

103^D CONGRESS
1ST SESSION

H. R. 483

To amend the Internal Revenue Code of 1986 to impose an excise tax on certain sales of assets of medical service organizations to managers, etc. of such organization.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1993

Mr. STARK introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to impose an excise tax on certain sales of assets of medical service organizations to managers, etc. of such organization.

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. EXCISE TAX ON SELF-DEALING IN CERTAIN**
4 **ASSETS OF TAX-EXEMPT MEDICAL SERVICE**
5 **ORGANIZATIONS.**

6 (a) IN GENERAL.—Chapter 42 of the Internal Reve-
7 nue Code of 1986 (relating to private foundations and cer-
8 tain other tax-exempt organizations) is amended by redес-

1 ignating subchapter D as subchapter E and by inserting
2 after subchapter C the following new subchapter:

3 “SUBCHAPTER D—SELF-DEALING IN CERTAIN ASSETS
4 OF TAX-EXEMPT MEDICAL SERVICE ORGANIZATIONS

“Sec. 4958. Tax on self-dealing in certain assets of tax-exempt
medical service organizations.

5 **“SEC. 4958. TAX ON SELF-DEALING IN CERTAIN ASSETS OF**
6 **TAX-EXEMPT MEDICAL SERVICE ORGANIZA-**
7 **TIONS.**

8 “(a) INITIAL TAXES.—

9 “(1) ON SELF-DEALER.—There is hereby im-
10 posed a tax on each self-dealing asset transaction
11 between a disqualified person and a medical service
12 organization. The rate of tax shall be equal to 5 per-
13 cent of the amount involved with respect to such
14 transaction for each year (or part thereof) in the
15 taxable period. The tax imposed by this paragraph
16 shall be paid by any disqualified person (other than
17 an organization manager acting only as such) who
18 participates in such transaction.

19 “(2) ON ORGANIZATION MANAGER.—In any
20 case in which a tax is imposed by paragraph (1),
21 there is hereby imposed on the participation of any
22 organization manager in any self-dealing asset trans-
23 action between a disqualified person and a medical
24 service organization, knowing that it is such a trans-

1 action, a tax equal to 2.5 percent of the amount in-
2 volved with respect to such transaction for each year
3 (or part thereof) in the taxable period, unless such
4 participation is not willful and is due to reasonable
5 cause. The tax imposed by this paragraph shall be
6 paid by any organization manager who participated
7 in the self-dealing asset transaction.

8 “(b) ADDITIONAL TAXES.—

9 “(1) ON SELF-DEALER.—In any case in which
10 an initial tax is imposed by subsection (a)(1) on a
11 self-dealing asset transaction by a disqualified per-
12 son with a medical service organization and such
13 transaction is not corrected within the taxable pe-
14 riod, there is hereby imposed a tax equal to 200 per-
15 cent of the amount involved. The tax imposed by
16 this paragraph shall be paid by any disqualified per-
17 son (other than an organization manager acting only
18 as such) who participated in such transaction.

19 “(2) ON ORGANIZATION MANAGER.—In any
20 case in which an additional tax is imposed by para-
21 graph (1), if an organization manager refused to
22 agree to part or all of the correction, there is hereby
23 imposed a tax equal to 50 percent of the amount in-
24 volved. The tax imposed by this paragraph shall be

1 paid by any organization manager who refused to
2 agree to part or all of the correction.

3 “(c) JOINT AND SEVERAL LIABILITY.—If more than
4 one person is liable under any paragraph of subsection (a)
5 or (b) with respect to any one self-dealing asset trans-
6 action, all such persons shall be jointly and severally liable
7 under such paragraph with respect to such transaction.

8 “(d) SELF-DEALING ASSET TRANSACTION.—For
9 purposes of this section—

10 “(1) IN GENERAL.—The term ‘self-dealing asset
11 transaction’ means any direct or indirect sale or ex-
12 change, or leasing, of any medical asset to any dis-
13 qualified person.

14 “(2) EXCEPTION.—Such term shall not include
15 any transaction if it is established to the satisfaction
16 of the Secretary that—

17 “(A) such transaction is at arm’s length
18 and for fair market value, and

19 “(B) such transaction does not involve
20 (and is not part of a series of transactions in-
21 volving) the disposition of any medical activity
22 (or of a substantial portion of any medical ac-
23 tivity).

24 “(3) CONTROLLED ENTITIES.—In the case of
25 any 50-percent controlled entity (other than an en-

1 tity exempt from tax under section 501(a)) of a
2 medical service organization—

3 “(A) if there is a disposition of any medi-
4 cal asset by such entity, such organization shall
5 be treated as disposing of such asset to the ex-
6 tent of such organization’s proportionate share
7 of such entity, and

8 “(B) any disposition of an interest referred
9 to in subsection (f)(2) in such entity shall be
10 treated as a disposition of such organization’s
11 proportionate share of the medical assets of
12 such entity.

