

have asked the Joint Committee on Taxation to perform an analysis outlining any potential negative impact to the revenue base. I am committed to an increase, but not at the expense of the revenue base. Therefore, the actual amount of the percentage increase will depend upon the Joint Tax Committee's analysis. This will allow the cosponsors of the bill to support it with a clear fiscal conscience.

As I introduce this bill, I hope that we can help others view their retirement years as a new beginning by providing the framework to get there.

EXEMPT ORGANIZATION REFORM
ACT OF 1995

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 12, 1995

Mr. STARK. Mr. Speaker, today my colleague, Mr. AMO HOUGHTON, and I will introduce the Exempt Organization Reform Act of 1995. This bill reforms three provisions of exempt organization law. The bill would first create a category of transactions that would be considered self-dealing because of insiders involved in a transfer of 501(c)(3) or 501(c)(4) organization assets; second, clarify that private inurement prohibitions apply to 501(c)(4) organizations; and third, impose intermediate sanctions on both private inurement and self-dealing transactions.

Section 501(c)(3) of the Internal Revenue Code exempts from Federal income tax religious, charitable, educational and certain other organizations that meet statutory and regulatory requirements. A primary requirement for tax-exempt organizations is that the organization's net earnings may not inure to the benefit of any private shareholder or individual, and the organization may not be organized or operated for the benefit of private rather than public interests.

Under current law, the only sanction available to the IRS to combat private inurement is revocation of the organization's exempt status. Revoking an organization's tax exemption is a severe penalty, which in many cases penalizes the wrong parties—the intended beneficiaries of its charitable work and the local community—while leaving untouched the insiders or other private parties who benefited from the diversion of the organization's assets and/or income. The IRS rarely imposes this sanction.

Since 1950, Congress has been concerned with problems of self-dealing between private foundations and insiders, and as recently as 1993 and 1994, the House Ways and Means Subcommittee on Oversight held public hearings that focused on compliance by public charities with the private inurement and private benefit prohibitions. Evidence presented at the oversight hearings documented numerous abuses of these prohibitions by a number of public charities. At the Oversight hearings, the IRS established a need for a wider range of enforcement tools—sanctions that do not require revocation of exempt status for violations of the private inurement and private benefit prohibitions.

Problems of insiders inappropriately benefiting from a tax exempt entity are all too common among nonprofit entities. The following

examples illustrate transactions in which individuals have enriched themselves at the public's expense while nonprofit organizations have been looted.

An exempt 501(c)(3) health care organization operated a clinic at which the chief executive officer received total compensation in excess of \$1 million. In addition, the organization made substantial payments for his personal expenses. The organization had sold its charitable assets and was purchasing physicians' private medical practices, often at more than fair market value.

An exempt University gave its president a significant compensation package, including salary, deferred compensation, expense accounts and loans—many of which were non interest bearing. He also received the use of an expensive residence whose maintenance costs, including maid service, were paid by the University.

A public charity provided assistance to the poor. A principal officer of the organization, along with relatives, used its funds to pay for personal expenses such as leasing of vehicles, educational expenses, vacations, home improvements, and rental of resort property.

An exempt organization headed by a television evangelist raised large sums of money through fraudulent or misleading fundraising. Only a small part of the funds raised was used for charitable purposes. The organization paid the personal expenses of the officers and controlling individuals.

Television evangelist Pat Robertson, chairman of Christian Broadcasting Network [CBN], and his son Timothy, turned a \$150,000 investment into stock worth \$90 million by the 1992 sale to the public of cable TV stock they had originally bought from CBN.

This story is complicated, with twists and turns that often exist in self-dealing and private inurement cases. A cable TV programming company, The Family Channel, was started in 1977 as a division of the nonprofit CBN and was financed with charitable donations of viewers. CBN wanted to sell the Family Channel in 1989, partly because the Family Channel was so lucrative that it jeopardized the tax exempt status of the CBN—IRS rules require charities to receive their revenues more from charitable activities than from business activities. The Family Channel reportedly generated \$17.5 million in just 9 months of 1989.

For the purchase in 1990, Pat and Tim Robertson formed a for-profit company, the International Family Entertainment, Inc., [IFE] with a minority shareholder and bought the Family Channel. The Robertsons put up \$150,000—2.22 cents a share—and the minority shareholder put up \$22 million.

