

106TH CONGRESS
1ST SESSION

H. R. 2124

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

JUNE 10, 1999

Mr. BALLENGER (for himself, Mrs. JOHNSON of Connecticut, Mrs. THURMAN, Mr. RAMSTAD, Mr. ROHRABACHER, and Mr. LEVIN) 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 1999”.

6 **SEC. 2. ESOP DIVIDENDS MAY BE REINVESTED WITHOUT**
7 **LOSS OF DIVIDEND DEDUCTION.**

8 (a) IN GENERAL.—Section 404(k)(2)(A) of the Inter-
9 nal Revenue Code of 1986 (defining applicable dividends)

1 is amended by striking “or” at the end of clause (ii), by
 2 redesignating clause (iii) as clause (iv), and by inserting
 3 after clause (ii) the following new clause:

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

6 “(I) payable as provided in clause
 7 (i) or (ii), or

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

10 (b) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to taxable years beginning after
 12 December 31, 1999.

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

14 (a) IN GENERAL.—Subchapter C of chapter 11 of the
 15 Internal Revenue Code of 1986 (relating to miscellaneous
 16 estate tax provisions) is amended by adding at the end
 17 thereof the following new section:

18 **“SEC. 2210. LIABILITY FOR PAYMENT IN CASE OF TRANS-**
 19 **FER OF EMPLOYER SECURITIES TO AN EM-**
 20 **PLOYEE STOCK OWNERSHIP PLAN OR A**
 21 **WORKER-OWNED COOPERATIVE.**

22 “(a) IN GENERAL.—If—

23 “(1) employer securities—

1 “(A) are acquired from the decedent by an
2 employee stock ownership plan or by an eligible
3 worker-owned cooperative from any decedent,

4 “(B) pass from the decedent to such a
5 plan or cooperative, or

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

8 “(2) the executor of the estate of the decedent
9 may (without regard to this section) make an elec-
10 tion under section 6166 with respect to that portion
11 of the tax imposed by section 2001 which is attrib-
12 utable to employer securities; and

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

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

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

21 “(A) which has acquired employer securi-
22 ties from the decedent, or to which such securi-
23 ties have passed from the decedent or been
24 transferred by the executor, and

1 “(B) with respect to which an agreement
2 described in subsection (e)(1) is in effect,
3 shall pay that portion of the tax imposed by section
4 2001 with respect to the taxable estate of the dece-
5 dent which is described in paragraph (2).

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

10 “(A) the value of the employer securities
11 described in subsection (a)(1) which is included
12 in the gross estate of the decedent, or

13 “(B) the tax imposed by section 2001 with
14 respect to such taxable estate reduced by the
15 sum of the credits allowable against such tax.

16 “(c) INSTALLMENT PAYMENTS.—

17 “(1) IN GENERAL.—If—

18 “(A) the executor of the estate of the dece-
19 dent (without regard to this section) elects to
20 have the provisions of section 6166 (relating to
21 extensions of time for payment of estate tax
22 where estate consists largely of interest in close-
23 ly-held business) apply to payment of that por-
24 tion of the tax imposed by section 2001 with re-

1 spect to such estate which is attributable to em-
2 ployer securities, and

3 “(B) the plan administrator or the cooper-
4 ative provides to the executor the agreement de-
5 scribed in subsection (e)(1),

6 then the plan administrator or any authorized officer
7 of the cooperative may elect, before the due date (in-
8 cluding extensions) for filing the return of such tax,
9 to pay all or part of the tax described in subsection
10 (b)(2) in installments under the provisions of section
11 6166.

12 “(2) INTEREST ON INSTALLMENTS.—In deter-
13 mining the 4-percent portion for purposes of section
14 6601(j)—

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

18 “(B) the portion of such tax for which an
19 employee stock ownership plan or an eligible
20 worker-owned cooperative is liable,
21 shall be aggregated.

22 “(3) SPECIAL RULES FOR APPLICATION OF SEC-
23 TION 6166(g).—In the case of any transfer of em-
24 ployer securities to an employee stock ownership

1 plan or eligible worker-owned cooperative to which
2 this section applies—

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

7 “(B) SEPARATE APPLICATION TO ESTATE
8 AND PLAN INTERESTS.—Section 6166(g) shall
9 be applied separately to the interests held after
10 such transfer by the estate and such plan or
11 cooperative.

