DESCRIPTION OF THE CHAIRMAN'S MARK OF A PROPOSAL TO PROVIDE SPECIAL RULES CONCERNING CHARITABLE CONTRIBUTIONS TO, AND PUBLIC CHARITY STATUS OF, AGRICULTURAL RESEARCH ORGANIZATIONS

Scheduled for Markup
by the
SENATE COMMITTEE ON FINANCE
on February 11, 2015

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of the
JOINT COMMITTEE ON TAXATION

February 9, 2015
JCX-24-15

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INTRODUCTION

The Senate Committee on Finance has scheduled a committee markup on February 11, 2015, of a proposal to provide special rules concerning charitable contributions to, and public charity status of, agricultural research organizations. This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Mark of a Proposal to Provide Special Rules Concerning Charitable Contributions to, and Public Charity Status of, Agricultural Research Organizations* (JCX-24-15), February 9, 2015. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Provide Special Rules Concerning Charitable Contributions to, and Public Charity Status of, Agricultural Research Organizations

Present Law

Public charities and private foundations

An organization qualifying for tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") is further classified as either a public charity or a private foundation. An organization may qualify as a public charity in several ways.[2] Certain organizations are classified as public charities *per se*, regardless of their sources of support. These include churches, certain schools, hospitals and other medical organizations (including medical research organizations), certain organizations providing assistance to colleges and universities, and governmental units.[3] Other organizations qualify as public charities because they are broadly publicly supported. First, a charity may qualify as publicly supported if at least one-third of its total support is from gifts, grants or other contributions from governmental units or the general public.[4] Alternatively, it may qualify as publicly supported if it receives more than one-third of its total support from a combination of gifts, grants, and contributions from governmental units and the public plus revenue arising from activities related to its exempt purposes (*e.g.*, fee for service income). In addition, this category of public charity must not rely excessively on endowment income as a source of support.[5] A supporting organization, *i.e.*, an organization that provides support to another section 501(c)(3) entity that is not a private foundation and meets certain other requirements of the Code, also is classified as a public charity.[6]

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[2] The Code does not expressly define the term "public charity," but rather provides exceptions to those entities that are treated as private foundations.

[3] Sec. 509(a)(1) (referring to sections 170(b)(1)(A)(i) through (iv) for a description of these organizations).

[4] Treas. Reg. sec. 1.170A-9(f)(2). Failing this mechanical test, the organization may qualify as a public charity if it passes a "facts and circumstances" test. Treas. Reg. sec. 1.170A-9(f)(3).

[5] To meet this requirement, the organization must normally receive more than one-third of its support from a combination of (1) gifts, grants, contributions, or membership fees and (2) certain gross receipts from admissions, sales of merchandise, performance of services, and furnishing of facilities in connection with activities that are related to the organization's exempt purposes. Sec. 509(a)(2)(A). In addition, the organization must not normally receive more than one-third of its public support in each taxable year from the sum of (1) gross investment income and (2) the excess of unrelated business taxable income as determined under section 512 over the amount of unrelated business income tax imposed by section 511. Sec. 509(a)(2)(B).

[6] Sec. 509(a)(3). Organizations organized and operated exclusively for testing for public safety also are classified as public charities. Sec. 509(a)(4). Such organizations, however, are not eligible to receive deductible charitable contributions under section 170.

A section 501(c)(3) organization that does not fit within any of the above categories is a private foundation. In general, private foundations receive funding from a limited number of sources (*e.g.*, an individual, a family, or a corporation).

The deduction for charitable contributions to private foundations is in some instances less generous than the deduction for charitable contributions to public charities. For example, an individual taxpayer who makes a cash charitable contribution may deduct the contribution up to 50 percent of her contribution base (generally, adjusted gross income, with modifications) if the contribution is made to a public charity, but only up to 30 percent of her contribution base if the contribution is made to a non-operating private foundation.[7]

In addition, private foundations are subject to a number of operational rules and restrictions that do not apply to public charities, as well as a tax on their net investment income.[8]

Medical research organizations

A medical research organization is treated as a public charity *per se*, regardless of its sources of financial support, and charitable contributions to a medical research organization may qualify for the more preferential 50-percent limitation.[9]

To qualify as a medical research organization, an organization's principal purpose or functions must be medical research, and it must be directly engaged in the continuous active conduct of medical research in conjunction with a hospital.[10] For a contribution to a medical research organization to qualify for the more preferential 50-percent limitation of section 170(b)(1)(A), during the calendar year in which the contribution is made, the organization must be committed to spend such contribution for the active conduct of medical research before January 1 of the fifth calendar year beginning after the date such contribution is made.[11]

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[7] Secs. 170(b)(1)(A) and (B).

[8] Unlike public charities, private foundations are subject to tax on their net investment income at a rate of two percent (one percent in some cases). Sec. 4940. Private foundations also are subject to more restrictions on their activities than are public charities. For example, private foundations are prohibited from engaging in self-dealing transactions (sec. 4941), are required to make a minimum amount of charitable distributions each year (sec. 4942), are limited in the extent to which they may control a business (sec. 4943), may not make speculative investments (sec. 4944), and may not make certain expenditures (sec. 4945). Violations of these rules result in excise taxes on the foundation and, in some cases, may result in excise taxes on the managers of the foundation.

[9] Secs. 170(b)(1)(A)(iii) and 509(a)(1).

