

116TH CONGRESS  
1ST SESSION

# S. 361

To amend the Internal Revenue Code of 1986 to facilitate water leasing and water transfers to promote conservation and efficiency.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2019

Mr. GARDNER (for himself, Mr. CRAPO, Mr. ROBERTS, Mr. TESTER, Mr. BENNET, Mr. RISCH, and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to facilitate water leasing and water transfers to promote conservation and efficiency.

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.**

4 This Act may be cited as the “Water and Agriculture  
5 Tax Reform Act of 2019”.

1 **SEC. 2. FACILITATE WATER LEASING AND WATER TRANS-**  
 2 **FERS TO PROMOTE CONSERVATION AND EF-**  
 3 **FICIENCY.**

4 (a) IN GENERAL.—Paragraph (12) of section 501(c)  
 5 of the Internal Revenue Code of 1986 is amended by add-  
 6 ing at the end the following new subparagraph:

7 “(J) TREATMENT OF MUTUAL DITCH IRRI-  
 8 GATION COMPANIES.—

9 “(i) IN GENERAL.—In the case of a  
 10 mutual ditch or irrigation company or of a  
 11 like organization to a mutual ditch or irri-  
 12 gation company, subparagraph (A) shall be  
 13 applied without taking into account—

14 “(I) any income received or ac-  
 15 crued from the sale, lease, or ex-  
 16 change of fee or other interests in real  
 17 and personal property, including inter-  
 18 ests in water (other than income de-  
 19 rived from the sale, lease, or transfer  
 20 of water to nonmembers outside the  
 21 river basin or basins within which the  
 22 mutual ditch or irrigation company  
 23 operates),

24 “(II) any income received or ac-  
 25 crued from the sale or exchange of  
 26 stock in a mutual ditch or irrigation

1           company (or in a like organization to  
2           a mutual ditch or irrigation company)  
3           or contract rights for the delivery or  
4           use of water, or

5                   “(III) any income received or ac-  
6                   crued from the investment of income  
7                   described in subclause (I) or (II),

8           except that any income described in sub-  
9           clause (I), (II), or (III) which is distrib-  
10          uted or expended for expenses (other than  
11          for operations, maintenance, and capital  
12          improvements) of the mutual ditch or irri-  
13          gation company or of the like organization  
14          to a mutual ditch or irrigation company  
15          (as the case may be) shall be treated as  
16          nonmember income in the year in which it  
17          is distributed or expended. For purposes of  
18          the preceding sentence, expenses (other  
19          than for operations, maintenance, and cap-  
20          ital improvements) include expenses for the  
21          construction of conveyances designed to de-  
22          liver water outside of the system of the  
23          mutual ditch or irrigation company or of  
24          the like organization.

1           “(ii) TREATMENT OF ORGANIZA-  
2           TIONAL GOVERNANCE.—In the case of a  
3           mutual ditch or irrigation company or of a  
4           like organization to a mutual ditch or irri-  
5           gation company, where State law provides  
6           that such a company or organization may  
7           be organized in a manner that permits vot-  
8           ing on a basis which is pro rata to share  
9           ownership on corporate governance mat-  
10          ters, subparagraph (A) shall be applied  
11          without taking into account whether its  
12          member shareholders have one vote on cor-  
13          porate governance matters per share held  
14          in the corporation. Nothing in this clause  
15          shall be construed to create any inference  
16          about the requirements of this subsection  
17          for companies or organizations not in-  
18          cluded in this clause.”.

19          (b) EFFECTIVE DATE.—The amendment made by  
20          subsection (a) shall apply to taxable years beginning after  
21          December 31, 2018.

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