

103D CONGRESS
1ST SESSION

H. R. 3697

To amend the Internal Revenue Code of 1986 to impose excise taxes on acts of self-dealing and private inurement by certain tax-exempt organizations.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

Mr. STARK introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to impose excise taxes on acts of self-dealing and private inurement by certain tax-exempt organizations.

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. EXCISE TAXES ON ACTS OF SELF-DEALING AND**
4 **PRIVATE INUREMENT BY CERTAIN TAX-EX-**
5 **EMPT ORGANIZATIONS.**

6 (a) IN GENERAL.—Chapter 42 of the Internal Reve-
7 nue Code of 1986 (relating to private foundations and cer-
8 tain other tax-exempt organizations) is amended by redес-
9 ignating subchapter D as subchapter E and by inserting
10 after subchapter C the following new subchapter:

1 “SUBCHAPTER D—ACTS OF SELF-DEALING AND PRI-
2 VATE INUREMENT BY CERTAIN EXEMPT ORGANIZA-
3 TIONS

“Sec. 4958. Taxes on certain acts of self-dealing.

“Sec. 4959. Taxes on private inurement.

“Sec. 4960. Other definitions.

4 **“SEC. 4958. TAXES ON CERTAIN ACTS OF SELF-DEALING.**

5 “(a) INITIAL TAXES.—

6 “(1) ON SELF-DEALER.—There is hereby im-
7 posed a tax on each act of self-dealing between a
8 disqualified person and an applicable tax-exempt or-
9 ganization. The amount of such tax shall be 5 per-
10 cent of the amount involved with respect to the act
11 of self-dealing for each year (or part thereof) in the
12 taxable period. The tax imposed by this paragraph
13 shall be paid by any disqualified person (other than
14 an organization manager acting only as such) who
15 participates in the act of self-dealing.

16 “(2) ON ORGANIZATION MANAGER.—In any
17 case in which a tax is imposed by paragraph (1),
18 there is hereby imposed on the participation of any
19 organization manager in any act of self-dealing be-
20 tween a disqualified person and an applicable tax-ex-
21 empt organization, knowing that it is such an act,
22 a tax equal to 2.5 percent of the amount involved
23 with respect to such act of self-dealing for each year
24 (or part thereof) in the taxable period, unless such

1 participation is not willful and is due to reasonable
2 cause. The tax imposed by this paragraph shall be
3 paid by any organization manager who participated
4 in the act of self-dealing.

5 “(b) ADDITIONAL TAXES.—

6 “(1) ON SELF-DEALER.—In any case in which
7 an initial tax is imposed by subsection (a)(1) on any
8 act of self-dealing between a disqualified person and
9 an applicable tax-exempt organization and such act
10 is not corrected within the taxable period, there is
11 hereby imposed a tax equal to 200 percent of the
12 amount involved. The tax imposed by this paragraph
13 shall be paid by any disqualified person (other than
14 an organization manager acting only as such) who
15 participated in the act of self-dealing.

16 “(2) ON ORGANIZATION MANAGER.—In any
17 case in which an additional tax is imposed by para-
18 graph (1), if an organization manager refused to
19 agree to part or all of the correction, there is hereby
20 imposed a tax equal to 50 percent of the amount in-
21 volved. The tax imposed by this paragraph shall be
22 paid by any organization manager who refused to
23 agree to part or all of the correction.

24 “(c) SPECIAL RULES.—

1 “(1) JOINT AND SEVERAL LIABILITY.—If more
2 than one person is liable under any paragraph of
3 subsection (a) or (b) with respect to any one act of
4 self-dealing, all such persons shall be jointly and sev-
5 erally liable under such paragraph with respect to
6 such act.

7 “(2) \$10,000 LIMIT FOR MANAGEMENT.—With
8 respect to any one act of self-dealing, the maximum
9 amount of the tax imposed by subsection (a)(2) shall
10 not exceed \$10,000, and the maximum amount of
11 the tax imposed by subsection (b)(2) shall not ex-
12 ceed \$10,000.

