

117TH CONGRESS
1ST SESSION

S. 1981

To amend the Internal Revenue Code of 1986 to modify rules relating to donor advised funds, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 9, 2021

Mr. KING (for himself and Mr. GRASSLEY) 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 modify rules relating to donor advised funds, 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 “Accelerating Chari-
5 table Efforts Act” or the “ACE Act”.

6 **SEC. 2. ADDITIONAL RESTRICTIONS ON DEDUCTIONS FOR**
7 **CONTRIBUTIONS TO DONOR ADVISED FUNDS.**

8 (a) **LIMITATION ON DEDUCTION.**—Section 170(f) of
9 the Internal Revenue Code of 1986 is amended by adding
10 at the end the following new paragraph:

1 “(19) TIME FOR DEDUCTION OF CONTRIBU-
2 TIONS TO DONOR ADVISED FUNDS.—

3 “(A) NONQUALIFIED DONOR ADVISED
4 FUNDS.—

5 “(i) IN GENERAL.—In the case of a
6 contribution to a donor advised fund (as
7 defined in section 4966(d)(2)) which is not
8 a qualified donor advised fund or a quali-
9 fied community foundation donor advised
10 fund—

11 “(I) in the case of any contribu-
12 tion of property other than cash, no
13 deduction shall be allowed under this
14 section unless the sponsoring organi-
15 zation sells such property for cash,

16 “(II) no deduction shall be al-
17 lowed under this section for any con-
18 tribution before the taxable year that
19 includes the date on which the spon-
20 soring organization makes a quali-
21 fying distribution of such contribution
22 (or the proceeds from the sale of such
23 contribution), and

1 “(III) the amount of the deduc-
2 tion shall be equal to the amount of
3 the qualifying distribution.

4 “(ii) QUALIFYING DISTRIBUTION.—
5 For purposes of this subparagraph, the
6 term ‘qualifying distribution’ means any
7 distribution which is not a taxable distribu-
8 tion (as defined in section 4966(c), deter-
9 mined without regard to paragraph (2)(C)
10 thereof).

11 “(iii) ORDERING RULE.—For pur-
12 poses of this subparagraph, distributions
13 shall be treated as made from contribu-
14 tions (and any earnings attributable there-
15 to) on a first-in, first-out basis.

16 “(B) NONPUBLICLY TRADED ASSETS OF
17 QUALIFIED DONOR ADVISED FUNDS.—

18 “(i) IN GENERAL.—In the case of a
19 contribution of a non-publicly traded asset
20 to a qualified donor advised fund or a
21 qualified community foundation donor ad-
22 vised fund—

23 “(I) no deduction shall be al-
24 lowed under this section for any tax-
25 able year before the taxable year that

1 includes the date on which the spon-
2 soring organization sells the asset,
3 and

4 “(II) the amount of the deduc-
5 tion allowed under subsection (a) shall
6 not exceed the amount of gross pro-
7 ceeds received from such sale and
8 credited to the account or fund identi-
9 fied with the taxpayer.

10 “(ii) NON-PUBLICLY TRADED
11 ASSET.—For purposes of this subpara-
12 graph, the term ‘non-publicly traded asset’
13 means any asset for which (as of the date
14 of the contribution) market quotations are
15 not readily available on an established se-
16 curities market.

17 “(C) CONTEMPORANEOUS WRITTEN AC-
18 KNOWLEDGEMENT.—

19 “(i) IN GENERAL.—In the case of a
20 contribution described in subparagraph (A)
21 or (B), no deduction shall be allowed under
22 subsection (a) for such contribution unless
23 the taxpayer substantiates the contribution
24 by a contemporaneous written acknowl-
25 edgement of the contribution by the spon-

1 soring organization that meets the require-
2 ments of clause (ii).

3 “(ii) CONTENT OF ACKNOWLEDGE-
4 MENT.—An acknowledgement meets the
5 requirements of this subparagraph if it in-
6 cludes the following information:

7 “(I) The name of the donor.

8 “(II) In the case of a contribu-
9 tion described in subparagraph (A)—

10 “(aa) if such contribution is
11 described in subparagraph
12 (A)(i)(I), a certification that the
13 asset was sold for cash and the
14 amount of cash received in such
15 sale, and

16 “(bb) a certification that a
17 qualifying distribution has been
18 made from such contribution (or
19 the proceeds from the sale of
20 such contribution), an identifica-
21 tion of the amount of such quali-
22 fying distribution, and a state-
23 ment that the deductible amount
24 may not exceed the amount of
25 such qualifying distribution.

