

107TH CONGRESS
2^D SESSION

S. 2722

To amend the Internal Revenue Code of 1986 to ensure the proper tax treatment of executive compensation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 11 (legislative day, JULY 10), 2002

Mr. ROCKEFELLER 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 ensure the proper tax treatment of executive compensation, 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 “Executive Compensa-
5 tion Tax Reform Act of 2002”.

1 **SEC. 2. REPEAL OF 1978 REVENUE ACT LIMITATION ON**
2 **SECRETARY OF THE TREASURY'S AUTHORITY**
3 **TO DETERMINE YEAR OF INCLUSION OF**
4 **AMOUNTS UNDER PRIVATE DEFERRED COM-**
5 **PENSATION PLANS.**

6 (a) REPEAL.—Section 132 of the Revenue Act of
7 1978 (Public Law 95–600) is repealed.

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

11 **SEC. 3. TREATMENT OF EMPLOYMENT LOANS MADE TO EX-**
12 **ECUTIVES.**

13 (a) IN GENERAL.—Subchapter C of chapter 80 of the
14 Internal Revenue Code of 1986 (relating to provisions af-
15 fecting more than one subtitle) is amended by adding after
16 section 7872 the following new section:

17 **“SEC. 7872A. TREATMENT OF EMPLOYMENT LOANS MADE**
18 **TO EXECUTIVES.**

19 “(a) GENERAL RULE.—If an employer directly or in-
20 directly makes a loan to an applicable employee—

21 “(1) such loan shall be treated as compensation
22 to the employee for purposes of subtitles A and C
23 if the requirements of subsection (b) are not met
24 with respect to such loan, and

25 “(2) if the principal amount of such loan, when
26 added to the aggregate outstanding balance (as of

1 the date of such loan) of all other loans made di-
2 rectly or indirectly by the employer to such em-
3 ployee, exceeds \$1,000,000, then the rules of sub-
4 section (c) shall for purposes of applying section
5 7872 to such loan.

6 “(b) MINIMUM REQUIREMENTS TO BE TREATED AS
7 A LOAN.—

8 “(1) IN GENERAL.—A loan meets the require-
9 ments of this subsection only if—

10 “(A) the loan is evidenced by a promissory
11 note or other written evidence of indebtedness,

12 “(B) there is adequate collateral or secu-
13 rity for the loan, and

14 “(C) there is a fixed schedule (not greater
15 than 10 years) for repayment of principal and
16 interest on the loan.

17 “(2) COLLATERAL.—For purposes of paragraph
18 (1)(B), there shall not be taken into account as col-
19 lateral or security any assets acquired by the em-
20 ployee by reason of the employee’s employment with
21 the employer, including any stock or capital or prof-
22 its interests in the employer, any option or other
23 contract to purchase such stock or interests, any re-
24 stricted stock or ownership interest, or any non-
25 qualified deferred compensation.

1 “(3) RELOCATION LOANS.—Paragraph (1)(C)
2 shall not apply to a loan by an employer to an em-
3 ployee the proceeds of which are used by the em-
4 ployee to purchase a principal residence if the pur-
5 chase is in connection with the commencement of
6 work by an employee or a change in the principal
7 work of an employee to which section 217 applies.

8 “(c) APPLICATION OF SECTION 7872 TO EXCESSIVE
9 LOANS.—If subsection (a)(2) applies to a loan, in deter-
10 mining whether such loan is a below-market loan to which
11 section 7872 applies (and in applying such section to such
12 loan if it is a below-market loan)—

13 “(1) such loan shall not be treated as a gift
14 loan or demand loan, and

15 “(2) the discount rate used in determining the
16 present value of any payment due under the loan
17 shall be the applicable Federal rate plus 3 percent-
18 age points.

19 “(d) RULES APPLICABLE TO AMOUNTS TREATED AS
20 COMPENSATION.—

21 “(1) IN GENERAL.—If subsection (a)(1) applies
22 to a loan made by an employer to an applicable em-
23 ployee, the employer shall be treated as having made
24 a supplemental wage payment to the employee in an
25 amount equal to the principal amount of the loan.

1 Such payment shall be treated as having been made
2 on the date the loan was made.

3 “(2) SUBSEQUENT REPAYMENTS.—If an em-
4 ployee repays any principal on a loan to which sub-
5 section (a)(1) applies—

6 “(A) there shall be allowed as a deduction
7 to the employee for the taxable year of the re-
8 payment the amount of such repayment, and

9 “(B) the amount treated as compensation
10 for purposes of subtitle C for the calendar year
11 of the repayment shall be reduced by the
12 amount of such repayment.

13 The amount of the reduction under subparagraph
14 (B) shall not exceed the amount treated as com-
15 pensation for purposes of subtitle C by reason of
16 this section and shall be carried to 1 or more suc-
17 ceeding calendar years to the extent such amount
18 exceeds the aggregate amount of compensation for
19 the year of the repayment and succeeding years.

