

109TH CONGRESS
1ST SESSION

S. 993

To amend the Internal Revenue Code of 1986 to impose an excise tax on amounts received under certain insurance policies in which certain exempt organizations hold an interest.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2005

Mr. GRASSLEY (for himself and Mr. BAUCUS) 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 impose an excise tax on amounts received under certain insurance policies in which certain exempt organizations hold an interest.

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 CERTAIN ACQUISITIONS OF IN-**
4 **TERESTS IN INSURANCE CONTRACTS IN**
5 **WHICH CERTAIN EXEMPT ORGANIZATIONS**
6 **HOLD AN INTEREST.**

7 (a) IMPOSITION OF TAX.—

1 (1) IN GENERAL.—Chapter 42 of the Internal
 2 Revenue Code of 1986 (relating to excise taxes in-
 3 volving private foundations and certain other tax-ex-
 4 empt organizations) is amended by adding at the
 5 end the following new subchapter:

6 **“Subchapter F—Insurance Contracts in**
 7 **Which Certain Exempt Organizations**
 8 **Hold Interests**

“Sec. 4965. Excise tax on acquisition of interests in insurance contracts
 in which certain exempt organizations hold an interest.

9 **“SEC. 4965. EXCISE TAX ON ACQUISITION OF INTERESTS IN**
 10 **INSURANCE CONTRACTS IN WHICH CERTAIN**
 11 **EXEMPT ORGANIZATIONS HOLD AN INTER-**
 12 **EST.**

13 “(a) IMPOSITION OF TAX.—If there is a taxable ac-
 14 quisition of any interest in an applicable insurance con-
 15 tract, there is hereby imposed on the person acquiring the
 16 interest a tax equal to 100 percent of the acquisition costs
 17 of the interest.

18 “(b) TAXABLE ACQUISITION.—For purposes of this
 19 section—

20 “(1) IN GENERAL.—The term ‘taxable acquisi-
 21 tion’ means the acquisition of any direct or indirect
 22 interest in an applicable insurance contract by—

23 “(A) an applicable exempt organization, or

1 “(B) a person other than an applicable ex-
2 empt organization if such interest in the hands
3 of such person is not an interest described in
4 clause (i), (ii), or (iii) of paragraph (2)(B).

5 “(2) APPLICABLE INSURANCE CONTRACT.—

6 “(A) IN GENERAL.—The term ‘applicable
7 insurance contract’ means any life insurance,
8 annuity, or endowment contract with respect to
9 which both an applicable exempt organization
10 and a person other than an applicable exempt
11 organization have directly or indirectly held an
12 interest in the contract (whether or not at the
13 same time).

14 “(B) EXCEPTIONS.—Such term shall not
15 include a life insurance, annuity, or endowment
16 contract if—

17 “(i) all persons directly or indirectly
18 holding any interest in the contract (other
19 than applicable exempt organizations) have
20 an insurable interest in the insured under
21 the contract independent of any interest of
22 an applicable exempt organization in the
23 contract,

24 “(ii) the sole interest in the contract
25 of each person other than an applicable ex-

1 exempt organization is as a named bene-
2 ficiary, or

3 “(iii) the sole interest in the contract
4 of each person other than an applicable ex-
5 empt organization is—

6 “(I) as a beneficiary of a trust
7 holding an interest in the contract,
8 but only if the person’s designation as
9 such beneficiary was made without
10 consideration and solely on a purely
11 gratuitous basis, or

12 “(II) as a trustee who holds an
13 interest in the contract in a fiduciary
14 capacity solely for the benefit of appli-
15 cable exempt organizations or persons
16 otherwise described in clauses (i) and
17 (ii) or subclause (I) of this clause.

18 “(3) DEFINITION AND RULE RELATING TO AC-
19 QUISSION COSTS.—

20 “(A) ACQUISITION COSTS DEFINED.—The
21 term ‘acquisition costs’ means the direct or in-
22 direct costs of acquiring an interest in an appli-
23 cable insurance contract. Such term shall in-
24 clude any fees, commissions, charges, or other
25 amounts paid in connection with the acquisi-

1 tion, whether or not paid to the issuer of the
2 contract.

3 “(B) TIMING OF PAYMENTS.—Except as
4 provided in regulations, if acquisition costs of
5 any acquisition are paid or incurred in more
6 than 1 calendar year, the tax imposed by sub-
7 section (a) with respect to the acquisition shall
8 be imposed each time the costs are so paid or
9 incurred.

10 “(4) RULES RELATING TO INTERESTS.—

11 “(A) IN GENERAL.—An interest in the
12 contract includes any right with respect to the
13 contract, whether as an owner, beneficiary, or
14 otherwise.

