

PERMANENT S CORPORATION CHARITABLE
CONTRIBUTIONS ACT OF 2014

MAY 2, 2014.—Committed to the Committee of the Whole House on the State of the
Union and ordered to be printed

Mr. CAMP, from the Committee on Ways and Means,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4454]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4454) to amend the Internal Revenue Code of 1986 to make permanent certain rules regarding basis adjustments to stock of S corporations making charitable contributions of property, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
I. SUMMARY AND BACKGROUND	2
A. Purpose and Summary	2
B. Background and Need for Legislation	2
C. Legislative History	3
II. EXPLANATION OF THE BILL	3
A. Permanent Rule Regarding Basis Adjustment to Stock of S Corporations Making Charitable Contributions of Property (sec. 1367 of the Code)	3
III. VOTES OF THE COMMITTEE	5
IV. BUDGET EFFECTS OF THE BILL	6
A. Committee Estimate of Budgetary Effects	6
B. Statement Regarding New Budget Authority and Tax Expendi- tures Budget Authority	6
C. Cost Estimate Prepared by the Congressional Budget Office	6
D. Macroeconomic Impact Analysis	7

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE	7
A. Committee Oversight Findings and Recommendations	7
B. Statement of General Performance Goals and Objectives	7
C. Information Relating to Unfunded Mandates	8
D. Applicability of House Rule XXI 5(b)	8
E. Tax Complexity Analysis	8
F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits	8
G. Duplication of Federal Programs	8
H. Disclosure of Directed Rule Makings	9
VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED	9
VII. DISSENTING VIEWS	10

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Permanent S Corporation Charitable Contributions Act of 2014”.

SEC. 2. PERMANENT RULE REGARDING BASIS ADJUSTMENT TO STOCK OF S CORPORATIONS MAKING CHARITABLE CONTRIBUTIONS OF PROPERTY.

(a) **IN GENERAL.**—Section 1367(a)(2) of the Internal Revenue Code of 1986 is amended by striking the last sentence.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2013.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

Identical to a provision contained in the discussion draft of the “Tax Reform Act of 2014” released on February 26, 2014, the bill, H.R. 4454, reported by the Committee on Ways and Means, provides that a shareholder’s basis in his S corporation stock is decreased by his pro rata share of the adjusted basis of any charitable contributions made by the S corporation, rather than the fair market value. An identical, temporary provision expired for taxable years beginning after December 31, 2013.

B. BACKGROUND AND NEED FOR LEGISLATION

While the Committee continues actively to pursue comprehensive tax reform as a critical means of promoting economic growth and job creation, the Committee also believes that it is important to provide small businesses permanent, immediate tax relief to help encourage economic growth and job creation. By providing small businesses with a permanent rule for adjusting the shareholders’ basis in stock of an S corporation making charitable contributions, H.R. 4454 corrects a disparity between the treatment of charitable contributions made by S corporations and partnerships, which can result in a future tax liability for shareholders of an S corporation that donates appreciated property. H.R. 4454 will level the playing field between S corporations and other types of businesses and provide S corporations with greater certainty so they can plan for charitable giving that is in the best interest of the company, its shareholders, and the charitable organizations receiving such donations.

C. LEGISLATIVE HISTORY

BACKGROUND

H.R. 4454 was introduced on April 10, 2014, and was referred to the Committee on Ways and Means.

COMMITTEE ACTION

The Committee on Ways and Means marked up H.R. 4454, the Permanent S Corporation Charitable Contributions Act of 2014, on April 29, 2014, and ordered the bill, as amended, favorably reported (with a quorum being present).

COMMITTEE HEARINGS

The need for permanent rules regarding basis adjustments to stock of S corporations making charitable contributions of property was discussed at no fewer than four hearings during the 112th and 113th Congresses:

- Full Committee hearing on Fundamental Tax Reform (January 20, 2011);
- Full Committee hearing on the Treatment of Closely-Held Businesses in the Context of Tax Reform (March 7, 2012);
- Select Revenue Measures Subcommittee hearing on the Small Business and Pass-Through Entity Tax Reform Discussion Draft (May 15, 2013); and
- Full Committee hearing on the Benefits of Permanent Tax Policy for America's Job Creators (April 8, 2014).

