

105TH CONGRESS
1ST SESSION

H. R. 1592

To amend the Internal Revenue Code of 1986 and Employee Retirement Income Security Act of 1974 in order to promote and improve employee stock ownership plans.

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 1997

Mr. BALLENGER (for himself, Mr. LEVIN, Mr. ROHRABACHER, Mr. JEFFERSON, Mrs. JOHNSON of Connecticut, Mrs. THURMAN, and Mr. RAMSTAD) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 and Employee Retirement Income Security Act of 1974 in order to promote and improve employee stock ownership plans.

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 “ESOP Promotion Act
5 of 1997”.

1 **SEC. 2. PROVISIONS RELATING TO S CORPORATIONS ES-**
2 **TABLISHING EMPLOYEE STOCK OWNERSHIP**
3 **PLANS.**

4 (a) REPEAL OF PROVISION MAKING CERTAIN ESOP
5 BENEFITS INAPPLICABLE TO S CORPORATIONS.—Section
6 1316(d) of the Small Business Job Protection Act of 1996
7 is repealed, and the Internal Revenue Code of 1986 shall
8 be applied and administered as if the amendments made
9 by such section had not been enacted.

10 (b) REPEAL OF APPLICATION OF UNRELATED BUSI-
11 NESS INCOME TAX.—Section 512(e) of the Internal Reve-
12 nue Code of 1986 is amended—

13 (1) by striking “described in section
14 1361(c)(7)” in paragraph (1) and inserting “de-
15 scribed in section 501(c)(3) and exempt from tax-
16 ation under section 501(a)”, and

17 (2) by inserting “CHARITABLE ORGANIZATIONS
18 HOLDING STOCK IN” after “APPLICABLE TO” in the
19 heading.

20 (c) ESOPs ALLOWED TO DISTRIBUTE CASH RATH-
21 ER THAN STOCK.—

22 (1) IN GENERAL.—Section 409(h)(2) of the In-
23 ternal Revenue Code of 1986 is amended by adding
24 at the end the following new subparagraph:

25 “(C) PLAN MAINTAINED BY S CORPORA-
26 TION.—In the case of a plan established and

1 maintained by an S corporation which otherwise
2 meets the requirements of this subsection or
3 section 4975(e)(7), such plan shall not be treat-
4 ed as failing to meet the requirements of this
5 subsection or section 401(a) merely because it
6 does not permit a participant to exercise the
7 right described in paragraph (1)(A) if such plan
8 provides that the participant entitled to a dis-
9 tribution has a right to receive the distribution
10 in cash.”

11 (2) CONFORMING AMENDMENTS.—Section
12 409(h)(2) of such Code is amended—

13 (A) by striking “A plan” and inserting:

14 “(A) IN GENERAL.—A plan”, and

15 (B) by striking “In the case of an em-
16 ployer” and inserting:

17 “(B) PLANS RESTRICTED BY CHARTER OR
18 BYLAWS.—In the case of an employer”.

19 (d) EXEMPTIONS FROM PROHIBITED TRANSACTION
20 RULES AVAILABLE TO ESOPs AND SHAREHOLDER EM-
21 PLOYEES.—The last sentence of section 408(d) of the Em-
22 ployee Retirement Income Security Act of 1974 (29
23 U.S.C. 1108(d)) is amended by striking all that precedes
24 “a participant or beneficiary” and inserting “For purposes
25 of this subsection,”.

1 (e) S CORPORATION STOCK DISTRIBUTIONS TO
2 ESOP NOT TREATED AS CONTRIBUTIONS.—Section
3 404(a) of such Code is amended by adding at the end the
4 following new paragraph:

5 “(11) DISTRIBUTIONS WITH RESPECT TO
6 STOCK OF S CORPORATION.—Distributions with re-
7 spect to the stock of an S corporation made to an
8 employee stock ownership plan (as defined in section
9 4975(e)(7)) shall not be considered contributions for
10 purposes of this section or under section 415(c).”

11 (f) DEDUCTION FOR S CORPORATION STOCK DIS-
12 TRIBUTIONS.—Paragraph (6) of section 404(k) of such
13 Code is amended by adding at the end the following new
14 subparagraph:

15 “(C) DIVIDEND.—The term ‘dividend’
16 shall include distributions with respect to stock
17 of an S corporation which would be treated as
18 a dividend but for the application of section
19 1368(a).”

