

116TH CONGRESS
2D SESSION

H. R. 8606

To defer the tax of certain sales of employer stock and reduce certain retirement-related excise taxes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 16, 2020

Mr. KIND (for himself, Mr. KELLY of Pennsylvania, and Mr. SMITH of Missouri) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To defer the tax of certain sales of employer stock and reduce certain retirement-related excise taxes, and for other purposes.

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. DEFERRAL OF TAX FOR CERTAIN SALES OF EM-**
4 **PLOYER STOCK TO EMPLOYEE STOCK OWN-**
5 **ERSHIP PLAN SPONSORED BY S CORPORA-**
6 **TION.**

7 (a) IN GENERAL.—Section 1042(c)(1)(A) of the In-
8 ternal Revenue Code of 1986 is amended by striking “do-

1 mestic C corporation” and inserting “domestic corpora-
2 tion”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to sales after the date of the enact-
5 ment of this Act.

6 **SEC. 2. REDUCTION IN EXCISE TAX ON CERTAIN ACCUMU-**
7 **LATIONS IN QUALIFIED RETIREMENT PLANS.**

8 (a) IN GENERAL.—Subsection (a) of section 4974 of
9 the Internal Revenue Code of 1986 is amended by striking
10 “50 percent” and inserting “25 percent”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to taxable years beginning after
13 December 31, 2019.

14 **SEC. 3. REDUCTION IN EXCISE TAX ON FAILURES TO TAKE**
15 **REQUIRED MINIMUM DISTRIBUTIONS.**

16 (a) IN GENERAL.—Section 4974 of the Internal Rev-
17 enue Code of 1986, as amended by section 2 of this Act,
18 is further amended by adding at the end the following new
19 subsection:

20 “(e) REDUCTION OF TAX IN CERTAIN CASES.—

21 “(1) REDUCTION.—In the case of a taxpayer
22 who—

23 “(A) corrects, during the correction win-
24 dow, a shortfall of distributions from an indi-

1 individual retirement plan which resulted in imposi-
2 tion of a tax under subsection (a), and

3 “(B) submits a return, during the correc-
4 tion window, reflecting such tax (as modified by
5 this subsection),

6 the first sentence of subsection (a) shall be applied
7 by substituting ‘10 percent’ for ‘25 percent’.

8 “(2) CORRECTION WINDOW.—For purposes of
9 this subsection, the term ‘correction window’ means
10 the period of time beginning on the date on which
11 the tax under subsection (a) is imposed with respect
12 to a shortfall of distributions from an individual re-
13 tirement plan, and ending on the earlier of—

14 “(A) the date on which the Secretary initi-
15 ates an audit, or otherwise demands payment,
16 with respect to the shortfall of distributions, or

17 “(B) the last day of the second taxable
18 year that begins after the end of the taxable
19 year in which the tax under subsection (a) is
20 imposed.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to taxable years beginning after
23 the date of the enactment of this Act.

1 **SECTION 4. MULTIPLE EMPLOYER 403(b) PLANS.**

2 (a) IN GENERAL.—Section 403(b) of the Internal
3 Revenue Code of 1986 is amended by adding at the end
4 the following new paragraph:

5 “(15) MULTIPLE EMPLOYER PLANS.—

6 “(A) IN GENERAL.—Except in the case of
7 a church plan, this subsection shall not be
8 treated as failing to apply to an annuity con-
9 tract solely by reason of such contract being
10 purchased under a plan maintained by more
11 than 1 employer.

12 “(B) TREATMENT OF EMPLOYERS FAILING
13 TO MEET REQUIREMENTS OF PLAN.—

14 “(i) IN GENERAL.—In the case of a
15 plan maintained by more than 1 employer,
16 this subsection shall not be treated as fail-
17 ing to apply to an annuity contract held
18 under such plan merely because of one or
19 more employers failing to meet the require-
20 ments of this subsection if such plan satis-
21 fies rules similar to the rules of section
22 413(e)(2) with respect to any such em-
23 ployer failure.

