

113TH CONGRESS  
2D SESSION

# S. 2710

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 SENATE OF THE UNITED STATES

JULY 30, 2014

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

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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 2014”.

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 all profits to charity requirement  
 16 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) ALL PROFITS TO CHARITY.—

5                   “(A) IN GENERAL.—The all profits to  
6           charity requirement of this paragraph is met if  
7           the business enterprise, not later than 120 days  
8           after the close of the taxable year, distributes  
9           an amount equal to its net operating income for  
10          such taxable year to the private foundation.

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

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

21                           “(ii) the tax imposed by chapter 1 on  
22                           the business enterprise for the taxable  
23                           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—

17                         “(i) also directors or officers of the  
18                         business enterprise, or

19                         “(ii) members of the family (deter-  
20                         mined under section 4958(f)(4)) of a sub-  
21                         stantial contributor (as defined in section  
22                         4958(c)(3)(C)) to the private foundation,  
23                         and

24                         “(C) there is no loan outstanding from the  
25                         business enterprise to a substantial contributor

1 (as so defined) to the private foundation or a  
 2 family member of such contributor (as so deter-  
 3 mined).

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

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

9 “(B) any trust described in section  
 10 4947(a)(1) (relating to charitable trusts), and

11 “(C) any trust described in section  
 12 4947(a)(2) (relating to split-interest trusts).”.

13 (b) EFFECTIVE DATE.—The amendments made by  
 14 this section shall apply to taxable years beginning after  
 15 December 31, 2013.

16 **SEC. 3. EXCEPTION TO UNRELATED BUSINESS TAX ON**  
 17 **SPECIFIED PAYMENTS FROM CERTAIN CON-**  
 18 **TROLLED ENTITIES.**

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

22 “(G) SUBPARAGRAPH NOT TO APPLY TO  
 23 PAYMENTS FROM CERTAIN PHILANTHROPIC  
 24 CONTROLLED ENTITIES.—Subparagraph (A)  
 25 shall not apply to any payment not in excess of

1 fair market value to a private foundation from  
2 an entity which is a business enterprise de-  
3 scribed in section 4943(g)(1) with respect to  
4 such foundation.”.

5 (b) EFFECTIVE DATE.—The amendments made by  
6 this section shall apply to taxable years beginning after  
7 December 31, 2013.

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