

114TH CONGRESS
1ST SESSION

S. 2313

To amend the Internal Revenue Code of 1986 to facilitate program-related investments by private foundations.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2015

Mr. GARDNER (for himself and Mr. PETERS) 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 facilitate program-related investments by private foundations.

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. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Philanthropic Facilitation Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Facilitation of program-related investments.
- Sec. 3. Declaratory judgment remedy.
- Sec. 4. Information returns.
- Sec. 5. Publicity of information.
- Sec. 6. Conforming amendments.

Sec. 7. Regulations.

Sec. 8. Effective date.

1 **SEC. 2. FACILITATION OF PROGRAM-RELATED INVEST-**
 2 **MENTS.**

3 Subsection (c) of section 4944 of the Internal Rev-
 4 enue Code of 1986 is amended to read as follows:

5 “(c) PROGRAM RELATED INVESTMENTS.—

6 “(1) TREATMENT OF PROGRAM RELATED IN-
 7 VESTMENTS.—For purposes of this subchapter, pro-
 8 gram-related investments—

9 “(A) are not investments which jeopardize
 10 the carrying out of one or more purposes de-
 11 scribed in section 170(c)(2)(B),

12 “(B) are not business holdings under sec-
 13 tion 4943, and

14 “(C) may be qualifying distributions under
 15 section 4942.

16 “(2) PROGRAM-RELATED INVESTMENTS DE-
 17 FINED.—

18 “(A) IN GENERAL.—For purposes of this
 19 subchapter and chapter 61, an investment made
 20 by a private foundation constitutes a program-
 21 related investment if—

22 “(i) the primary purpose of the invest-
 23 ment is to accomplish one or more of the
 24 purposes described in section 170(c)(2)(B),

1 “(ii) no significant purpose of the in-
2 vestment is the production of income or
3 the appreciation of property, and

4 “(iii) no purpose of the investment is
5 to accomplish one or more of the purposes
6 described in section 170(c)(2)(D).

7 “(B) SPECIAL RULES.—For purposes of
8 subparagraph (A)—

9 “(i) determinations of whether an in-
10 vestment qualifies as a program-related in-
11 vestment shall be based on consideration of
12 all relevant facts and circumstances, and

13 “(ii) the fact that the entity produces
14 significant income or capital appreciation
15 shall not, in the absence of other factors,
16 be conclusive evidence of a significant pur-
17 pose involving the production of income or
18 the appreciation of property.

19 “(3) SAFE HARBOR DETERMINATIONS.—The
20 Secretary shall establish a procedure which shall be
21 substantially similar to the processes for recognition
22 of exemption under section 501(a) or 4945(g) and
23 under which an entity seeking to receive program-re-
24 lated investments may petition the Secretary for a
25 determination that, based on consideration of all rel-

1 evant facts and circumstances, investments by pri-
2 vate foundations in such entity will be program-re-
3 lated investments meeting the requirements of para-
4 graph (2). Under this procedure, the Secretary shall
5 rule on all requests within 120 days of submission.

6 “(4) EFFECT OF DETERMINATION.—Once a de-
7 termination has been made that investments in an
8 entity qualify as program-related investments, orga-
9 nizations making such investments shall be entitled
10 to rely on the determination, unless and until the
11 Secretary publishes notice of revocation of the deter-
12 mination.

13 “(5) VOLUNTARY NATURE OF PROCESS.—Enti-
14 ties seeking program-related investments are not re-
15 quired to seek a determination under paragraph (3),
16 and the absence of such a determination shall not
17 affect the ability of a private foundation to make a
18 program-related investment based on its own deter-
19 mination that the investment qualifies as a program-
20 related investment.

21 “(6) ORGANIZATIONS TREATED AS PRIVATE
22 FOUNDATIONS.—For purposes of this subsection and
23 section 6104A, all references to private foundations
24 include organizations that are treated as private
25 foundations under any of the provisions of sections

1 4940 through 4948, inclusive, whether created under
2 State law or the law of any federally recognized
3 tribe.”.

4 **SEC. 3. DECLARATORY JUDGMENT REMEDY.**

5 Paragraph (1) of section 7428(a) of the Internal Rev-
6 enue Code of 1986 is amended by striking “or” at the
7 end of subparagraph (C) and by adding after subpara-
8 graph (D) the following new subparagraph:

9 “(E) with respect to whether investments
10 in an entity are program-related investments
11 (as described in section 4944(c)(2)), or”.

12 **SEC. 4. INFORMATION RETURNS.**

13 Part III of subchapter A of chapter 61 of the Internal
14 Revenue Code of 1986 is amended by inserting after sec-
15 tion 6033 the following new section:

16 **“SEC. 6033A. INFORMATION REPORTING BY FOR-PROFIT**
17 **ORGANIZATIONS RECEIVING PROGRAM-RE-**
18 **LATED INVESTMENTS.**

19 “(a) ORGANIZATIONS REQUIRED TO FILE.—If in-
20 vestments in an entity have been determined to be pro-
21 gram-related investments through a determination of the
22 Internal Revenue Service pursuant to section 4944(c)(3)
23 or by a determination of a court pursuant to section
24 7428(a), the entity shall, in addition to any other applica-
25 ble filing obligations, file an annual return providing the

1 information specified in subsection (b) for any taxable
2 year in which it receives or retains one or more program-
3 related investments (as defined in section 4944(c)(2)).