1 “(III) In the case of a contribu-
2 tion described in subparagraph (B), a
3 certification that the asset was sold
4 and the amount of the gross proceeds
5 received from such sale and credited
6 to the account or fund of the tax-
7 payer, together with a statement that
8 the deductible amount may not exceed
9 the amount of the gross proceeds re-
10 ceived from the sale of the asset and
11 credited to the account or fund of the
12 taxpayer.

13 “(iii) CONTEMPORANEOUS.—For pur-
14 poses of clause (i), an acknowledgement
15 shall be considered to be contemporaneous
16 if the sponsoring organization provides it
17 within 30 days of—

18 “(I) in the case of a contribution
19 described in subparagraph (A), the
20 date of the qualifying distribution,
21 and

22 “(II) in the case of a contribu-
23 tion described in subparagraph (B),
24 the date that the gross proceeds from

1 the sale of the asset are credited to
2 the account or fund of the taxpayer.

3 “(iv) INFORMATION TO SECRETARY.—

4 A sponsoring organization required to pro-
5 vide an acknowledgement under this para-
6 graph shall provide to the Secretary the in-
7 formation contained in the acknowledge-
8 ment. Such information shall be provided
9 at such time and in such manner as the
10 Secretary may prescribe.

11 “(D) QUALIFIED DONOR ADVISED FUND.—

12 For purposes of this paragraph, the term
13 ‘qualified donor advised fund’ means a donor
14 advised fund (as defined in section 4966(d)(2))
15 established under an agreement that requires,
16 for the duration of such fund, the termination
17 of any advisory privilege with respect to any
18 contribution (including any earnings thereon)
19 made by any donor (or any person appointed or
20 designated by a donor) before the last day of
21 the 14th taxable year beginning after the tax-
22 able year in which the contribution was made.

23 “(E) QUALIFIED COMMUNITY FOUNDATION

24 DONOR ADVISED FUND.—For purposes of this
25 paragraph—

1 “(i) IN GENERAL.—The term ‘quali-
 2 fied community foundation donor advised
 3 fund’ means a donor advised fund (as de-
 4 fined in section 4966(d)(2)) which is
 5 owned or controlled by a qualified commu-
 6 nity foundation and which meets one or
 7 more of the requirements of clauses (ii) or
 8 (iii).

9 “(ii) MAXIMUM VALUE OF ADVISORY
 10 PRIVILEGES.—

11 “(I) IN GENERAL.—A donor ad-
 12 vised fund meets the requirements of
 13 this clause if each individual who has
 14 advisory privileges with respect to
 15 such fund does not have advisory
 16 privileges with respect to 1 or more
 17 donor advised funds held by the quali-
 18 fied community foundation with an
 19 aggregate value at any time after the
 20 date of the enactment of this para-
 21 graph in excess of \$1,000,000.

22 “(II) INFLATION ADJUST-
 23 MENT.—In the case of any taxable
 24 year beginning after 2021, the
 25 \$1,000,000 amount in subclause (I)

1 shall be increased by an amount equal
2 to such dollar amount multiplied by
3 the cost-of-living adjustment deter-
4 mined under section 1(f)(3) for the
5 calendar year in which the taxable
6 year begins, determined by sub-
7 stituting in subparagraph (A)(ii)
8 thereof ‘calendar year 2020’ for ‘cal-
9 endar year 2016’. If any amount as
10 adjusted under the preceding sentence
11 is not a multiple of \$10,000, such dol-
12 lar amount shall be rounded to the
13 next lowest multiple of \$10,000.

14 “(iii) MINIMUM PAYOUT.—A donor
15 advised fund meets the requirements of
16 this paragraph if the fund is established
17 under an agreement that requires that the
18 fund make qualifying distributions (as de-
19 fined in subparagraph (A)(ii)) each cal-
20 endar year in an amount not less than 5
21 percent of the value of the fund (deter-
22 mined as of the last day of the preceding
23 calendar year).

1 “(iv) QUALIFIED COMMUNITY FOUN-
2 DATION.—The term ‘qualified community
3 foundation’ means an organization—

4 “(I) which is described in section
5 501(c)(3),

6 “(II) which is organized and op-
7 erated for the purpose of under-
8 standing and serving the needs of a
9 particular geographic community that
10 is no larger than 4 States by engaging
11 donors and pooling donations to cre-
12 ate charitable funds in direct further-
13 ance of those needs, and

14 “(III) which holds substantial as-
15 sets (but in no case less than 25 per-
16 cent of the organization’s total assets)
17 outside of donor advised funds.

