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SENATE

{ REPORT
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CHARITABLE AGRICULTURAL RESEARCH ACT

APRIL 14, 2015.—Ordered to be printed

Mr. HATCH, from the Committee on Finance,
submitted the following

R E P O R T

[To accompany S. 908]

The Committee on Finance, having considered an original bill, S. 908, to amend the Internal Revenue Code of 1986 to provide for the deductibility of charitable contributions to agricultural research organizations, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. LEGISLATIVE BACKGROUND

The Committee on Finance, having considered S. 908, the “Charitable Agricultural Research Act,” to amend the Internal Revenue Code of 1986 to provide for the deductibility of charitable contributions to agricultural research organizations, and for other purposes, reports favorably thereon without amendment and recommends that the bill do pass.

Background and need for legislative action

Background.—Based on a proposal recommended by Senators Thune and Stabenow, and on S. 1280 (113th Cong., 1st Sess.), co-sponsored by Senators Stabenow, Thune, Blunt, Cantwell, Cochran, Coons, Inhofe, Klobuchar and Wyden, the Committee on Finance marked up original legislation (the “Charitable Agricultural Research Act”) on February 11, 2015, and, with a majority present, ordered the bill favorably reported.

Need for legislative action.—The production agriculture’s current economic strength is a direct result of research that, among other things, has increased crop yields, made livestock healthier, and made food safer. Recognizing the need for additional funding for agricultural research in a growing global market, the Committee believes it is appropriate to encourage research affiliations between private charitable organizations and institutions of higher education. To stimulate private funding of these arrangements, the provision includes rules designed to ensure that an agricultural research organization that collaborates with a college or university of agriculture will be treated as a public charity and that charitable contributions to the organization will qualify for the more preferential charitable contribution percentage limits.

In addition, it has been reported that many thousands of Medicare providers and suppliers have outstanding Federal employment and income tax liability, which contribute to the tax gap. The permissible percentage of payments to a Medicare provider subject to levy should be increased.

II. EXPLANATION OF THE BILL**A. PROVIDE SPECIAL RULES CONCERNING CHARITABLE CONTRIBUTIONS TO, AND PUBLIC CHARITY STATUS OF, AGRICULTURAL RESEARCH ORGANIZATIONS (SEC. 2 OF THE BILL AND SECS. 170(b) AND 501(h) OF THE CODE)**

PRESENT LAW

Public charities and private foundations

An organization qualifying for tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”) is further classified as either a public charity or a private foundation. An organization may qualify as a public charity in several ways.¹ Certain organizations are classified as public charities *per se*, regardless of their sources of support. These include churches, certain schools, hospitals and other medical organizations (including medical research organizations), certain organizations providing assistance to colleges and universities, and governmental units.² Other organizations qualify as public charities because they are broadly publicly supported. First, a charity may qualify as publicly supported if at least one-third of its total support is from gifts, grants or other contributions from governmental units or the gen-

¹The Code does not expressly define the term “public charity,” but rather provides exceptions to those entities that are treated as private foundations.

²Sec. 509(a)(1) (referring to sections 170(b)(1)(A)(i) through (iv) for a description of these organizations).

grants or other contributions from governmental units or the general public.³ Alternatively, it may qualify as publicly supported if it receives more than one-third of its total support from a combination of gifts, grants, and contributions from governmental units and the public plus revenue arising from activities related to its exempt purposes (*e.g.*, fee for service income). In addition, this category of public charity must not rely excessively on endowment income as a source of support.⁴ A supporting organization, *i.e.*, an organization that provides support to another section 501(c)(3) entity that is not a private foundation and meets certain other requirements of the Code, also is classified as a public charity.⁵

A section 501(c)(3) organization that does not fit within any of the above categories is a private foundation. In general, private foundations receive funding from a limited number of sources (*e.g.*, an individual, a family, or a corporation).

