

Charity Provisions in Pension Bill (all incentives for two years)

1. **IRA Rollover.** IRA distributions tax-free for individuals over 70 1/2. Distributions may not exceed \$100,000 per taxpayer per year. Distributions only for public charities – similar to limitations in Katrina. Filing requirements for split-interest trusts.
2. **Food donation.** Prior to the Hurricane Katrina relief legislation, only C-Corps could claim an enhanced deduction for donations of food. The enhanced deduction is equal to the lesser of the cost of producing the food item (or basis) plus ½ of the items appreciated value; or twice basis. Non C-Corps (S-Corps, Partnerships, and Sole Props) were limited to claiming a deduction equal to their basis in the food item. The Katrina legislation expanded the deduction for non C corps through December 31, 2005. The conference report extends the expanded enhanced deduction through December 31, 2007.
3. **S Corporation.** The amount of a shareholder's basis reduction in the stock of an S Corporation by reason of a charitable contribution made by the corporation will be equal to the shareholder's pro rata share of the adjusted basis of the contributed property.
4. **Book inventory.** Expands the enhanced deduction for book donations to include public schools. .
5. **Modify payments to certain controlling exempt organizations (512(b)(13)).** : In general, rental payments received by a tax exempt organization are not subject to tax (unrelated business income tax) because it is a form of passive income. Other forms of income that are excluded from tax include dividends and interest. However, if rental payments are made to a tax exempt organization from a controlled subsidiary of the tax exempt organization those rental payments are subject to tax. This limitation is in place to prevent a tax exempt organization from "washing" otherwise taxable income producing activities through a for-profit sub and accepting the revenue from this activity as rent. For example, without the limit a charity could drop a for profit subsidiary to sell cars. If the charity sold cars that income would be subject to tax. But the sub could sell cars and pay the charity the proceeds in the form of rental payments which are exempt from taxation. The Conference report contains a proposal that would exempt these rental payments from tax, so long as the rental payments reflected the fair market value and an existing arrangement is already in place. Rental payments that exceed fair market value would be subject to a penalty tax of 20% (on top of the normal tax due). The fair market value rule prevents "washing" abuse by requiring that the rental payments reflect fair market value - thus preventing the disguising of unrelated business income as rent. Penalties and reporting requirements.
- 6.. **Land/Conservation.** The Conference report includes a proposal to allow ranchers and farmers to write off 100% of their AGI over a 15 year period for donations of qualified conservation easements to qualified conservation organizations and state and local governments. In addition, the proposal allows all taxpayers to claim up to 50% of their

AGI over 15 years for such donations. Currently, taxpayers are limited to writing off 30% of their AGI for donations of conservation easements. The proposal is effective from December 31, 2005 through December 31, 2007. Requirement that land available for agriculture purposes.

7. Excise tax for blood collector organizations. The provision exempts qualified blood collector organizations from certain retail and manufacturers excise taxes (fuel, telecommunication, heavy truck, tires, vaccines, etc.) to the extent such items are for the exclusive use of such an organization for the distribution or collection of blood.

8. Life insurance contracts/Public Charities. Require charities to report to the IRS if they enter into certain insurance contracts that have raised tax policy concerns. Require Treasury report on these insurance contracts on their appropriateness and whether consistent with tax-exempt status.

9. Increase the amount of penalty excise taxes relating to public charities, social welfare organizations and private foundations. Doubling current penalties for self-dealing, excess benefit transactions and other similar penalties.

10. Façade easement reform. Easement must be for entire structure – not just façade. Must have qualified appraisal submitted and charity recipient must attest to certain best practices. Filing fee. Limitation on taxpayer being able to receive tax benefit for both rehabilitation credit as well as easement.

11. Taxidermy donations and exempt use reforms. The deduction for contributions of taxidermy property created by the taxpayer generally is limited to the taxpayer's direct cost of the taxidermy. Travel and other indirect costs are not deduction. In addition, for all contributions of tangible personal property intended for an exempt use, there is a recapture of the deduction if the property is not used for an exempt use.