24 “(ii) ADDITIONAL REQUIREMENTS IN
25 CASE OF NON-GOVERNMENTAL PLANS.—A
26 plan shall not be treated as meeting the re-

1 requirements of this subparagraph unless the
2 plan meets the requirements of subpara-
3 graph (A) or (B) of section 413(e)(1), ex-
4 cept in the case of a multiple employer
5 plan maintained solely by any of the fol-
6 lowing: A State, a political subdivision of a
7 State, or an agency or instrumentality of
8 any one or more of the foregoing.”.

9 (b) ANNUAL REGISTRATION FOR 403(b) MULTIPLE
10 EMPLOYER PLAN.—Section 6057 of such Code is amend-
11 ed by redesignating subsection (g) as subsection (h) and
12 by inserting after subsection (f) the following new sub-
13 section:

14 “(g) 403(b) MULTIPLE EMPLOYER PLANS TREATED
15 AS ONE PLAN.—In the case of annuity contracts to which
16 this section applies and to which section 403(b) applies
17 by reason of the plan under which such contracts are pur-
18 chased meeting the requirements of paragraph (15) there-
19 of, such plan shall be treated as a single plan for purposes
20 of this section.”.

21 (c) ANNUAL INFORMATION RETURNS FOR 403(b)
22 MULTIPLE EMPLOYER PLAN.—Section 6058 of the Inter-
23 nal Revenue Code of 1986 is amended by redesignating
24 subsection (f) as subsection (g) and by inserting after sub-
25 section (e) the following new subsection:

1 “(f) 403(b) MULTIPLE EMPLOYER PLANS TREATED
2 AS ONE PLAN.—In the case of annuity contracts to which
3 this section applies and to which section 403(b) applies
4 by reason of the plan under which such contracts are pur-
5 chased meeting the requirements of paragraph (15) there-
6 of, such plan shall be treated as a single plan for purposes
7 of this section.”.

8 (d) AMENDMENTS TO EMPLOYEE RETIREMENT AND
9 INCOME SECURITY ACT OF 1974.—

10 (1) TREATED AS POOLED EMPLOYER PLAN.—

11 (A) IN GENERAL.—Section 3(43)(A) of the
12 Employee Retirement and Income Security Act
13 of 1974 is amended—

14 (i) in clause (ii), by striking “section
15 501(a) of such Code or” and inserting
16 “501(a) of such Code, a plan that consists
17 of contracts described in section 403(b) of
18 such Code, or”; and

19 (ii) in the flush text at the end, by
20 striking “the plan.” and inserting “the
21 plan, but such term shall include any pro-
22 gram (other than a governmental plan)
23 maintained for the benefit of the employees
24 of more than 1 employer that consists of
25 contracts described in section 403(b) of

1 such Code and that meets the require-
2 ments of subparagraph (A) or (B) of sec-
3 tion 413(e)(1) of such Code.”.

4 (B) CONFORMING AMENDMENTS.—Sec-
5 tions 3(43)(B)(v)(II) and 3(44)(A)(i)(I) of such
6 Act are each amended by striking “section
7 401(a) of such Code or” and inserting “401(a)
8 of such Code, a plan that consists of contracts
9 described in section 403(b) of such Code, or”.

10 (2) FIDUCIARIES.—Section 3(43)(B)(ii) of such
11 Act is amended—

12 (A) by striking “trustees meeting the re-
13 quirements of section 408(a)(2) of the Internal
14 Revenue Code of 1986” and inserting “trustees
15 (or other fiduciaries in the case of a plan that
16 consists of contracts described in section 403(b)
17 of the Internal Revenue Code of 1986) meeting
18 the requirements of section 408(a)(2) of such
19 Code”, and

20 (B) by striking “holding” and inserting
21 “holding (or causing to be held under the terms
22 of a plan consisting of such contracts)”.

23 (e) REGULATIONS RELATING TO PLAN TERMI-
24 NATION.—The Secretary of the Treasury (or the Sec-
25 retary’s designee) shall prescribe such regulations as may

1 be necessary to clarify the treatment of a plan termination
2 by an employer in the case of plans to which section
3 403(b)(15) of such Code applies.