4 “(b) REQUIRED REPORTING.—The return described
5 in subsection (a) shall provide, in such manner and at
6 such time as the Secretary may by forms or regulations
7 prescribe, the following information—

8 “(1) the organization’s gross income for the
9 year,

10 “(2) its expenses attributable to such income
11 incurred within the year,

12 “(3) its disbursements within the year for one
13 or more purposes described in section 170(c)(2)(B),
14 together with a narrative statement describing the
15 results obtained from the use of those assets for
16 such one or more purposes described in section
17 170(c)(2)(B),

18 “(4) a balance sheet showing its assets, liabil-
19 ities, and net worth as of the beginning and end of
20 such year,

21 “(5) the names and addresses of all private
22 foundations holding program-related investments in
23 the organization,

24 “(6) a statement of the portion of its liabilities
25 and net worth that represent capitalization obtained

1 by means of program-related investments as of the
 2 beginning and end of such year,

3 “(7) a statement of any interest, dividends, or
 4 other distributions paid with respect to any pro-
 5 gram-related investments during the year, and

6 “(8) such other information as may be nec-
 7 essary for the return described in subsection (a) to
 8 satisfy the annual financial reporting required by the
 9 expenditure responsibility rules pursuant to the reg-
 10 ulations under section 4945 or as the Secretary may
 11 by forms or regulations prescribe.”.

12 **SEC. 5. PUBLICITY OF INFORMATION.**

13 Subchapter B of chapter 61 of the Internal Revenue
 14 Code of 1986 is amended by inserting after section 6104
 15 the following new section:

16 **“SEC. 6104A. PUBLICITY OF INFORMATION REGARDING OR-**
 17 **GANIZATIONS RECEIVING PROGRAM-RE-**
 18 **LATED INVESTMENTS.**

19 “(a) INSPECTION OF PETITIONS FOR DETERMINA-
 20 TION OF PROGRAM-RELATED INVESTMENT STATUS.—If
 21 an entity seeks a determination pursuant to section
 22 4944(c)(3) that investments by private foundations in
 23 such organization will be program-related investments, the
 24 petition seeking such a determination, together with any
 25 documents submitted in support of such petition and any

1 determination or other document issued by the Internal
2 Revenue Service with respect to such petition, shall be
3 open to public inspection at the national office of the In-
4 ternal Revenue Service.

5 “(b) INSPECTION OF ANNUAL INFORMATION RE-
6 TURNS.—The information required to be furnished by sec-
7 tion 6033A, together with the names and addresses of
8 such entity, shall be made available to the public at such
9 times and in such places as the Secretary may prescribe.

10 “(c) PUBLIC INSPECTION OF PETITIONS AND AN-
11 NUAL INFORMATION RETURNS.—Any entity that receives
12 a determination from the Internal Revenue Service that
13 private foundation investments shall be program-related
14 investments pursuant to section 4944(c)(3) shall make
15 copies available at the organization’s principal office, dur-
16 ing regular business hours, of the petition for such deter-
17 mination (together with supporting materials provided
18 with the petition and documents issued by the Internal
19 Revenue Service with respect to such petition), as well as
20 the annual returns required by section 6033A filed by such
21 organization. Upon request of an individual made at such
22 principal office, copies of such petition materials and an-
23 nual reports shall be provided to such individual without
24 charge other than a reasonable fee for any reproduction
25 and mailing costs. The inspection and duplication rights

1 granted in this subsection shall apply to an annual return
2 only during the three-year period beginning on the last
3 day prescribed for filing such return (determined with re-
4 gard to any extension of time for filing).

5 “(d) LIMITATION ON PROVIDING COPIES.—Para-
6 graph (c) shall not apply to any request if, in accordance
7 with regulations promulgated by the Secretary, the entity
8 has made the requested documents widely available, or the
9 Secretary determines, upon application by an entity, that
10 such request is part of a harassment campaign and that
11 compliance with such request is not in the public inter-
12 est.”.

13 **SEC. 6. CONFORMING AMENDMENTS.**

14 (a) CONFORMING CHANGE TO SECTION 501(n).—
15 Paragraph (4)(A) of section 501(n) of the Internal Rev-
16 enue Code of 1986 is amended by inserting “paragraph
17 (2) of” before “section 4944(c).”

18 (b) CONFORMING CHANGE TO SECTION 514(b).—
19 Paragraph (1) of section 514(b) of the Internal Revenue
20 Code of 1986 is amended by redesignating subparagraphs
21 (D) and (E) as subparagraphs (E) and (F) and by insert-
22 ing after subparagraph (C) the following new subpara-
23 graph:

24 “(D) any property owned or treated as
25 owned by a private foundation by virtue of its

1 having made an investment in an entity that
2 has received a determination from the Internal
3 Revenue Service pursuant to section
4 4944(c)(3), or by a court pursuant to section
5 7428(a), that such investments in such entity
6 qualify as program-related investments;”.

7 (c) CONFORMING CHANGE TO SECTION 4943(d).—
8 Paragraph (3) of section 4943(d) of the Internal Revenue
9 Code of 1986 is amended by striking “or” at the end of
10 subparagraph (A), by redesignating subparagraph (B) as
11 subparagraph (C) and by inserting after subparagraph (A)
12 the following new subparagraph:

13 “(B) any program-related investment, as
14 defined in section 4944(c)(2), or”.

15 **SEC. 7. REGULATIONS.**

16 The Secretary of the Treasury shall, not later than
17 1 year after the date of the enactment of this Act, amend
18 any applicable regulations as may be necessary or appro-
19 priate to implement any amendments contained in this Act
20 or to carry out the purposes of this Act, including pro-
21 viding additional examples of qualifying program-related
22 investments.

1 **SEC. 8. EFFECTIVE DATE.**

2 The amendments made by this Act shall apply to in-
3 vestments made after the date of the enactment of this
4 Act in taxable years ending after such date.

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