

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3653

To amend the Internal Revenue Code of 1986 to allow a credit against income tax to C corporations which have substantial employee ownership and to encourage stock ownership by employees by excluding from gross income stock paid as compensation for services, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 6, 2005

Mr. ANDREWS introduced the following bill; which was referred to the  
Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to allow a credit against income tax to C corporations which have substantial employee ownership and to encourage stock ownership by employees by excluding from gross income stock paid as compensation for services, 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 “Employee Participa-  
5 tion Incentive Act of 2005”.

1 **SEC. 2. MAXIMUM RATE OF INCOME TAX FOR C CORPORA-**  
2 **TIONS WITH SUBSTANTIAL EMPLOYEE OWN-**  
3 **ERSHIP.**

4 (a) IN GENERAL.—Section 11 of the Internal Rev-  
5 enue Code of 1986 (relating to tax on corporations) is  
6 amended by redesignating subsections (c) and (d) as sub-  
7 sections (d) and (e), respectively, and by inserting after  
8 subsection (b) the following new subsection:

9 “(c) MAXIMUM RATE OF 30 PERCENT FOR CORPORA-  
10 TIONS WITH SUBSTANTIAL EMPLOYEE OWNERSHIP.—

11 “(1) IN GENERAL.—Except as provided in sub-  
12 section (b)(2), the maximum rate of tax under sub-  
13 section (b) shall be 30 percent with respect to any  
14 corporation if, with respect to such corporation—

15 “(A) the employee voting percentage is at  
16 least 20 percent, and

17 “(B) the employee value percentage is at  
18 least 20 percent.

19 “(2) DEFINITIONS.—For purposes of this sub-  
20 section—

21 “(A) EMPLOYEE VOTING PERCENTAGE.—

22 The term ‘employee voting percentage’ means  
23 the percentage of the total voting power of the  
24 stock of such corporation which is held directly  
25 by employees of such corporation.

1           “(B) EMPLOYEE VALUE PERCENTAGE.—  
2           The term ‘employee value percentage’ means  
3           the percentage of the total value of the stock of  
4           such corporation which is held directly by em-  
5           ployees of such corporation.

6           “(C) STOCK.—The term ‘stock’ has the  
7           meaning given such term under section 1504.

8           “(3) DETERMINATION OF OWNERSHIP AVER-  
9           AGES.—

10           “(A) IN GENERAL.—The determination of  
11           the employee voting percentage and the em-  
12           ployee value percentage shall be made on the  
13           last day of the taxable year of the corporation.

14           “(B) HOLDINGS OF 5 PERCENT-SHARE-  
15           HOLDERS AND HIGHLY COMPENSATED EMPLOY-  
16           EES DISREGARDED.—Each such percentage  
17           shall be determined without regard to the hold-  
18           ings of any highly compensated employee (as  
19           defined in section 414(q)). Notwithstanding the  
20           preceding sentence, the holdings of 5-percent  
21           owners (as defined in such section) shall be  
22           taken into account if the corporation has 50 or  
23           fewer employees.

1           “(C) CONTROLLED GROUPS.—In the case  
2 of corporations which are treated as a single  
3 employer under section 52(a)—

4           “(i) such corporations shall be treated  
5 as 1 corporation for purposes of subpara-  
6 graph (B), and

7           “(ii) the Secretary shall prescribe reg-  
8 ulations—

9           “(I) for the application of this  
10 subsection in the case of corporations  
11 filing a consolidated return, and

12           “(II) to prevent the abuse of the  
13 purposes of this subsection.”.

14       (b) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to taxable years beginning after  
16 December 31, 2005.

17 **SEC. 3. EXCLUSION FROM GROSS INCOME FOR COMPENSA-**  
18 **TION PAID IN STOCK BY CERTAIN CORPORA-**  
19 **TIONS.**

20       (a) IN GENERAL.—Part III of subchapter B of chap-  
21 ter 1 of the Internal Revenue Code of 1986 (relating to  
22 items specifically excluded from gross income) is amended  
23 by inserting after section 139A the following new section:

1 **“SEC. 139B. COMPENSATION PAID IN STOCK BY CERTAIN**  
2 **CORPORATIONS.**

3 “(a) IN GENERAL.—In the case of an employee of  
4 an eligible corporation, gross income of such employee  
5 does not include remuneration received in the form of  
6 stock of such corporation or of any parent or subsidiary  
7 (within the meaning of section 422(b)) of such corpora-  
8 tion.

9 “(b) LIMITATION.—The amount excluded under sub-  
10 section (a) from the gross income of an employee for any  
11 taxable year shall not exceed 20 percent of the wages (as  
12 defined in section 3401(a) without regard to paragraph  
13 (23)) which would (but for this section) be includible in  
14 gross income for such year.

15 “(c) ELIGIBLE CORPORATION.—For purposes of this  
16 section, the term ‘eligible corporation’ means, with respect  
17 to any taxable year of an employee, any corporation if—

18 “(1) the corporation offers to pay remuneration  
19 for services performed during the calendar year in  
20 which or with which such taxable year ends in the  
21 form of stock of such corporation to at least 95 per-  
22 cent of such corporation’s full-time employees, and

23 “(2) at least 95 percent of the value of the  
24 stock which is so offered during such calendar year  
25 is offered to employees whose wages (as defined in  
26 section 3401(a)) are among the bottom 75 percent

1 of the employees when ranked on the basis of such  
2 wages.

3 “(d) BASIS.—The amount excluded from gross in-  
4 come under this section shall not be taken into account  
5 in determining the basis of the stock.”.

6 (b) EXCLUSION FROM WITHHOLDING.—Subsection  
7 (a) of section 3401 of such Code is amended by striking  
8 “or” at the end of paragraph (21), by striking the period  
9 at the end of paragraph (22) and inserting “; or”, and  
10 by adding at the end the following new paragraph:

11 “(23) in the form of stock if at the time such  
12 stock is paid it is reasonable to believe that the em-  
13 ployee will be able to exclude such stock from income  
14 under section 139B.”.

15 (c) CLERICAL AMENDMENT.—The table of sections  
16 for such part III is amended by inserting after the item  
17 relating to section 139A the following new item:

“139B. Compensation paid in stock by certain corporations.”.

18 (d) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to taxable years beginning after  
20 December 31, 2005.

21 **SEC. 4. DEDUCTION ALLOWED TO ELIGIBLE CORPORA-**  
22 **TIONS AT TIME QUALIFIED STOCK OPTION**  
23 **GRANTED.**

24 (a) IN GENERAL.—Subsection (a) of section 421 of  
25 the Internal Revenue Code of 1986 (relating to general

1 rules for certain stock options) is amended by adding at  
2 the end the following flush sentence:

3 “Paragraph (2) shall not apply to options granted during  
4 any calendar year for which the corporation is an eligible  
5 corporation (as defined in section 139B(c)).”.

6 (b) EFFECTIVE DATE.—The amendment made by  
7 subsection (a) shall apply to options granted after the date  
8 of the enactment of this Act.

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