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

16 “(i) such distribution shall not be
17 treated as a disposition or withdrawal for
18 purposes of section 6166(g), and

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

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

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

1 “(2) who has entered into an agreement de-
2 scribed in subsection (e)(2) which is in effect,
3 and any eligible worker-owned cooperative shall guarantee
4 (in such manner as the Secretary may prescribe) the pay-
5 ment of any amount such plan or cooperative, respectively,
6 is required to pay under subsection (b).

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

9 “(1) A written agreement signed by the plan
10 administrator, or by any authorized officer of the eli-
11 gible worker-owned cooperative, consenting to the
12 application of subsection (b) to such plan or cooper-
13 ative.

14 “(2) A written agreement signed by the em-
15 ployer whose employees are covered by the plan de-
16 scribed in subsection (b) consenting to the applica-
17 tion of subsection (d).

18 “(f) EXEMPTION FROM TAX ON PROHIBITED TRANS-
19 ACTIONS.—The liability which is assumed under this sec-
20 tion by an employee stock ownership plan of any portion
21 of the liability for any portion of the tax imposed by sec-
22 tion 2001 shall be treated as a loan described in section
23 4975(d)(3).

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

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

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

7 “(3) ELIGIBLE WORKER-OWNED COOPERA-
8 TIVE.—The term ‘eligible worker-owned cooperative’
9 has the meaning given to such term by section
10 1042(c)(2).

11 “(4) PLAN ADMINISTRATOR.—The term ‘plan
12 administrator’ has the meaning given such term by
13 section 414(g).

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

18 (b) CONFORMING AMENDMENT.—Section 408(b) of
19 the Employee Retirement Income Security Act of 1974
20 (29 U.S.C. 1108(b)) is amended further by adding at the
21 end the following new paragraph:

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

1 (c) CLERICAL AMENDMENT.—The table of sections
 2 for subchapter C of chapter 11 of such Code is amended
 3 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.”

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

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

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

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

15 “(i) EXCEPTION FOR TRANSFERS OF QUALIFIED SE-
 16 CURITIES SOLD TO EMPLOYEE STOCK OWNERSHIP
 17 PLANS.—

18 “(1) EXCLUSION FROM INCOME.—Subsections
 19 (a) and (b) shall not apply to, and no amount shall
 20 be includible in gross income with respect to, the
 21 transfer of any qualified security (as defined in sec-
 22 tion 1042(c)(1)) in connection with the performance
 23 of services if, and to the extent that, within 60 days
 24 after the event which would cause the recognition of

1 income pursuant to subsection (a) or (b) in the ab-
2 sence of this subsection, the transferee sells such
3 qualified security to an employee stock ownership
4 plan (as defined in section 4975(e)(7)) and the re-
5 quirements of section 1042(a) are met with respect
6 to such sale.

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

14 (2) CONFORMING AMENDMENTS.—

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

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

22 (B) Section 1042(a) of such Code is
23 amended—

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

4 (ii) by adding at the end thereof the
5 following new sentence: “If any gain is rec-
6 ognized after the application of the pre-
7 ceding sentence, the portion of such recog-
8 nized gain (up to the whole of such recog-
9 nized gain) which is equal to the amount
10 of ordinary income, if any, that was not
11 recognized with respect to such qualified
12 securities by virtue of section 83(i) or
13 424(c)(1)(D) shall be treated as ordinary
14 income.”.

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

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

1 “(B) were not received by the taxpayer
2 in—

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

5 “(ii) a transfer pursuant to a right to
6 acquire stock to which section 423 ap-
7 plied.”

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

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

20 “(1) IN GENERAL.—If a taxpayer disposes of
21 any qualified replacement property, then, notwith-
22 standing any other provision of this title, gain (if
23 any) shall be recognized to the extent of the gain or
24 ordinary income which was not recognized by reason
25 of the acquisition by such taxpayer of such qualified

1 replacement property, taking into account the appli-
2 cation of subsection (a) and, if applicable, the appli-
3 cation of section 83(i) or 424(c)(1)(D). The portion
4 of such gain (up to the whole thereof) equal to the
5 amount of ordinary income that was not recognized
6 by reason of such acquisition shall be treated as or-
7 dinary income.”

8 (3) EFFECTIVE DATE.—The amendments made
9 by this subsection shall apply to sales of qualified se-
10 curities on or after the date of the enactment of this
11 Act.