20 “(e) OTHER DEFINITIONS AND RULES.—For pur-
21 poses of this section—

22 “(1) APPLICABLE EMPLOYEE.—

23 “(A) IN GENERAL.—The term ‘applicable
24 employee’ means an employee who, at the time
25 the loan is made—

1 “(i) is an officer or director of the em-
2 ployer,

3 “(ii) is a 5-percent owner (within the
4 meaning of section 416(i)) of the employer,
5 or

6 “(iii) has an aggregate outstanding
7 balance of loans (including such loan)
8 made directly or indirectly to the employee
9 by the employer in excess of \$1,000,000.

10 “(B) APPLICABLE RULES.—For purposes
11 of subparagraph (A)—

12 “(i) the term ‘employee’ includes a di-
13 rector and a self-employed individual (with-
14 in the meaning of section 401(c)(1)), and

15 “(ii) in the case of an employer which
16 is not a corporation, an individual shall be
17 treated as an officer or director if the indi-
18 vidual holds any comparable position with
19 the employer.

20 “(2) AGGREGATION.—All persons treated as a
21 single employer under subsection (a) or (b) of sec-
22 tion 52 shall be treated as a single person for pur-
23 poses of this section.”

24 (b) CONFORMING AMENDMENT.—The table of sec-
25 tions for subchapter C of chapter 80 of the Internal Rev-

1 enue Code of 1986 is amended by adding after the item
 2 relating to section 7872 the following new item:

“Sec. 7872A. Treatment of employment loans made to executives.”

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to—

5 (1) loans made after the date of the enactment
 6 of this Act, and

7 (2) refinancings after such date of loans made
 8 before such date.

9 **SEC. 4. CERTAIN SALES OF COMPANY STOCK BY COR-**
 10 **PORATE INSIDERS TO BE SUBJECT TO EX-**
 11 **CISE TAX ON GOLDEN PARACHUTE PAY-**
 12 **MENTS.**

13 (a) IN GENERAL.—Section 4999 of the Internal Rev-
 14 enue Code of 1986 (relating to golden parachute pay-
 15 ments) is amended by redesignating subsection (c) as sub-
 16 section (d) and by inserting after subsection (b) the fol-
 17 lowing new subsection:

18 “(c) CERTAIN SALES OF COMPANY STOCK BY COR-
 19 PORATE INSIDERS.—

20 “(1) IN GENERAL.—For purposes of this sec-
 21 tion, the term ‘excess parachute payment’ includes
 22 any amount realized by a corporate insider on the
 23 sale or exchange of stock in the corporation with re-
 24 spect to which the individual is a corporate insider
 25 if such sale or exchange occurs while such corpora-

1 tion (or any other entity consolidated with such cor-
2 poration for purposes of reporting to the Securities
3 and Exchange Commission) maintains a transfer-re-
4 stricted 401(k) plan.

5 “(2) CORPORATE INSIDER.—For purposes of
6 this subsection, the term ‘corporate insider’ means,
7 with respect to a corporation, any individual who is
8 subject to the requirements of section 16(a) of the
9 Securities Exchange Act of 1934 with respect to
10 such corporation.

11 “(3) TRANSFER-RESTRICTED 401(k) PLAN.—
12 For purposes of this subsection, the term ‘transfer-
13 restricted 401(k) plan’ means, with respect to any
14 period, any qualified cash or deferred arrangement
15 (as defined in section 401(k)(2)) if, during such pe-
16 riod, any participant in such arrangement is not able
17 to freely sell employer stock—

18 “(A) which is held in such participant’s ac-
19 count under such arrangement, and

20 “(B) which is attributable to employee con-
21 tributions, employer contributions, or earnings
22 thereon.

23 “(4) APPLICATION OF SUBSECTION.—This sub-
24 section shall apply to sales and exchanges during the

1 6-month period beginning on the date of the enact-
2 ment of this subsection.”

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to sales and exchanges after the
5 date of the enactment of this Act.

6 **SEC. 5. INCLUSION IN INCOME OF CERTAIN DEFERRED**
7 **AMOUNTS OF INSIDERS OF CORPORATIONS**
8 **WHICH EXPATRIATE TO AVOID UNITED**
9 **STATES INCOME TAX.**

10 (a) IN GENERAL.—Part II of subchapter B of chap-
11 ter 1 of the Internal Revenue Code of 1986 (relating to
12 items specifically included in gross income) is amended by
13 adding at the end the following new section:

14 **“SEC. 91. UNREALIZED GAIN ON STOCK OPTIONS OF INSID-**
15 **ERS OF CORPORATIONS WHICH EXPATRIATE**
16 **TO AVOID UNITED STATES INCOME TAX.**

17 “(a) IN GENERAL.—In the case of a corporate insider
18 of any expatriate corporation, the gross income of such
19 insider (for the taxable year during which such corpora-
20 tion becomes an expatriate corporation) shall include as
21 ordinary income the net unrealized built-in gain on options
22 held by such insider to acquire stock in such corporation
23 or in any member of the expanded affiliated group which
24 includes such corporation. Proper adjustments shall be
25 made in the amount of any gain or loss subsequently real-

1 ized with respect to such options for any amount included
2 in gross income under the preceding sentence.

