
21 bility Act of 1982.

22 (c) AUTOMATIC ENROLLMENT BY CHURCH PLANS.—

23 (1) IN GENERAL.—This subsection shall super-
24 seede any law of a State that relates to wage, salary,
25 or payroll payment, collection, deduction, garnish-

1 ment, assignment, or withholding which would di-
2 rectly or indirectly prohibit or restrict the inclusion
3 in any church plan (as defined in this subsection) of
4 an automatic contribution arrangement.

5 (2) DEFINITION OF AUTOMATIC CONTRIBUTION
6 ARRANGEMENT.—For purposes of this subsection,
7 the term “automatic contribution arrangement”
8 means an arrangement—

9 (A) under which a participant may elect to
10 have the plan sponsor make payments as con-
11 tributions under the plan on behalf of the par-
12 ticipant, or to the participant directly in cash,
13 and

14 (B) under which a participant is treated as
15 having elected to have the plan sponsor make
16 such contributions in an amount equal to a uni-
17 form percentage of compensation provided
18 under the plan until the participant specifically
19 elects not to have such contributions made (or
20 specifically elects to have such contributions
21 made at a different percentage).

22 (3) NOTICE REQUIREMENTS.—

23 (A) IN GENERAL.—The plan administrator
24 of an automatic contribution arrangement shall,
25 within a reasonable period before such plan

1 year, provide to each participant to whom the
2 arrangement applies for such plan year notice
3 of the participant's rights and obligations under
4 the arrangement which—

5 (i) is sufficiently accurate and com-
6 prehensive to apprise the participant of
7 such rights and obligations, and

8 (ii) is written in a manner calculated
9 to be understood by the average partici-
10 pant to whom the arrangement applies.

11 (B) ELECTION REQUIREMENTS.—A notice
12 shall not be treated as meeting the require-
13 ments of subparagraph (A) with respect to a
14 participant unless—

15 (i) the notice includes an explanation
16 of the participant's right under the ar-
17 rangement not to have elective contribu-
18 tions made on the participant's behalf (or
19 to elect to have such contributions made at
20 a different percentage),

21 (ii) the participant has a reasonable
22 period of time, after receipt of the notice
23 described in clause (i) and before the first
24 elective contribution is made, to make such
25 election, and

1 (iii) the notice explains how contribu-
2 tions made under the arrangement will be
3 invested in the absence of any investment
4 election by the participant.

5 (4) EFFECTIVE DATE.—This subsection shall
6 take effect on the date of the enactment of this Act.

7 (d) ALLOW CERTAIN PLAN TRANSFERS AND MERG-
8 ERS.—

9 (1) IN GENERAL.—Section 414 of the Internal
10 Revenue Code of 1986 is amended by adding at the
11 end the following new subsection:

12 “(y) CERTAIN PLAN TRANSFERS AND MERGERS.—

13 “(1) IN GENERAL.—Under rules prescribed by
14 the Secretary, except as provided in paragraph (2),
15 no amount shall be includible in gross income by
16 reason of—

17 “(A) a transfer of all or a portion of the
18 account balance of a participant or beneficiary,
19 whether or not vested, from a plan described in
20 section 401(a) or an annuity contract described
21 in section 403(b), which is a church plan de-
22 scribed in subsection (e) to an annuity contract
23 described in section 403(b), if such plan and
24 annuity contract are both maintained by the

1 same church or convention or association of
2 churches,

3 “(B) a transfer of all or a portion of the
4 account balance of a participant or beneficiary,
5 whether or not vested, from an annuity contract
6 described in section 403(b) to a plan described
7 in section 401(a) or an annuity contract de-
8 scribed in section 403(b), which is a church
9 plan described in subsection (e), if such plan
10 and annuity contract are both maintained by
11 the same church or convention or association of
12 churches, or

13 “(C) a merger of a plan described in sec-
14 tion 401(a), or an annuity contract described in
15 section 403(b), which is a church plan described
16 in subsection (e) with an annuity contract de-
17 scribed in section 403(b), if such plan and an-
18 nuity contract are both maintained by the same
19 church or convention or association of churches.

20 “(2) LIMITATION.—Paragraph (1) shall not
21 apply to a transfer or merger unless the partici-
22 pant’s or beneficiary’s benefit immediately after the
23 transfer or merger is equal to or greater than the
24 participant’s or beneficiary’s benefit immediately be-
25 fore the transfer or merger.

1 “(3) QUALIFICATION.—A plan or annuity con-
2 tract shall not fail to be considered to be described
3 in sections 401(a) or 403(b) merely because such
4 plan or account engages in a transfer or merger de-
5 scribed in this subsection.

6 “(4) DEFINITIONS.—For purposes of this sub-
7 section:

8 “(A) CHURCH.—The term ‘church’ in-
9 cludes an organization described in subpara-
10 graph (A) or (B)(ii) of subsection (e)(3).

11 “(B) ANNUITY CONTRACT.—The term ‘an-
12 nuity contract’ includes a custodial account de-
13 scribed in section 403(b)(7) and a retirement
14 income account described in section
15 403(b)(9).”.

16 (2) EFFECTIVE DATE.—The amendment made
17 by this subsection shall apply to transfers or merg-
18 ers occurring after the date of the enactment of this
19 Act.

20 (e) INVESTMENTS BY CHURCH PLANS IN COLLEC-
21 TIVE TRUSTS.—

22 (1) IN GENERAL.—In the case of—

23 (A) a church plan (as defined in section
24 414(e) of the Internal Revenue Code of 1986),
25 including a plan described in section 401(a) of

1 such Code and a retirement income account de-
2 scribed in section 403(b)(9) of such Code, and

3 (B) an organization described in section
4 414(e)(3)(A) of such Code the principal pur-
5 pose or function of which is the administration
6 of such a plan or account,

7 the assets of such plan, account, or organization (in-
8 cluding any assets otherwise permitted to be com-
9 mingled for investment purposes with the assets of
10 such a plan, account, or organization) may be in-
11 vested in a group trust otherwise described in Inter-
12 nal Revenue Service Revenue Ruling 81-100 (as
13 modified by Internal Revenue Service Revenue Rul-
14 ings 2004-67 and 2011-1), or any subsequent rev-
15 enue ruling that supersedes or modifies such revenue
16 ruling, without adversely affecting the tax status of
17 the group trust, such plan, account, or organization,
18 or any other plan or trust that invests in the group
19 trust.

20 (2) EFFECTIVE DATE.—This subsection shall
21 apply to investments made after the date of the en-
22 actment of this Act.

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