The deduction for charitable contributions to private foundations is in some instances less generous than the deduction for charitable contributions to public charities. For example, an individual taxpayer who makes a cash charitable contribution may deduct the contribution up to 50 percent of her contribution base (generally, adjusted gross income, with modifications) if the contribution is made to a public charity, but only up to 30 percent of her contribution base if the contribution is made to a non-operating private foundation.⁶

In addition, private foundations are subject to a number of operational rules and restrictions that do not apply to public charities, as well as a tax on their net investment income.⁷

Medical research organizations

A medical research organization is treated as a public charity *per se*, regardless of its sources of financial support, and charitable contributions to a medical research organization may qualify for the more preferential 50-percent limitation.⁸

To qualify as a medical research organization, an organization's principal purpose or functions must be medical research, and it must be directly engaged in the continuous active conduct of med-

³Treas. Reg. sec. 1.170A-9(f)(2). Failing this mechanical test, the organization may qualify as a public charity if it passes a "facts and circumstances" test. Treas. Reg. sec. 1.170A-9(f)(3).

⁴To meet this requirement, the organization must normally receive more than one-third of its support from a combination of (1) gifts, grants, contributions, or membership fees and (2) certain gross receipts from admissions, sales of merchandise, performance of services, and furnishing of facilities in connection with activities that are related to the organization's exempt purposes. Sec. 509(a)(2)(A). In addition, the organization must not normally receive more than one-third of its public support in each taxable year from the sum of (1) gross investment income and (2) the excess of unrelated business taxable income as determined under section 512 over the amount of unrelated business income tax imposed by section 511. Sec. 509(a)(2)(B).

⁵Sec. 509(a)(3). Organizations organized and operated exclusively for testing for public safety also are classified as public charities. Sec. 509(a)(4). Such organizations, however, are not eligible to receive deductible charitable contributions under section 170.

⁶Secs. 170(b)(1)(A) and (B).

⁷Unlike public charities, private foundations are subject to tax on their net investment income at a rate of two percent (one percent in some cases). Sec. 4940. Private foundations also are subject to more restrictions on their activities than are public charities. For example, private foundations are prohibited from engaging in self-dealing transactions (sec. 4941), are required to make a minimum amount of charitable distributions each year (sec. 4942), are limited in the extent to which they may control a business (sec. 4943), may not make speculative investments (sec. 4944), and may not make certain expenditures (sec. 4945). Violations of these rules result in excise taxes on the foundation and, in some cases, may result in excise taxes on the managers of the foundation.

⁸Secs. 170(b)(1)(A)(iii) and 509(a)(1).

a medical research organization to qualify for the more preferential 50-percent limitation of section 170(b)(1)(A), during the calendar year in which the contribution is made, the organization must be committed to spend such contribution for the active conduct of medical research before January 1 of the fifth calendar year beginning after the date such contribution is made.¹⁰

Lobbying activities of section 501(c)(3) organizations

Charitable organizations face limits on the amount of permissible lobbying activity. An organization does not qualify for tax-exempt status as a charitable organization unless “no substantial part” of its activities constitutes “carrying on propaganda, or otherwise attempting, to influence legislation” (commonly referred to as “lobbying”).¹¹ Public charities may engage in limited lobbying activities, provided that such activities are not substantial, without losing their tax-exempt status and generally without being subject to tax. In contrast, private foundations are subject to a restriction that lobbying activities, even if insubstantial, may result in the foundation being subject to penalty excise taxes.¹²

For purposes of determining whether lobbying activities are a substantial part of a public charity’s overall functions, a public charity may choose between two standards, the “substantial part” test or the “expenditure” test.¹³ The substantial part test derives from the statutory language quoted above and uses a facts and circumstances approach to measure the permissible level of lobbying activities. The expenditure test sets specific dollar limits, calculated as a percentage of a charity’s total exempt purpose expenditures, on the amount a charity may spend to influence legislation.¹⁴

REASONS FOR CHANGE

The Committee believes that production agriculture’s current economic strength is a direct result of research that, among other things, has increased crop yields, made livestock healthier, and made food safer. Recognizing the need for additional funding for agricultural research in a growing global market, the Committee believes it is appropriate to encourage research affiliations between private charitable organizations and institutions of higher education in the same manner as the Code encourages research affiliations between medical research organizations and hospitals. To stimulate private funding of these arrangements, the provision includes rules designed to ensure that an agricultural research organization that collaborates with a college or university of agriculture will be treated as a public charity and that charitable contributions to the organization will qualify for the more preferential charitable contribution percentage limits.

