

104TH CONGRESS
1ST SESSION

H. R. 2316

To amend the Internal Revenue Code of 1986 to impose an excise tax on amounts of private excess benefits from certain charitable organizations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 1995

Mr. STARK (for himself and Mr. HOUGHTON) 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 amounts of private excess benefits from certain charitable organizations, 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; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Exempt Organization Reform Act of 1995”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
2 sion of the Internal Revenue Code of 1986.

3 **SEC. 2. EXCISE TAXES FOR FAILURE BY CERTAIN CHARITABLE ORGANIZATIONS TO MEET CERTAIN QUALIFICATION REQUIREMENTS.**

6 (a) IN GENERAL.—Chapter 42 (relating to private
7 foundations and certain other tax-exempt organizations)
8 is amended by redesignating subchapter D as subchapter
9 E and by inserting after subchapter C the following new
10 subchapter:

11 **“Subchapter D—Failure By Certain Charitable Organizations To Meet Certain Qualification Requirements**

“Sec. 4958. Taxes on excess benefit transactions.

15 **“SEC. 4958. TAXES ON EXCESS BENEFIT TRANSACTIONS.**

16 “(a) INITIAL TAXES.—

17 “(1) ON THE DISQUALIFIED PERSON.—There is
18 hereby imposed on each excess benefit transaction a
19 tax equal to 25 percent of the excess benefit. The
20 tax imposed by this paragraph shall be paid by any
21 disqualified person referred to in subsection (f)(1)
22 with respect to such transaction.

23 “(2) ON THE MANAGEMENT.—In any case in
24 which a tax is imposed by paragraph (1), there is

1 hereby imposed on any organization manager who
2 participates in the excess benefit transaction, know-
3 ing that it is such a transaction, a tax equal to 10
4 percent of the excess benefit, unless such participa-
5 tion is not willful and is due to reasonable cause.

6 The tax imposed by this paragraph shall be paid by
7 any organization manager who participated in the
8 excess benefit transaction.

9 “(b) ADDITIONAL TAX ON THE DISQUALIFIED PER-
10 SON.—In any case in which an initial tax is imposed by
11 subsection (a)(1) on an excess benefit transaction and the
12 excess benefit involved in such transaction is not corrected
13 within the taxable period, there is hereby imposed a tax
14 equal to 200 percent of the excess benefit involved. The
15 tax imposed by this subsection shall be paid by any dis-
16 qualified person referred to in subsection (f)(1) with re-
17 spect to such transaction.

18 “(c) EXCESS BENEFIT TRANSACTION; EXCESS BEN-
19 EFIT.—For purposes of this section—

20 “(1) EXCESS BENEFIT TRANSACTION.—

21 “(A) IN GENERAL.—The term ‘excess ben-
22 efit transaction’ means any transaction in
23 which an economic benefit is provided by an ap-
24 plicable tax-exempt organization to or for the
25 use of any disqualified person if the value of the

1 economic benefit provided exceeds the value of
2 the consideration (including the performance of
3 services) received for providing such benefit.

4 “(B) LOANS AND CERTAIN PRIVATE
5 INUREMENT INCLUDED.—The term ‘excess ben-
6 efit transaction’ includes—

7 “(i) any loan of money or other exten-
8 sion of credit by an applicable tax-exempt
9 organization to or for the use of a disquali-
10 fied person described in subsection
11 (f)(1)(A)(i), and

12 “(ii) any transaction in which the
13 amount of any economic benefit provided
14 to or for the use of a disqualified person
15 is determined in whole or in part by the
16 gross or net revenues of 1 or more activi-
17 ties of the organization but only if such
18 transaction results in inurement not per-
19 mitted under paragraph (3) or (4) of sec-
20 tion 501(c), as the case may be.

21 “(2) EXCESS BENEFIT.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), the term ‘excess benefit’
24 means the excess referred to in paragraph
25 (1)(A).

1 “(B) LOANS AND PRIVATE INUREMENT IN-
2 CLUDED.—The term ‘excess benefit’ means—

3 “(i) in the case of a loan or extension
4 of credit described in paragraph (1)(B)(i),
5 the amount of the loan or the credit ex-
6 tended, and

7 “(ii) in the case of a transaction de-
8 scribed in paragraph (1)(B)(ii), the
9 amount of the inurement.

10 “(d) SPECIAL RULES.—For purposes of this sec-
11 tion—

12 “(1) JOINT AND SEVERAL LIABILITY.—If more
13 than 1 person is liable for any tax imposed by sub-
14 section (a) or subsection (b), all such persons shall
15 be jointly and severally liable for such tax.

