Calendar No. 43

114TH CONGRESS
1ST SESSION

S. 909

[Report No. 114–20]

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

APRIL 14, 2015

Mr. HATCH, from the Committee on Finance, reported the following original bill; which was read twice and placed on the calendar

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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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Philanthropic Enterprise Act of 2015''.

SEC. 2. EXCEPTION FROM PRIVATE FOUNDATION EXCESS BUSINESS HOLDING TAX FOR CERTAIN PHILANTHROPIC BUSINESS HOLDINGS.

(a) IN GENERAL.—Section 4943 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(g) EXCEPTION FOR CERTAIN PHILANTHROPIC BUSINESS HOLDINGS.—

"(1) IN GENERAL.—Subsection (a) shall not apply with respect to the holdings of a private foundation in any business enterprise which for the taxable year meets—

"(A) the exclusive ownership requirements of paragraph (2),

"(B) the all profits to charity requirement of paragraph (3), and

"(C) the independent operation requirements of paragraph (4).

"(2) EXCLUSIVE OWNERSHIP.—The exclusive ownership requirements of this paragraph are met if—

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

"(B) all the private foundation's ownership interests in the business enterprise were acquired under the terms of a will or trust upon the death of the testator or settlor, as the case may be.

"(3) ALL PROFITS TO CHARITY.—

"(A) IN GENERAL.—The all profits to charity 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 "(iii) an amount for a reasonable reserve for working capital and other business needs of the business enterprise.

"(4) INDEPENDENT OPERATION.—The independent operation requirements of this paragraph are met if, at all times during the taxable year—

"(A) no substantial contributor (as defined in section 4958(c)(3)(C)) to the private foundation, or family member of such a contributor (determined under section 4958(f)(4)), is a director, officer, trustee, manager, employee, or contractor of the business enterprise (or an individual having powers or responsibilities similar to any of the foregoing),

"(B) at least a majority of the board of directors of the private foundation are individuals other than individuals who are either—

"(i) directors or officers of the business enterprise, or

"(ii) members of the family (determined under section 4958(f)(4)) of a substantial contributor (as defined in section 4958(c)(3)(C)) to the private foundation, and

"(C) there is no loan outstanding from the business enterprise to a substantial contributor (as so defined) to the private foundation or a family member of such contributor (as so determined).

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

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

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

"(C) any trust described in section 4947(a)(2) (relating to split-interest trusts).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2014.

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