

117TH CONGRESS
1ST SESSION

S. 2256

To amend the Internal Revenue Code of 1986 to limit the charitable deduction for certain qualified conservation contributions.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2021

Mr. DAINES (for himself, Ms. STABENOW, Mr. WYDEN, and Mr. GRASSLEY) 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 limit the charitable deduction for certain qualified conservation contributions.

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 “Charitable Conserva-
5 tion Easement Program Integrity Act of 2021”.

1 **SEC. 2. LIMITATION ON DEDUCTION FOR QUALIFIED CON-**
 2 **SERVATION CONTRIBUTIONS MADE BY PASS-**
 3 **THROUGH ENTITIES.**

4 (a) IN GENERAL.—Section 170(h) of the Internal
 5 Revenue Code of 1986 is amended by adding at the end
 6 the following new paragraph:

7 “(7) LIMITATION ON DEDUCTION FOR QUALI-
 8 FIED CONSERVATION CONTRIBUTIONS MADE BY
 9 PASS-THROUGH ENTITIES.—

10 “(A) IN GENERAL.—A contribution by a
 11 partnership (whether directly or as a distribu-
 12 tive share of a contribution of another partner-
 13 ship) shall not be treated as a qualified con-
 14 servation contribution for purposes of this sec-
 15 tion if the amount of such contribution exceeds
 16 2.5 times the sum of each partner’s relevant
 17 basis in such partnership.

18 “(B) RELEVANT BASIS.—For purposes of
 19 this paragraph—

20 “(i) IN GENERAL.—The term ‘relevant
 21 basis’ means, with respect to any partner,
 22 the portion of such partner’s modified
 23 basis in the partnership which is allocable
 24 (under rules similar to the rules of section
 25 755) to the portion of the real property

with respect to which the contribution described in subparagraph (A) is made.

“(ii) MODIFIED BASIS.—The term ‘modified basis’ means, with respect to any partner, such partner’s adjusted basis in the partnership as determined—

“(I) immediately before the contribution described in subparagraph (A),

“(II) without regard to section 752, and

“(III) by the partnership after taking into account the adjustments described in subclauses (I) and (II) and such other adjustments as the Secretary may provide.

“(C) EXCEPTION FOR CONTRIBUTIONS OUTSIDE 3-YEAR HOLDING PERIOD.—Subparagraph (A) shall not apply to any contribution which is made at least 3 years after the latest of—

“(i) the last date on which the partnership that made such contribution acquired any portion of the real property

1 with respect to which such contribution is
 2 made,

3 “(ii) the last date on which any part-
 4 ner in the partnership that made such con-
 5 tribution acquired any interest in such
 6 partnership, and

7 “(iii) if the interest in the partnership
 8 that made such contribution is held
 9 through one or more partnerships—

10 “(I) the last date on which any
 11 such partnership acquired any interest
 12 in any other such partnership, and

13 “(II) the last date on which any
 14 partner in any such partnership ac-
 15 quired any interest in such partner-
 16 ship.

17 “(D) EXCEPTION FOR FAMILY PARTNER-
 18 SHIPS.—

19 “(i) IN GENERAL.—Subparagraph (A)
 20 shall not apply with respect to any con-
 21 tribution made by any partnership if sub-
 22 stantially all of the partnership interests in
 23 such partnership are held, directly or indi-
 24 rectly, by an individual and members of
 25 the family of such individual.

1 “(ii) MEMBERS OF THE FAMILY.—For
2 purposes of this subparagraph, the term
3 ‘members of the family’ means, with re-
4 spect to any individual—

5 “(I) the spouse of such indi-
6 vidual, and

7 “(II) any individual who bears a
8 relationship to such individual which
9 is described in subparagraphs (A)
10 through (G) of section 152(d)(2).

11 “(E) APPLICATION TO OTHER PASS-
12 THROUGH ENTITIES.—Except as may be other-
13 wise provided by the Secretary, the rules of this
14 paragraph shall apply to S corporations and
15 other pass-through entities in the same manner
16 as such rules apply to partnerships.