IFE/Family Channel went public at \$15 a share in 1992, and the Robertsons' \$150,000 investment became worth \$90 million. They retained 69-percent control of IFE/Family Channel. The Family Channel continues to be a cash cow. Pat Robertson's 1992 salary and bonus from IFE/Family Channel amounted to \$390,611. His son Tim received \$465,731 in 1992 alone. All the while, Robertson remains chairman of the nonprofit CBN that created the lucrative family channel.

The 1993 and 1994 Oversight hearings established the need for sanctions that fall short of revocation of exempt status for violations of private inurement and private benefit prohibitions. The health care bills reported in 1994 by

the House Ways and Means and Senate Finance Committees both incorporated provisions on intermediate sanctions. The bipartisan effort in this area has been demonstrated time and time again—in hearings, in committee reports, and in proposed legislation. When unable to pass intermediate sanction legislation during health reform last year, a provision on intermediate sanctions was offered in the Ways and Means Committee's GATT bill, however it was not accepted by the Senate Finance Committee.

The evidence of abuse in this area is compelling. We should move quickly to pass this legislation before insiders take further advantage of organization's tax exempt status.

EXPLANATION OF BILL: PRESENT LAW

Under the Internal Revenue Code (the "Code"), a tax-exempt charitable organization described in section 501(c)(3) must be organized and operated exclusively for a charitable, religious, educational, scientific, or other exempt purpose specified in that section, and no part of the organization's net earnings may inure to the benefit of any private shareholder or individual. Organizations described in section 501(c)(3) are classified as either private foundations or public charities. Organizations described in section 501(c)(4) also must be operated on a non-profit basis, although there is no specific statutory rule prohibiting the net earnings of such an organization from inuring the benefit of shareholder or individual.

Under the Code, penalty excise taxes may be imposed on private foundations, their managers, and certain disqualified persons for engaging in certain prohibited transactions (such as so-called "self-dealing" and "taxable expenditure" transactions, see sections 4941 and 4945). In addition, under present law, penalty excise taxes may be imposed when a public charity makes an improper political expenditure (section 4955). However, the Code generally does not provide for the imposition of penalty excise taxes in cases where a public charity (or section 501(c)(4) organization) engages in a transaction that results in private inurement. In such cases, the only sanction that may be imposed under the Code is revocation of the organization's tax-exempt status.

I. EXCISE TAX ON EXCESS BENEFIT
TRANSACTIONS

A. The bill would amend the Code to impose penalty excise taxes equal to 25 percent of the excess benefit as an intermediate sanction in cases where a public charity described in section 501(c)(3) (such as a hospital) or organization described in section 501(c)(4) such as an HMO engages in a "self-dealing" transaction with certain disqualified persons. In the case where an organizational manager knows of such a transaction, an additional tax equal to 10 percent of the excess benefit may be imposed upon the organizational manager.

B. For purposes of the bill, "excess benefit transaction" generally means any transaction in which an economic benefit is provided by an applicable tax-exempt organization to or for the use of any disqualified person if the economic benefit provided exceeds the value of the consideration. The term "excess benefit" includes loans and certain private inurement.

C. Under the bill, "excess benefit" also includes the lending of money or other extension of credit between an applicable tax-exempt organization and disqualified person.

D. "Disqualified persons" would be defined under the bill as any person who was an organizational manager at any time during the five-year period prior to the self-dealing

transaction at issue, as well as certain family members and 35-percent owned entities. The term "organization manager" means any officer, director, or trustee of a public charity or social welfare organization (or any individual having powers or responsibilities similar to those of officers, directors, or trustees).

E. The bill would provide for a two-tiered penalty excise tax structure, similar to the excess tax penalty provisions applicable under present law to prohibited transactions by private foundations and political expenditures by public charities. Under the bill, an initial tax equal to 25 percent of the amount involved would be imposed on a disqualified person who participates in a self-dealing transaction. Organization managers who participate in self-dealing transactions, knowing that the transaction constitutes self-dealing, would be subject to a tax equal to 10 percent of the amount involved (subject to a maximum amount of tax of \$10,000), unless such participation was not willful and was due to reasonable cause.

F. Additionally, second-tier taxes would apply under the bill if the self-dealing transaction is not "corrected," meaning undoing the transaction to the extent possible, but at least insuring that the organization is in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards. If a self-dealing transaction is not corrected within a specified time period (generally ending 90 days after the IRS mails a notice of deficiency), then the disqualified person would be subject to a tax equal to 200 percent of the amount involved. Any organization manager refusing to agree to correction would be subject to tax equal to 50 percent of the amount involved (subject to a maximum amount of tax of \$10,000). Under the bill, if more than one person is liable for a first-tier or second-tier tax with respect to any one self-dealing transaction, then all such persons would be jointly and severally liable for the tax.