18 “(v) SPONSORING ORGANIZATION.—
19 The term ‘sponsoring organization’ has the
20 meaning given such term under section
21 4966(d)(1).”.

22 (b) OTHER REQUIREMENTS FOR QUALIFIED DONOR
23 ADVISED FUNDS.—Section 170(f)(18) of the Internal
24 Revenue Code of 1986 is amended by striking “and” at
25 the end of subparagraph (A)(ii), by striking the period at

1 the end of subparagraph (B) and inserting “, and”, and
2 by adding at the end the following new subparagraph:

3 “(C) in the case of a contribution to a
4 qualified donor advised fund (as defined in
5 paragraph (19)(D)), the taxpayer identifies for
6 the sponsoring organization a preferred organi-
7 zation for the purposes of making distributions
8 of so much of the amount contributed (and any
9 earnings attributable thereto) as has not been
10 distributed before the end of the last day of the
11 14th taxable year beginning after the taxable
12 year in which the contribution was made.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to contributions made after the
15 date of the enactment of this Act.

16 **SEC. 3. FAILURE OF DONOR ADVISED FUNDS TO DIS-**
17 **TRIBUTE CONTRIBUTIONS.**

18 (a) IN GENERAL.—Subchapter G of chapter 42 of the
19 Internal Revenue Code of 1986 is amended by adding at
20 the end the following new section:

21 **“SEC. 4967A. FAILURE OF DONOR ADVISED FUNDS TO DIS-**
22 **TRIBUTE CONTRIBUTIONS.**

23 “(a) IN GENERAL.—In the case of a contribution
24 which is held in a donor advised fund (other than a quali-
25 fied community foundation donor advised fund), there is

1 hereby imposed a tax equal to 50 percent of so much of
2 the portion of such contribution (and any earnings attrib-
3 utable thereto) as has not been distributed by the spon-
4 soring organization in a qualifying distribution before the
5 last day of the sixth month following the last day of the
6 applicable taxable year with respect to such contribution.
7 The tax imposed by this subsection shall be paid by such
8 sponsoring organization.

9 “(b) APPLICABLE TAXABLE YEAR.—For purposes of
10 this section, the term ‘applicable taxable year’ means—

11 “(1) in the case of a contribution to a qualified
12 donor advised fund, the 14th taxable year beginning
13 after the taxable year in which the contribution was
14 made, and

15 “(2) in the case of a contribution to any other
16 donor advised fund (other than a qualified commu-
17 nity foundation donor advised fund), the 49th tax-
18 able year beginning after the taxable year in which
19 the contribution was made.

20 “(c) DEFINITIONS AND OTHER RULES.—

21 “(1) QUALIFIED DONOR ADVISED FUND.—The
22 term ‘qualified donor advised fund’ has the meaning
23 given such term under section 170(f)(19)(D).

24 “(2) QUALIFIED COMMUNITY FOUNDATION
25 DONOR ADVISED FUND.—The term ‘qualified com-

1 munity foundation donor advised fund’ has the
 2 meaning given such term under section
 3 170(f)(19)(E).

4 “(3) QUALIFYING DISTRIBUTION.—The term
 5 ‘qualifying distribution’ has the meaning given such
 6 term under section 170(f)(19)(A)(ii).

7 “(4) ORDERING RULE.—Rules similar to the
 8 rules of section 170(f)(19)(A)(iii) shall apply for
 9 purposes of this section.”.

10 (b) CONFORMING AMENDMENT.—The table of sec-
 11 tions for subchapter G of chapter 42 of such Code is
 12 amended by adding at the end the following new item:

“Sec. 4967A. Failure of donor advised funds to distribute contributions.”.

13 (c) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to contributions made after the
 15 date of the enactment of this Act.

16 **SEC. 4. TREATMENT OF PRIVATE FOUNDATION ADMINIS-**
 17 **TRATIVE EXPENSES PAID TO DISQUALIFIED**
 18 **PERSONS.**

19 (a) IN GENERAL.—Section 4942(g) of the Internal
 20 Revenue Code of 1986 is amended by adding at the end
 21 the following new paragraph:

22 “(5) DISALLOWANCE OF ADMINISTRATIVE EX-
 23 PENSES PAID TO DISQUALIFIED PERSONS.—

24 “(A) IN GENERAL.—For purposes of para-
 25 graph (1)(A), administrative expenses paid to

1 any person described in subparagraph (B) shall
2 not be treated as a qualifying distribution.