16 “(2) LIMIT FOR MANAGEMENT.—With respect
17 to any 1 excess benefit transaction, the maximum
18 amount of the tax imposed by subsection (a)(2) shall
19 not exceed \$10,000.

20 “(e) APPLICABLE TAX-EXEMPT ORGANIZATION.—
21 For purposes of this subchapter, the term ‘applicable tax-
22 exempt organization’ means any organization which (with-
23 out regard to any excess benefit) would be described in
24 paragraph (3) or (4) of section 501(c) and exempt from

1 tax under section 501(a). Such term shall not include a
2 private foundation (as defined in section 509(a)).

3 “(f) OTHER DEFINITIONS.—For purposes of this sec-
4 tion—

5 “(1) DISQUALIFIED PERSON.—The term ‘dis-
6 qualified person’ means, with respect to any trans-
7 action—

8 “(A) any person who was, at any time dur-
9 ing the 5-year period ending on the date of
10 such transaction—

11 “(i) an organization manager, or

12 “(ii) an individual (other than an or-
13 ganization manager) in a position to exer-
14 cise substantial influence over the affairs
15 of the organization,

16 “(B) a member of the family of an individ-
17 ual described in subparagraph (A), and

18 “(C) a 35-percent controlled entity.

19 “(2) ORGANIZATION MANAGER.—The term ‘or-
20 ganization manager’ means, with respect to any ap-
21 plicable tax-exempt organization, any officer, direc-
22 tor, or trustee of such organization (or any individ-
23 ual having powers or responsibilities similar to those
24 of officers, directors, or trustees of the organiza-
25 tion).

1 “(3) 35-PERCENT CONTROLLED ENTITY.—

2 “(A) IN GENERAL.—The term ‘35-percent
3 controlled entity’ means—

4 “(i) a corporation in which persons
5 described in subparagraph (A) or (B) of
6 paragraph (1) own more than 35 percent
7 of the total combined voting power,

8 “(ii) a partnership in which such per-
9 sons own more than 35 percent of the
10 profits interest, and

11 “(iii) a trust or estate in which such
12 persons own more than 35 percent of the
13 beneficial interest.

14 “(B) CONSTRUCTIVE OWNERSHIP
15 RULES.—Rules similar to the rules of para-
16 graphs (3) and (4) of section 4946(a) shall
17 apply for purposes of this paragraph.

18 “(4) FAMILY MEMBERS.—The members of an
19 individual’s family shall be determined under section
20 4946(d); except that such members also shall in-
21 clude the brothers and sisters (whether by the whole
22 or half blood) of the individual and their spouses.

23 “(5) TAXABLE PERIOD.—The term ‘taxable pe-
24 riod’ means, with respect to any excess benefit
25 transaction, the period beginning with the date on

1 which the transaction occurs and ending on the ear-
2 liest of—

3 “(A) the date of mailing a notice of defi-
4 ciency under section 6212 with respect to the
5 tax imposed by subsection (a)(1), or

6 “(B) the date on which the tax imposed by
7 subsection (a)(1) is assessed.

8 “(6) CORRECTION.—The terms ‘correction’ and
9 ‘correct’ mean, with respect to any excess benefit
10 transaction, undoing the excess benefit to the extent
11 possible, establishing safeguards to prevent future
12 such excess benefit, and where fully undoing the ex-
13 cess benefit is not possible, such additional correc-
14 tive action as is prescribed by the Secretary by regu-
15 lations.

16 “(g) TREATMENT OF PREVIOUSLY EXEMPT ORGANI-
17 ZATIONS.—

18 “(1) IN GENERAL.—For purposes of this sec-
19 tion, the status of any organization as an applicable
20 tax-exempt organization shall be terminated only
21 if—

22 “(A)(i) such organization notifies the Sec-
23 retary (at such time and in such manner as the
24 Secretary may by regulations prescribe) of its
25 intent to accomplish such termination, or

1 “(ii) there is a final determination by the
2 Secretary that such status has terminated, and

3 “(B)(i) such organization pays the tax im-
4 posed by paragraph (2) (or any portion not
5 abated pursuant to paragraph (3)), or

6 “(ii) the entire amount of such tax is
7 abated pursuant to paragraph (3).

8 “(2) IMPOSITION OF TAX.—There is hereby im-
9 posed on each organization referred to in paragraph
10 (1) a tax equal to the lesser of—

11 “(A) the amount which the organization
12 substantiates by adequate records or other cor-
13 roborating evidence as the aggregate tax benefit
14 resulting from its exemption from tax under
15 section 501(a), or

16 “(B) the value of the net assets of such or-
17 ganization.