3 “(b) DEFINITIONS.—For purposes of this section—

4 “(1) CORPORATE INSIDER.—The term ‘cor-
5 porate insider’ means, with respect to a corporation,
6 any individual who is subject to the requirements of
7 section 16(a) of the Securities Exchange Act of
8 1934 with respect to such corporation.

9 “(2) EXPATRIATE CORPORATION.—

10 “(A) IN GENERAL.—The term ‘expatriate
11 corporation’ means the acquiring corporation in
12 a corporate expatriation transaction.

13 “(B) CORPORATE EXPATRIATION TRANS-
14 ACTION.—For purposes of this paragraph—

15 “(i) IN GENERAL.—The term ‘cor-
16 porate expatriation transaction’ means any
17 transaction if—

18 “(I) a nominally foreign corpora-
19 tion (referred to in this subparagraph
20 as the ‘acquiring corporation’) ac-
21 quires, as a result of such transaction,
22 directly or indirectly substantially all
23 of the properties held directly or indi-
24 rectly by a domestic corporation, and

1 “(II) immediately after the trans-
2 action, more than 80 percent of the
3 stock (by vote or value) of the acquir-
4 ing corporation is held by former
5 shareholders of the domestic corpora-
6 tion by reason of holding stock in the
7 domestic corporation.

8 “(ii) LOWER STOCK OWNERSHIP RE-
9 QUIREMENT IN CERTAIN CASES.—Sub-
10 clause (II) of clause (i) shall be applied by
11 substituting ‘50 percent’ for ‘80 percent’
12 with respect to any nominally foreign cor-
13 poration if—

14 “(I) such corporation does not
15 have substantial business activities
16 (when compared to the total business
17 activities of the expanded affiliated
18 group) in the foreign country in which
19 or under the law of which the corpora-
20 tion is created or organized, and

21 “(II) the stock of the corporation
22 is publicly traded and the principal
23 market for the public trading of such
24 stock is in the United States.

1 “(iii) PARTNERSHIP TRANSACTIONS.—

2 The term ‘corporate expatriation trans-
3 action’ includes any transaction if—

4 “(I) a nominally foreign corpora-
5 tion (referred to in this paragraph as
6 the ‘acquiring corporation’) acquires,
7 as a result of such transaction, di-
8 rectly or indirectly properties consti-
9 tuting a trade or business of a domes-
10 tic partnership,

11 “(II) immediately after the trans-
12 action, more than 80 percent of the
13 stock (by vote or value) of the acquir-
14 ing corporation is held by former
15 partners of the domestic partnership
16 or related foreign partnerships (deter-
17 mined without regard to stock of the
18 acquiring corporation which is sold in
19 a public offering related to the trans-
20 action), and

21 “(III) the acquiring corporation
22 meets the requirements of subclauses
23 (I) and (II) of clause (ii).

24 “(iv) SPECIAL RULES.—For purposes
25 of this subparagraph—

1 “(I) a series of related trans-
2 actions shall be treated as 1 trans-
3 action, and

4 “(II) stock held by members of
5 the expanded affiliated group which
6 includes the acquiring corporation
7 shall not be taken into account in de-
8 termining ownership.

9 “(v) NOMINALLY FOREIGN CORPORA-
10 TION.—The term ‘nominally foreign cor-
11 poration’ means any corporation which
12 would (but for this subparagraph) be treat-
13 ed as a foreign corporation.

14 “(3) NET REALIZED BUILT-IN GAIN.—The term
15 ‘net unrealized built-in gain’ means, with respect to
16 options to acquire stock in any corporation, the
17 amount which would be required to be included in
18 gross income were such options exercised.

19 “(4) EXPANDED AFFILIATED GROUP.—The
20 term ‘expanded affiliated group’ means an affiliated
21 group (as defined in section 1504(a) without regard
22 to section 1504(b)).”

23 (b) CLERICAL AMENDMENT.—The table of sections
24 for such part II is amended by adding at the end the fol-
25 lowing new item:

“Sec. 91. Certain deferred amounts of insiders of corporations
which expatriate to avoid United States income
tax.”

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to corporate expatria-
3 tion transactions completed after the date of the enact-
4 ment of this Act, and to taxable years ending after such
5 date.

○