3 “(B) PERSON DESCRIBED.—A person is
4 described in this subparagraph if such person is
5 a disqualified person (as defined in section
6 4946(a)(1)) with respect to the private founda-
7 tion, other than a foundation manager (as de-
8 fined in section 4946(b)(1)) of such private
9 foundation who is not a member of the family
10 (as defined in section 4946(d)) of any indi-
11 vidual described in subparagraph (A) or (C) of
12 section 4946(a)(1).”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to taxable years beginning after
15 December 31, 2021.

16 **SEC. 5. TREATMENT OF DISTRIBUTIONS TO DONOR AD-**
17 **VISED FUNDS FROM PRIVATE FOUNDATIONS.**

18 (a) PROHIBITION ON TREATMENT AS QUALIFYING
19 DISTRIBUTIONS.—

20 (1) IN GENERAL.—Section 4942(g)(1)(A) of the
21 Internal Revenue Code of 1986 is amended by strik-
22 ing “paragraph (3), or” and inserting “paragraph
23 (3), or (iii) a sponsoring organization (as defined in
24 section 4966(d)(1)) if such contribution will be held
25 in a donor advised fund (as defined in section

1 4966(d)(2)), except as provided in paragraph (3),
2 or”.

3 (2) CONFORMING AMENDMENT.—Section
4 4942(g)(3) is amended by striking “(i) or (ii)” and
5 inserting “(i), (ii), or (iii)”.

6 (b) REPORTING.—Section 6033(c) of the Internal
7 Revenue Code of 1986 is amended—

8 (1) by redesignating paragraphs (1) and (2) as
9 paragraphs (2) and (3), respectively,

10 (2) by inserting before paragraph (2) (as redesi-
11 gnated) the following new paragraph:

12 “(1) the private foundation shall include in its
13 annual return under this section information on—

14 “(A) the amount of any contribution to a
15 sponsoring organization (as defined in section
16 4966(d)(1)) which will be held in a donor ad-
17 vised fund (as defined in section 4966(d)(2)),

18 “(B) the sponsoring organization to which
19 such contribution was made, and

20 “(C) the donation advice given to such or-
21 ganization (if any),”, and

22 (3) in the matter following paragraph (3) (as
23 redesignated) by striking “paragraph (1)” and in-
24 serting “paragraph (2)”.

25 (c) EFFECTIVE DATES.—

1 (1) PROHIBITION.—The amendment made by
2 subsection (a) shall apply to distributions made after
3 December 31, 2021.

4 (2) REPORTING.—The amendments made by
5 subsection (b) shall apply to returns required to be
6 filed after December 31, 2021.

7 **SEC. 6. TREATMENT OF CONTRIBUTIONS FROM DONOR AD-**
8 **ADVISED FUNDS FOR PURPOSES OF DETER-**
9 **MINING PUBLIC SUPPORT.**

10 (a) PRIVATE FOUNDATIONS.—Section 509 of the In-
11 ternal Revenue Code of 1986 is amended by adding at the
12 end the following new subsection:

13 “(g) SPECIAL RULES FOR SUPPORT FROM DONOR
14 ADVISED FUNDS.—

15 “(1) IN GENERAL.—For purposes of subsection
16 (a)(2), except as otherwise provided in this sub-
17 section, all amounts received from sponsoring orga-
18 nizations (as defined in section 4966(d)(1))—

19 “(A) shall not be treated as support re-
20 ceived from an organization described in section
21 170(b)(1)(A), and

22 “(B) shall be treated as support received
23 from one person.

24 “(2) EXCEPTION WHERE DONOR IDENTIFIED.—

25 In the case of support from a sponsoring organiza-

1 tion which is provided from funds which are identi-
2 fied with a donor to a donor advised fund (as de-
3 fined in section 4966(d)(2)) and the sponsoring or-
4 ganization identifies such donor, such support shall
5 be treated as provided by such donor.

6 “(3) EXCEPTION FOR AMOUNTS NOT CONTRIB-
7 UTED FROM DONOR ADVISED FUNDS.—Paragraph
8 (1) shall not apply to any amount if the sponsoring
9 organization specifies that—

10 “(A) the amount is not a distribution from
11 a donor advised fund (as so defined), and

12 “(B) no donor (or any person appointed or
13 designated by such donor) had advisory privi-
14 leges with respect to the provision of the sup-
15 port.”.

