

107TH CONGRESS
2D SESSION

H. R. 5432

To amend the Internal Revenue Code of 1986 to require the same holding period for company stock acquired upon exercise of options as is applicable to company stock in its 401(k) plan, to require disclosure to shareholders of the amount of corporate perks provided to retired executives, and to provide parity for secured retirement benefits between the rank and file and executives.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2002

Mr. MATSUI (for himself, Mr. GEPHARDT, Mr. RANGEL, Mr. GEORGE MILLER of California, Mr. STARK, Mr. COYNE, Mr. McDERMOTT, Mr. NEAL of Massachusetts, Mr. DOGGETT, Ms. LOFGREN, and Mr. JEFFERSON) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to require the same holding period for company stock acquired upon exercise of options as is applicable to company stock in its 401(k) plan, to require disclosure to shareholders of the amount of corporate perks provided to retired executives, and to provide parity for secured retirement benefits between the rank and file and executives.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SPECIAL RULES FOR EXECUTIVE PERKS AND**
 2 **RETIREMENT BENEFITS.**

3 (a) IN GENERAL.—Part I of subchapter D of chapter
 4 1 of the Internal Revenue Code of 1986 (relating to pen-
 5 sion, profit-sharing, stock bonus plans, etc.) is amended
 6 by adding at the end the following new subpart:

7 “SUBPART F—SPECIAL RULES FOR EXECUTIVE PERKS
 8 AND RETIREMENT BENEFITS

“Sec. 420A. Holding period requirement for stock acquired
 through exercise of option.

“Sec. 420B. Additional tax on nondisclosed retirement perks.

“Sec. 420C. Inclusion in gross income of funded deferred com-
 pensation of corporate insiders.

“Sec. 420D. Definitions and special rule.

9 **“SEC. 420A. HOLDING PERIOD REQUIREMENT FOR STOCK**
 10 **ACQUIRED THROUGH EXERCISE OF OPTION.**

11 “(a) IN GENERAL.—In the case of a corporate insider
 12 with respect to a corporation, the tax imposed by this
 13 chapter on a corporate insider for any taxable year shall
 14 be increased by 50 percent of the amount realized by such
 15 insider from the disqualified disposition during such year
 16 of stock acquired by the corporate insider upon the exer-
 17 cise of a stock option granted by the corporation with re-
 18 spect to which such individual is a corporate insider.

19 “(b) DISQUALIFIED DISPOSITION OF STOCK.—

20 “(1) IN GENERAL.—For purposes of subsection

21 (a), the term ‘disqualified disposition of stock’
 22 means any sale, exchange, or other disposition of

1 stock which, if such stock were employer securities
 2 held in a qualified cash or deferred arrangement (as
 3 defined in section 401(k)(2)), would violate any re-
 4 striction imposed on the sale or other disposition of
 5 such securities by the plan of which such arrange-
 6 ment is a part.

7 “(2) SPECIAL RULE FOR 2 OR MORE CASH OR
 8 DEFERRED ARRANGEMENTS.—If a corporation has
 9 more than 1 qualified cash or deferred arrangement
 10 (as so defined), the restrictions which apply for pur-
 11 poses of paragraph (1) shall be the most restrictive
 12 provisions relating to the disposition of employer se-
 13 curities held pursuant to any such arrangements.

14 **“SEC. 420B. ADDITIONAL TAX ON NONDISCLOSED RETIRE-**
 15 **MENT PERKS.**

16 “(a) IN GENERAL.—In the case of a publicly traded
 17 corporation, the tax imposed by this chapter for the tax-
 18 able year shall be increased by 50 percent of the net cost
 19 to the corporation for the taxable year of personal perks
 20 provided to a retired executive of the corporation.

21 “(b) WAIVER IF PERKS PROVIDED PURSUANT TO
 22 SHAREHOLDER APPROVAL.—Subsection (a) shall not
 23 apply with respect to any personal perks provided pursu-
 24 ant to a contract if—

1 “(1) all of the material terms of such contract
2 (including a description of the benefits to be pro-
3 vided to the executive and the extent of such bene-
4 fits) are disclosed to shareholders, and

5 “(2) such contract is approved by a majority of
6 the vote in a separate shareholder vote before any
7 benefits are provided under the contract.

8 “(c) NET COST OF PERSONAL PERKS.—

9 “(1) IN GENERAL.—For purposes of subsection
10 (a), the net cost of personal perks provided to a re-
11 tired executive is the excess of—

12 “(A) the cost to the corporation of such
13 perks, over

14 “(B) the amount paid in cash during the
15 taxable year by the executive to reimburse the
16 corporation for the cost of such perks.