13 “(d) SELF-DEALING.—For purposes of this section—

14 “(1) IN GENERAL.—Except as provided by
15 paragraph (2), the term ‘self-dealing’ means any di-
16 rect or indirect—

17 “(A) transfer, lease, or license of property
18 between an applicable tax-exempt organization
19 and a disqualified person, and

20 “(B) lending of money or other extension
21 of credit between an applicable tax-exempt or-
22 ganization and a disqualified person.

23 “(2) EXCEPTIONS.—The term ‘self-dealing’
24 shall not include—

1 “(A) the lending of money by a disqualified
2 person to an applicable tax-exempt organization
3 if the loan is without interest or other charge
4 (determined without regard to section 7872)
5 and if the proceeds of the loan are used exclu-
6 sively for exempt purposes,

7 “(B) the furnishing of goods or facilities
8 by a disqualified person to an applicable tax-ex-
9 empt organization if the furnishing is without
10 charge and if the goods or facilities so fur-
11 nished are used exclusively for exempt purposes,
12 and

13 “(C) any transfer, lease, or license of prop-
14 erty if—

15 “(i) such transfer, lease, or license (as
16 the case may be) is by a disqualified per-
17 son in the ordinary course of such disquali-
18 fied person’s trade or business and such
19 transaction is on a basis comparable to the
20 basis on which similar transactions are
21 made in the ordinary course of such trade
22 or business with other parties, or

23 “(ii) such transfer, lease, or license
24 (as the case may be) is by an applicable
25 tax-exempt organization in the ordinary

1 course of its activities and such transaction
2 is made on a basis comparable to the basis
3 on which similar transactions are made in
4 the ordinary course of such activities with
5 other parties.

6 “(3) EXEMPT PURPOSE.—For purposes of
7 paragraph (2), the term ‘exempt purpose’ means—

8 “(A) in the case of an organization de-
9 scribed in section 501(c)(3), any purpose speci-
10 fied in section 501(c)(3), and

11 “(B) in the case of an organization de-
12 scribed in section 501(c)(4), any purposes spec-
13 ified in section 501(c)(4).

14 “(e) OTHER DEFINITIONS.—For purposes of this
15 section—

16 “(1) TAXABLE PERIOD.—The term ‘taxable pe-
17 riod’ means, with respect to any act of self-dealing,
18 the period beginning with the date on which the act
19 of self-dealing occurs and ending on the earliest of—

20 “(A) the date of mailing a notice of defi-
21 ciency under section 6212 with respect to the
22 tax imposed by subsection (a)(1),

23 “(B) the date on which the tax imposed by
24 subsection (a)(1) is assessed, or

1 “(C) the date on which correction of the
2 act of self-dealing is completed.

3 “(2) AMOUNT INVOLVED.—The term ‘amount
4 involved’ means, with respect to any act of self-deal-
5 ing, the greater of the amount of money and fair
6 market value of other property given, or the amount
7 of money and fair market value of other property re-
8 ceived. In the case of a lease or license, the amount
9 involved is the fair market value of the leased or li-
10 censed property. For purposes of this paragraph—

11 “(A) in the case of the taxes imposed by
12 subsection (a), fair market value shall be deter-
13 mined as of the date on which the act of self-
14 dealing occurs, and

15 “(B) in the case of the taxes imposed by
16 subsection (b), fair market value shall be the
17 highest fair market value during the taxable
18 period.

19 “(3) CORRECTION.—The terms ‘correction’ and
20 ‘correct’ mean, with respect to any act of self-deal-
21 ing transaction, undoing the transaction to the ex-
22 tent possible, but in any case place the applicable
23 tax-exempt organization in a financial position not
24 worse than that in which it would be if the disquali-

1 fied person were dealing under the highest fiduciary
2 standards.