15 “(B) INDIRECT INTEREST.—An indirect
16 interest in a contract includes an interest in an
17 entity which directly or indirectly holds an in-
18 terest in the contract.

19 “(C) EXCHANGED CONTRACTS.—In the
20 case of an exchange of an applicable insurance
21 contract on which no gain or loss is recognized
22 under section 1035, any interest in any of the
23 contracts involved in the exchange shall be
24 treated as an interest in all such contracts.

1 “(5) INCREASE IN INTEREST.—If a person in-
2 creases an interest in an applicable insurance con-
3 tract, the increase shall be treated as a separate ac-
4 quisition for purposes of this section.

5 “(6) PRIOR ACQUISITIONS.—Except as provided
6 in regulations, if a person acquires an interest in a
7 contract before the contract is treated as an applica-
8 ble insurance contract, the acquisition shall be treat-
9 ed as a taxable acquisition of an interest in an appli-
10 cable insurance contract as of the date the contract
11 becomes an applicable insurance contract.

12 “(c) APPLICABLE EXEMPT ORGANIZATION.—For
13 purposes of this section, the term ‘applicable exempt orga-
14 nization’ means—

15 “(1) an organization described in section
16 170(c),

17 “(2) an organization described in section
18 168(h)(2)(A)(iv), or

19 “(3) an organization not described in paragraph
20 (1) or (2) which is described in section 2055(a) or
21 section 2522(a).

22 “(d) TAX NOT TREATED AS INVESTMENT IN THE
23 CONTRACT.—For purposes of section 72, the tax imposed
24 by this section shall not be included in investment in the
25 contract.

1 “(e) REGULATIONS.—The Secretary shall prescribe
 2 such regulations as may be necessary to carry out the pro-
 3 visions of this section. Such regulations may include regu-
 4 lations which—

5 “(1) exempt certain contracts from treatment
 6 as applicable insurance contracts based on specific
 7 factors, including whether the transaction is at arms
 8 length, the relative economic benefits to applicable
 9 exempt organizations as compared to other persons,
 10 and the likelihood of abuse,

11 “(2) provide, for purposes of subsection (b)(6),
 12 appropriate rules for the application of this section
 13 in any case where an interest is acquired before a
 14 contract becomes an applicable insurance contract,

15 “(3) prevent, in cases the Secretary determines
 16 appropriate, the imposition of more than one tax
 17 under this section if the same interest is acquired
 18 more than once, and

19 “(4) are designed to prevent avoidance of the
 20 purposes of this section, including through the use
 21 of intermediaries.”.

22 (2) CONFORMING AMENDMENT.—The table of
 23 subchapters for chapter 42 of such Code is amended
 24 by adding at the end the following new item:

“Subchapter F. Insurance contracts in which certain exempt organizations
 hold interests.”.

1 (b) REPORTING REQUIREMENTS.—

2 (1) IN GENERAL.—Subpart B of part III of
3 subchapter A of chapter 61 of the Internal Revenue
4 Code of 1986 (relating to information concerning
5 transactions with other persons) is amended by add-
6 ing at the end the following new section:

7 **“SEC. 6050U. RETURNS RELATING TO APPLICABLE INSUR-**
8 **ANCE CONTRACTS IN WHICH CERTAIN EX-**
9 **EMPT ORGANIZATIONS HOLD INTERESTS.**

10 “(a) REQUIREMENTS OF REPORTING.—

11 “(1) EXEMPT ORGANIZATIONS.—Each—

12 “(A) applicable exempt organization which
13 acquires (within the meaning of section 4965)
14 an interest in any applicable insurance contract,
15 and

16 “(B) other person which so acquires such
17 an interest which, in the hands of such person,
18 is taxable under section 4965,

19 shall make the return described in subsection (c).

20 “(2) TRANSFERS.—If a person (including an
21 applicable exempt organization) acquires an interest
22 in an applicable insurance contract in an acquisition
23 which is taxable under section 4965 and then trans-
24 fers such interest to 1 or more other persons, each

1 person acquiring all or a portion of such interest
2 shall make the return described in subsection (c).

3 “(b) TIME FOR MAKING RETURN.—Any organization
4 or person required to make a return under subsection (a)
5 shall file such return at such time as may be established
6 by the Secretary with respect to—

7 “(1) in the case of an organization described in
8 subsection (a)(1), the calendar year in which the ac-
9 quisition occurs, any calendar year in which acquisi-
10 tion costs are paid or incurred, and any other cal-
11 endar years specified by the Secretary, and

12 “(2) in the case of a person described in sub-
13 section (a)(2), the calendar year in which the trans-
14 fer occurs.