[10] Treas. Reg. sec. 1.170A-9(d)(2)(i).

[11] *Ibid.*

Lobbying activities of section 501(c)(3) organizations

Charitable organizations face limits on the amount of permissible lobbying activity. An organization does not qualify for tax-exempt status as a charitable organization unless "no substantial part" of its activities constitutes "carrying on propaganda, or otherwise attempting, to influence legislation" (commonly referred to as "lobbying").[12] Public charities may engage in limited lobbying activities, provided that such activities are not substantial, without losing their tax-exempt status and generally without being subject to tax. In contrast, private foundations are subject to a restriction that lobbying activities, even if insubstantial, may result in the foundation being subject to penalty excise taxes.[13]

For purposes of determining whether lobbying activities are a substantial part of a public charity's overall functions, a public charity may choose between two standards, the "substantial part" test or the "expenditure" test.[14] The substantial part test derives from the statutory language quoted above and uses a facts and circumstances approach to measure the permissible level of lobbying activities. The expenditure test sets specific dollar limits, calculated as a percentage of a charity's total exempt purpose expenditures, on the amount a charity may spend to influence legislation.[15]

Description of Proposal

The proposal amends section 170(b)(1)(A) to provide special treatment for certain agricultural research organizations, similar to the present-law treatment for medical research organizations. The effect of the proposed amendment, therefore, is to: (1) allow certain charitable contributions to qualifying agricultural research organizations to qualify for the 50-percent limitation; and (2) treat qualifying agricultural research organizations as public charities (*i.e.*, non-private foundations) *per se*, regardless of their sources of financial support.

To qualify, an agricultural research organization must be engaged in the continuous active conduct of agricultural research (as defined in section 1404 of the Agricultural Research, Extension, and Teaching Policy Act of 1977) in conjunction with a land-grant college or university (as defined in such section) or a non-land grant college of agriculture (as defined in such section). In addition, for a contribution to an agricultural research organization to qualify for the 50-percent limitation, during the calendar year in which a contribution is made to the organization it must be committed to spend the contribution for such research before January 1 of the fifth calendar year which begins after the date of enactment.

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[12] Sec. 501(c)(3).

[13] Sec. 4945(d)(1).

[14] Secs. 501(c)(3), 501(h), and 4911. Churches and certain church-related entities may not choose the expenditure test. Sec. 501(h)(5).

[15] Secs. 501(h) and 4911.

An agricultural research organization is permitted to use the expenditure test of section 501(h) for purposes of determining whether a substantial part of its activities consist of carrying on propaganda, or otherwise attempting, to influence legislation (*i.e.*, lobbying).

Effective Date

The proposal is effective for contributions made on or after the date of enactment.

B. Estimated Revenue Effects

Fiscal Years [Millions of Dollars]												
2015	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**	**2025**	**2015-20**	**2015-25**
[1]	-2	-3	-3	-3	-3	-3	-3	-4	-4	-4	-13	-32

NOTE: Details do not add to totals due to rounding.
[1] Loss of less than $500,000.

C. Increase Continuous Levy Authority on Payments to Medicare Providers and Suppliers

Present Law

In general

Levy is the administrative authority of the IRS to seize a taxpayer's property, or rights to property, to pay the taxpayer's tax liability.[16] Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,[17] the property is not exempt from levy,[18] and the IRS has provided both notice of intention to levy[19] and notice of the right to an administrative hearing (the notice is referred to as a "collections due process notice" or "CDP notice" and the hearing is referred to as the "CDP hearing")[20] at least 30 days before the levy is made. A levy on salary or wages generally is continuously in effect until released.[21] A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.[22]

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.[23]

The CDP notice (and pre-levy CDP hearing) is not required if: (1) the Secretary finds that collection would be jeopardized by delay; (2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund; (3) the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served; or (4) the Secretary has served a Federal contractor levy. In each of these four cases,

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[16] Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.

[17] *Ibid*.

[18] Sec. 6334.

[19] Sec. 6331(d).

[20] Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.

[21] Secs. 6331(e) and 6343.

[22] Sec. 6321.

[23] Secs. 6331(d)(3) and 6861.

however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.[24]

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997[25] authorized the establishment of the Federal Payment Levy Program ("FPLP"), which allows the IRS to continuously levy up to 15 percent of certain "specified payments" by the Federal government if the payees are delinquent on their tax obligations. With respect to payments to vendors of goods, services, or property sold or leased to the Federal government, the continuous levy may be up to 100 percent of each payment.[26] For payments to Medicare providers and suppliers, the levy is up to 15 percent for payments made within 180 days after December 19, 2014. For payments made after that date, the levy is up to 30 percent.[27]

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by Treasury's Bureau of Fiscal Service ("BFS"), such as certain Social Security benefit and Federal wage records. When these records match, the delinquent taxpayer is provided both the notice of intention to levy and the CDP notice. If the taxpayer does not respond after 30 days, the IRS can instruct BFS to levy the taxpayer's Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or the IRS releases the levy.

Description of Proposal

The proposal provides that the present limitation of 30 percent of certain specified payments be increased by an amount sufficient to offset the estimated revenue loss of the provision described in Part A, above.

Effective Date

The proposal is effective for payments made after 180 days after the date of enactment.

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[24] Sec. 6330(f).

[25] Pub. L. No. 105-34.

[26] Sec. 6331(h)(3).

[27] Pub. L. No. 113-295, Division B.