3 **“SEC. 4959. TAXES ON PRIVATE INUREMENT.**

4 “(a) INITIAL TAXES.—

5 “(1) ON THE ORGANIZATION.—There is hereby
6 imposed on any taxable inurement a tax equal to 10
7 percent of the amount thereof. The tax imposed by
8 this paragraph shall be paid by the organization
9 with respect to which such inurement occurred.

10 “(2) ON THE MANAGEMENT.—There is hereby
11 imposed on the participation of any organization
12 manager of an organization in any taxable
13 inurement which occurs with respect to such organi-
14 zation, knowing that it is taxable inurement, a tax
15 equal to 2½ percent of the amount thereof, unless
16 such participation is not willful and is due to reason-
17 able cause. The tax imposed by this paragraph shall
18 be paid by the organization manager who partici-
19 pated in the taxable inurement.

20 “(3) ON THE BENEFICIARY.—There is hereby
21 imposed on any taxable inurement a tax equal to 5
22 percent of the amount thereof. The tax imposed by
23 this paragraph shall be paid by the beneficiary of
24 such inurement.

25 “(b) ADDITIONAL TAXES.—

1 “(1) ON THE ORGANIZATION.—In any case in
2 which an initial tax is imposed by subsection (a)(1)
3 on any taxable inurement and such inurement is not
4 corrected within the taxable period, there is hereby
5 imposed a tax equal to 100 percent of the amount
6 of the taxable inurement. The tax imposed by this
7 paragraph shall be paid by the organization with re-
8 spect to which such inurement occurred.

9 “(2) ON THE MANAGEMENT.—In any case in
10 which an additional tax is imposed by paragraph (1),
11 if an organization manager refused to agree to part
12 or all of the correction, there is hereby imposed a
13 tax equal to 50 percent of the amount of the taxable
14 inurement. The tax imposed by this paragraph shall
15 be paid by any organization manager who refused to
16 agree to part or all of the correction.

17 “(3) ON THE BENEFICIARY.—In any case in
18 which an additional tax is imposed by paragraph (1),
19 there is hereby imposed a tax equal to 200 percent
20 of the amount of the taxable inurement. The tax im-
21 posed by this paragraph shall be paid by the bene-
22 ficiary of such inurement.

23 “(c) TAXABLE INUREMENT.—For purposes of this
24 section, the term ‘taxable inurement’ means any direct or
25 indirect inurement of any part of the net earnings of an

1 applicable tax-exempt organization to the benefit of any
2 disqualified person. Such term shall not include any act
3 of self-dealing on which tax is imposed under section 4958.

4 “(d) SPECIAL RULES.—For purposes of this sec-
5 tion—

6 “(1) JOINT AND SEVERAL LIABILITY.—If more
7 than one person is liable under any paragraph of
8 subsection (a) or (b) with respect to any one taxable
9 inurement, all such persons shall be jointly and sev-
10 erally liable under such paragraph with respect to
11 such inurement.

12 “(2) LIMIT FOR MANAGEMENT.—With respect
13 to any 1 taxable inurement, the maximum amount
14 of the tax imposed by subsection (a)(2) shall not ex-
15 ceed \$10,000, and the maximum amount of the tax
16 imposed by subsection (b)(2) shall not exceed
17 \$10,000.

18 “(e) OTHER DEFINITIONS.—For purposes of this
19 section—

20 “(1) TAXABLE PERIOD.—The term ‘taxable pe-
21 riod’ means, with respect to any taxable inurement,
22 the period beginning with the date on which the
23 inurement occurs and ending on the earliest of—

1 “(A) the date of mailing a notice of defi-
2 ciency under section 6212 with respect to the
3 tax imposed by subsection (a)(1), or

4 “(B) the date on which the tax imposed by
5 subsection (a)(1) is assessed.

6 “(2) CORRECTION.—The terms ‘correction’ and
7 ‘correct’ mean, with respect to any taxable
8 inurement, undoing the inurement to the extent pos-
9 sible, establishing safeguards to prevent future tax-
10 able inurement, and where fully undoing the
11 inurement is not possible, such additional corrective
12 action as is prescribed by the Secretary by regula-
13 tions.