12. Substantiation requirements and Clothing/Household goods donations. Conform substantiation requirements for cash donations to be same as donations of property (receipt, cancelled check, etc. required). Deduction allowed for charitable contribution of clothing or household items if clothing or household is in good used condition or better. Secretary has regulatory authority to deny deductions for items with minimal monetary value (example, used underwear and socks). Exception if item over \$500 and not in good used condition, can get appraisal.

13. Fractional Donation reform. First, if donor makes an initial fractional contribution, must complete the donation earlier of 10 years or donor's death. Valuation rules based on time of initial gift. Rules for multiple donors with fractional interest in same gift. Requirement for charity to take possession during the time period above.

14. Penalties relation to appraiser and substantial and gross overstatements of valuations of property for both charity donations and gift and estate. Same as Senate good government bill.

15. Credit Counseling Organizations. To be exempt as a 501(c)(3) or a 501(c)(4) credit counseling organization, the organization must be primarily educational in nature, have a reasonable fee policy, waive fees for those unable to pay, have an independent board, and limit credit repair services and loans. Section 501(c)(3) organizations in addition may not have more than 50% of revenues attributable to debt management plan activity (phased in from 80% over four years). Section 501(c)(4) organizations must apply for exemption with the IRS.

16. Make UBIT return public for 501(c)(3) organizations. The unrelated business income tax return (Form 990-T) of section 501(c)(3) organizations is made publicly available, subject to redaction of sensitive information.

17. Treasury study of donor advised funds and supporting organizations. Treasury shall report within one year on a number of issues relating to donor advised funds and supporting organizations, including whether contributions to donor advised funds and supporting organizations are appropriate considering the use of the assets contributed, whether donor advised funds should be subject to a payout, whether the retention of advisory privileges should result in denial of deduction in some cases, and the extent to which issues such as these are raised in the context of other charitable organizations.

18. Donor Advised Funds. Donor advised funds are defined in the Code, with certain exceptions for scholarship funds advised by committee and endowment funds. Certain transactions between a donor advised fund and its donors (i.e., compensation, grants), donor advisors, and related parties are subject to excise taxes. Donor advised funds making distributions for noncharitable purposes are subject to tax. Donor advised fund managers and donors advising grants that result in distributions of more than incidental benefit to the donor are subject to tax. Donor advised funds are subject to excess business holdings rules (these rules only apply to securities – example, not land, etc.). Donors, donor advisors, and related persons are made disqualified persons with respect to their donor advised funds (but not to the sponsoring charity) -- so all transactions must be at fair value. Investment advisors of donor advised funds are made disqualified persons with respect to the sponsoring charity (so all there transactions must be at fair value). Charities must report more detailed information about their donor advised funds to the IRS.

19. Supporting Organizations. Payments from a supporting organization to a substantial contributor are subject to excise tax. Loans by a supporting organization to insiders of the organization (disqualified persons) are subject to an excise tax. Treasury is directed to revise the current regulations that require a payout by Type III supporting organizations to provide for a payout that will result in a significant amount going to charity. The private foundation excess business holdings rules are applied to Type III supporting organizations (other than "functionally integrated" Type III supporting organizations, as currently defined in regulations), certain previous state attorney general directives are allowed, and allowance for secretary to waive with consideration of new state attorney general directives. Type III supporting organizations may not support a

foreign organization. Treasury must revise the standard for exemption of Type III supporting organizations that are charitable trusts within one year. Private foundations may, in general, make distributions without penalty to a supporting organization unless the supporting organization is a Type III supporting organization (other than a functionally integrated one), or a disqualified person of the foundation has control over the supporting organization (or its supported charities). New reporting requirements apply to supporting organizations.

20. Disclosure to state official of tax information related to section 501(c) organizations. Reform of Section 6103 to allow sharing of tax information to state officials.

21. Private foundation excise tax – loophole closer. Same as Senate reconciliation bill with modification to exclude from tax capital gains from the exchange of like property.

22. Definition of convention or association of churches. Same as Senate reconciliation bill.

23. Notification requirement for exempt entities not currently required to file (postcard notification). Same as Senate reconciliation bill.