18 “(3) ABATEMENT OF TAX.—The Secretary may
19 abate the unpaid portion of the assessment of any
20 tax imposed by paragraph (2), or any liability in re-
21 spect thereof, if the applicable tax-exempt organiza-
22 tion distributes all of its net assets to 1 or more or-
23 ganizations each of which has been in existence, and
24 described in section 501(c)(3), for a continuous pe-
25 riod of at least 60 calendar months. If the distribut-

1 ing organization is described in section 501(c)(4),
2 the preceding sentence shall be applied by treating
3 the reference to section 501(c)(3) as including a ref-
4 erence to section 501(c)(4).

5 “(4) CERTAIN RULES MADE APPLICABLE.—
6 Rules similar to the rules of subsections (d), (e), and
7 (f) of section 507 shall apply for purposes of this
8 subsection.”

9 (b) APPLICATION OF PRIVATE INUREMENT RULE TO
10 TAX-EXEMPT ORGANIZATIONS DESCRIBED IN SECTION
11 501(c)(4).—Paragraph (4) of section 501(c) is amended
12 by inserting “(A)” after “(4)” and by adding at the end
13 the following:

14 “(B) Subparagraph (A) shall not apply to an
15 entity unless no part of the net earnings of such en-
16 tity inures to the benefit of any private shareholder
17 or individual.”

18 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

19 (1) Subsection (e) of section 4955 is amend-
20 ed—

21 (A) by striking “SECTION 4945” in the
22 heading and inserting “SECTIONS 4945 and
23 4958”, and

24 (B) by inserting before the period “or an
25 excess benefit for purposes of section 4958”.

1 (2) Subsections (a), (b), and (c) of section 4963
2 are each amended by inserting “4958,” after
3 “4955,”.

4 (3) Subsection (e) of section 6213 is amended
5 by inserting “4958 (relating to private excess bene-
6 fit),” before “4971”.

7 (4) Paragraphs (2) and (3) of section 7422(g)
8 are each amended by inserting “4958,” after
9 “4955,”.

10 (5) Subsection (b) of section 7454 is amended
11 by inserting “or whether an organization manager
12 (as defined in section 4958(f)(2)) has ‘knowingly’
13 participated in an excess benefit transaction (as de-
14 fined in section 4958(c)),” after “section 4912(b),”.

15 (6) The table of subchapters for chapter 42 is
16 amended by striking the last item and inserting the
17 following:

 “Subchapter D. Failure by certain charitable organizations to
 meet certain qualification requirements.

 “Subchapter E. Abatement of first and second tier taxes in cer-
 tain cases.”

18 (d) EFFECTIVE DATES.—

19 (1) IN GENERAL.—The amendments made by
20 this section (other than subsection (b)) shall apply
21 to excess benefit transactions occurring on or after
22 September 6, 1995.

1 (2) BINDING CONTRACTS FOR PERSONAL SERV-
2 ICES.—The amendments referred to in paragraph
3 (1) shall not apply to any transaction pursuant to
4 any written contract for the performance of personal
5 services which was binding on September 6, 1995,
6 and at all times thereafter before such transaction
7 occurred.

8 (3) APPLICATION OF PRIVATE INUREMENT
9 RULE TO TAX-EXEMPT ORGANIZATIONS DESCRIBED
10 IN SECTION 501(c)(4).—

11 (A) IN GENERAL.—The amendment made
12 by subsection (b) shall apply to inurement oc-
13 curring on or after September 6, 1995.

14 (B) BINDING CONTRACTS.—The amend-
15 ment made by subsection (b) shall not apply to
16 any inurement occurring before July 1, 1996,
17 pursuant to a written contract which was bind-
18 ing on September 6, 1995, and at all times
19 thereafter before such inurement occurred.

20 **SEC. 3. REPORTING OF CERTAIN EXCISE TAXES.**

21 (a) REPORTING BY ORGANIZATIONS DESCRIBED IN
22 SECTION 501(c)(3).—Subsection (b) of section 6033 (re-
23 lating to certain organizations described in section
24 501(c)(3)) is amended by striking “and” at the end of
25 paragraph (9), by redesignating paragraph (10) as para-

1 graph (12), and by inserting after paragraph (9) the fol-
2 lowing new paragraphs:

3 “(10) the respective amounts (if any) of the
4 taxes paid by the organization during the taxable
5 year under the following provisions:

6 “(A) section 4911 (relating to tax on ex-
7 cess expenditures to influence legislation),

8 “(B) section 4912 (relating to tax on dis-
9 qualifying lobbying expenditures of certain or-
10 ganizations),

11 “(C) section 4955 (relating to taxes on po-
12 litical expenditures of section 501(c)(3) organi-
13 zations),

14 “(D) section 4958 (relating to taxes on
15 private excess benefit from certain charitable
16 organizations),

17 “(11) such information as the Secretary may
18 require with respect to any excess benefit trans-
19 action (as defined in section 4958), and”.