II. EXPLANATION OF THE BILL

A. PERMANENT RULE REGARDING BASIS ADJUSTMENT TO STOCK OF S CORPORATIONS MAKING CHARITABLE CONTRIBUTIONS OF PROPERTY (SEC. 1367 OF THE CODE)

PRESENT LAW

Under present law, if an S corporation makes a charitable contribution of money or other property, each shareholder takes into account the shareholder's pro rata share of the contribution in determining its own income tax liability.¹ A shareholder of an S corporation reduces the basis in the stock of the S corporation by the shareholder's pro rata share of the S corporation's charitable contributions.²

In the case of contributions made in taxable years beginning before January 1, 2014, the amount of a shareholder's basis reduction in the stock of an S corporation on account of a charitable contribution made by the corporation is the shareholder's pro rata share of the adjusted basis of the contributed property. For contributions made in taxable years beginning after December 31, 2013, the amount of the reduction is the shareholder's pro rata share of the fair market value of the contributed property.

¹Sec. 1366(a)(1)(A).

²Sec. 1367(a)(2)(B). See also the last sentence of section 1366(a)(1) referencing sec. 702(a)(4).

REASONS FOR CHANGE

The Committee believes that the provision regarding basis adjustments to S corporation stock should be made permanent to prevent S corporation shareholders from losing the tax benefit of the deduction for charitable contributions of appreciated property when the shareholders sell their stock. Under the provision, S corporation shareholders will be treated in the same manner as other persons owning an interest in a business making charitable contributions, including partnerships and limited liability companies. The Committee also believes that this provision will encourage charitable giving.

EXPLANATION OF PROVISION

The provision makes permanent the basis reduction rule applicable for contributions made in taxable years beginning before January 1, 2014.

EFFECTIVE DATE

The provision applies to charitable contributions made in taxable years beginning after December 31, 2013.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 4454, the Permanent S Corporation Charitable Contributions Act of 2014, on April 29, 2014.

The bill, H.R. 4454, was ordered favorably reported as amended by a roll call vote of 21 yeas to 14 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Camp	✓			Mr. Levin		✓	
Mr. Johnson	✓			Mr. Rangel		✓	
Mr. Brady	✓			Mr. McDermott		✓	
Mr. Ryan	✓			Mr. Lewis		✓	
Mr. Nunes	✓			Mr. Neal		✓	
Mr. Tiberi	✓			Mr. Becerra		✓	
Mr. Reichert	✓			Mr. Doggett		✓	
Mr. Boustany	✓			Mr. Thompson		✓	
Mr. Roskam	✓			Mr. Larson		✓	
Mr. Gerlach				Mr. Blumenauer		✓	
Mr. Price	✓			Mr. Kind			
Mr. Buchanan	✓			Mr. Pascrell		✓	
Mr. Smith	✓			Mr. Crowley		✓	
Mr. Schock	✓			Ms. Schwartz			
Ms. Jenkins	✓			Mr. Davis		✓	
Mr. Paulsen	✓			Ms. Sanchez		✓	
Mr. Marchant	✓						
Ms. Black	✓						
Mr. Reed	✓						
Mr. Young	✓						
Mr. Kelly	✓						
Mr. Griffin							
Mr. Renacci	✓						

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 4454, as reported.

The bill, as reported, is estimated to have the following effect on Federal budget receipts for fiscal years 2014–2024:

Fiscal years, billions of dollars—

2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014–19	2014–24
---	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.3	-0.7

NOTE: Details do not add to totals due to rounding.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 1, 2014.

Hon. DAVE CAMP,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4454, the Permanent S Corporation Charitable Contributions Act of 2014.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Logan Timmerhoff.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4454—Permanent S Corporation Charitable Contributions Act of 2014

H.R. 4454 would amend the Internal Revenue Code to make permanent a rule that expired at the end of 2013 that defines how a shareholder in an S corporation adjusts the basis of that S corporation stock to account for that corporation's contributions of property to charity. This legislation would permanently provide that a shareholder reduces S corporation stock basis by an amount equal to the shareholder's pro rata share of the adjusted basis of the con-

tributed property, instead of the pro rata share of the fair market value of the contributed property.

