Bond Case Briefs

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S. 952 Would Clarify Treatment of Church Pension Plans.

S. 952, the Church Plan Clarification Act of 2013, introduced by Senate Finance Committee member Benjamin L. Cardin, D-Md., would provide various clarifications regarding the treatment of church plans, including application of controlled group rules, contribution limits, automatic enrollment, transfers and mergers, and investments.

113TH CONGRESS

1ST SESSION

S. 952

To amend the Internal Revenue Code of 1986 to clarify the

treatment of church pension plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 14, 2013

Mr. CARDIN (for himself and Mr. PORTMAN) 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 clarify the treatment of church pension plans, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Church Plan Clarification Act of 2013”.

SEC. 2. CHURCH PLAN CLARIFICATION.

(a) APPLICATION OF CONTROLLED GROUP RULES TO CHURCH PLANS. —

(1) IN GENERAL. — Section 414(c) of the Internal Revenue Code of 1986 is amended —

(A) by striking “For purposes” and inserting the following:

“(1) IN GENERAL. — For purposes”, and

(B) by adding at the end the following new paragraph:

“(2) CHURCH PLANS. —

“(A) GENERAL RULE. — Except as provided in subparagraphs (B) and (C), for purposes of this subsection and subsection (m), an organization that is otherwise eligible to participate in a church plan as defined in subsection (e) shall not be aggregated with another such organization and treated as a single employer with such other organization unless —

“(i) one such organization provides directly or indirectly at least 80 percent of the operating funds for the other organization during the preceding tax year of the recipient organization, and

“(ii) there is a degree of common management or supervision between the organizations.

For purposes of this subparagraph, a degree of common management or supervision exists only if the organization providing the operating funds is directly involved in the day-to-day operations of the other organization.

“(B) NONQUALIFIED CHURCH-CONTROLLED ORGANIZATIONS. — Notwithstanding the provisions of subparagraph (A), for purposes of this subsection and subsection (m), an organization that is a nonqualified church-controlled organization shall be aggregated with one or more other nonqualified church-controlled organizations, or with an organization that is not exempt from tax under section 501, and treated as a single employer with such other organizations, if at least 80 percent of the directors or trustees of such organizations are either representatives of, or directly or indirectly controlled by, the first organization. For purposes of this subparagraph, a ‘nonqualified church controlled organization’ shall mean a church-controlled organization described in section 501(c)(3) that is not a qualified church-controlled organization described in section 3121(w)(3)(B).

“(C) PERMISSIVE AGGREGATION AMONG CHURCH-RELATED ORGANIZATIONS. — Organizations described in subparagraph (A) may elect to be treated as under common control for purposes of this subsection. Such election shall be made by the church or convention or association of churches with which such organizations are associated within the meaning of subsection (e)(3)(D), or by an organization determined by such church or convention or association of churches to be the appropriate organization for making such election.

“(D) PERMISSIVE DISAGGREGATION OF CHURCH-RELATED ORGANIZATIONS. — For purposes of subparagraph (A), in the case of a church plan (as defined in subsection (e)), any employer may permissively disaggregate those entities that are not churches (as defined in section 403(b)(12)(B)) separately from those entities that are churches, even if such entities maintain separate church plans.

“(E) ANTI-ABUSE RULE. — For purposes of subparagraphs (A) and (B), the anti-abuse rule in Treasury Regulation section 1.414(c)-5(f) shall apply.”.

(2) EFFECTIVE DATE. — The amendments made by this subsection shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

(b) APPLICATION OF CONTRIBUTION AND FUNDING LIMITATIONS TO 403(b) GRANDFATHERED DEFINED BENEFIT PLANS. —

(1) IN GENERAL. — Section 251(e)(5) of the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248), is amended —

(A) by striking “403(b)(2)” and inserting “403(b)”, and

(B) by inserting before the period at the end the following: “, and shall be subject to the applicable limitations of section 415(b) of such Code as if it were a defined benefit plan under section 401(a) of such Code and not the limitations of section 415(c) of such Code (relating to limitation for defined contribution plans).”.

(2) EFFECTIVE DATE. — The amendments made by this subsection shall apply as if included in the enactment of the Tax Equity and Fiscal Responsibility Act of 1982.

(c) AUTOMATIC ENROLLMENT BY CHURCH PLANS. —

(1) IN GENERAL. — This subsection shall supersede any law of a State that relates to wage, salary, or payroll payment, collection, deduction, garnishment, assignment, or withholding which would directly or indirectly prohibit or restrict the inclusion in any church plan (as defined in this subsection) of an automatic contribution arrangement.