20 (b) ORGANIZATIONS DESCRIBED IN SECTION
21 501(c)(4).—Section 6033 is amended by redesignating
22 subsection (f) as subsection (g) and by inserting after sub-
23 section (e) the following new subsection:

24 “(f) CERTAIN ORGANIZATIONS DESCRIBED IN SEC-
25 TION 501(c)(4).—Every organization described in section

1 501(c)(4) which is subject to the requirements of sub-
2 section (a) shall include on the return required under sub-
3 section (a) the information referred to in paragraphs (10)
4 and (11) of subsection (b) with respect to such organiza-
5 tion.”

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to returns for taxable years begin-
8 ning after the date of the enactment of this Act.

9 **SEC. 4. EXEMPT ORGANIZATIONS REQUIRED TO PROVIDE**
10 **COPY OF RETURN.**

11 (a) GENERAL RULE.—

12 (1) Subparagraph (A) of section 6104(e)(1) (re-
13 lating to public inspection of annual returns) is
14 amended to read as follows:

15 “(A) IN GENERAL.—During the 3-year pe-
16 riod beginning on the filing date—

17 “(i) a copy of the annual return filed
18 under section 6033 (relating to returns by
19 exempt organizations) by any organization
20 to which this paragraph applies shall be
21 made available by such organization for in-
22 spection during regular business hours by
23 any individual at the principal office of
24 such organization and, if such organization
25 regularly maintains 1 or more regional or

1 district offices having 3 or more employees,
2 at each such regional or district office, and
3 “(ii) upon request of an individual
4 made at such principal office or such a re-
5 gional or district office, a copy of such an-
6 nual return shall be provided to such indi-
7 vidual without charge other than a reason-
8 able fee for any reproduction and mailing
9 costs.

10 If the request under clause (ii) is made in per-
11 son, such copy shall be provided immediately
12 and, if made other than in person, shall be pro-
13 vided within 30 days. If the organization deter-
14 mines that a request under clause (ii) is part of
15 a harassment campaign, the requirement of
16 clause (ii) shall be treated as met if the organi-
17 zation places a copy of such return on a pub-
18 licly available electronic network.”

19 (2) Clause (ii) of section 6104(e)(2)(A) is
20 amended by inserting before the period at the end
21 thereof the following: “(and, upon request of an in-
22 dividual made at such principal office or such a re-
23 gional or district office, a copy of the material re-
24 quired to be available for inspection under this sub-
25 paragraph shall be provided (in accordance with the

1 last sentence of paragraph (1)(A)) to such individual
2 without charge other than a reasonable fee for any
3 reproduction and mailing costs)”.
4

5 (3) Subsection (e) of section 6104 is amended
6 by adding at the end the following new paragraph:

7 “(3) LIMITATION.—Paragraph (1)(A)(ii) (and
8 the corresponding provision of paragraph (2)) shall
9 not apply to any request if the Secretary determines,
10 upon application by an organization, that such re-
11 quest is part of a harassment campaign and that
12 compliance with such request is not in the public in-
13 terest.”

14 (b) ADVERTISEMENTS ETC., REQUIRED TO DIS-
15 CLOSE AVAILABILITY OF ANNUAL RETURN.—

16 (1) Paragraph (1) of section 6104(e) is amend-
17 ed by adding at the end thereof the following new
18 subparagraph:

19 “(E) ADVERTISEMENTS ETC., REQUIRED
20 TO DISCLOSE AVAILABILITY OF ANNUAL RE-
21 TURN.—In the case of an organization required
22 by subparagraph (A) to provide a copy of its
23 annual return under section 6033 upon request
24 to individuals, each advertisement or solicitation
25 by (or on behalf of) such organization shall con-
tain an express statement (in a conspicuous and

1 easily recognizable format) that such return
2 shall be provided to individuals upon request.”

3 (2) Section 6716, as added by section 5 of this
4 Act, is amended—

5 (A) by striking “section 6116” each place
6 it appears and inserting “section 6116 or sec-
7 tion 6104(e)(1)(E)”,

8 (B) by striking “\$1,000” in subsection (a)
9 and inserting “\$1,000 (\$100 in the case of a
10 failure to meet the requirements of
11 6104(e)(1)(E))”, and

12 (C) by inserting before the period at the
13 end of the section heading “; **FAILURE OF**
14 **CERTAIN EXEMPT ORGANIZATIONS TO DIS-**
15 **CLOSE AVAILABILITY OF ANNUAL RE-**
16 **TURN”**.

