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114TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 114–16

PERMANENT S CORPORATION CHARITABLE CONTRIBUTION ACT OF 2015

FEBRUARY 9, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RYAN of Wisconsin, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 630]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 630) to amend the Internal Revenue Code of 1986 to make permanent certain rules regarding basis adjustments to stock of S corporations making charitable contributions of property, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Permanent S Corporation Charitable Contribution Act of 2015".

SEC. 2. PERMANENT RULE REGARDING BASIS ADJUSTMENT TO STOCK OF S CORPORATIONS MAKING CHARITABLE CONTRIBUTIONS OF PROPERTY.

(a) IN GENERAL.—Section 1367(a)(2) of the Internal Revenue Code of 1986 is amended by striking the last sentence.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in taxable years beginning after December 31, 2014.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H.R. 630, reported by the Committee on Ways and Means, provides that a shareholder's basis in his S corporation stock is decreased by the adjusted basis of any charitable contributions made by the S corporation, rather than the fair market value. An identical, temporary provision expired for taxable years beginning after December 31, 2014.

B. BACKGROUND AND NEED FOR LEGISLATION

While the Committee continues actively to pursue comprehensive tax reform as a critical means of promoting economic growth and job creation, the Committee also believes that it is important to provide small businesses permanent, immediate tax relief in order to help encourage economic growth and job creation. By providing small businesses with a permanent rule for adjusting the shareholders' basis in stock of an S corporation making charitable contributions, H.R. 630 corrects a disparity between the treatment of charitable contributions made by S corporations and partnerships, which can result in a future tax liability for shareholders of an S corporation that donates appreciated property. H.R. 630 will level the playing field between S corporations and other types of businesses and provide S corporations with greater certainty so they can plan for charitable giving that is in the best interest of the company, its shareholders, and the charitable organizations receiving such donations.

C. LEGISLATIVE HISTORY

Background

H.R. 630 was introduced on January 30, 2015, and was referred to the Committee on Ways and Means.

Committee action

The Committee on Ways and Means marked up H.R. 630, the Permanent S Corporation Charitable Contribution Act of 2015, on February 4, 2015, and ordered the bill, as amended, favorably reported (with a quorum being present).

Committee hearings

The need for permanent rules regarding basis adjustments to stock of S corporations making charitable contributions of property was discussed at no fewer than four hearings during the 112th and 113th Congresses:

- Full Committee hearing on Fundamental Tax Reform (January 20, 2011);
- Full Committee hearing on the Treatment of Closely-Held Businesses in the Context of Tax Reform (March 7, 2012);
- Full Committee hearing on the Small Business and Pass-Through Entity Tax Reform Discussion Draft (May 15, 2013); and
- Full Committee hearing on the Benefits of Permanent Tax Policy for America's Job Creators (April 8, 2014).

II. EXPLANATION OF THE BILL

A. Permanent Rule Regarding Basis Adjustment to Stock of S Corporations Making Charitable Contributions of Property (sec. 1367 of the Code)

PRESENT LAW

Under present law, if an S corporation makes a charitable contribution of money or other property, each shareholder takes into account the shareholder's pro rata share of the contribution in determining its own income tax liability.[1] A shareholder of an S corporation reduces the basis in the stock of the S corporation by the shareholder's pro rata share of the S corporation's charitable contributions.[2]

In the case of contributions made in taxable years beginning before January 1, 2015, the amount of a shareholder's basis reduction in the stock of an S corporation on account of a charitable contribution made by the corporation is the shareholder's pro rata share of the adjusted basis of the contributed property. For contributions made in taxable years beginning after December 31, 2014, the amount of the reduction is the shareholder's pro rata share of the fair market value of the contributed property.

REASONS FOR CHANGE

The Committee believes that the provision regarding basis adjustments to S corporation stock should be made permanent to prevent S corporation shareholders from losing the tax benefit of the deduction for charitable contributions of appreciated property when the shareholders sell their stock. Under the provision, S corporation shareholders will be treated in the same manner as other persons owning an interest in a business making charitable contribu-

[1] Sec. 1366(a)(1)(A).
[2] Sec. 1367(a)(2)(B). See also the last sentence of section 1366(a)(1) referencing sec. 702(a)(4).

tions, including partnerships and limited liability companies. The Committee also believes that this provision will encourage charitable giving.

EXPLANATION OF PROVISION

The provision makes permanent the basis reduction rule applicable for contributions made in taxable years beginning before January 1, 2015.

EFFECTIVE DATE

The provision applies to charitable contributions made in taxable years beginning after December 31, 2014.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 630, the Permanent S Corporation Charitable Contribution Act of 2015, on February 4, 2015.