20 (g) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to taxable years beginning after
22 December 31, 1997.

23 **SEC. 3. ESOP ASSUMPTION OF ESTATE TAX.**

24 (a) IN GENERAL.—Subchapter C of chapter 11 of the
25 Internal Revenue Code of 1986 (relating to miscellaneous

1 estate tax provisions) is amended by adding at the end
2 thereof the following new section:

3 **“SEC. 2210. LIABILITY FOR PAYMENT IN CASE OF TRANS-**
4 **FER OF EMPLOYER SECURITIES TO AN EM-**
5 **PLOYEE STOCK OWNERSHIP PLAN OR A**
6 **WORKER-OWNED COOPERATIVE.**

7 “(a) IN GENERAL.—If—

8 “(1) employer securities—

9 “(A) are acquired from the decedent by an
10 employee stock ownership plan or by an eligible
11 worker-owned cooperative from any decedent,

12 “(B) pass from the decedent to such a
13 plan or cooperative, or

14 “(C) are transferred by the executor to
15 such a plan or cooperative, and

16 “(2) the executor of the estate of the decedent
17 may (without regard to this section) make an elec-
18 tion under section 6166 with respect to that portion
19 of the tax imposed by section 2001 which is attrib-
20 utable to employer securities; and

21 then the executor is relieved of liability for payment of
22 that portion of the tax imposed by section 2001 which
23 such employee stock ownership plan or cooperative is re-
24 quired to pay under subsection (b).

1 “(b) PAYMENT OF TAX BY EMPLOYEE STOCK OWN-
2 ERSHIP PLAN OR COOPERATIVE.—

3 “(1) IN GENERAL.—An employee stock owner-
4 ship plan or eligible worker-owned cooperative—

5 “(A) which has acquired employer securi-
6 ties from the decedent, or to which such securi-
7 ties have passed from the decedent or been
8 transferred by the executor, and

9 “(B) with respect to which an agreement
10 described in subsection (e)(1) is in effect,
11 shall pay that portion of the tax imposed by section
12 2001 with respect to the taxable estate of the dece-
13 dent which is described in paragraph (2).

14 “(2) AMOUNT OF TAX TO BE PAID.—The por-
15 tion of the tax imposed by section 2001 with respect
16 to the taxable estate of the decedent that is referred
17 to in paragraph (1) is equal to the lesser of:

18 “(A) the value of the employer securities
19 described in subsection (a)(1) which is included
20 in the gross estate of the decedent, or

21 “(B) the tax imposed by section 2001 with
22 respect to such taxable estate reduced by the
23 sum of the credits allowable against such tax.

24 “(c) INSTALLMENT PAYMENTS.—

25 “(1) IN GENERAL.—If—

1 “(A) the executor of the estate of the dece-
2 dent (without regard to this section) elects to
3 have the provisions of section 6166 (relating to
4 extensions of time for payment of estate tax
5 where estate consists largely of interest in close-
6 ly-held business) apply to payment of that por-
7 tion of the tax imposed by section 2001 with re-
8 spect to such estate which is attributable to em-
9 ployer securities, and

10 “(B) the plan administrator or the cooper-
11 ative provides to the executor the agreement de-
12 scribed in subsection (e)(1),

13 then the plan administrator or any authorized officer
14 of the cooperative may elect, before the due date (in-
15 cluding extensions) for filing the return of such tax,
16 to pay all or part of the tax described in subsection
17 (b)(2) in installments under the provisions of section
18 6166.

19 “(2) INTEREST ON INSTALLMENTS.—In deter-
20 mining the 4-percent portion for purposes of section
21 6601(j)—

22 “(A) the portion of the tax imposed by sec-
23 tion 2001 with respect to an estate for which
24 the executor is liable, and

1 “(B) the portion of such tax for which an
2 employee stock ownership plan or an eligible
3 worker-owned cooperative is liable,
4 shall be aggregated.

5 “(3) SPECIAL RULES FOR APPLICATION OF SEC-
6 TION 6166(g).—In the case of any transfer of em-
7 ployer securities to an employee stock ownership
8 plan or eligible worker-owned cooperative to which
9 this section applies—

10 “(A) TRANSFER DOES NOT TRIGGER AC-
11 CELERATION.—Such transfer shall not be treat-
12 ed as a disposition of withdrawal to which sec-
13 tion 6166(g) applies.

