

Amendments to the Internal Revenue Code to Promote Efficiency of Water Usage for Agriculture, Municipalities, and Fisheries

Summary of Proposed Legislation

April 17, 2010

Section 1: Title: The Water and Energy Conservation Act of 2011

Section 2: Legislative Findings

This legislation is intended to promote water efficiency and conservation by: 1) facilitating donations of water rights for charitable and conservation purposes, and 2) by facilitating the leasing and transfer of water rights to promote more efficient uses of water provided that the income from such activities is used to further the maintenance and operation of water infrastructure owned and operated by tax-exempt irrigation, ditch, and reservoir companies. The legislative findings section of this legislation will emphasize the importance of these issues to agriculture, municipalities and fisheries and will emphasize the energy savings that can be realized through more efficient use of water in the West.

Section 3: Amending Section 170 to Clarify that Contributions of Qualified Water Rights Are Tax-Deductible

This amendment to Section 170(f)(3)(B) is intended to clarify that a charitable contribution deduction is permitted for donation of a perfected right to appropriate and use water in accordance with state law. In addition, a charitable contribution is permitted for the donation of an undivided interest in such water right under circumstances where the donee organization has a right to use the water for the protection or enhancement of fish habitat or the natural environment.

Section 4: Amending Section 501(c)(12) to Facilitate Water Leasing and Water Transfers to Promote Conservation and Efficiency

This amendment to Section 501(c)(12) provides for relief from income tax for certain mutual ditch and irrigation companies. Specifically, those mutual ditch and irrigation companies who are unable to distribute assets to their members and thus by definition must use their income and assets in furtherance of their exempt purpose would be exempt from income tax regardless of whether 85% or more of its income was received from its members. This would allow mutual ditch companies to supplement their income from nonmember sources such as water leases, recreational leases, crossing fees and the like in order to defray the prohibitively high cost of applying water to agricultural uses. Further, subparagraph (ii) is intended to clarify a concern expressed by the Internal Revenue Service that mutual ditch and irrigation corporations operating on a one share one vote basis as opposed to a one member one vote basis might not otherwise qualify for the exemption currently provided for in Section 501(c)(12).