

110TH CONGRESS
2D SESSION

S. 3615

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 26 (legislative day, SEPTEMBER 17), 2008

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 2008”.

6 **SEC. 2. APPLICATION OF CONTROLLED GROUP RULES TO**
7 **CHURCH PLANS.**

8 (a) IN GENERAL.—Section 414(c) of the Internal
9 Revenue Code of 1986 (relating to employees of partner-

1 ships, proprietorships, etc., which are under common con-
2 trol) is amended—

3 (1) by striking “For purposes” and inserting
4 the following:

5 “(1) IN GENERAL.—For purposes”, and

6 (2) by adding at the end the following new
7 paragraph:

8 “(2) CHURCH PLANS.—For purposes of this
9 subsection, in determining whether an employer who
10 is otherwise eligible to participate in a church plan
11 is treated as a member of a group of entities under
12 common control, such employer (including an orga-
13 nization described in subsection (e)(3)(A)) shall not
14 be treated as under common control with another
15 entity if, based on all of the facts and circumstances,
16 the day-to-day financial and operational activities
17 are not under common control. In determining if
18 such activities are under common control, the Sec-
19 retary shall consider whether the entities have been
20 historically viewed as distinct entities within the
21 church or convention or association of churches.”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning before,
24 on, or after the date of the enactment of this Act.

1 **SEC. 3. APPLICATION OF CONTRIBUTION AND FUNDING**
 2 **LIMITATIONS TO 403(b) GRANDFATHERED DE-**
 3 **FINED BENEFIT PLANS.**

4 (a) IN GENERAL.—Section 251(e)(5) of the Tax Eq-
 5 uity and Fiscal Responsibility Act of 1982 (relating to spe-
 6 cial rule for existing defined benefit arrangements), Public
 7 Law 97–248, is amended—

8 (1) by striking “403(b)(2)” and inserting
 9 “403(b)”, and

10 (2) by inserting before the period at the end the
 11 following: “, and shall be subject to the applicable
 12 limitations of section 415(b) of such Code as if it
 13 were a defined benefit plan under section 401(a) of
 14 such Code and not the limitations of section 415(c)
 15 of such Code (relating to limitation for defined con-
 16 tribution plans).”.

17 (b) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply as if included in the enactment
 19 of the Tax Equity and Fiscal Responsibility Act of 1982.

20 **SEC. 4. ALLOW CERTAIN PLAN TRANSFERS AND MERGERS.**

21 (a) IN GENERAL.—Section 414 of the Internal Rev-
 22 enue Code of 1986 (relating to definitions and special
 23 rules) is amended by adding at the end the following new
 24 subsection:

25 “(y) CERTAIN PLAN TRANSFERS AND MERGERS.—

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

5 “(A) a transfer of all or a portion of the
6 account balance of a participant or beneficiary,
7 whether or not vested, from a plan described in
8 section 401(a), or a retirement income account
9 described in section 403(b)(9), which is a
10 church plan described in section 414(e) to a re-
11 tirement income account described in section
12 403(b)(9), if such plan and account are both
13 maintained by the same church or convention or
14 association of churches;

15 “(B) a transfer of all or a portion of the
16 account balance of a participant or beneficiary,
17 whether or not vested, from a retirement in-
18 come account described in section 403(b)(9) to
19 a plan described in section 401(a), or a retire-
20 ment income account described in section
21 403(b)(9), which is a church plan described in
22 section 414(e), if such plan and account are
23 both maintained by the same church or conven-
24 tion or association of churches, or

1 “(C) a merger of a plan described in sec-
2 tion 401(a), or a retirement income account de-
3 scribed in section 403(b)(9), which is a church
4 plan described in section 414(e) with a retire-
5 ment income account described in section
6 403(b)(9), if such plan and account are both
7 maintained by the same church or convention or
8 association of churches.

9 “(2) LIMITATION.—Paragraph (1) shall not
10 apply to a transfer or merger unless the partici-
11 pant’s or beneficiary’s benefit immediately after the
12 transfer or merger is equal to or greater than the
13 participant’s or beneficiary’s benefit immediately be-
14 fore the transfer or merger.

15 “(3) QUALIFICATION.—A plan or account shall
16 not fail to be considered to be described in sections
17 401(a) or 403(b)(9) merely because such plan or ac-
18 count engages in a transfer or merger described in
19 this subsection.

20 “(4) DEFINITION OF CHURCH.—For purposes
21 of this subsection, the term ‘church’ includes an or-
22 ganization described in subparagraph (A) or (B)(ii)
23 of subsection (e)(3).”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to transfers or mergers occurring
3 after the date of the enactment of this Act.

4 **SEC. 5. INVESTMENTS BY CHURCH PLANS IN COLLECTIVE**
5 **TRUSTS.**

6 (a) IN GENERAL.—In the case of—

7 (1) a church plan (as defined in section 414(e)
8 of the Internal Revenue Code 1986), including a
9 plan described in section 401(a) of such Code and
10 a retirement income account described in section
11 403(b)(9) of such Code, and

12 (2) an organization described in section
13 414(e)(3)(A) of such Code the principal purpose or
14 function of which is the administration of such a
15 plan or account,

16 the assets of such plan, account, or organization (includ-
17 ing any assets otherwise permitted to be commingled for
18 investment purposes with the assets of such a plan, ac-
19 count, or organization) may be invested in a group trust
20 otherwise described in Internal Revenue Service Revenue
21 Ruling 81–100 (as modified by Internal Revenue Service
22 Revenue Ruling 2004–67), or any subsequent revenue rul-
23 ing that supersedes or modifies such revenue ruling, with-
24 out adversely affecting the tax status of the group trust,

1 such plan, account, or organization, or any other plan or
2 trust that invests in the group trust.

3 (b) EFFECTIVE DATE.—This section shall apply to
4 investments made after the date of the enactment of this
5 Act.

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