14 “(B) SEPARATE APPLICATION TO ESTATE
15 AND PLAN INTERESTS.—Section 6166(g) shall
16 be applied separately to the interests held after
17 such transfer by the estate and such plan or
18 cooperative.

19 “(C) REQUIRED DISTRIBUTION NOT TAKEN
20 INTO ACCOUNT.—In the case of any distribution
21 of such securities by such plan which is de-
22 scribed in section 4978(d)(1)—

23 “(i) such distribution shall not be
24 treated as a disposition or withdrawal for
25 purposes of section 6166(g), and

1 “(ii) such securities shall not be taken
2 into account in applying section 6166(g) to
3 any subsequent disposition or withdrawal.

4 “(d) GUARANTEE OF PAYMENTS.—Any employer—

5 “(1) whose employees are covered by an em-
6 ployee stock ownership plan, and

7 “(2) who has entered into an agreement de-
8 scribed in subsection (e)(2) which is in effect,

9 and any eligible worker-owned cooperative shall guarantee
10 (in such manner as the Secretary may prescribe) the pay-
11 ment of any amount such plan or cooperative, respectively,
12 is required to pay under subsection (b).

13 “(e) AGREEMENTS.—The agreements described in
14 this subsection are as follows:

15 “(1) A written agreement signed by the plan
16 administrator, or by any authorized officer of the eli-
17 gible worker-owned cooperative, consenting to the
18 application of subsection (b) to such plan or cooper-
19 ative.

20 “(2) A written agreement signed by the em-
21 ployer whose employees are covered by the plan de-
22 scribed in subsection (b) consenting to the applica-
23 tion of subsection (d).

24 “(f) EXEMPTION FROM TAX ON PROHIBITED TRANS-
25 ACTIONS.—The liability which is assumed under this sec-

1 tion by an employee stock ownership plan of any portion
2 of the liability for any portion of the tax imposed by sec-
3 tion 2001 shall be treated as a loan described in section
4 4975(d)(3).

5 “(g) DEFINITIONS.—For purposes of this section—

6 “(1) EMPLOYER SECURITIES.—The term ‘em-
7 ployer securities’ has the meaning given such term
8 by section 409(l).

9 “(2) EMPLOYEE STOCK OWNERSHIP PLAN.—
10 The term ‘employee stock ownership plan’ has the
11 meaning given such term by section 4975(e)(7).

12 “(3) ELIGIBLE WORKER-OWNED COOPERA-
13 TIVE.—The term ‘eligible worker-owned cooperative’
14 has the meaning given to such term by section
15 1042(c)(2).

16 “(4) PLAN ADMINISTRATOR.—The term ‘plan
17 administrator’ has the meaning given such term by
18 section 414(g).

19 “(5) TAX IMPOSED BY SECTION 2001.—The
20 term ‘tax imposed by section 2001’ includes any in-
21 terest, penalty, addition to tax, or additional amount
22 relating to any tax imposed by section 2001.”

23 (b) CONFORMING AMENDMENT.—Section 408(b) of
24 the Employee Retirement Income Security Act of 1974

1 (29 U.S.C. 1108(b)) is amended further by adding at the
2 end the following new paragraph:

3 “(14) Any transaction described in section 2210
4 of the Internal Revenue Code of 1986.”

5 (c) CLERICAL AMENDMENT.—The table of sections
6 for subchapter C of chapter 11 of such Code is amended
7 by adding at the end thereof the following new item:

“Sec. 2210. Liability for payment in case of transfer of employer
securities to an employee stock ownership plan or
a worker-owned cooperative.”

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to transfers of employer securities
10 after the date of enactment of this Act.

11 **SEC. 4. ESOP DIVIDENDS MAY BE REINVESTED WITHOUT**
12 **LOSS OF DIVIDEND DEDUCTION.**

13 (a) IN GENERAL.—Section 404(k)(2)(A) of the Inter-
14 nal Revenue Code of 1986 (defining applicable dividends)
15 is amended by striking “or” at the end of clause (ii), by
16 redesignating clause (iii) as clause (iv), and by inserting
17 after clause (ii) the following new clause:

18 “(iii) is, at the election of such par-
19 ticipants or their beneficiaries—

20 “(I) payable as provided in clause
21 (i) or (ii), or

22 “(II) paid to the plan and rein-
23 vested in employer securities, or”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 1997.