EXPLANATION OF PROVISION

The provision amends section 170(b)(1)(A) to provide special treatment for certain agricultural research organizations, con-

¹⁰ *Ibid.*

¹¹ Sec. 501(c)(3).

¹² Sec. 4945(d)(1).

¹³ Secs. 501(c)(3), 501(h), and 4911. Churches and certain church-related entities may not choose the expenditure test. Sec. 501(h)(5).

¹⁴ Secs. 501(h) and 4911.

EXPLANATION OF PROVISION

The provision amends section 170(b)(1)(A) to provide special treatment for certain agricultural research organizations, consistent with the present-law treatment for medical research organizations. The effect of the proposed amendment, therefore, is to: (1) allow certain charitable contributions to qualifying agricultural research organizations to qualify for the 50-percent limitation; and (2) treat qualifying agricultural research organizations as public charities (*i.e.*, non-private foundations) *per se*, regardless of their sources of financial support.

To qualify, an agricultural research organization must be engaged in the continuous active conduct of agricultural research (as defined in section 1404 of the Agricultural Research, Extension, and Teaching Policy Act of 1977) in conjunction with a land-grant college or university (as defined in such section) or a non-land grant college of agriculture (as defined in such section). In addition, for a contribution to an agricultural research organization to qualify for the 50-percent limitation, during the calendar year in which a contribution is made to the organization it must be committed to spend the contribution for such research before January 1 of the fifth calendar year which begins after the date of enactment. It is intended that the provision be interpreted in like manner to and consistent with the rules applicable to medical research organizations.

An agricultural research organization is permitted to use the expenditure test of section 501(h) for purposes of determining whether a substantial part of its activities consist of carrying on propaganda, or otherwise attempting, to influence legislation (*i.e.*, lobbying).

EFFECTIVE DATE

The provision is effective for contributions made on or after the date of enactment.

B. INCREASE CONTINUOUS LEVY AUTHORITY ON PAYMENTS TO MEDICARE PROVIDERS AND SUPPLIERS (SEC. 3 OF THE BILL AND SEC. 6331(h) OF THE CODE)

PRESENT LAW

In general

Levy is the administrative authority of the IRS to seize a taxpayer's property, or rights to property, to pay the taxpayer's tax liability.¹⁵ Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,¹⁶ the property is not exempt from levy,¹⁷ and the IRS has provided both notice of intention to levy¹⁸ and notice of the right to an administrative hearing (the notice is referred to as a "collections due process notice" or "CDP notice" and the hearing is referred to as

¹⁵Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.

¹⁶*Ibid.*

¹⁷Sec. 6334.

¹⁸Sec. 6331(d).

the “CDP hearing”¹⁹ at least 30 days before the levy is made. A levy on salary or wages generally is continuously in effect until released.²⁰ A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.²¹

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.²²

The CDP notice (and pre-levy CDP hearing) is not required if: (1) the Secretary finds that collection would be jeopardized by delay; (2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund; (3) the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served; or (4) the Secretary has served a Federal contractor levy. In each of these four cases, however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.²³

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997²⁴ authorized the establishment of the Federal Payment Levy Program (“FPLP”), which allows the IRS to continuously levy up to 15 percent of certain “specified payments” by the Federal government if the payees are delinquent on their tax obligations. With respect to payments to vendors of goods, services, or property sold or leased to the Federal government, the continuous levy may be up to 100 percent of each payment.²⁵ For payments to Medicare providers and suppliers, the levy is up to 15 percent for payments made within 180 days after December 19, 2014. For payments made after that date, the levy is up to 30 percent.²⁶

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by Treasury’s Bureau of Fiscal Service (“BFS”), such as certain Social Security benefit and Federal wage records. When these records match, the delinquent taxpayer is provided both the notice of intention to levy and the CDP notice. If the taxpayer does not respond after 30 days, the IRS can instruct BFS to levy the taxpayer’s Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or the IRS releases the levy.