13 For purposes of the preceding sentence, the term
14 ‘proportionate share’ means the percentage of the
15 interests referred to in subsection (f)(2) in such en-
16 tity which are held by such organization.

17 “(e) DISQUALIFIED PERSON; ORGANIZATION MAN-
18 AGER.—For purposes of this section—

19 “(1) DISQUALIFIED PERSON.—The term ‘dis-
20 qualified person’ means—

21 “(A) any organization manager,

22 “(B) any person who performs substantial
23 professional medical services for the medical
24 service organization pursuant to an employment

1 or other contractual relationship with such or-
2 ganization,

3 “(C) any member of a family (as defined
4 in section 4946(d)) of any individual described
5 in subparagraph (A) or (B), and

6 “(D) any 35-percent controlled entity of
7 persons described in subparagraph (A), (B), or
8 (C).

9 “(2) ORGANIZATION MANAGER.—The term ‘or-
10 ganization manager’ means, with respect to a medi-
11 cal service organization, any officer, director, or
12 trustee of such organization (or any individual hav-
13 ing powers or responsibilities similar to those of offi-
14 cers, directors, or trustees of the organization).

15 “(f) MEDICAL SERVICE ORGANIZATION; MEDICAL
16 ACTIVITY; MEDICAL ASSET.—For purposes of this sec-
17 tion—

18 “(1) MEDICAL SERVICE ORGANIZATION.—The
19 term ‘medical service organization’ means any orga-
20 nization which (without regard to any self-dealing
21 asset transaction) would be described in section
22 501(c)(3) and exempt from tax under section 501(a)
23 if such organization (either directly or through any
24 50-percent controlled entity of such organization)
25 engages in a medical activity.

1 “(2) MEDICAL ACTIVITY.—The term ‘medical
2 activity’ means any activity of providing medical or
3 hospital care or medical education or medical re-
4 search.

5 “(3) MEDICAL ASSET.—The term ‘medical
6 asset’ means any tangible or intangible asset used in
7 a medical activity.

8 “(g) CONTROLLED ENTITIES.—For purposes of this
9 section—

10 “(1) 35-PERCENT CONTROLLED ENTITY.—The
11 term ‘35-percent controlled entity’ means—

12 “(A) a corporation in which persons de-
13 scribed in subparagraph (A), (B), or (C) of sub-
14 section (e)(1) own more than 35 percent of the
15 combined voting power,

16 “(B) a partnership in which such persons
17 own more than 35 percent of the profits inter-
18 est, and

19 “(C) a trust or estate in which such per-
20 sons own more than 35 percent of the beneficial
21 interest.

22 “(2) 50-PERCENT CONTROLLED ENTITY.—The
23 term ‘50-percent controlled entity’ means any cor-
24 poration, partnership, or trust in which a medical
25 service organization owns more than 50 percent of

1 the combined voting power, profits interest, or bene-
2 ficial interest, as the case may be.

3 “(3) CONSTRUCTIVE OWNERSHIP RULES.—
4 Rules similar to the rules of paragraphs (3) and (4)
5 of section 4946(a) shall apply for purposes of this
6 subsection.

7 “(h) OTHER DEFINITIONS.—For purposes of this
8 section—

9 “(1) TAXABLE PERIOD.—The term ‘taxable pe-
10 riod’ means, with respect to any self-dealing asset
11 transaction, the period beginning with the date on
12 which the transaction occurs and ending on the ear-
13 liest of—

14 “(A) the date of mailing a notice of defi-
15 ciency under section 6212 with respect to the
16 tax imposed by subsection (a)(1),

17 “(B) the date on which the tax imposed by
18 subsection (a)(1) is assessed, or

19 “(C) the date on which correction of the
20 self-dealing asset transaction is corrected.

21 “(2) AMOUNT INVOLVED.—The term ‘amount
22 involved’ means, with respect to any self-dealing
23 asset transaction, the amount of money and fair
24 market value of other property transferred by the
25 medical service organization in the transaction (or in

1 the case of a lease, the fair market value of the
2 leased property). For purposes of the preceding sen-
3 tence—

4 “(A) in the case of the taxes imposed by
5 subsection (a), fair market value shall be deter-
6 mined as of the date of which the transaction
7 occurs, and

8 “(B) in the case of the taxes imposed by
9 subsection (b), fair market value shall be the
10 highest fair market value during the taxable pe-
11 riod.

12 “(3) CORRECTION.—The terms ‘correction’ and
13 ‘correct’ mean, with respect to any self-dealing asset
14 transaction, undoing the transaction to the extent
15 possible, but in any case place the medical service
16 organization in a financial position not worse than
17 that in which it would be if the disqualified person
18 were dealing under the highest fiduciary standards.”

19 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

20 (1) Subsections (a), (b), and (c) of section 4963
21 of such Code are each amended by inserting “4958,”
22 after “4955,”.

23 (2) Subsection (b) of section 4962 of such Code
24 is amended by inserting before the period “and shall
25 not include the tax imposed by section 4958(a) (re-

