

112TH CONGRESS  
2D SESSION

# H. R. 4035

To amend the Internal Revenue Code of 1986 to exempt private foundations from the tax on excess business holdings in the case of certain philanthropic enterprises which are independently supervised, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 2012

Mr. REICHERT (for himself and Mr. LARSON of Connecticut) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to exempt private foundations from the tax on excess business holdings in the case of certain philanthropic enterprises which are independently supervised, 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 “Philanthropic Enter-  
5 prise Act of 2012”.

1 **SEC. 2. EXCEPTION FROM PRIVATE FOUNDATION EXCESS**  
2 **BUSINESS HOLDING TAX FOR CERTAIN PHIL-**  
3 **ANTHROPIC BUSINESS HOLDINGS.**

4 (a) IN GENERAL.—Section 4943 of the Internal Rev-  
5 enue Code of 1986 is amended by adding at the end the  
6 following new subsection:

7 “(g) EXCEPTION FOR CERTAIN PHILANTHROPIC  
8 BUSINESS HOLDINGS.—

9 “(1) IN GENERAL.—Subsection (a) shall not  
10 apply with respect to the holdings of a private foun-  
11 dation in any business enterprise which for the tax-  
12 able year meets—

13 “(A) the exclusive ownership requirements  
14 of paragraph (2),

15 “(B) the minimum distribution require-  
16 ment of paragraph (3), and

17 “(C) the independent operation require-  
18 ments of paragraph (4).

19 “(2) EXCLUSIVE OWNERSHIP.—The exclusive  
20 ownership requirements of this paragraph are met  
21 if—

22 “(A) all ownership interests in the business  
23 enterprise are held by the private foundation at  
24 all times during the taxable year, and

25 “(B) all the private foundation’s ownership  
26 interests in the business enterprise were ac-

1           required under the terms of a will or trust upon  
2           the death of the testator or settlor, as the case  
3           may be.

4           “(3) MINIMUM DISTRIBUTION.—

5                   “(A) IN GENERAL.—The minimum dis-  
6           tribution requirement of this paragraph is met  
7           if the business enterprise, not later than 120  
8           days after the close of the taxable year, distrib-  
9           utes an amount equal to its net operating in-  
10          come for such taxable year to the private foun-  
11          dation.

12                   “(B) NET OPERATING INCOME.—For pur-  
13          poses of this paragraph, the net operating in-  
14          come of any business enterprise for any taxable  
15          year is an amount equal to the gross income of  
16          the business enterprise for the taxable year, re-  
17          duced by the sum of—

18                           “(i) the deductions allowed by chapter  
19                           1 for the taxable year which are directly  
20                           connected with the production of such in-  
21                           come,

22                           “(ii) the tax imposed by chapter 1 on  
23                           the business enterprise for the taxable  
24                           year, and

1                   “(iii) an amount for a reasonable re-  
2                   serve for working capital and other busi-  
3                   ness needs of the business enterprise.

4                   “(4) INDEPENDENT OPERATION.—The inde-  
5                   pendent operation requirements of this paragraph  
6                   are met if, at all times during the taxable year—

7                   “(A) no substantial contributor (as defined  
8                   in section 4958(c)(3)(C)) to the private founda-  
9                   tion, or family member of such a contributor  
10                  (determined under section 4958(f)(4)) is a di-  
11                  rector, officer, trustee, manager, employee, or  
12                  contractor of the business enterprise (or an in-  
13                  dividual having powers or responsibilities simi-  
14                  lar to any of the foregoing),

15                  “(B) at least a majority of the board of di-  
16                  rectors of the private foundation are not also  
17                  directors or officers of the business enterprise,  
18                  and

19                  “(C) there is no loan outstanding from the  
20                  business enterprise to a substantial contributor  
21                  (as so defined) to the private foundation or a  
22                  family member of such contributor (as so deter-  
23                  mined).

24                  “(5) CERTAIN DEEMED PRIVATE FOUNDATIONS  
25                  EXCLUDED.—This subsection shall not apply to—

1           “(A) any fund or organization treated as a  
2 private foundation for purposes of this section  
3 by reason of subsection (e) or (f),

4           “(B) any trust described in section  
5 4947(a)(1) (relating to charitable trusts), and

6           “(C) any trust described in section  
7 4947(a)(2) (relating to split-interest trusts).”.

8       (b) **EFFECTIVE DATE.**—The amendments made by  
9 this section shall apply to taxable years beginning after  
10 December 31, 2011.

11 **SEC. 3. EXCEPTION TO UNRELATED BUSINESS TAX ON**  
12 **SPECIFIED PAYMENTS FROM CERTAIN CON-**  
13 **TROLLED ENTITIES.**

14       (a) **IN GENERAL.**—Paragraph (13) of section 512(b)  
15 of the Internal Revenue Code of 1986 is amended by add-  
16 ing at the end the following new subparagraph:

17           “(G) **SUBPARAGRAPH NOT TO APPLY TO**  
18 **PAYMENTS FROM CERTAIN PHILANTHROPIC**  
19 **CONTROLLED ENTITIES.**—Subparagraph (A)  
20 shall not apply to any payment not in excess of  
21 fair market value to a private foundation from  
22 an entity which is a business enterprise de-  
23 scribed in section 4943(g)(1) with respect to  
24 such foundation.”.

1       (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2011.

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