The staff of the Joint Committee on Taxation (JCT) estimates that enacting H.R. 4454 would reduce revenues, thus increasing federal deficits, by \$662 million over the 2014–2024 period.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending and revenues. Enacting H.R. 4454 would result in revenue losses in each year beginning in 2015. The estimated increases in the deficit are shown in the following table.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Logan Timmerhoff. The estimate was approved by David Weiner, Assistant Director for Tax Analysis.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 4454, AS ORDERED REPORTED BY THE
HOUSE COMMITTEE ON WAYS AND MEANS ON APRIL 29, 2014

	By fiscal year, in millions of dollars—												
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014– 2019	2014– 2024
NET INCREASE IN THE DEFICIT													
Statutory Pay-As- You-Go Effects ...	0	74	53	56	60	63	66	68	71	74	77	306	662

Source: Staff of the Joint Committee on Taxation.

D. MACROECONOMIC IMPACT ANALYSIS

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of H.R. 4454 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (the “IRS Reform Act”) requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have “widespread applicability” to individuals or small businesses, within the meaning of the rule.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. DUPLICATION OF FEDERAL PROGRAMS

In compliance with Sec. 3(j)(2) of H. Res. 5 (113th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or (3) a program related to a program identified in the most recent Catalog of Federal Do-

mestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169).

H. DISCLOSURE OF DIRECTED RULE MAKINGS

In compliance with Sec. 3(k) of H. Res. 5 (113th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 1367 OF THE INTERNAL REVENUE CODE OF 1986

SEC. 1367. ADJUSTMENTS TO BASIS OF STOCK OF SHAREHOLDERS, ETC.

(a) GENERAL RULE.—

(1) * * *

(2) DECREASES IN BASIS.—The basis of each shareholder's stock in an S corporation shall be decreased for any period (but not below zero) by the sum of the following items determined with respect to the shareholder for such period:

(A) * * *

* * * * *

The decrease under subparagraph (B) by reason of a charitable contribution (as defined in section 170(c)) of property shall be the amount equal to the shareholder's pro rata share of the adjusted basis of such property. **[The preceding sentence shall not apply to contributions made in taxable years beginning after December 31, 2013.]**

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VII. DISSENTING VIEWS

These bills would add a combined \$310 billion to the deficit. Even though these bills were introduced individually with some bipartisan support, the opposition to these bills was based on the position that these tax provisions should not be made permanent by adding to the deficit without any revenue offset.

To put the combined cost (\$310 billion) into context, this total represents more than one-half of the entire federal deficit this year—the lowest it has been since President Obama took office. It represents nearly two-thirds of all non-defense domestic discretionary spending in 2014. It is more than three times what we spend annually on education, job training, and social services. It is five times more than we spend on veterans. And, it is five times more than we spend on medical research and public health.

We also opposed the manner in which Republicans were proceeding—selecting six to make permanent without any offset from the approximately 60 tax provisions that expired last year. This approach was both fiscally irresponsible and fundamentally hypocritical.

We found it hypocritical that, four months ago, Republicans let emergency unemployment insurance expire for more than 1.3 million Americans by arguing that an adequate offset had yet to be proposed. In early April, the Senate came to a bipartisan agreement on an offset after months of painstaking negotiations. Yet House Republicans still refuse to act.

Further, we found it also hypocritical that the Republicans were in favor of passing these six tax bills at a cost of \$310 billion without an offset at the same time that they were requiring an offset for a provision stripped from another bill under consideration at the markup that helped foster children at a cost of \$12 million.

The consideration of these six tax bills should have been part of the consideration of all the expired tax provisions commonly referred to as “tax extenders.” The Republicans did not take up other tax extenders that also are important to Democratic Committee Members. Left to an uncertain fate are provisions like the Work Opportunity Tax Credit, the New Markets Tax Credit, and the renewable energy tax credits, as well as the long-term status of the Earned Income Tax Credit, the Child Tax Credit, and the American Opportunity Tax Credit.

Sincerely,

SANDER M. LEVIN,
Ranking Member.

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