

112TH CONGRESS
2D SESSION

S. 3377

To amend the Internal Revenue Code of 1986 to exempt private foundations from the tax on excess business holdings in the case of certain philanthropic enterprises which are independently supervised, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 12, 2012

Mr. LIEBERMAN (for himself and Ms. SNOWE) 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 exempt private foundations from the tax on excess business holdings in the case of certain philanthropic enterprises which are independently supervised, 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 “Philanthropic Enter-
5 prise Act of 2012”.

1 **SEC. 2. EXCEPTION FROM PRIVATE FOUNDATION EXCESS**
 2 **BUSINESS HOLDING TAX FOR CERTAIN PHIL-**
 3 **ANTHROPIC BUSINESS HOLDINGS.**

4 (a) IN GENERAL.—Section 4943 of the Internal Rev-
 5 enue Code of 1986 is amended by adding at the end the
 6 following new subsection:

7 “(g) EXCEPTION FOR CERTAIN PHILANTHROPIC
 8 BUSINESS HOLDINGS.—

9 “(1) IN GENERAL.—Subsection (a) shall not
 10 apply with respect to the holdings of a private foun-
 11 dation in any business enterprise which for the tax-
 12 able year meets—

13 “(A) the exclusive ownership requirements
 14 of paragraph (2),

15 “(B) the minimum distribution require-
 16 ment of paragraph (3), and

17 “(C) the independent operation require-
 18 ments of paragraph (4).

19 “(2) EXCLUSIVE OWNERSHIP.—The exclusive
 20 ownership requirements of this paragraph are met
 21 if—

22 “(A) all ownership interests in the business
 23 enterprise are held by the private foundation at
 24 all times during the taxable year, and

25 “(B) all the private foundation’s ownership
 26 interests in the business enterprise were ac-

quired under the terms of a will or trust upon the death of the testator or settlor, as the case may be.

“(3) MINIMUM DISTRIBUTION.—

“(A) IN GENERAL.—The minimum distribution requirement of this paragraph is met if the business enterprise, not later than 120 days after the close of the taxable year, distributes an amount equal to its net operating income for such taxable year to the private foundation.

“(B) NET OPERATING INCOME.—For purposes of this paragraph, the net operating income of any business enterprise for any taxable year is an amount equal to the gross income of the business enterprise for the taxable year, reduced by the sum of—

“(i) the deductions allowed by chapter 1 for the taxable year which are directly connected with the production of such income,

“(ii) the tax imposed by chapter 1 on the business enterprise for the taxable year, and

1 “(iii) an amount for a reasonable re-
2 serve for working capital and other busi-
3 ness needs of the business enterprise.

4 “(4) INDEPENDENT OPERATION.—The inde-
5 pendent operation requirements of this paragraph
6 are met if, at all times during the taxable year—

7 “(A) no substantial contributor (as defined
8 in section 4958(c)(3)(C)) to the private founda-
9 tion, or family member of such a contributor
10 (determined under section 4958(f)(4)) is a di-
11 rector, officer, trustee, manager, employee, or
12 contractor of the business enterprise (or an in-
13 dividual having powers or responsibilities simi-
14 lar to any of the foregoing),

15 “(B) at least a majority of the board of di-
16 rectors of the private foundation are not also
17 directors or officers of the business enterprise,
18 and

19 “(C) there is no loan outstanding from the
20 business enterprise to a substantial contributor
21 (as so defined) to the private foundation or a
22 family member of such contributor (as so deter-
23 mined).

24 “(5) CERTAIN DEEMED PRIVATE FOUNDATIONS
25 EXCLUDED.—This subsection shall not apply to—

1 “(A) any fund or organization treated as a
2 private foundation for purposes of this section
3 by reason of subsection (e) or (f),

4 “(B) any trust described in section
5 4947(a)(1) (relating to charitable trusts), and

6 “(C) any trust described in section
7 4947(a)(2) (relating to split-interest trusts).”.

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 2011.

11 **SEC. 3. EXCEPTION TO UNRELATED BUSINESS TAX ON**
12 **SPECIFIED PAYMENTS FROM CERTAIN CON-**
13 **TROLLED ENTITIES.**

14 (a) **IN GENERAL.**—Paragraph (13) of section 512(b)
15 of the Internal Revenue Code of 1986 is amended by add-
16 ing at the end the following new subparagraph:

17 “(G) **SUBPARAGRAPH NOT TO APPLY TO**
18 **PAYMENTS FROM CERTAIN PHILANTHROPIC**
19 **CONTROLLED ENTITIES.**—Subparagraph (A)
20 shall not apply to any payment not in excess of
21 fair market value to a private foundation from
22 an entity which is a business enterprise de-
23 scribed in section 4943(g)(1) with respect to
24 such foundation.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2011.

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