17 (3) Subparagraph (C) of section 6652(c)(1) is
18 amended by striking “(e)(1)” and inserting “(e)(1)
19 (other than subparagraph (E))”, by striking “\$10”
20 and inserting “\$20”, and by striking “\$5,000” and
21 inserting “\$10,000”.

22 (4) Subparagraph (D) of section 6652(c)(1) is
23 amended by striking “\$10” and inserting “\$20”.

24 (5) The item relating to section 6716 in the
25 table of sections for part I of subchapter B of chap-

1 ter 68 is amended by inserting before the period “;
2 failure of certain exempt organizations to disclose
3 availability of annual return”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on January 1, 1996 (or, if
6 later, the 90th day after the date of the enactment of this
7 Act).

8 **SEC. 5. CERTAIN ORGANIZATIONS REQUIRED TO DIS-**
9 **CLOSE NONEXEMPT STATUS.**

10 (a) GENERAL RULE.—Subchapter B of chapter 61
11 (relating to miscellaneous provisions) is amended by redес-
12 ignating section 6116 as section 6117 and by inserting
13 after section 6115 the following new section:

14 **“SEC. 6116. CERTAIN ORGANIZATIONS REQUIRED TO DIS-**
15 **CLOSE NONEXEMPT STATUS.**

16 “(a) IN GENERAL.—If—

17 “(1) in an advertisement or solicitation by (or
18 on behalf of) an organization, such organization is
19 referred to as being nonprofit, and

20 “(2) such organization is not exempt from tax
21 under subtitle A,

22 such advertisement or solicitation shall contain an express
23 statement (in a conspicuous and easily recognizable for-
24 mat) that such organization is not exempt from Federal
25 income taxes.

1 “(b) CROSS REFERENCE.—

“For penalties for violation of subsection (a), see
section 6716.”

2 (b) PENALTY.—Part I of subchapter B of chapter 68
3 is amended by adding at the end thereof the following new
4 section:

5 “**SEC. 6716. FAILURE TO DISCLOSE NONEXEMPT STATUS.**

6 “(a) IMPOSITION OF PENALTY.—If there is a failure
7 to meet the requirements of section 6116 with respect to
8 any advertisement or solicitation by (or on behalf of) an
9 organization, such organization shall pay a penalty of
10 \$1,000 for each day on which such a failure occurred. The
11 maximum penalty imposed under this subsection on fail-
12 ures by any organization during any calendar year shall
13 not exceed \$10,000.

14 “(b) REASONABLE CAUSE EXEMPTION.—No penalty
15 shall be imposed under this section with respect to any
16 failure if it is shown that such failure is due to reasonable
17 cause.

18 “(c) \$10,000 LIMITATION NOT TO APPLY WHERE
19 INTENTIONAL DISREGARD.—If any failure to which sub-
20 section (a) applies is due to intentional disregard of the
21 requirements of section 6116—

22 “(1) the penalty under subsection (a) for the
23 day on which failure occurred shall be the greater
24 of—

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on January 1, 1996 (or, if
3 later, the 90th day after the date of the enactment of this
4 Act).

5 **SEC. 6. INCREASE IN PENALTIES ON EXEMPT ORGANIZA-**
6 **TIONS FOR FAILURE TO FILE COMPLETE AND**
7 **TIMELY ANNUAL RETURNS.**

8 (a) IN GENERAL.—Subparagraph (A) of section
9 6652(c)(1) (relating to annual returns under section
10 6033) is amended by striking “\$10” and inserting “\$20”
11 and by striking “\$5,000” and inserting “\$10,000”.

12 (b) LARGER PENALTY ON ORGANIZATIONS HAVING
13 GROSS RECEIPTS IN EXCESS OF \$1,000,000.—Subpara-
14 graph (A) of section 6652(c)(1) is amended by adding at
15 the end the following new sentence: “In the case of an
16 organization having gross receipts exceeding \$1,000,000
17 for any year, with respect to the return required under
18 section 6033 for such year, the first sentence of this sub-
19 paragraph shall be applied by substituting ‘\$100’ for ‘\$20’
20 and, in lieu of applying the second sentence of this sub-
21 paragraph, the maximum penalty under this subparagraph
22 shall not exceed \$50,000.”

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to returns for taxable years ending
3 on or after December 31, 1995.

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