17 “(F) REGULATIONS.—The Secretary shall
18 prescribe such regulations or other guidance as
19 may be necessary or appropriate to carry out
20 the purposes of this paragraph, including regu-
21 lations or other guidance—

22 “(i) to require reporting, including re-
23 porting related to tiered partnerships and
24 the modified basis of partners, and

1 “(ii) to prevent the avoidance of the
2 purposes of this paragraph.”.

3 (b) APPLICATION OF ACCURACY-RELATED PEN-
4 ALTIES.—

5 (1) IN GENERAL.—Section 6662(b) of the In-
6 ternal Revenue Code of 1986 is amended by insert-
7 ing after paragraph (9) the following new para-
8 graph:

9 “(10) Any disallowance of a deduction by rea-
10 son of section 170(h)(7).”.

11 (2) TREATMENT AS GROSS VALUATION
12 MISSTATEMENT.—Section 6662(h)(2) of such Code
13 is amended by striking “and” at the end of subpara-
14 graph (B), by striking the period at the end of sub-
15 paragraph (C) and inserting “, and”, and by adding
16 at the end the following new subparagraph:

17 “(D) any disallowance of a deduction de-
18 scribed in subsection (b)(10).”.

19 (3) NO REASONABLE CAUSE EXCEPTION.—Sec-
20 tion 6664(c)(2) of such Code is amended by insert-
21 ing “or to any disallowance of a deduction described
22 in section 6662(b)(10)” before the period at the end.

23 (4) APPROVAL OF ASSESSMENT NOT RE-
24 QUIRED.—Section 6751(b)(2)(A) of such Code is

1 amended by striking “subsection (b)(9)” and insert-
 2 ing “paragraph (9) or (10) of subsection (b)”.

3 (c) APPLICATION OF STATUTE OF LIMITATIONS ON
 4 ASSESSMENT AND COLLECTION.—

5 (1) EXTENSION FOR CERTAIN ADJUSTMENTS
 6 MADE UNDER PRIOR LAW.—In the case of any dis-
 7 allowance of a deduction by reason of section
 8 170(h)(7) of the Internal Revenue Code of 1986 (as
 9 added by this section) or any penalty imposed under
 10 section 6662 of such Code with respect to such dis-
 11 allowance, section 6229(d)(2) of such Code (as in ef-
 12 fect before its repeal) shall be applied by sub-
 13 stituting “2 years” for “1 year”.

14 (2) EXTENSION FOR LISTED TRANSACTIONS.—
 15 Any contribution described in section 170(h)(7)(A)
 16 of the Internal Revenue Code of 1986 (as added by
 17 this section) shall be treated for purpose of sections
 18 6501(c)(10) and 6235(c)(6) of such Code as a
 19 transaction specifically identified by the Secretary on
 20 December 23, 2016, as a tax avoidance transaction
 21 for purposes of section 6011 of such Code.

22 (d) APPLICATION TO CERTAIN TRANSACTIONS DIS-
 23 ALLOWED UNDER OTHER PROVISIONS OF LAW.—In the
 24 case of any disallowance of a deduction under section 170
 25 of the Internal Revenue Code of 1986 with respect a

1 transaction described in Internal Revenue Service Notice
2 2017-10 with respect to a taxable year ending before the
3 date of the enactment of this Act, such disallowance shall
4 be treated for purposes of section 6662(b)(10) of such
5 Code (as added by this section) and subsection (c)(1) as
6 being by reason of section 170(h)(7) of such Code (as
7 added by this section).

8 (e) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (2), the amendments made by this section
11 shall apply to contributions made after December
12 23, 2016, in taxable years ending after such date.

13 (2) CERTIFIED HISTORIC STRUCTURES.—In the
14 case of contributions the conservation purpose (as
15 defined in section 170(h)(4) of the Internal Revenue
16 Code of 1986) of which is the preservation of a cer-
17 tified historic structure (as defined in section
18 170(h)(4)(C) of such Code), the amendments made
19 by this section shall apply to contributions made in
20 taxable years beginning after December 31, 2018.

21 (3) NO INFERENCE.—No inference is intended
22 as to the appropriate treatment of contributions
23 made in taxable years ending on or before the date
24 specified in paragraph (1) or (2), whichever is appli-
25 cable, or as to any activity not described in section

- 1 170(h)(7) of the Internal Revenue Code of 1986, as
- 2 added by this section.