The bill, H.R. 630, was ordered favorably reported as amended by a roll call vote of 24 yeas to 14 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Ryan	X			Mr. Levin		X	
Mr. Johnson	X			Mr. Rangel		X	
Mr. Brady	X			Mr. McDermott		X	
Mr. Nunes	X			Mr. Lewis		X	
Mr. Tiberi	X			Mr. Neal		X	
Mr. Reichert	X			Mr. Becerra		X	
Mr. Boustany	X			Mr. Doggett		X	
Mr. Roskam	X			Mr. Thompson		X	
Mr. Price	X			Mr. Larson		X	
Mr. Buchanan	X			Mr. Blumenauer			
Mr. Smith (NE)	X			Mr. Kind		X	
Mr. Schock	X			Mr. Pascrell		X	
Ms. Jenkins	X			Mr. Crowley		X	
Mr. Paulsen	X			Mr. Davis		X	
Mr. Marchant	X			Ms. Sanchez		X	
Ms. Black	X						
Mr. Reed	X						
Mr. Young	X						
Mr. Kelly	X						
Mr. Renacci	X						
Mr. Meehan	X						
Ms. Noem	X						
Mr. Holding	X						
Mr. Smith (MO)	X						

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 630, as reported.

The bill, as reported, is estimated to have the following effect on Federal budget receipts for fiscal years 2015–2025:

FISCAL YEARS

[Millions of dollars]

2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015–20	2015–25
−23	−49	−53	−55	−57	−59	−61	−64	−68	−71	−75	−296	−635

NOTE: Details do not add to totals due to rounding.

Pursuant to clause 8 of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not "major legislation" for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee states further that the bill involves no new or increased tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, February 5, 2015.

Hon. Paul Ryan,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 630, the Permanent S Corporation Charitable Contribution Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Nate Frentz.

Sincerely,

Douglas W. Elmendorf.

Enclosure.

H.R. 630—Permanent S Corporation Charitable Contribution Act of 2015

H.R. 630 would amend the Internal Revenue Code to make permanent a rule that expired at the end of 2014 that defines how a shareholder in an S corporation adjusts the basis of that S corporation stock to account for that corporation's contributions of property to charity. This legislation would permanently provide that a shareholder reduces S corporation stock basis by an amount equal

to the shareholder's pro rata share of the adjusted basis of the contributed property, instead of the pro rata share of the fair market value of the contributed property.

The staff of the Joint Committee on Taxation (JCT) estimates that enacting H.R. 630 would reduce revenues, thus increasing federal deficits, by $635 million over the 2015–2025 period.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending and revenues. Enacting H.R. 630 would result in revenue losses in each year beginning in 2015. The estimated increases in the deficit are shown in the following table.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Nathaniel Frentz. The estimate was approved by David Weiner, Assistant Director for Tax Analysis.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 630, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON FEBRUARY 4, 2015

	By fiscal year, in millions of dollars—												
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015–2020	2015–2025
NET INCREASE IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	23	49	53	55	57	59	61	64	68	71	75	296	635

Source: Staff of the Joint Committee on Taxation.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of H.R. 630 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (the "IRS Reform Act") requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have "widespread applicability" to individuals or small businesses, within the meaning of the rule.

F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. Duplication of Federal Programs

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169).

H. Disclosure of Directed Rule Makings

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The

Committee estimates that the bill requires no directed rule makings within the meaning of such section.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter S—Tax Treatment of S Corporations and Their Shareholders

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PART II—TAX TREATMENT OF SHAREHOLDERS

* * * * * * *

SEC. 1367. ADJUSTMENTS TO BASIS OF STOCK OF SHAREHOLDERS, ETC.

(a) GENERAL RULE.—

(1) INCREASES IN BASIS.—The basis of each shareholder's stock in an S corporation shall be increased for any period by the sum of the following items determined with respect to that shareholder for such period:

(A) the items of income described in subparagraph (A) of section 1366(a)(1),

(B) any nonseparately computed income determined under subparagraph (B) of section 1366(a)(1), and

(C) the excess of the deductions for depletion over the basis of the property subject to depletion.

(2) DECREASES IN BASIS.—The basis of each shareholder's stock in an S corporation shall be decreased for any period (but not below zero) by the sum of the following items determined with respect to the shareholder for such period:

(A) distributions by the corporation which were not includible in the income of the shareholder by reason of section 1368,

(B) the items of loss and deduction described in subparagraph (A) of section 1366(a)(1),

(C) any nonseparately computed loss determined under subparagraph (B) of section 1366(a)(1),

(D) any expense of the corporation not deductible in computing its taxable income and not properly chargeable to capital account, and

(E) the amount of the shareholder's deduction for depletion for any oil and gas property held by the S corporation to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such shareholder under section 613A(c)(11)(B).