¹⁹ Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.

²⁰ Secs. 6331(e) and 6343.

²¹ Sec. 6321.

²² Secs. 6331(d)(3) and 6861.

²³ Sec. 6330(f).

²⁴ Pub. L. No. 105–34.

²⁵ Sec. 6331(h)(3).

²⁶ Pub. L. No. 113–295, Division B.

REASONS FOR CHANGE

It has been reported that many thousands of Medicare providers and suppliers have outstanding Federal employment and income tax liability, which contribute to the tax gap. Consequently, the Committee believes that it is appropriate to increase the permissible percentage of payments to a Medicare provider subject to levy.

EXPLANATION OF PROVISION

The provision provides that the present limitation of 30 percent of certain specified payments be increased by an amount sufficient to offset the estimated revenue loss of the provision described in Part A, above.

EFFECTIVE DATE

The provision is effective for payments made after 180 days after the date of enactment.

III. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATES

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 308(a)(1) of the Congressional Budget and Impoundment Control Act of 1974, as amended (the “Budget Act”), the following statement is made concerning the estimated budget effects of the revenue provisions of the “Charitable Agricultural Research Act” as reported.

The provisions are estimated to have the following effects of Federal budget receipts for fiscal years 2015–2025.

**ESTIMATED BUDGET EFFECTS OF
THE "CHARITABLE AGRICULTURAL RESEARCH ACT,"
AS REPORTED BY THE COMMITTEE ON FINANCE**

Fiscal Years 2015 - 2025

[Millions of Dollars]

Provision	Effective	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015-20	2015-25
1. Provide Special Rules Concerning Charitable Contributions to, and Public Charity Status of, Agricultural Research Organizations.....	[1]	-2	-3	-3	-3	-3	-3	-3	-3	-4	-4	-4	-13	-32
2. Increase Continuous Levy Authority to 35% on Payments to Medicare Providers and Suppliers.....	---	6	6	6	6	7	7	7	7	7	7	7	32	67
NET TOTAL	[1]	4	3	3	3	4	4	4	4	3	3	3	19	35

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. The date of enactment is assumed to be April 1, 2015.

Legend for "Effective" column:

cmoaa = contributions made on or after
DOE = date of enactment

pma = payments made after
180da = 180 days after

[1] Loss of less than \$500,000.

B. BUDGET AUTHORITY AND TAX EXPENDITURES

Budget authority

In compliance with section 308(a)(1) of the Budget Act, the Committee states that no provisions of the bill as reported involve new or increased budget authority.

Tax expenditures

In compliance with section 308(a)(1) of the Budget Act, the Committee states that certain provisions of the bill as reported affect the levels of tax expenditures (see revenue table in part A., above).

C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 402 of the Budget Act, the Committee advises that the Congressional Budget Office has not submitted a statement on the bill. The letter from the Congressional Budget Office will be provided separately.

IV. VOTES OF THE COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that, with a majority present, the “Charitable Agricultural Research Act,” was ordered favorably reported by voice vote on February 11, 2015.

V. REGULATORY IMPACT AND OTHER MATTERS

A. REGULATORY IMPACT

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill.

Impact on individuals and businesses, personal privacy and paperwork

The bill provides rules regarding charitable contributions to, and public charity status of, agricultural research organization. It also increases the IRS’s continuous levy authority on payments to Medicare providers and suppliers. The provisions of the bill are not expected to impose additional administrative requirements or regulatory burdens on individuals or businesses.

The provisions of the bill do not impact personal privacy.

B. UNFUNDED MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the tax provisions of the reported bill do not contain Federal private sector mandates or Federal intergovernmental mandates on State, local, or tribal governments within the meaning of Public Law 104–4, the Unfunded Mandates Reform Act of 1995.

C. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (“IRS Reform Act”) requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses. The staff of the Joint Committee on Taxation has determined that there are no provisions that are of widespread applicability to individuals or small businesses.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

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