17 “(2) PERSONAL PERKS.—For purposes of para-
18 graph (1), the term ‘personal perks’ means—

19 “(A) the use of corporate-owned property,

20 “(B) travel expenses, including meals and
21 lodging, unless such expenses are directly re-
22 lated to the performance of services by the exec-
23 utive for the corporation and the business rela-
24 tionship of such expenses is substantiated under
25 the requirements of section 274,

1 “(C) tickets to sporting or other entertain-
2 ment events,

3 “(D) amounts paid or incurred for mem-
4 bership in any club organized for business,
5 pleasure, recreation, or other social purpose,
6 and

7 “(E) other personal services, including
8 services related to maintenance or protection of
9 any personal residence of the executive.

10 “(3) COST RELATING TO USE OF CORPORATE-
11 OWNED PROPERTY.—For purposes of this sub-
12 section—

13 “(A) IN GENERAL.—The cost taken into
14 account with respect to the use of corporate-
15 owned property shall be the allocable portion of
16 the total cost of operating such property.

17 “(B) ALLOCABLE PORTION.—For purposes
18 of subparagraph (A), the allocable portion of
19 total cost is—

20 “(i) the portion of the total cost (in-
21 cluding depreciation) incurred by the cor-
22 poration for operating and maintaining
23 such property during the corporation’s tax-
24 able year in which such use occurred,

1 “(ii) which is allocable to the use (de-
 2 termined on the basis of the relationship of
 3 such use to the total use of the property
 4 during the taxable year).

5 **“SEC. 420C. INCLUSION IN GROSS INCOME OF FUNDED DE-**
 6 **FERRED COMPENSATION OF CORPORATE IN-**
 7 **SIDERS.**

8 “(a) IN GENERAL.—If an employer maintains a fund-
 9 ed deferred compensation plan—

10 “(1) compensation of any corporate insider
 11 which is deferred under such funded deferred com-
 12 pensation plan shall be included in the gross income
 13 of the corporate insider or beneficiary for the 1st
 14 taxable year in which there is no substantial risk of
 15 forfeiture of the rights to such compensation, and

16 “(2) the tax treatment of any amount made
 17 available under the plan to a corporate insider or
 18 beneficiary shall be determined under section 72 (re-
 19 lating to annuities, etc.).

20 “(b) FUNDED DEFERRED COMPENSATION PLAN.—
 21 For purposes of this section—

22 “(1) IN GENERAL.—The term ‘funded deferred
 23 compensation plan’ means any plan providing for the
 24 deferral of compensation unless—

1 “(A) the employee’s rights to the com-
2 pensation deferred under the plan are no great-
3 er than the rights of a general creditor of the
4 employer, and

5 “(B) all amounts set aside (directly or in-
6 directly) for purposes of paying the deferred
7 compensation, and all income attributable to
8 such amounts, remain (until made available to
9 the participant or other beneficiary) solely the
10 property of the employer (without being re-
11 stricted to the provision of benefits under the
12 plan), and

13 “(C) the amounts referred to in subpara-
14 graph (B) are available to satisfy the claims of
15 the employer’s general creditors at all times
16 (not merely after bankruptcy or insolvency).

17 Such term shall not include a qualified employer
18 plan.

19 “(2) SPECIAL RULES.—

20 “(A) EMPLOYEE’S RIGHTS.—A plan shall
21 be treated as failing to meet the requirements
22 of paragraph (1)(A) unless—

23 “(i) the compensation deferred under
24 the plan is payable only upon separation
25 from service, death, disability, or at a spec-

1 ified time (or pursuant to a fixed sched-
2 ule), and

3 “(ii) the plan does not permit the ac-
4 celeration of the time such deferred com-
5 pensation is payable by reason of any
6 event.

7 If the employer and employee agree to a modi-
8 fication of the plan that accelerates the time for
9 payment of any deferred compensation, then all
10 compensation previously deferred under the
11 plan shall be includible in gross income for the
12 taxable year during which such modification
13 takes effect and the taxpayer shall pay interest
14 at the underpayment rate on the underpay-
15 ments that would have occurred had the de-
16 ferred compensation been includible in gross in-
17 come on the earliest date that there is no sub-
18 stantial risk of forfeiture of the rights to such
19 compensation.

20 “(B) CREDITOR’S RIGHTS.—A plan shall
21 be treated as failing to meet the requirements
22 of paragraph (1)(B) with respect to amounts
23 set aside in a trust unless—

24 “(i) the employee has no beneficial in-
25 terest in the trust,

1 “(ii) assets in the trust are available
2 to satisfy claims of general creditors at all
3 times (not merely after bankruptcy or in-
4 solvency), and

5 “(iii) there is no factor that would
6 make it more difficult for general creditors
7 to reach the assets in the trust than it
8 would be if the trust assets were held di-
9 rectly by the employer in the United
10 States.

