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113TH CONGRESS
1ST SESSION

H. R. 2832

To amend the Internal Revenue Code of 1986 to facilitate program-related investments by private foundations.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2013

Mr. GARDNER (for himself and Mr. POLIS) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Internal Revenue Code of 1986 to facilitate program-related investments by private foundations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Philanthropic Facilitation Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Facilitation of program-related investments.
Sec. 3. Declaratory judgment remedy.
Sec. 4. Information returns.
Sec. 5. Publicity of information.
Sec. 6. Conforming amendments.

Sec. 7. Regulations.
Sec. 8. Effective date.

SEC. 2. FACILITATION OF PROGRAM-RELATED INVESTMENTS.

Subsection (c) of section 4944 of the Internal Revenue Code of 1986 is amended to read as follows:

''(c) PROGRAM RELATED INVESTMENTS.—

''(1) TREATMENT OF PROGRAM RELATED INVESTMENTS.—For purposes of this subchapter, program-related investments—

''(A) are not investments which jeopardize the carrying out of one or more purposes described in section 170(c)(2)(B),

''(B) are not business holdings under section 4943, and

''(C) may be qualifying distributions under section 4942.

''(2) PROGRAM-RELATED INVESTMENTS DEFINED.—

''(A) IN GENERAL.—For purposes of this subchapter and chapter 61, an investment made by a private foundation constitutes a program-related investment if—

''(i) the primary purpose of the investment is to accomplish one or more of the purposes described in section 170(c)(2)(B),

''(ii) no significant purpose of the investment is the production of income or the appreciation of property, and

''(iii) no purpose of the investment is to accomplish one or more of the purposes described in section 170(c)(2)(D).

''(B) SPECIAL RULES.—For purposes of subparagraph (A)—

''(i) determinations of whether an investment qualifies as a program-related investment shall be based on consideration of all relevant facts and circumstances, and

''(ii) the fact that the entity produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

''(3) SAFE HARBOR DETERMINATIONS.—The Secretary shall establish a procedure which shall be substantially similar to the processes for recognition of exemption under section 501(a) or 4945(g) and under which an entity seeking to receive program-related investments may petition the Secretary for a determination that, based on consideration of all rel-

evant facts and circumstances, investments by private foundations in such entity will be program-related investments meeting the requirements of paragraph (2). Under this procedure, the Secretary shall rule on all requests within 120 days of submission.

''(4) EFFECT OF DETERMINATION.—Once a determination has been made that investments in an entity qualify as program-related investments, organizations making such investments shall be entitled to rely on the determination, unless and until the Secretary publishes notice of revocation of the determination.

''(5) VOLUNTARY NATURE OF PROCESS.—Entities seeking program-related investments are not required to seek a determination under paragraph (3), and the absence of such a determination shall not affect the ability of a private foundation to make a program-related investment based on its own determination that the investment qualifies as a program-related investment.

''(6) ORGANIZATIONS TREATED AS PRIVATE FOUNDATIONS.—For purposes of this subsection and section 6104A, all references to private foundations include organizations that are treated as private foundations under any of the provisions of sections

4940 through 4948, inclusive, whether created under state law or the law of any federally-recognized tribe.''.

SEC. 3. DECLARATORY JUDGMENT REMEDY.

Paragraph (1) of section 7428(a) of the Internal Revenue Code of 1986 is amended by striking ''or'' at the end of subparagraph (C) and by adding after subparagraph (D) the following new subparagraph:

''(E) with respect to whether investments in an entity are program-related investments (as described in section 4944(c)(2)), or''.

SEC. 4. INFORMATION RETURNS.

Part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by inserting after section 6033 the following new section:

''SEC. 6033A. INFORMATION REPORTING BY FOR-PROFIT ORGANIZATIONS RECEIVING PROGRAM-RELATED INVESTMENTS.

''(a) ORGANIZATIONS REQUIRED TO FILE.—If investments in an entity have been determined to be program-related investments through a determination of the Internal Revenue Service pursuant to section 4944(c)(3) or by a determination of a court pursuant to section 7428(a), the entity shall, in addition to any other applicable filing obligations, file an annual return providing the

information specified in subsection (b) for any taxable year in which it receives or retains one or more program-related investments (as defined in section 4944(c)(2)).