12 (b) MODIFICATION TO 25-PERCENT SHAREHOLDER
13 RULE.—

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

16 “(B) for the benefit of any other person
17 who owns (after the application of section
18 318(a)) more than 25 percent of—

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

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

3 (2) EFFECTIVE DATE.—The amendment made
4 by paragraph (1) shall take effect on the date of the
5 enactment of this Act.

6 (c) REINVESTMENT IN CERTAIN MUTUAL FUNDS
7 PERMITTED.—

8 (1) IN GENERAL.—Clause (ii) of section
9 1042(c)(4)(B) of such Code is amended to read as
10 follows:

11 “(ii) FINANCIAL INSTITUTIONS, IN-
12 SURANCE COMPANIES, AND MUTUAL
13 FUNDS.—The term ‘operating corporation’
14 shall include—

15 “(I) any financial institution de-
16 scribed in section 581,

17 “(II) any insurance company
18 subject to tax under subchapter L,
19 and

20 “(III) any regulated investment
21 company if substantially all of the se-
22 curities held by such company are se-
23 curities issued by operating corpora-
24 tions (determined without regard to
25 this subclause).”

1 (2) EFFECTIVE DATE.—The amendment
 2 made by paragraph (1) shall apply to sales of
 3 qualified securities after the date of the enact-
 4 ment of this Act.

5 **SEC. 5. EARLY DISTRIBUTIONS FROM EMPLOYEE STOCK**
 6 **OWNERSHIP PLANS FOR HIGHER EDUCATION**
 7 **EXPENSES AND FIRST-TIME HOMEBUYER**
 8 **PURCHASES.**

9 (a) IN GENERAL.—Paragraph (2) of section 72(t) of
 10 the Internal Revenue Code of 1986 (relating to 10-percent
 11 additional tax on early distributions from qualified retire-
 12 ment plans) is amended by adding at the end the following
 13 new subparagraph:

14 “(G) DISTRIBUTIONS FROM EMPLOYEE
 15 STOCK OWNERSHIP PLANS FOR HIGHER EDU-
 16 CATION EXPENSES AND FIRST-TIME HOME-
 17 BUYER PURCHASES.—

18 “(i) IN GENERAL.—Distributions
 19 made to the employee from an employee
 20 stock ownership plan (within the meaning
 21 of section 4975(e)(7)), the amount of
 22 which does not exceed the sum of—

23 “(I) qualified higher education
 24 expenses (as defined by paragraph
 25 (7)) reduced by the amount of such

1 expenses taken into account under
2 subparagraph (E), and

3 “(II) qualified first-time home-
4 buyer distributions (as defined by
5 paragraph (8)) reduced by the amount
6 of such distributions taken into ac-
7 count under subparagraph (F).

8 “(ii) LIMITATION.—A distribution
9 may only be taken into account under
10 clause (i) if—

11 “(I) such distribution is in the
12 form of either employer securities
13 (within the meaning of section 409(l))
14 or cash proceeds resulting from the
15 sale of such securities made not more
16 than 180 days before the date of such
17 distribution for the purposes of such
18 distribution,

19 “(II) such securities so distrib-
20 uted or sold were held by such plan
21 for at least 5 years before the date of
22 such distribution or, if applicable,
23 sale, and

24 “(III) the number of shares in
25 each class of such securities so dis-

1 tributed or sold, when added to all
2 previous distributions and sales of
3 each such class of such securities for
4 such purposes on behalf of such em-
5 ployee, does not exceed 10 percent of
6 the aggregate number of shares of
7 each class of such securities allocated
8 to the account of such employee under
9 such plan.

10 “(iii) VALUATION OF DISTRIBUTED
11 SECURITIES.—For purposes of clause (ii),
12 the value of a security shall be the value
13 of such security on the date of distribu-
14 tion.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Paragraph (7) of section 72(t) of such Code
17 is amended by striking “paragraph (2)(E)” and in-
18 serting “subparagraphs (E) and (G) of paragraph
19 (2)”.

20 (2) Paragraph (8) of section 72(t) of such Code
21 is amended by striking “paragraph (2)(F)” and in-
22 serting “subparagraphs (F) and (G) of paragraph
23 (2)”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to distributions made after Decem-
3 ber 31, 1999.

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