The decrease under subparagraph (B) by reason of a charitable contribution (as defined in section 170(c)) of property shall be the amount equal to the shareholder's pro rata share of the adjusted basis of such property. [The preceding sentence shall not apply to contributions made in taxable years beginning after December 31, 2014.]

(b) SPECIAL RULES.—

(1) INCOME ITEMS.—An amount which is required to be included in the gross income of a shareholder and shown on his return shall be taken into account under subparagraph (A) or (B) of subsection (a)(1) only to the extent such amount is included in the shareholder's gross income on his return, increased or decreased by any adjustment of such amount in a redetermination of the shareholder's tax liability.

(2) ADJUSTMENTS IN BASIS OF INDEBTEDNESS.—

(A) REDUCTION OF BASIS.—If for any taxable year the amounts specified in subparagraphs (B), (C), (D), and (E) of subsection (a)(2) exceed the amount which reduces the shareholder's basis to zero, such excess shall be applied to reduce (but not below zero) the shareholder's basis in any indebtedness of the S corporation to the shareholder.

(B) RESTORATION OF BASIS.—If for any taxable year beginning after December 31, 1982, there is a reduction under subparagraph (A) in the shareholder's basis in the indebtedness of an S corporation to a shareholder, any net increase (after the application of paragraphs (1) and (2) of subsection (a)) for any subsequent taxable year shall be applied to restore such reduction in basis before any of it may be used to increase the shareholder's basis in the stock of the S corporation.

(3) COORDINATION WITH SECTIONS 165(G) AND 166(D).—This section and section 1366 shall be applied before the application of sections 165(g) and 166(d) to any taxable year of the shareholder or the corporation in which the security or debt becomes worthless.

(4) ADJUSTMENTS IN CASE OF INHERITED STOCK.—

(A) IN GENERAL.—If any person acquires stock in an S corporation by reason of the death of a decedent or by bequest, devise, or inheritance, section 691 shall be applied with respect to any item of income of the S corporation in the same manner as if the decedent had held directly his pro rata share of such item.

(B) ADJUSTMENTS TO BASIS.—The basis determined under section 1014 of any stock in an S corporation shall be reduced by the portion of the value of the stock which

is attributable to items constituting income in respect of the decedent.

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VII. DISSENTING VIEWS

The seven bills approved by the Republicans at the markup would add more than $93 billion to the deficit—and if history is our guide, this is merely the start of the approach the Republicans embraced last Congress. In the 113th Congress, Ways and Means Committee Republicans approved $825 billion worth of deficit-financed, permanent tax cuts. The bills marked up by the Committee set us down a partisan path, when we should be embracing bipartisanship and working in a responsible, bipartisan manner on tax reform.

Even though some of these bills were introduced individually with some bipartisan support, the opposition to these bills was based on the position that these tax provisions should not be made permanent by adding to the deficit without any revenue offset. Our nation's small businesses play a vital role in the economy. They are the backbone of our communities, creating jobs, economic growth, and harnessing the American entrepreneurial spirit—this is undeniable. But the approach that the Committee Republicans are taking with respect to this and other important legislation undermines that bipartisan support that the provisions enjoy. The American people expect a tax code that maintains and supports our shared priorities, and each time the Committee considers these bills in a piecemeal approach, it is taking a step in the wrong direction and away from comprehensive tax reform.

We all support the small businesses in our communities and across the nation. The markup was not to debate the economic growth driven by small businesses, the role of small businesses donations in our country's charitable giving, or the merits of H.R. 630, which would make permanent the certain rules regarding basis adjustments to the stock of S corporations making charitable contributions of property.

Finally, we also oppose the manner in which Republicans were proceeding—selecting seven provisions to make permanent at a cost of nearly $100 billion without any offset from the approximately 60 tax provisions that expired at the end of last year. This approach is both fiscally irresponsible and contrary to the goals of bipartisan, comprehensive tax reform.

Expired provisions must be dealt with in a comprehensive manner. The Republicans did not take up other tax extenders that also are important to Democratic Committee Members. Left to an uncertain fate are provisions like the Work Opportunity Tax Credit, the New Markets Tax Credit, and the renewable energy tax credits, as well as the long-term status of the Earned Income Tax Credit, the Child Tax Credit, and the American Opportunity Tax Credit.

SANDER M. LEVIN.

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