''(b) REQUIRED REPORTING.—The return described in subsection (a) shall provide, in such manner and at such time as the Secretary may by forms or regulations prescribe, the following information—

''(1) the organization's gross income for the year,

''(2) its expenses attributable to such income incurred within the year,

''(3) its disbursements within the year for one or more purposes described in section 170(c)(2)(B), together with a narrative statement describing the results obtained from the use of those assets for such one or more purposes described in section 170(c)(2)(B),

''(4) a balance sheet showing its assets, liabilities, and net worth as of the beginning and end of such year,

''(5) the names and addresses of all private foundations holding program-related investments in the organization,

''(6) a statement of the portion of its liabilities and net worth that represent capitalization obtained

by means of program-related investments as of the beginning and end of such year,

''(7) a statement of any interest, dividends, or other distributions paid with respect to any program-related investments during the year, and

''(8) such other information as may be necessary for the return described in subsection (a) to satisfy the annual financial reporting required by the expenditure responsibility rules pursuant to the regulations under section 4945 or as the Secretary may by forms or regulations prescribe.''.

SEC. 5. PUBLICITY OF INFORMATION.

Subchapter B of chapter 61 of the Internal Revenue Code of 1986 is amended by inserting after section 6104 the following new section:

''SEC. 6104A. PUBLICITY OF INFORMATION REGARDING ORGANIZATIONS RECEIVING PROGRAM-RELATED INVESTMENTS.

''(a) INSPECTION OF PETITIONS FOR DETERMINATION OF PROGRAM-RELATED INVESTMENT STATUS.—If an entity seeks a determination pursuant to section 4944(c)(3) that investments by private foundations in such organization will be program-related investments, the petition seeking such a determination, together with any documents submitted in support of such petition and any

determination or other document issued by the Internal Revenue Service with respect to such petition, shall be open to public inspection at the national office of the Internal Revenue Service.

''(b) INSPECTION OF ANNUAL INFORMATION RETURNS.—The information required to be furnished by section 6033A, together with the names and addresses of such entity, shall be made available to the public at such times and in such places as the Secretary may prescribe.

''(c) PUBLIC INSPECTION OF PETITIONS AND ANNUAL INFORMATION RETURNS.—Any entity that receives a determination from the Internal Revenue Service that private foundation investments shall be program-related investments pursuant to section 4944(c)(3) shall make copies available at the organization's principal office, during regular business hours, of the petition for such determination (together with supporting materials provided with the petition and documents issued by the Internal Revenue Service with respect to such petition), as well as the annual returns required by section 6033A filed by such organization. Upon request of an individual made at such principal office, copies of such petition materials and annual reports shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs. The inspection and duplication rights

granted in this subsection shall apply to an annual return only during the three-year period beginning on the last day prescribed for filing such return (determined with regard to any extension of time for filing).

''(d) LIMITATION ON PROVIDING COPIES.—Paragraph (c) shall not apply to any request if, in accordance with regulations promulgated by the Secretary, the entity has made the requested documents widely available, or the Secretary determines, upon application by an entity, that such request is part of a harassment campaign and that compliance with such request is not in the public interest.''.

SEC. 6. CONFORMING AMENDMENTS.

(a) CONFORMING CHANGE TO SECTION 501(n).—Paragraph (4)(A) of section 501(n) of the Internal Revenue Code of 1986 is amended by inserting ''paragraph (2) of'' before ''section 4944(c).''

(b) CONFORMING CHANGE TO SECTION 514(b).—Paragraph (1) of section 514(b) of the Internal Revenue Code of 1986 is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F) and by inserting after subparagraph (C) the following new subparagraph:

''(D) any property owned or treated as owned by a private foundation by virtue of its

having made an investment in an entity that has received a determination from the Internal Revenue Service pursuant to section 4944(c)(3), or by a court pursuant to section 7428(a), that such investments in such entity qualify as program-related investments;''.

(c) CONFORMING CHANGE TO SECTION 4943(d).—Paragraph (3) of section 4943(d) of the Internal Revenue Code of 1986 is amended by striking ''or'' at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) any program-related investment, as defined in section 4944(c)(2), or''.

SEC. 7. REGULATIONS.

The Secretary of the Treasury shall, not later than 1 year after the date of the enactment of this Act, amend any applicable regulations as may be necessary or appropriate to implement any amendments contained in this Act or to carry out the purposes of this Act, including providing additional examples of qualifying program-related investments.

SEC. 8. EFFECTIVE DATE.

The amendments made by this Act shall apply to investments made after the date of the enactment of this Act in taxable years ending after such date.

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