

TRIBAL GENERAL WELFARE
EXCLUSION ACT OF 2014

Mr. WYDEN. Mr. President, I rise as chairman of the Senate Finance Committee to strongly support the Senate's passage of an important tax bill, H.R. 3043, the Tribal General Welfare Exclusion Act of 2014. This bill will improve the application of the Federal income tax in Indian Country and in doing so will reflect appropriate respect for the sovereignty of tribal governments.

By way of background, the Federal Tax Code treats most payments that individuals receive, and the value of some services they receive, as taxable income. There is an exclusion, though, for payments and services received under programs conducted by State and local governments. It's called the general welfare exclusion, and it covers things like housing assistance, emergency medical care, and education assistance. These are traditionally treated as nontaxable.

Unfortunately, the IRS has had difficulty applying the general welfare exclusion when it comes to benefits provided by tribal governments to tribal members. In order to determine which benefits were excluded from taxation, the IRS began conducting aggressive audits, leaving the tax treatment of many tribe-provided benefits in doubt. As Delores Pigsley, chairman of the Confederated Tribes of Siletz Indians Tribal Council, put it in a letter to me, "for several years, the IRS has sought to tax tribal government programs and services." This, in turn, has undermined tribal sovereignty and hindered economic and social development.

I am pleased to report that there has been some significant progress. In July, the IRS issued regulations clarifying the application of the exclusion, and the regulations were a good step in the right direction, clearing up some questions and reflecting an improved dialogue between the IRS and tribes. However, a regulation is not a congressional statute; we need to lock these improvements into statutory law, as well as expand on them such as by establishing a Tribal Advisory Committee to help the Treasury Department and the IRS understand about how best to address tax issues affecting Indian Country.

The bill we are considering today would accomplish these goals. It codifies and expands IRS regulations, draws clear lines, and gives greater respect to tribal institutions and programs.

I would like to acknowledge the principal sponsors of the Senate version of the bill, Senators MORAN and HEITKAMP, for their leadership. I also would like to thank Senators STABENOW, THUNE, and other members of the Finance Committee, who have urged the committee to move forward on this issue.

Tribal governments have a long history of providing critical benefits to tribal members, and these programs are fundamental to the sovereignty and

cultural integrity of tribes. Tribes, and not the IRS, are in the best position to determine the needs of their members and provide for the general welfare of their tribal citizens and communities. I know this bill has the support of tribes in my home State of Oregon and will benefit tribes and tribal members across the Nation. I urge all Senators to support the bill.

AMENDING THE EMPLOYEE RE-
TIREMENT INCOME SECURITY
ACT OF 1974

Mr. HARKIN. Mr. President, as chairman of the Health, Education, Labor, and Pensions Committee, the pension community approached me with their concerns that the Pension Benefit Guaranty Corporation was interpreting section 4062(e) of the Employee Retirement Income Security Act of 1974 too broadly. That provision was intended to protect pension plan participants in the event of a cessation of operations at a facility. However, the pension community was able to provide substantial evidence that the corporation's enforcement efforts were out of line with congressional intent to such an extent that section 4062(e) had become a major impediment to businesses' efforts to restructure. After a thorough review of the situation and consultation with employers, employees, retirees, and the Obama administration, it became abundantly clear that enforcement efforts under section 4062(e) were failing to protect either pensions or the corporation.

Consequently, I worked with the ranking member, Senator ALEXANDER, on a new approach that we introduced as S. 2511. That legislation, which passed out of committee on a unanimous vote, will restore the original intent of section 4062(e) by clarifying the types of cessations of operations that trigger downsizing liability. The legislation will give plan sponsors certainty with respect to their obligations, and it will also ensure that participants are protected when workforce reductions signal that the ongoing viability of a plan sponsor is in question.

Overall, S. 2511 represents a significant compromise between the needs of employers, employees, and retirees, and I think it will give everyone a lot more clarity with regard to their obligations under section 4062(e). However, there are a few points about the bill that I would like to clarify.

First, there may be questions as to how the terms "facility" and "location" should be interpreted. They are not explicitly defined in S. 2511 because we intend for them to be interpreted according to their natural usage. For example, if an employer maintains several buildings that are physically adjacent to each other, that would be a single facility at a single location. However, if the employer maintains a building in one part of a city and another building in another part of the city, those buildings would be separate facilities at separate locations.

Second, S. 2511 is intended to allow employers to make conditional elections. The legislation allows employers that have a substantial cessation under section 4062(e) to elect a new, alternative means of satisfying their liability. The election must be made not later than 30 days after the earlier of the date that the employer notifies the corporation of a substantial cessation of operations or the date that the corporation makes a final administrative determination both that a substantial cessation of operations has occurred and of the amount of the alternative liability. Of course, there may be instances in which it is uncertain as to whether such a cessation has occurred or the amount of the alternative liability, if any, even after a final administrative determination has been made by the corporation. In those cases, the employer would certainly not be required to make a binding election to pay amounts that may later be determined not to be due. Thus, in all cases, an election by the employer would become inapplicable to the extent that a court subsequently rules or the corporation later agrees that a cessation has not occurred or that the alternative liability amount is lower than the amount determined by the corporation.

To the extent that an election becomes inapplicable, any contributions previously made by the employer to satisfy such inapplicable liability amount should be treated as additional funding contributions that are not subject to the provisions of the bill. Consequently, such additional funding contributions could be treated as increasing the employer's prefunding balance. In addition, we fully intend for the corporation and the courts to have the power to stay, in whole or in part, an employer's obligation to make alternative liability payments until the court has determined whether there has been a substantial cessation and/or the alternative liability amount.

In other cases, a substantial cessation may have occurred, but there is no liability of any kind due to the corporation's enforcement policy. We expect that some employers may want to make an election of the alternative liability amount in case the employer's financial condition changes and the corporation asserts a liability under section 4062(e). In such cases, the annual amount due under the alternative liability method would be zero until the corporation makes a final administrative determination that the corporation's enforcement policy no longer applies to such employer. To ensure that a substantial cessation in one year cannot cause liabilities 10 or 20 years later, for example, the 7-year payment period for the alternative liability amount would include years in which the amount due is zero.

In order to ensure that any reporting requirement that may later be determined to apply is satisfied, an employer may notify the corporation of