4 (f) MODIFICATION OF MODEL PLAN LANGUAGE.—

5 (1) PLAN NOTIFICATIONS.—The Secretary of
6 the Treasury (or the Secretary's designee) shall
7 modify the model plan language published under sec-
8 tion 413(e)(5) of the Internal Revenue Code of 1986
9 to include language which notifies participating em-
10 ployers which are exempt from tax under section
11 501(a) of such Code that the plan is subject to the
12 Employee Retirement and Income Security Act of
13 1974 and that such employer is a plan sponsor with
14 respect to its employees participating in the multiple
15 employer plan and, as such, has certain fiduciary
16 duties with respect to the plan and to its employees.

17 (2) MODEL PLANS FOR MULTIPLE EMPLOYER
18 403(b) NON-GOVERNMENTAL PLANS.—For plans to
19 which section 403(b)(15)(A) of the Internal Revenue
20 Code of 1986 applies (other than a plan maintained
21 for its employees by a State, a political subdivision
22 of a State, or an agency or instrumentality of any
23 one or more of the foregoing) the Secretary shall
24 publish model plan language similar to model plan

1 language published under section 413(e)(5) of such
2 Code.

3 (g) NO INFERENCE WITH RESPECT TO CHURCH
4 PLANS.—Regarding any application of section 403(b) of
5 the Internal Revenue Code of 1986 to an annuity contract
6 purchased under a church plan (as defined in section
7 414(e) of such Code) maintained by more than 1 em-
8 ployer, or to any application of rules similar to section
9 413(e) of such Code to such a plan, no inference shall
10 be made from section 403(b)(15)(A) of such Code (as
11 added by this Act) not applying to such plans.

12 (h) EFFECTIVE DATE.—

13 (1) IN GENERAL.—The amendments made by
14 this section shall apply to plan years beginning after
15 December 31, 2020.

16 (2) RULE OF CONSTRUCTION.—Nothing in the
17 amendments made by subsection (a) shall be con-
18 strued as limiting the authority of the Secretary of
19 the Treasury or the Secretary's delegate (determined
20 without regard to such amendment) to provide for
21 the proper treatment of a failure to meet any re-
22 quirement applicable under such Code with respect
23 to one employer (and its employees) in the case of
24 a plan to which section 403(b)(15) applies.

1 **SEC. 5. APPLICATION OF CREDIT FOR SMALL EMPLOYER**
2 **PENSION PLAN STARTUP COSTS TO EMPLOY-**
3 **ERS WHICH JOIN AN EXISTING PLAN.**

4 (a) IN GENERAL.—Section 45E(d)(3)(A) of the In-
5 ternal Revenue Code of 1986 is amended by striking “ef-
6 fective” and inserting “effective with respect to the eligible
7 employer”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to eligible employer plans which
10 become effective with respect to the eligible employer after
11 the date of the enactment of this Act.

12 **SEC. 6. HARMONIZATION OF TREATMENT OF IRAS WITH**
13 **EMPLOYER PLANS.**

14 (a) STATUTE OF LIMITATIONS.—Section 6501(l) of
15 the Internal Revenue Code of 1986 is amended—

16 (1) in paragraph (1), by inserting “(other than
17 with respect to an individual retirement plan)” after
18 “section 4975”, and

19 (2) by adding at the end the following new
20 paragraph:

21 “(4) INDIVIDUAL RETIREMENT PLANS.—For
22 purposes of any tax imposed by section 4973, 4974,
23 or 4975 in connection with an individual retirement
24 plan, the return referred to in this section shall be
25 the income tax return filed by the person on whom
26 the tax under such section is imposed for the year

1 in which the act (or failure to act) giving rise to the
2 liability for such tax occurred. In the case of a per-
3 son who is not required to file an income tax return
4 for such year—

5 “(A) the return referred to in this section
6 shall be the income tax return that such person
7 would have been required to file but for the fact
8 that such person was not required to file such
9 return, and

10 “(B) the 3-year period referred to in sub-
11 section (a) with respect to the return shall be
12 deemed to begin on the date by which the re-
13 turn would have been required to be filed (ex-
14 cluding any extension thereof).”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to plan years beginning after De-
17 cember 31, 2020.

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