

112TH CONGRESS  
1ST SESSION

# S. 143

To amend the Internal Revenue Code of 1986 to clarify the treatment of church pension plans, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Mrs. HUTCHISON (for herself and Mr. CARDIN) 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 clarify the treatment of church pension plans, and for other purposes.

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 “Church Plan Clarifica-  
5 tion Act of 2011”.

6 **SEC. 2. APPLICATION OF CONTROLLED GROUP RULES TO**  
7 **CHURCH PLANS.**

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

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

3           “(1) IN GENERAL.—For purposes”, and

4           (2) by adding at the end the following new  
5 paragraph:

6           “(2) CHURCH PLANS.—For purposes of this  
7 subsection, in determining whether an employer who  
8 is otherwise eligible to participate in a church plan  
9 is treated as a member of a group of entities under  
10 common control, such employer (including an orga-  
11 nization described in subsection (e)(3)(A)) shall not  
12 be treated as under common control with another  
13 entity if, based on all of the facts and circumstances,  
14 the day-to-day financial and operational activities  
15 are not under common control. In determining if  
16 such activities are under common control, the Sec-  
17 retary shall consider whether the entities have been  
18 historically viewed as distinct entities within the  
19 church or convention or association of churches.”.

20           (b) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to taxable years beginning before,  
22 on, or after the date of the enactment of this Act.

1 **SEC. 3. APPLICATION OF CONTRIBUTION AND FUNDING**  
2 **LIMITATIONS TO 403(b) GRANDFATHERED DE-**  
3 **FINED BENEFIT PLANS.**

4 (a) IN GENERAL.—Section 251(e)(5) of the Tax Eq-  
5 uity and Fiscal Responsibility Act of 1982 (Public Law  
6 97–248), is amended—

7 (1) by striking “403(b)(2)” and inserting  
8 “403(b)”, and

9 (2) by inserting before the period at the end the  
10 following: “, and shall be subject to the applicable  
11 limitations of section 415(b) of such Code as if it  
12 were a defined benefit plan under section 401(a) of  
13 such Code and not the limitations of section 415(c)  
14 of such Code (relating to limitation for defined con-  
15 tribution plans).”.

16 (b) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply as if included in the enactment  
18 of the Tax Equity and Fiscal Responsibility Act of 1982.

19 **SEC. 4. AUTOMATIC ENROLLMENT BY CHURCH PLANS.**

20 (a) IN GENERAL.—For purposes of section 514(e) of  
21 the Employee Retirement Income Security Act of 1974  
22 (29 U.S.C. 1114(e)), the term “plan” shall include an em-  
23 ployee benefit plan which is a church plan (as defined in  
24 section 3(33) of such Act or section 414(e) of the Internal  
25 Revenue Code of 1986).

1 (b) EFFECTIVE DATE.—This section shall take effect  
2 on the date of the enactment of this Act.

3 **SEC. 5. ALLOW CERTAIN PLAN TRANSFERS AND MERGERS.**

4 (a) IN GENERAL.—Section 414 of the Internal Rev-  
5 enue Code of 1986 is amended by adding at the end the  
6 following new subsection:

7 “(y) CERTAIN PLAN TRANSFERS AND MERGERS.—

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

12 “(A) a transfer of all or a portion of the  
13 account balance of a participant or beneficiary,  
14 whether or not vested, from a plan described in  
15 section 401(a), or a retirement income account  
16 described in section 403(b)(9), which is a  
17 church plan described in section 414(e) to a re-  
18 tirement income account described in section  
19 403(b)(9), if such plan and account are both  
20 maintained by the same church or convention or  
21 association of churches;

22 “(B) a transfer of all or a portion of the  
23 account balance of a participant or beneficiary,  
24 whether or not vested, from a retirement in-  
25 come account described in section 403(b)(9) to

1 a plan described in section 401(a), or a retire-  
2 ment income account described in section  
3 403(b)(9), which is a church plan described in  
4 section 414(e), if such plan and account are  
5 both maintained by the same church or conven-  
6 tion or association of churches, or

7 “(C) a merger of a plan described in sec-  
8 tion 401(a), or a retirement income account de-  
9 scribed in section 403(b)(9), which is a church  
10 plan described in section 414(e) with a retire-  
11 ment income account described in section  
12 403(b)(9), if such plan and account are both  
13 maintained by the same church or convention or  
14 association of churches.

15 “(2) LIMITATION.—Paragraph (1) shall not  
16 apply to a transfer or merger unless the partici-  
17 pant’s or beneficiary’s benefit immediately after the  
18 transfer or merger is equal to or greater than the  
19 participant’s or beneficiary’s benefit immediately be-  
20 fore the transfer or merger.

21 “(3) QUALIFICATION.—A plan or account shall  
22 not fail to be considered to be described in sections  
23 401(a) or 403(b)(9) merely because such plan or ac-  
24 count engages in a transfer or merger described in  
25 this subsection.

1           “(4) DEFINITION OF CHURCH.—For purposes  
2 of this subsection, the term ‘church’ includes an or-  
3 ganization described in subparagraph (A) or (B)(ii)  
4 of subsection (e)(3).”.

5           (b) EFFECTIVE DATE.—The amendment made by  
6 this section shall apply to transfers or mergers occurring  
7 after the date of the enactment of this Act.

8 **SEC. 6. INVESTMENTS BY CHURCH PLANS IN COLLECTIVE**  
9 **TRUSTS.**

10          (a) IN GENERAL.—In the case of—

11           (1) a church plan (as defined in section 414(e)  
12 of the Internal Revenue Code 1986), including a  
13 plan described in section 401(a) of such Code and  
14 a retirement income account described in section  
15 403(b)(9) of such Code, and

16           (2) an organization described in section  
17 414(e)(3)(A) of such Code the principal purpose or  
18 function of which is the administration of such a  
19 plan or account,

20 the assets of such plan, account, or organization (includ-  
21 ing any assets otherwise permitted to be commingled for  
22 investment purposes with the assets of such a plan, ac-  
23 count, or organization) may be invested in a group trust  
24 otherwise described in Internal Revenue Service Revenue  
25 Ruling 81–100 (as modified by Internal Revenue Service

1 Revenue Ruling 2004–67), or any subsequent revenue rul-  
2 ing that supersedes or modifies such revenue ruling, with-  
3 out adversely affecting the tax status of the group trust,  
4 such plan, account, or organization, or any other plan or  
5 trust that invests in the group trust.

6 (b) EFFECTIVE DATE.—This section shall apply to  
7 investments made after the date of the enactment of this  
8 Act.

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