16 (b) DETERMINATION OF CONTRIBUTION LIMITA-
17 TIONS.—Section 170(b)(1)(A) of such Code is amended by
18 adding at the end the following: “For purposes of clause
19 (vi), rules similar to the rules of section 509(g) shall
20 apply.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to contributions made in taxable
23 years beginning after the date of the enactment of this
24 Act.

1 **SEC. 7. EXEMPTION FROM TAX ON INVESTMENT INCOME**
2 **FOR CERTAIN PRIVATE FOUNDATIONS MAK-**
3 **ING SIGNIFICANT QUALIFYING DISTRIBU-**
4 **TIONS.**

5 (a) **IN GENERAL.**—Section 4940 of the Internal Rev-
6 enue Code of 1986 is amended by adding at the end the
7 following new subsection:

8 “(e) **EXEMPTION FOR FOUNDATIONS MAKING SIG-**
9 **NIFICANT QUALIFYING DISTRIBUTIONS.**—No tax shall be
10 imposed by this section for any taxable year on any private
11 foundation if such private foundation makes qualifying
12 distributions (as defined in section 4942(g)) during such
13 taxable year in an amount that is not less than 7 percent
14 of the excess of—

15 “(1) the aggregate fair market value of all as-
16 sets of the foundation (other than those which are
17 used (or held for use) directly in carrying out the
18 foundation’s exempt purpose) determined as of the
19 first date of the taxable year, over

20 “(2) the acquisition indebtedness with respect
21 to such assets (determined under section
22 514(c)(1)).”.

23 (b) **EFFECTIVE DATE.**—The amendment made by
24 this section shall apply to taxable years beginning after
25 the date of the enactment of this Act.

1 **SEC. 8. EXEMPTION FROM TAX ON INVESTMENT INCOME**
 2 **OF LIMITED-DURATION PRIVATE FOUNDA-**
 3 **TIONS.**

4 (a) IN GENERAL.—Section 4940 of the Internal Rev-
 5 enue Code of 1986, as amended by section 7, is amended
 6 by adding at the end the following new subsection:

7 “(f) EXEMPTION FOR LIMITED-DURATION FOUNDA-
 8 TIONS.—

9 “(1) EXEMPTION.—

10 “(A) IN GENERAL.—No tax shall be im-
 11 posed by subsection (a) on any private founda-
 12 tion if such private foundation meets the re-
 13 quirements of subparagraph (B).

14 “(B) REQUIREMENTS.—A private founda-
 15 tion meets the requirements of this subpara-
 16 graph if, at the time of its establishment and
 17 at all times thereafter—

18 “(i) such private foundation has a du-
 19 ration specified in its governing documents
 20 of not more than 25 years, and

21 “(ii) such private foundation makes
 22 no distributions to disqualified private
 23 foundations.

24 “(C) DISQUALIFIED PRIVATE FOUNDA-
 25 TION.—For purposes of this subsection, the
 26 term disqualified private foundation means,

1 with respect to the private foundation described
2 in subparagraph (B), another private founda-
3 tion with respect to which there is a disqualified
4 person who is also a disqualified person with re-
5 spect to such private foundation described in
6 subparagraph (B).

7 “(2) RECAPTURE TAX.—

8 “(A) IN GENERAL.—If—

9 “(i) no tax is imposed under sub-
10 section (a) on a private foundation by rea-
11 son of paragraph (1), and

12 “(ii) such private foundation—

13 “(I) fails to meet the require-
14 ments of paragraph (1)(B) in any
15 subsequent taxable year,

16 “(II) has a duration of more
17 than 25 years, or

18 “(III) makes a distribution to a
19 disqualified private foundation,

20 a tax shall be imposed on such foundation
21 in the amount determined under subpara-
22 graph (B) for the first taxable year in
23 which such private foundation is described
24 in clause (ii).

1 “(B) AMOUNT OF TAX.—The amount of
2 tax determined under this subparagraph is the
3 aggregate amount of taxes which would have
4 been imposed on such private foundation for all
5 taxable years before the first taxable year in
6 which such foundation was described in sub-
7 paragraph (A)(ii) if paragraph (1) had not ap-
8 plied.”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to taxable years beginning after
11 the date of the enactment of this Act.

○