4 **SEC. 5. AMENDMENTS RELATED TO SECTION 1042.**

5 (a) EXTENSION OF SECTION 1042 PRINCIPLES TO
6 STOCK RECEIVED AS COMPENSATION FOR SERVICES.—

7 (1) IN GENERAL.—Section 83 of the Internal
8 Revenue Code of 1986 (relating to property trans-
9 ferred in connection with performance of services) is
10 amended by adding at the end thereof the following
11 new subsection:

12 “(i) EXCEPTION FOR TRANSFERS OF QUALIFIED SE-
13 CURITIES SOLD TO EMPLOYEE STOCK OWNERSHIP
14 PLANS.—

15 “(1) EXCLUSION FROM INCOME.—Subsections
16 (a) and (b) shall not apply to, and no amount shall
17 be includible in gross income with respect to, the
18 transfer of any qualified security (as defined in sec-
19 tion 1042(c)(1)) in connection with the performance
20 of services if, and to the extent that, within 60 days
21 after the event which would cause the recognition of
22 income pursuant to subsection (a) or (b) in the ab-
23 sence of this subsection, the transferee sells such
24 qualified security to an employee stock ownership
25 plan (as defined in section 4975(e)(7)) and the re-

1 requirements of section 1042(a) are met with respect
2 to such sale.

3 “(2) NO DEDUCTION BY EMPLOYER.—Notwith-
4 standing the provisions of subsection (h), the person
5 for whom were performed the services in connection
6 with which any qualified security is transferred shall
7 not be entitled to a deduction with respect to such
8 transfer if, and to the extent that, paragraph (1) ap-
9 plies to such transfer.”

10 (2) CONFORMING AMENDMENTS.—

11 (A) Section 424(c)(1) of such Code is
12 amended by striking “or” at the end of sub-
13 paragraph (B), by striking the period at the
14 end of subparagraph (C) and inserting “, or”,
15 and by adding at the end thereof the following
16 new subparagraph:

17 “(D) a sale to which 1042 applies.”

18 (B) Section 1042(a) of such Code is
19 amended—

20 (i) by striking “which would be recog-
21 nized as long-term capital gain” from the
22 first sentence thereof, and

23 (ii) by adding at the end thereof the
24 following new sentence: “If any gain is rec-
25 ognized after the application of the preced-

1 ing sentence, the portion of such recog-
2 nized gain (up to the whole of such recog-
3 nized gain) which is equal to the amount
4 of ordinary income, if any, that was not
5 recognized with respect to such qualified
6 securities by virtue of section 83(i) or
7 424(c)(1)(D) shall be treated as ordinary
8 income.”.

9 (C) Section 1042(b)(4) of such Code is
10 amended by adding at the end thereof the fol-
11 lowing new sentence: “The requirements of the
12 preceding sentence shall not apply to qualified
13 securities received by the taxpayer in a transfer
14 to which section 83 or 422 applied (or to which
15 section 422 or 424 (as in effect on the day be-
16 fore the date of enactment of the Revenue Rec-
17 onciliation Act of 1990) applied).”.

18 (D) Section 1042(c)(1)(B) of such Code is
19 amended to read as follows:

20 “(B) were not received by the taxpayer
21 in—

22 “(i) a distribution from a plan de-
23 scribed in section 401(a), or

1 “(ii) a transfer pursuant to a right to
2 acquire stock to which section 423 ap-
3 plied.”

4 (E) The first sentence of section 1042(d)
5 of such Code is amended to read as follows:
6 “The basis of the taxpayer in qualified replace-
7 ment property purchased by the taxpayer dur-
8 ing the replacement period shall be reduced by
9 the amount of gain or ordinary income not rec-
10 ognized by virtue of such purchase, taking into
11 account the application of subsection (a) and, if
12 applicable, the application of section 83(i) or
13 section 424(c)(1)(D).”

