

114TH CONGRESS
2D SESSION

S. 3365

To amend the Internal Revenue Code of 1986 to improve the treatment of pension and employee benefit plans maintained by tribal governments.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2016

Ms. CANTWELL 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 improve the treatment of pension and employee benefit plans maintained by tribal governments.

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. TREATMENT OF PENSION AND EMPLOYEE BEN-**
4 **EFIT PLANS MAINTAINED BY TRIBAL GOV-**
5 **ERNMENTS.**

6 (a) AMENDMENTS TO THE INTERNAL REVENUE
7 CODE OF 1986.—

8 (1) QUALIFIED PUBLIC SAFETY EMPLOYEE.—

9 Section 72(t)(10)(B) of the Internal Revenue Code

1 of 1986 (defining qualified public safety employee) is
 2 amended by—

3 (A) striking “or political subdivision of a
 4 State” and inserting “, political subdivision of
 5 a State, or Indian tribe”; and

6 (B) striking “such State or political sub-
 7 division” and inserting “such State, political
 8 subdivision, or tribe”.

9 (2) GOVERNMENTAL PLAN.—The last sentence
 10 of section 414(d) of such Code (defining govern-
 11 mental plan) is amended to read as follows: “The
 12 term ‘governmental plan’ includes a plan established
 13 or maintained for its employees by an Indian tribal
 14 government (as defined in section 7701(a)(40)), a
 15 subdivision of an Indian tribal government (deter-
 16 mined in accordance with section 7871(d)), an agen-
 17 cy, instrumentality, or subdivision of an Indian trib-
 18 al government, or an entity established under Fed-
 19 eral, State, or tribal law which is wholly owned or
 20 controlled by any of the foregoing.”.

21 (3) DOMESTIC RELATIONS ORDER.—Section
 22 414(p)(1)(B)(ii) of such Code (defining domestic re-
 23 lations order) is amended by inserting “or tribal”
 24 after “State”.

1 (4) EXEMPT GOVERNMENTAL DEFERRED COM-
 2 PENSATION PLAN.—Section 3121(v)(3) of such Code
 3 (defining governmental deferred compensation plan)
 4 is amended by inserting “by an Indian tribal govern-
 5 ment or subdivision thereof,” after “political subdivi-
 6 sion thereof,”.

7 (5) GRANDFATHER OF CERTAIN DEFERRED
 8 COMPENSATION PLANS.—Section 457 of the Internal
 9 Revenue Code is amended by adding at the end the
 10 following new subsection:

11 “(h) CERTAIN TRIBAL GOVERNMENT PLANS GRAND-
 12 FATHERED.—Plans established before the date of enact-
 13 ment of this subsection and maintained by an Indian tribal
 14 government (as defined in section 7701(a)(40)), a subdivi-
 15 sion of an Indian tribal government (determined in accord-
 16 ance with section 7871(d)), an agency, instrumentality, or
 17 subdivision of an Indian tribal government, or an entity
 18 established under Federal, State, or tribal law which is
 19 wholly owned or controlled by any of the foregoing, in com-
 20 pliance with subsection (b) or (f) shall be treated as if
 21 established by an eligible employer under subsection
 22 (e)(1)(A).”.

23 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT
 24 INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—The last sentence of section 3(32) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(32)) is amended to read as follows: “The term ‘governmental plan’ includes a plan established or maintained for its employees by an Indian tribal government (as defined in section 7701(a)(40) of the Internal Revenue Code of 1986), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency, instrumentality, or subdivision of an Indian tribal government, or an entity established under Federal, State, or tribal law which is wholly owned or controlled by any of the foregoing.”.

(2) DOMESTIC RELATIONS ORDER.—Section 206(d)(3)(B)(ii)(II) of such Act (29 U.S.C. 1056(d)(3)(B)(ii)(II)) is amended by inserting “or tribal” after “State”.

(3) CONFORMING AMENDMENTS.—

(A) Section 4021(b) of such Act (29 U.S.C. 1321(b)) is amended by striking “or” at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting “; or”, and by inserting after paragraph (13) the following new paragraph:

1 “(14) established or maintained for its employ-
2 ees by an Indian tribal government (as defined in
3 section 7701(a)(40) of the Internal Revenue Code of
4 1986), a subdivision of an Indian tribal government
5 (determined in accordance with section 7871(d) of
6 such Code), an agency, instrumentality, or subdivi-
7 sion of an Indian tribal government, or an entity es-
8 tablished under Federal, State, or tribal law which
9 is wholly owned or controlled by any of the fore-
10 going.”.

11 (B) Section 4021(b)(2) of such Act (29
12 U.S.C. 1321(b)(2)) is amended by striking “, or
13 which is described in the last sentence of sec-
14 tion 3(32)” and inserting a comma.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to years beginning after the date
17 of the enactment of this Act.

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