(2) DEFINITION OF AUTOMATIC CONTRIBUTION ARRANGEMENT. — For purposes of this subsection, the term “automatic contribution arrangement” means an arrangement —

(A) under which a participant may elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash, and

(B) under which a participant is treated as having elected to have the plan sponsor make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage).

(3) NOTICE REQUIREMENTS. —

(A) IN GENERAL. — The plan administrator of an automatic contribution arrangement shall, within a reasonable period before such plan year, provide to each participant to whom the arrangement applies for such plan year notice of the participant’s rights and obligations under the arrangement which —

(i) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

(B) ELECTION REQUIREMENTS. — A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to a participant unless —

(i) the notice includes an explanation of the participant’s right under the arrangement not to have elective contributions made on the participant’s behalf (or to elect to have such contributions made at a different percentage),

(ii) the participant has a reasonable period of time, after receipt of the notice described in clause (i) and before the first elective contribution is made, to make such election, and

(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the participant.

(4) EFFECTIVE DATE. — This subsection shall take effect on the date of the enactment of this Act.

(d) ALLOW CERTAIN PLAN TRANSFERS AND MERGERS. —

(1) IN GENERAL. — Section 414 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(y) CERTAIN PLAN TRANSFERS AND MERGERS. —

"(1) IN GENERAL. — Under rules prescribed by the Secretary, except as provided in paragraph (2), no amount shall be includible in gross income by reason of —

"(A) a transfer of all or a portion of the account balance of a participant or beneficiary, whether or not vested, from a plan described in section 401(a) or an annuity contract described in section 403(b), which is a church plan described in subsection (e) to an annuity contract described in section 403(b), if such plan and annuity contract are both maintained by the same church or convention or association of churches,

"(B) a transfer of all or a portion of the account balance of a participant or beneficiary, whether or not vested, from an annuity contract described in section 403(b) to a plan described in section 401(a) or an annuity contract described in section 403(b), which is a church plan described in subsection (e), if such plan and annuity contract are both maintained by the same church or convention or association of churches, or

"(C) a merger of a plan described in section 401(a), or an annuity contract described in section 403(b), which is a church plan described in subsection (e) with an annuity contract described in section 403(b), if such plan and annuity contract are both maintained by the same church or convention or association of churches.

"(2) LIMITATION. — Paragraph (1) shall not apply to a transfer or merger unless the participant's or beneficiary's benefit immediately after the transfer or merger is equal to or greater than the participant's or beneficiary's benefit immediately before the transfer or merger.

"(3) QUALIFICATION. — A plan or annuity contract shall not fail to be considered to be described in sections 401(a) or 403(b) merely because such plan or account engages in a transfer or merger described in this subsection.

"(4) DEFINITIONS. — For purposes of this subsection:

"(A) CHURCH. — The term 'church' includes an organization described in subparagraph (A) or (B)(ii) of subsection (e)(3).

"(B) ANNUITY CONTRACT. — The term 'annuity contract' includes a custodial account described in section 403(b)(7) and a retirement income account described in section 403(b)(9).".

(2) EFFECTIVE DATE. — The amendment made by this subsection shall apply to transfers or mergers occurring after the date of the enactment of this Act.

(e) INVESTMENTS BY CHURCH PLANS IN COLLECTIVE TRUSTS. —

(1) IN GENERAL. — In the case of —

(A) a church plan (as defined in section 414(e) of the Internal Revenue Code of 1986), including a

plan described in section 401(a) of such Code and a retirement income account described in section 403(b)(9) of such Code, and

(B) an organization described in section 414(e)(3)(A) of such Code the principal purpose or function of which is the administration of such a plan or account,

the assets of such plan, account, or organization (including any assets otherwise permitted to be commingled for investment purposes with the assets of such a plan, account, or organization) may be invested in a group trust otherwise described in Internal Revenue Service Revenue Ruling 81-100 (as modified by Internal Revenue Service Revenue Rulings 2004-67 and 2011-1), or any subsequent revenue ruling that supersedes or modifies such revenue ruling, without adversely affecting the tax status of the group trust, such plan, account, or organization, or any other plan or trust that invests in the group trust.

(2) EFFECTIVE DATE. — This subsection shall apply to investments made after the date of the enactment of this Act.