14 (F) Section 1042(e)(1) of such Code is
15 amended to read as follows:

16 “(1) IN GENERAL.—If a taxpayer disposes of
17 any qualified replacement property, then, notwith-
18 standing any other provision of this title, gain (if
19 any) shall be recognized to the extent of the gain or
20 ordinary income which was not recognized by reason
21 of the acquisition by such taxpayer of such qualified
22 replacement property, taking into account the appli-
23 cation of subsection (a) and, if applicable, the appli-
24 cation of section 83(i) or 424(c)(1)(D). The portion
25 of such gain (up to the whole thereof) equal to the

1 amount of ordinary income that was not recognized
2 by reason of such acquisition shall be treated as or-
3 dinary income.”

4 (3) EFFECTIVE DATE.—The amendments made
5 by this subsection shall apply to sales of qualified se-
6 curities on or after the date of the enactment of this
7 Act.

8 (b) MODIFICATION TO 25-PERCENT SHAREHOLDER
9 RULE.—

10 (1) IN GENERAL.—Section 409(n)(1)(B) of
11 such Code is amended to read as follows:

12 “(B) for the benefit of any other person
13 who owns (after the application of section
14 318(a)) more than 25 percent of—

15 “(i) the total combined voting power
16 of all classes of stock of the corporation
17 which issued such employer securities or of
18 any corporation which is a member of the
19 same controlled group of corporations
20 (within the meaning of subsection (l)(4))
21 as such corporation, or

22 “(ii) the total value of all classes of
23 stock of any such corporation.”

1 defined in section 4975(e)(7)) but only to the
2 extent that—

3 “(i) the securities transferred pre-
4 viously passed from a decedent to a trust
5 described in paragraph (1) or (2);

6 “(ii) no deduction under section 404
7 is allowable with respect to such transfer;

8 “(iii) such plan provides that the se-
9 curities so transferred are allocated to plan
10 participants in a manner consistent with
11 section 401(a)(4);

12 “(iv) such plan treats such securities
13 as being attributable to employer contribu-
14 tions but without regard to the limitations
15 otherwise applicable to such contributions
16 under section 404;

17 “(v) such plan provides that such se-
18 curities are held in a suspense account
19 under the plan to be allocated each year,
20 up to the limitations under section 415(c),
21 after first allocating all other annual addi-
22 tions for the limitation year, up to the lim-
23 itations under sections 415(c) and (e); and

24 “(vi) the employer whose employees
25 are covered by the plan described in this

1 subparagraph files with the Secretary a
2 verified written statement consenting to
3 the application of sections 4978 and
4 4979A with respect to such employer.

5 “(B) QUALIFIED EMPLOYER SECURI-
6 TIES.—For purposes of this section, the term
7 ‘qualified employer securities’ means employer
8 securities (as defined in section 409(l)) which
9 are issued by a domestic corporation which has
10 no outstanding stock which is readily tradable
11 on an established securities market.

12 “(C) TREATMENT OF SECURITIES ALLO-
13 CATED BY EMPLOYEE STOCK OWNERSHIP PLAN
14 TO PERSONS RELATED TO DECEDENT OR 5-PER-
15 CENT SHAREHOLDERS.—

16 “(i) IN GENERAL.—If any portion of
17 the assets of the plan attributable to secu-
18 rities acquired by the plan in a qualified
19 gratuitous transfer are allocated to the ac-
20 count of—

21 “(I) any person who is related to
22 the decedent (within the meaning of
23 section 267(b)), or

24 “(II) any person who, at the time
25 of such allocation or at any time dur-

1 ing the 1-year period ending on the
2 date of the acquisition of qualified
3 employer securities by the plan, is a
4 5-percent shareholder of the employer
5 maintaining the plan,

6 the plan shall be treated as having distrib-
7 uted (at the time of such allocation) to
8 such person or shareholder the amount so
9 allocated.

10 “(ii) 5-PERCENT SHAREHOLDER.—
11 For purposes of clause (i), the term ‘5-per-
12 cent shareholder’ means any person who
13 owns (directly or through the application
14 of section 318(a)) more than 5 percent
15 of—

16 “(I) any class of outstanding
17 stock of the corporation which issued
18 such qualified employer securities or
19 of any corporation which is a member
20 of the same controlled group of cor-
21 porations (within the meaning of sec-
22 tion 409(l)(4)) as such corporation, or

23 “(II) the total value of any class
24 of outstanding stock of any such cor-
25 poration; and

1 For purposes of the preceding sentence,
2 section 318(a) shall be applied without re-
3 gard to the exception in paragraph
4 (2)(B)(i) thereof.