II. REPORTING OF CERTAIN EXCISE TAXES

A. Specified organizations would be required to report respective amounts of taxes paid by the organization concerning lobbying and political expenditures during the taxable year as specified in the bill.

III. EXEMPT ORGANIZATIONS REQUIRED TO PROVIDE COPY OF RETURN

A. During the three-year period beginning on the filing date, applicable organizations must make available for inspection during regular business hours a copy of their annual return. If the request is made in person, the return must be provided immediately. If the request is made in some other fashion, the organization must produce the document within 30 days.

B. Advertisements or solicitations used by applicable organizations must contain an express statement that the organization's annual return is available upon request. Penalties for failing to disclose this information are doubled.

IV. CERTAIN ORGANIZATIONS REQUIRED TO DISCLOSE NONEXEMPT STATUS

A. If the organization advertises or solicits as a nonprofit organization and the organization is not designated by the IRS as tax exempt, the advertisement or solicitation must contain an express statement indicating such.

B. If the organization fails to meet the disclosure requirement with respect to advertising or solicitation, the organization would be required to pay \$1,000 for each day that it fails to disclose (not to exceed \$10,000 per year unless the organization intentionally disregards the requirement).

V. INCREASE IN PENALTIES ON EXEMPT ORGANIZATIONS FOR FAILURE TO FILE COMPLETE AND TIMELY ANNUAL RETURNS

A. Penalties for organizations that fail to file their return or who file incomplete returns is increased.

EUROPEAN WHEAT GLUTEN EXPORTS TO THE UNITED STATES

HON. SAM BROWNBACK

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 12, 1995

Mr. BROWNBACK. Mr. Speaker, our American wheat farmers and producers of vital wheat gluten are in dire danger of falling victim to what could become a virtual monopoly of European wheat gluten exports to the U.S.

Currently, because of existing European tariff and subsidy programs, which are being used unfairly, increasing imports of vital wheat gluten are being dumped in the U.S. at prices below the cost of production. USDA reports that European wheat gluten production will double in the next several years. In combination with predatory pricing, this could destroy our gluten producers. Wheat gluten supplies will become so large and prices so low that the effect would be the inevitable erosion of the U.S. high protein wheat industry.

Mr. Speaker, this must not be allowed to happen.

Today I call on the Clinton administration to help stop this unfair practice that could prove devastating to American farmers. I call on Ambassador Kantor and Secretary Glickman to take action now to negotiate a resolution to this issue.

IN RECOGNITION OF MOBILE CONSTRUCTION BATTALION 2

HON. JAMES V. HANSEN

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 12, 1995

Mr. HANSEN. Mr. Speaker, and colleagues, I rise today to pay tribute to a special group of America's unsung heroes—the U.S. Navy Seabees. In particular, I want to tell you the story of one such group of these heroes and the tremendous service they provided our Nation over 40 years ago.

The story of USN Mobile Construction Battalion 2, stationed at Port Hueneme and Cubi Point, began in the spring of 1952. Commanding officer Comdr. Charles C. Compton, and the 12 officers and 464 men of MCB 2, sailed for the Philippines aboard the U.S.S. *Menard* [APA-201] on June 9. The job of the battalion, and their colleagues of MCB's 3 and 5, was to carve a new naval air facility out of the hilly peninsula, called Cubi Point, adjacent to the Subic Bay Naval Station.

Over the next years, the men of MCB 2, clad in traditional Seabee greens or rubberized suits to fend off the relentless summer rains, constructed one of our Nation's most important strategic airfields. The battalion completed several enormous projects including the removal of the top 90 feet of Mount Muritan, a rock mountain which blocked the approach to the future airfield. Major construction projects, including a large and remote ammunition storage facility, a tank farm built on top of a swamp, a new water system, and the Camayan Point-Cubi Point road, tested the skills, dedication, and versatility of the Seabees. In all, millions of cubic yards of earth were moved, reservoirs providing over 2.5 million gallons of water were built, and a new naval air facility was born.

The facilities these unsung heroes built would serve our Nation and her allies well for the next 40 years. The story of MCB 2 and Cubi Point is repeated each year by Seabee units around the world. Never knowing what they would be doing next, the men of Mobile Construction Battalion 2 remained confident in their ability to go anywhere at anytime and build anything asked of them, for they were the Navy's "Fighting Seabees."