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

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A BILL

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

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

SECTION 1. TREATMENT OF PENSION AND EMPLOYEE BENEFIT PLANS MAINTAINED BY TRIBAL GOVERNMENTS.

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

(1) QUALIFIED PUBLIC SAFETY EMPLOYEE.—Section 72(t)(10)(B) of the Internal Revenue Code

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

(A) striking ‘‘or political subdivision of a State’’ and inserting ‘‘, political subdivision of a State, or Indian tribe’’; and

(B) striking ‘‘such State or political subdivision’’ and inserting ‘‘such State, political subdivision, or tribe’’.

(2) GOVERNMENTAL PLAN.—The last sentence of section 414(d) of such Code (defining governmental plan) 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)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), 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.’’.

(3) DOMESTIC RELATIONS ORDER.—Section 414(p)(1)(B)(ii) of such Code (defining domestic relations order) is amended by inserting ‘‘or tribal’’ after ‘‘State’’.

(4) EXEMPT GOVERNMENTAL DEFERRED COMPENSATION PLAN.—Section 3121(v)(3) of such Code (defining governmental deferred compensation plan) is amended by inserting "by an Indian tribal government or subdivision thereof," after "political subdivision thereof,".

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

"(h) CERTAIN TRIBAL GOVERNMENT PLANS GRANDFATHERED.—Plans established before the date of enactment of this subsection and maintained by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), 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, in compliance with subsection (b) or (f) shall be treated as if established by an eligible employer under subsection (e)(1)(A).".

(b) AMENDMENTS TO THE EMPLOYEE RETIREMENT 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:

"(14) 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.".

(B) Section 4021(b)(2) of such Act (29 U.S.C. 1321(b)(2)) is amended by striking ", or which is described in the last sentence of section 3(32)" and inserting a comma.

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

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