5 “(iii) CROSS REFERENCE.—

**“For excise tax on allocations described in clause
 (i), see section 4979A.”**

6 (c) CONFORMING AMENDMENTS.—

7 (1) Section 401(a)(1) of such Code is amended
8 by inserting “or by a charitable remainder trust pur-
9 suant to a qualified gratuitous transfer (as defined
10 in section 664(d)(3)(A)),” after “stock bonus
11 plans),”.

12 (2) Section 404(a)(9) of such Code is amended
13 by inserting after subparagraph (C) the following
14 new subparagraph:

15 “(D) A qualified gratuitous transfer (as
16 defined in section 664(d)(3)(A)) shall have no
17 effect on the amount or amounts otherwise de-
18 ductible under paragraph (3) or (7) or under
19 this paragraph.”

20 (3) Section 415(c)(6) of such Code is amended
21 by adding at the end thereof the following new sen-
22 tence:

23 “‘The amount of any qualified gratuitous transfer
24 (as defined in section 664(d)(3)(A)) allocated to a

1 participant for any limitation year shall not exceed
2 the limitations imposed by this section, but such
3 amount shall not be taken into account in determin-
4 ing whether any other amount exceeds the limita-
5 tions imposed by this section.”

6 (4) Section 415(e) of such Code is amended—

7 (A) by redesignating paragraph (6) as
8 paragraph (7), and

9 (B) by inserting after paragraph (5) the
10 following new paragraph:

11 “(6) SPECIAL RULE FOR QUALIFIED GRATU-
12 ITOUS TRANSFERS.—Any qualified gratuitous trans-
13 fer of qualified employer securities (as defined by
14 section 664(d)(3)) shall not be taken into account in
15 calculating, and shall not be subject to, the limita-
16 tions provided in this subsection.”

17 (5) Paragraph (3) of section 644(e) of such
18 Code is amended to read as follows:

19 “(3) acquired by a charitable remainder annuity
20 trust (as defined in section 664(d)(1)) or a chari-
21 table remainder unitrust (as defined in sections
22 664(d)(2) and (4)), or”.

23 (6) Subparagraph (B) of section 664(d)(1) of
24 such Code and subparagraph (B) of section
25 664(d)(2) of such Code are each amended by insert-

1 ing “and other than qualified gratuitous transfers
2 described in subparagraph (C)” after “subparagraph
3 (A)”.

4 (7) Paragraph (4) of section 674(b) of such
5 Code is amended by inserting before the period “or
6 to an employee stock ownership plan (as defined in
7 section 4975(e)(7)) in a qualified gratuitous transfer
8 (as defined in section 664(d)(3))”.

9 (8)(A) Section 2055(a) of such Code is amend-
10 ed—

11 (i) by striking “or” at the end of para-
12 graph (3),

13 (ii) by striking the period at the end of
14 paragraph (4) and inserting “; or”, and

15 (iii) by inserting after paragraph (4) the
16 following new paragraph:

17 “(5) to an employee stock ownership plan if
18 such transfer qualifies as a qualified gratuitous
19 transfer of qualified employer securities within the
20 meaning of section 664(d)(3).”

21 (B) Clause (ii) of section 2055(e)(3)(C) of such
22 Code is amended by striking “section 664(d)(3)”
23 and inserting “section 664(d)(4)”.

24 (9) Paragraph (8) of section 2056(b) of such
25 Code is amended to read as follows:

1 “(8) SPECIAL RULE FOR CHARITABLE REMAIN-
2 DER TRUSTS.—

3 “(A) IN GENERAL.—If the surviving
4 spouse of the decedent is the only beneficiary of
5 a qualified charitable remainder trust who is
6 not a charitable beneficiary nor an ESOP bene-
7 ficiary, paragraph (1) shall not apply to any in-
8 terest in such trust which passes or has passed
9 from the decedent to such surviving spouse.

10 “(B) DEFINITIONS.—For purposes of sub-
11 paragraph (A)—

12 “(i) CHARITABLE BENEFICIARY.—The
13 term ‘charitable beneficiary’ means any
14 beneficiary which is an organization de-
15 scribed in section 170(c).

