

**Statement for the Record**  
**Submitted by the Honorable Vern Buchanan**  
**Member, United States House of Representative**  
**Committee on Ways and Means**  
**Subcommittee on Select Revenue Measures**  
**Hearing on Certain Expiring Tax Provisions**  
**April 26, 2012**

Chairman Tiberi, Ranking Member Neal, and Members of the Subcommittee on Select Revenue Measures, I commend you for your leadership in moving forward with a much needed and long overdue examination of the provisions of the Internal Revenue Code that expired at the end of 2011 and that will expire at the end of this year.

I would like to take a moment to highlight one such provision that is important to many charitable organizations. Section 512(b)(13) allows charitable organization to maintain a structure that permits them to affiliate with a taxable entity on a limited basis while maintaining their charitable status and their vital charitable mission. Without the section some charities might have to consider a different structure that would reduce their commitment to charity.

In the Taxpayer Relief Act of 1997 under the leadership of Chairman Bill Archer, Congress permanently modified the rules relating to defining when a tax exempt organization has a controlling share of a related taxable subsidiary. Under the law, if the organization is controlled, payments to the exempt organization from the taxable subsidiary (usually in the form of interest, rents, and royalties) are taxable. Prior to this change, a tax exempt did not control a taxable subsidiary if it directly owned less than 80 percent; the 1997 modification reduced the share ownership level to direct or indirect control of 50 percent.

This change was of serious concern to many charitable organizations and tax exempts that are devoted to the support of charities because while it is a common practice to affiliate with taxable organizations, an ownership level below 50 percent would make it much harder for the exempt organization to protect the use of its most important attributes, its good name, its symbols, its logos and other identifying information, and its good will.

Following the enactment of the 1997 modification, numerous charities and organizations supporting charity entered into discussions with Chairman Archer, his staff, and with the Joint Committee on Taxation to develop an alternative test that would both meet the concerns that the Chairman had when he proposed the 1997 change, but also meet the needs of the charitable organizations. The result of these discussions was the development and enactment in the Pension Protection Act of an alternative test under which the IRS will use tools at its disposal to test whether payments between a tax exempt organization and a taxable subsidiary are at arm's length and fair market value. In the event that they are not, Congress not only provided that the excess payments would be taxed but also subject to a 20 percent excise tax.

This alternative test has worked well, but starting with its original enactment, became a part of the perennial extenders package for the political and budgetary reasons that the Committee is now trying to remedy.

Section 512(b) (13) is an alternative to a permanent provision in existing law that should itself have been made permanent.

The 512(b) (13) provision that expired at the end of 2011 is limited as well to existing contracts (and their renewals) in effect at the time of enactment. The assumption at that time was that when a future Congress undertook the painstaking effort of examining all of the extenders this provisions would, likely be made permanent and opened up to new arrangements.

I urge the Committee ultimately to extend section 512(b) (13) on a permanent basis with the removal of the existing limitation to contracts in effect on the date of enactment as part of that effort. If in the interim temporary extensions are needed one more time, 512(b) (13) should definitely be included as well.

I thank the Chairman, the Ranking Member, and the Members of the Subcommittee on Select Revenue Measures, for the important work they are doing, and for the opportunity to submit these comments.