

108TH CONGRESS
1ST SESSION

S. 1857

To amend the Internal Revenue Code of 1986 to provide procedural fairness in the application of the controlled group provisions to employers who contribute to multiemployer pension plans and who engage in bona fide corporate transactions.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, (legislative day, NOVEMBER 12), 2003

Mr. LOTT (for himself and Mr. SMITH) 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 provide procedural fairness in the application of the controlled group provisions to employers who contribute to multiemployer pension plans and who engage in bona fide corporate transactions.

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 “Multiemployer Pension
5 Plan Procedural Fairness Act of 2003”.

1 **SEC. 2. AMENDMENT TO THE INTERNAL REVENUE CODE OF**
2 **1986.**

3 (a) IN GENERAL.—Section 414(f) of the Internal
4 Revenue Code of 1986 is amended—

5 (1) by striking paragraph (2) and inserting the
6 following:

7 “(2) COMMON CONTROL.—

8 “(A) IN GENERAL.—For purposes of this
9 subsection and subtitle E of title IV of the Em-
10 ployee Retirement Income Security Act of 1974
11 (29 U.S.C. 1381 et seq.), all trades or busi-
12 nesses (whether or not incorporated) which are
13 under common control within the meaning of
14 subsection (c) are considered a single employer.

15 “(B) PRINCIPAL PURPOSE TEST.—If a
16 principal purpose of any transaction is to evade
17 or avoid liability under subtitle E of title IV of
18 the Employee Retirement Income Security Act
19 of 1974 (29 U.S.C. 1381 et seq.), then, subject
20 to paragraph (6), the determination of whether
21 one or more trades or businesses are under
22 common control for purposes of such subtitle
23 shall be made without regard to such trans-
24 action.”, and

25 (2) by adding at the end the following:

1 “(6) DETERMINATION OF COMMON CONTROL
2 MORE THAN 5 YEARS FOLLOWING A TRANSACTION.—

3 “(A) IN GENERAL.—If—

4 “(i) a plan sponsor of a plan deter-
5 mines that—

6 “(I) a complete or partial with-
7 drawal of an employer has occurred,
8 or

9 “(II) an employer is liable for
10 withdrawal liability payments with re-
11 spect to the complete or partial with-
12 drawal of an employer from the plan,

13 “(ii) such determination is based in
14 whole or in part on a finding by the plan
15 sponsor that a principal purpose of any
16 transaction was to evade or avoid liability
17 under subtitle E of title IV of the Em-
18 ployee Retirement Income Security Act of
19 1974 (29 U.S.C. 1381 et seq.), and

20 “(iii) such transaction occurred at
21 least 5 years before the date of the com-
22 plete or partial withdrawal,

23 then the special rules under subparagraph (B)
24 shall be used in applying section 4219(c) and
25 section 4221(a) of the Employee Retirement In-

1 come Security Act of 1974 (29 U.S.C. 1399(c)
2 and 1401(a)) to the employer.

3 “(B) SPECIAL RULES.—

4 “(i) DETERMINATION.—Notwith-
5 standing section 4221(a)(3) of the Em-
6 ployee Retirement Income Security Act of
7 1974 (29 U.S.C. 1401(a)(3))—

8 “(I) a determination by the plan
9 sponsor under subparagraph (A)(i)
10 shall not be presumed to be correct,
11 and

12 “(II) the plan sponsor shall have
13 the burden to establish, by a prepon-
14 derance of the evidence, each and
15 every element of the claim for with-
16 drawal liability.

17 “(ii) PROCEDURE.—Notwithstanding
18 section 4219(c) and section 4221(d) of the
19 Employee Retirement Income Security Act
20 of 1974 (29 U.S.C. 1399(c) and 1401(d)),
21 if an employer contests the plan sponsor’s
22 determination under subparagraph (A)(i)
23 through an arbitration proceeding pursu-
24 ant to section 4221(a) of such Act (29
25 U.S.C. 1401(a)), or through a claim

1 brought in a court of competent jurisdic-
2 tion, the employer shall not be obligated to
3 make any withdrawal liability payments
4 until a final decision in the arbitration, or
5 in court, upholds the plan sponsor's deter-
6 mination.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to any employer that receives a
9 notification under section 4219(b)(1) of the Employee Re-
10 tirement Income Security Act of 1974 (29 U.S.C.
11 1399(b)(1)) after October 31, 2003.

○