16 “(ii) ESOP BENEFICIARY.—The term
17 ‘ESOP beneficiary’ means any beneficiary
18 which is an employee stock ownership plan
19 (as defined in section 4975(e)(7)) that
20 holds a remainder interest in qualified em-
21 ployer securities (as defined in section
22 664(d)(3)) to be transferred to such plan
23 in a qualified gratuitous transfer (as de-
24 fined in section 664(d)(3)).

1 “(iii) QUALIFIED CHARITABLE RE-
2 MAINDER TRUST.—The term ‘qualified
3 charitable remainder trust’ means a chari-
4 table remainder annuity trust or a chari-
5 table remainder unitrust (described in sec-
6 tion 664).”

7 (10) Section 4947(b) of such Code is amended
8 by inserting after paragraph (3) the following new
9 paragraph:

10 “(4) SECTION 507.—The provisions of section
11 507(a) shall not apply to a trust which is described
12 in subsection (a)(2) by reason of a distribution of
13 qualified employer securities (as defined in section
14 664(d)(3)) to an employee stock ownership plan (as
15 defined in section 4975(e)(7)) in a qualified gratu-
16 itous transfer (as defined by section 664(d)(3)).”

17 (11) The last sentence of section 4975(e)(7) of
18 such Code is amended by inserting “and section
19 664(d)(3)” after “section 409(n)”

20 (12) Subsection (a) of section 4978 of such
21 Code is amended by inserting “or acquired any
22 qualified employer securities in a qualified gratu-
23 itous transfer to which section 664(d)(3) applied”
24 after “section 1042 applied”.

1 (13) Paragraph (2) of section 4978(b) of such
2 Code is amended—

3 (A) by inserting “or acquired in the quali-
4 fied gratuitous transfer to which section
5 664(d)(3) applied” after “section 1042 ap-
6 plied”, and

7 (B) by inserting “or to which section
8 664(d)(3) applied” after “section 1042 applied”
9 in subparagraph (C) thereof.

10 (14) Subsection (c) of section 4978 of such
11 Code is amended by striking “written statement”
12 and all that follows and inserting “written statement
13 described in section 664(d)(3)(A)(vi) or in section
14 1042(b)(3) (as the case may be).”

15 (15) Paragraph (2) of section 4978(e) of such
16 Code is amended by striking the period and insert-
17 ing “; except that such section shall be applied with-
18 out regard to subparagraph (B) thereof for purposes
19 of applying this section and section 4979A with re-
20 spect to securities acquired in a qualified gratuitous
21 transfer (as defined in section 664(d)(3)(A)).”

22 (16) Subsection (a) of section 4979A of such
23 Code is amended to read as follows:

24 “(a) IMPOSITION OF TAX.—If—

1 “(1) there is a prohibited allocation of qualified
2 securities by any employee stock ownership plan or
3 eligible worker-owned cooperative, or

4 “(2) there is an allocation described in section
5 663(d)(3)(C)(i),

6 there is hereby imposed a tax on such allocation equal to
7 50 percent of the amount involved.”

8 (17) Subsection (c) of section 4979A of such
9 Code is amended to read as follows:

10 “(c) LIABILITY FOR TAX.—The tax imposed by this
11 section shall be paid by—

12 “(1) the employer sponsoring such plan, or

13 “(2) the eligible worker-owned cooperative,

14 which made the written statement described in section
15 664(d)(3)(A)(vi) or in section 1042(b)(3)(B) (as the case
16 may be).”

17 (18) Section 4979A of such Code is amended
18 by redesignating subsection (d) as subsection (e) and
19 by inserting after subsection (c) the following new
20 subsection:

21 “(d) SPECIAL STATUTE OF LIMITATIONS FOR TAX
22 ATTRIBUTABLE TO CERTAIN ALLOCATIONS.—The statu-
23 tory period for the assessment of any tax imposed by this
24 section on an allocation described in subsection (a)(2) of

1 qualified employer securities shall not expire before the
2 date which is 3 years from the later of—

3 “(1) the 1st allocation of such securities in con-
4 nection with a qualified gratuitous transfer (as de-
5 fined in section 664(d)(3)(A)), or

6 “(2) the date on which the Secretary is notified
7 of the allocation described in subsection (a)(2).”

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to transfers made by trusts to, or
10 for the use of, an employee stock ownership plan after the
11 date of the enactment of this Act.

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