

112TH CONGRESS  
2D SESSION

# S. 3532

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

SEPTEMBER 12, 2012

Mrs. HUTCHISON (for herself and Mr. CARDIN) 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 2012”.

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 which would directly or indi-  
25       rectly prohibit or restrict the inclusion in any church

1 plan (as defined in this subsection) of an automatic  
2 contribution arrangement.

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

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

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

20 (3) NOTICE REQUIREMENTS.—

21 (A) IN GENERAL.—The plan administrator  
22 of an automatic contribution arrangement shall,  
23 within a reasonable period before such plan  
24 year, provide to each participant to whom the  
25 arrangement applies for such plan year notice

1 of the participant's rights and obligations under  
2 the arrangement which—

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

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

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

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

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

24 (iii) the notice explains how contribu-  
25 tions made under the arrangement will be

1                   invested in the absence of any investment  
2                   election by the participant.

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

5                   (d) ALLOW CERTAIN PLAN TRANSFERS AND MERG-  
6                   ERS.—

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

10                  “(z) CERTAIN PLAN TRANSFERS AND MERGERS.—

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

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

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

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

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

24          “(3) QUALIFICATION.—A plan or annuity con-  
25          tract shall not fail to be considered to be described

1 in sections 401(a) or 403(b) merely because such  
2 plan or account engages in a transfer or merger de-  
3 scribed in this subsection.

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

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

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

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

18 (e) INVESTMENTS BY CHURCH PLANS IN COLLEC-  
19 TIVE TRUSTS.—

20 (1) IN GENERAL.—In the case of—

21 (A) a church plan (as defined in section  
22 414(e) of the Internal Revenue Code of 1986),  
23 including a plan described in section 401(a) of  
24 such Code and a retirement income account de-  
25 scribed in section 403(b)(9) of such Code, and

1           (B) an organization described in section  
2           414(e)(3)(A) of such Code the principal pur-  
3           pose or function of which is the administration  
4           of such a plan or account,  
5           the assets of such plan, account, or organization (in-  
6           cluding any assets otherwise permitted to be com-  
7           mingled for investment purposes with the assets of  
8           such a plan, account, or organization) may be in-  
9           vested in a group trust otherwise described in Inter-  
10          nal Revenue Service Revenue Ruling 81-100 (as  
11          modified by Internal Revenue Service Revenue Rul-  
12          ings 2004-67 and 2011-1), or any subsequent rev-  
13          enue ruling that supersedes or modifies such revenue  
14          ruling, without adversely affecting the tax status of  
15          the group trust, such plan, account, or organization,  
16          or any other plan or trust that invests in the group  
17          trust.

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

○