15 “(c) FORM AND MANNER OF RETURNS.—A return
16 is described in this subsection if such return—

17 “(1) is in such form as the Secretary pre-
18 scribes,

19 “(2) in the case of—

20 “(A) a return required under subsection
21 (a)(1)(A), contains the name, address, and tax-
22 payer identification number of the applicable
23 exempt organization, the issuer of the applica-
24 ble insurance contract, and any person acquir-

1 ing an interest in the contract which may be
2 taxable under section 4965,

3 “(B) a return required under subsection
4 (a)(1)(B), contains the name, address, and tax-
5 payer identification number of the person ac-
6 quiring an interest in the applicable insurance
7 contract which is taxable under section 4965,
8 any applicable exempt organization holding an
9 interest in the contract, and the issuer of the
10 contract, and

11 “(C) a return required under subsection
12 (a)(2), contains the name, address, and tax-
13 payer identification number of the transferor
14 and transferee, and

15 “(3) contains such other information as the
16 Secretary may prescribe.

17 “(d) STATEMENTS TO BE FURNISHED TO PERSONS
18 WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—

19 Every person required to make a return under subsection
20 (a) shall furnish to each person whose taxpayer identifica-
21 tion information is required to be included in such return
22 under subsection (c) a written statement showing—

23 “(1) the name and address of the person re-
24 quired to make such return and the telephone num-
25 ber of the information contact for such person, and

1 “(2) the taxpayer identity and other informa-
2 tion required to be shown on the return with respect
3 to such person.

4 The written statement required under the preceding sen-
5 tence shall be furnished on or before the date specified
6 by the Secretary.

7 “(e) DEFINITIONS.—For purposes of this section,
8 any term used in this section which is also used in section
9 4965 shall have the meaning given such term by section
10 4965.”.

11 (2) PENALTIES.—

12 (A) IN GENERAL.—Section 6724(d) of
13 such Code is amended—

14 (i) in paragraph (1)(B), by redesignig-
15 nating clauses (xiii) through (xviii) as
16 clauses (xiv) through (xix) and by inserting
17 after clause (xii) the following new clause:

18 “(xiii) section 6050U (relating to re-
19 turns relating to applicable insurance con-
20 tracts in which certain exempt organiza-
21 tions hold interests),”, and

22 (ii) in paragraph (3), by striking
23 “and” at the end of subparagraph (C), by
24 striking the period at the end of subpara-
25 graph (D) and inserting “, and”, and by

1 adding at the end the following new sub-
 2 paragraph:

3 “(E) the statement required by subsection
 4 (d) of section 6050U (relating to returns relat-
 5 ing to applicable insurance contracts in which
 6 certain exempt organizations hold interests).”.

7 (B) INTENTIONAL DISREGARD.—Section
 8 6721(e)(2) of such Code is amended by striking
 9 “or” at the end of subparagraph (B), by strik-
 10 ing “and” at the end of subparagraph (C) and
 11 inserting “or”, and by adding at the end the
 12 following new subparagraph:

13 “(D) in the case of a return required to be
 14 filed under section 6050U, the amount of tax
 15 imposed under section 4965 which has not been
 16 paid with respect to items required to be in-
 17 cluded on the return, and”.

18 (3) CONFORMING AMENDMENT.—The table of
 19 sections for subpart B of part III of subchapter A
 20 of chapter 61 of such Code is amended by adding at
 21 the end the following new item:

“Sec. 6050U. Returns relating to applicable insurance contracts in which
 certain exempt organizations hold interests.”.

22 (c) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply to contracts issued after May
3 3, 2005.

4 (2) REPORTING OF EXISTING CONTRACTS.—In
5 the case of any life insurance, annuity, or endow-
6 ment contract—

7 (A) which was issued on or before May 3,
8 2005,

9 (B) with respect to which an applicable ex-
10 empt organization (as defined in section 4965
11 of the Internal Revenue Code of 1986, as added
12 by this section) holds an interest on May 3,
13 2005, and

14 (C) which would be treated as an applica-
15 ble insurance contract (as so defined) if issued
16 after May 3, 2005,

17 such organization shall, not later than the date
18 which is 1 year after the date of the enactment of
19 this Act, report to the Secretary of the Treasury
20 with respect to such contract. Such report shall be
21 in such form and manner, and contain such informa-
22 tion, as the Secretary may prescribe. The Secretary
23 shall submit such reports, along with any rec-
24 ommendations for legislation as the Secretary con-
25 siders appropriate, to the Committee on Ways and

1 Means of the House of Representatives and to the
2 Committee on Finance of the Senate within 6
3 months of the date such reports are required to be
4 filed.

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