

110TH CONGRESS
1ST SESSION

S. 1322

To amend the Internal Revenue Code of 1986 to improve the operation of employee stock ownership plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2007

Mrs. LINCOLN 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 improve the operation of employee stock ownership plans, and for other purposes.

1 *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Employee Stock Ownership Plan Promotion and Improvement Act of 2007”.

1 **SEC. 2. 10 PERCENT PENALTY TAX NOT TO APPLY TO CER-**
2 **TAIN S CORPORATION DISTRIBUTIONS MADE**
3 **ON STOCK HELD BY EMPLOYEE STOCK OWN-**
4 **ERSHIP PLAN.**

5 (a) IN GENERAL.—Clause (vi) of section 72(t)(2)(A)
6 of the Internal Revenue Code of 1986 (relating to general
7 rule that subsection not to apply to certain distributions)
8 is amended by inserting before the comma at the end the
9 following: “or any distribution (as described in section
10 1368(a)) with respect to S corporation stock that con-
11 stitutes qualifying employer securities (as defined by sec-
12 tion 409(l)) to the extent that such distributions are paid
13 to a participant in the manner described in clause (i) or
14 (ii) of section 404(k)(2)(A)”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to distributions made after the
17 date of the enactment of this Act.

18 **SEC. 3. ESOP DIVIDEND EXCEPTION TO ADJUSTMENTS**
19 **BASED ON ADJUSTED CURRENT EARNINGS.**

20 (a) IN GENERAL.—Section 56(g)(4)(C) of the Inter-
21 nal Revenue Code of 1986 (relating to disallowance of
22 items not deductible in computing earnings and profits)

23 is amended by adding at the end the following new clause:

24 “(vii) TREATMENT OF ESOP DIVI-
25 DENDS.—Clause (i) shall not apply to any
26 deduction allowable under section 404(k) if

1 the deduction is allowed for dividends paid
2 on employer securities held by an employee
3 stock ownership plan established or author-
4 ized to be established before March 15,
5 1991.”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to taxable years beginning after
8 December 31, 1989.

9 (c) WAIVER OF LIMITATIONS.—If refund or credit of
10 any overpayment of tax resulting from the application of
11 the amendment made by this section is prevented at any
12 time before the close of the 1-year period beginning on
13 the date of the enactment of this Act by the operation
14 of any law or rule of law (including res judicata), such
15 refund or credit may nevertheless be made or allowed if
16 claim therefor is filed before the close of such period.

17 SEC. 4. AMENDMENTS RELATED TO SECTION 1042.

18 (a) DEFERRAL OF TAX FOR CERTAIN SALES TO EM-
19 PLOYEE STOCK OWNERSHIP PLAN SPONSORED BY S COR-
20 PORATION.—

21 (1) IN GENERAL.—Section 1042(c)(1)(A) of the
22 Internal Revenue Code of 1986 (defining qualified
23 securities) is amended by striking “C”.

4 (b) REINVESTMENT IN CERTAIN MUTUAL FUNDS

5 PERMITTED.—

4 (c) MODIFICATION TO 25-PERCENT SHAREHOLDER

5 RULE.—

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

22 (2) EFFECTIVE DATE.—The amendment made
23 by paragraph (1) shall take effect on the date of the
24 enactment of this Act.

1 **SEC. 5. DE MINIMIS EXCEPTION TO DIVERSIFICATION OF**
2 **INVESTMENT REQUIREMENT.**

3 (a) IN GENERAL.—Paragraph (28) of section 401(a)
4 of the Internal Revenue Code of 1986 (relating to addi-
5 tional requirements relating to employee stock ownership
6 plans) is amended by adding at the end the following new
7 subparagraph:

8 “(D) EXCEPTION FOR DE MINIMIS AC-
9 COUNT BALANCE.—A plan shall not fail to meet
10 the requirements of this subparagraph for a
11 plan year solely because the plan provides that
12 clause (i) does not apply to any participant’s
13 account in the plan which, as of the close of the
14 preceding plan year, has an account balance
15 which does not exceed \$2,500.”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply to plan years beginning after the
18 date of the enactment of this Act.