14 **“SEC. 4960. OTHER DEFINITIONS.**

15 “(a) APPLICABLE TAX-EXEMPT ORGANIZATION.—
16 For purposes of this subchapter, the term ‘applicable tax-
17 exempt organization’ means any organization which (with-
18 out regard to any act of self-dealing or taxable inurement)
19 would be described in paragraph (3) or (4) of section
20 501(c) and exempt from tax under section 501(a). Such
21 term shall not include any private foundation.

22 “(b) DISQUALIFIED PERSON.—For purposes of this
23 subchapter, the term ‘disqualified person’ means, with re-
24 spect to any transaction—

1 “(1) any person who was an organization man-
2 ager at any time during the 5-year period ending on
3 the date of such transaction,

4 “(2) any member of a family (as defined in sec-
5 tion 4946(d)) of any person described in paragraph
6 (1), and

7 “(3) any 35-percent controlled entity of persons
8 described in paragraph (1) or (2).

9 “(c) ORGANIZATION MANAGER.—For purposes of
10 this subchapter, the term ‘organization manager’ means,
11 with respect to any applicable tax-exempt organization,
12 any officer, director, or trustee of such organization (or
13 any individual having powers or responsibilities similar to
14 those of officers, directors, or trustees of the organiza-
15 tion). Such term includes any person performing substan-
16 tial medical services as a physician for the applicable tax-
17 exempt organization pursuant to an employment or other
18 contractual relationship.

19 “(d) 35-PERCENT CONTROLLED ENTITY.—For pur-
20 poses of this section—

21 “(1) 35-PERCENT CONTROLLED ENTITY.—The
22 term ‘35-percent controlled entity’ means—

23 “(A) a corporation in which persons de-
24 scribed in paragraph (1) or (2) of subsection

1 (b) own more than 35 percent of the combined
2 voting power,

3 “(B) a partnership in which such persons
4 own more than 35 percent of the profits inter-
5 est, and

6 “(C) a trust or estate in which such per-
7 sons own more than 35 percent of the beneficial
8 interest.

9 “(2) CONSTRUCTIVE OWNERSHIP RULES.—
10 Rules similar to the rules of paragraphs (3) and (4)
11 of section 4946(a) shall apply for purposes of this
12 subsection.”

13 (b) APPLICATION OF PRIVATE INUREMENT RULE TO
14 TAX-EXEMPT CIVIC LEAGUES.—Paragraph (4) of section
15 501(c) of such Code is amended to read as follows:

16 “(4)(A) Civic leagues or organizations not orga-
17 nized for profit but operated exclusively for the pro-
18 motion of social welfare and no part of the net earn-
19 ings of which inures to the benefit of any private
20 shareholder or individual.

21 “(B) Local associations of employees—

22 “(i) the membership of which is limited to
23 the employees of a designated person or persons
24 in a particular municipality, and

1 “(ii) which is operated exclusively for char-
2 itable, educational, or recreational purposes.”

3 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

4 (1) Subsection (e) of section 4955 of such Code
5 is amended—

6 (A) by striking “SECTION 4945” in the
7 heading and inserting “SECTIONS 4945 and
8 4959”, and

9 (B) by inserting before the period “or a
10 taxable inurement for purposes of section
11 4959”.

12 (2) Subsections (a), (b), and (c) of section 4963
13 of such Code are each amended by inserting “4958,
14 4959,” after “4955,”.

15 (3) Subsection (e) of section 6213 of such Code
16 is amended by inserting “4958 (relating to acts of
17 self-dealing), 4959 (relating to private inurement),”
18 before “4971”.

19 (4) The table of subchapters for chapter 42 of
20 such Code is amended by striking the last item and
21 inserting the following:

 “Subchapter D. Acts of self-dealing and private inurement by cer-
 tain exempt organizations.

 “Subchapter E. Abatement of first and second tier taxes in cer-
 tain cases.”

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to transactions occurring on or
3 after January 1, 1994.

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