11 Except as provided in regulations prescribed by
12 the Secretary, such a factor shall include the lo-
13 cation of the trust outside the United States.

14 “(c) OTHER DEFINITIONS AND SPECIAL RULES.—
15 For purposes of this section—

16 “(1) QUALIFIED EMPLOYER PLAN.—The term
17 ‘qualified employer plan’ means—

18 “(A) any plan, contract, pension, account,
19 or trust described in subparagraph (A) or (B)
20 of section 219(g)(5), and

21 “(B) any other plan of an organization ex-
22 empt from tax under subtitle A.

23 “(2) PLAN INCLUDES ARRANGEMENTS, ETC.—
24 The term ‘plan’ includes any agreement or arrange-
25 ment.

1 “(3) SUBSTANTIAL RISK OF FORFEITURE.—The
 2 rights of a person to compensation are subject to a
 3 substantial risk of forfeiture if such person’s rights
 4 to such compensation are conditioned upon the fu-
 5 ture performance of substantial services by any indi-
 6 vidual.

7 “(4) TREATMENT OF EARNINGS.—Except for
 8 purposes of subsection (a)(1) and the last sentence
 9 of (b)(2)(A), references to deferred compensation
 10 shall be treated as including references to income at-
 11 tributable to such compensation or such income.

12 **“SEC. 420D. DEFINITIONS AND SPECIAL RULE.**

13 “(a) DEFINITIONS.—For purposes of this subpart—

14 “(1) CORPORATE INSIDER.—The term ‘cor-
 15 porate insider’ means, with respect to a corporation,
 16 any individual—

17 “(A) who is subject to the requirements of
 18 section 16(a) of the Securities Exchange Act of
 19 1934 with respect to such corporation, or

20 “(B) who would be subject to such require-
 21 ments if such corporation were an issuer of eq-
 22 uity securities referred to in such section.

23 “(2) RETIRED EXECUTIVE.—The term ‘retired
 24 executive’ means any corporate insider who is no
 25 longer performing services on a substantially full

1 time basis in the capacity that resulted in being sub-
2 ject to the requirements of section 16(a) of the Se-
3 curities Exchange Act of 1934.

4 “(3) PUBLICLY TRADED CORPORATION.—The
5 term ‘publicly traded corporation’ means any cor-
6 poration issuing any class of securities required to
7 be registered under section 12 of the Securities Ex-
8 change Act of 1934.

9 “(4) CORPORATE-OWNED PROPERTY.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), the term ‘corporate-owned
12 property’ means any of the following property
13 owned by a corporation—

14 “(i) planes,

15 “(ii) apartments or other residences,

16 “(iii) vacation, sports, and entertain-
17 ment facilities, and

18 “(iv) cars.

19 Such term includes any such property which is
20 leased or chartered by the corporation.

21 “(B) EXCEPTIONS.—Such term does not
22 include any property used directly by the cor-
23 poration in providing transportation, lodging, or
24 entertainment services to the general public.

1 “(b) ADDITIONS TO TAX NOT TREATED AS TAX FOR
 2 CERTAIN PURPOSES.—The tax imposed by sections 420A
 3 and 420B shall not be treated as a tax imposed by this
 4 chapter for purposes of determining—

5 “(1) the amount of any credit allowable under
 6 this chapter, or

7 “(2) the amount of the minimum tax imposed
 8 by section 55.”.

9 (b) CLERICAL AMENDMENT.—The table of subparts
 10 for part I of subchapter D of chapter 1 of such Code is
 11 amended by adding at the end the following new item:

“Subpart F. Special Rules for Executive Perks and Retirement
 Benefits.”.

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section shall take effect as follows:

14 (1) Section 420A of the Internal Revenue Code
 15 of 1986 (as added by this section) shall apply to
 16 stock acquired pursuant to the exercise of an option
 17 after the date of the enactment of this Act.

18 (2)(A) Except as provided by subparagraph
 19 (B), section 420B of such Code (as so added) shall
 20 apply to perks provided after the date of the enact-
 21 ment of this Act.

22 (B) In the case of perks provided pursuant to
 23 a contract in existence on the date of the enactment
 24 of this Act, such section 420B shall apply to such

1 perks after the date of the first annual shareholders
2 meeting after the date of the enactment of this Act.

3 (3) Section 420C of such Code (as so added)
4 shall apply to amounts deferred after the date of the
5 enactment of this Act.

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