

111TH CONGRESS  
1ST SESSION

# H. R. 3586

To amend the Internal Revenue Code of 1986 to expand the availability of employee stock ownership plans in S corporations, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 2009

Mr. KIND (for himself and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to expand the availability of employee stock ownership plans in S corporations, 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 “S Corporation ESOP  
5       Promotion and Expansion Act of 2009”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

1           (1) since January 1, 1998, employees have been  
2           permitted to be owners of subchapter S corporations  
3           through an employee stock ownership plan (hereafter  
4           in this section referred to as an “ESOP”) pursuant  
5           to Small Business Job Protection Act of 1996 (Pub-  
6           lic Law 104–188);

7           (2) with the passage of the Taxpayer Relief Act  
8           of 1997 (Public Law 105–34), Congress designed in-  
9           centives to encourage businesses to become ESOP-  
10          owned S corporations;

11          (3) since that time, several thousand companies  
12          have become ESOP-owned S corporations, creating  
13          an ownership interest for several million Americans  
14          in companies in every State in the country, in indus-  
15          tries ranging from heavy manufacturing to tech-  
16          nology development to services;

17          (4) while estimates show that 40 percent of  
18          working Americans have no formal retirement ac-  
19          count at all, every United States worker who is an  
20          employee-owner of an S corporation company  
21          through an ESOP has a valuable qualified retire-  
22          ment savings account;

23          (5) recent studies have shown that employees of  
24          ESOP-owned S corporations enjoy greater job sta-  
25          bility than employees of comparable companies;

1           (6) studies also show that employee-owners of S  
 2           corporation ESOP companies have amassed mean-  
 3           ingful retirement savings through their S ESOP ac-  
 4           counts that will give them the means to retire with  
 5           dignity; and

6           (7) it is the goal of Congress to both preserve  
 7           and foster employee ownership of S corporations  
 8           through ESOPs.

9   **SEC. 3. DEFERRAL OF TAX FOR CERTAIN SALES OF EM-**  
 10                   **PLOYER STOCK TO EMPLOYEE STOCK OWN-**  
 11                   **ERSHIP PLAN SPONSORED BY S CORPORA-**  
 12                   **TION.**

13       (a) IN GENERAL.—Subparagraph (A) of section  
 14   1042(c)(1) of the Internal Revenue Code of 1986 (defin-  
 15   ing qualified securities) is amended by striking “domestic  
 16   C corporation” and inserting “domestic corporation”.

17       (b) EFFECTIVE DATE.—The amendment made by  
 18   subsection (a) shall apply to sales after the date of the  
 19   enactment of this Act.

1 **SEC. 4. DEDUCTION FOR INTEREST ON LOAN TO FINANCE**  
 2 **PURCHASE OF EMPLOYER SECURITIES BY AN**  
 3 **EMPLOYEE STOCK OWNERSHIP PLAN SPON-**  
 4 **SORED BY AN S CORPORATION.**

5 (a) IN GENERAL.—Part VI of subchapter B of chap-  
 6 ter 1 of the Internal Revenue Code of 1986 is amended  
 7 by inserting after section 199 the following new section:

8 **“SEC. 200. INTEREST ON CERTAIN LOANS FOR THE PUR-**  
 9 **CHASE OF EMPLOYER SECURITIES BY AN EM-**  
 10 **PLOYEE STOCK OWNERSHIP PLAN SPON-**  
 11 **SORED BY AN S CORPORATION.**

12 “(a) IN GENERAL.—There shall be allowed as a de-  
 13 duction an amount equal to 50 percent of the interest re-  
 14 ceived during the taxable year by a bank (within the mean-  
 15 ing of section 581) with respect to a securities acquisition  
 16 loan.

17 “(b) SECURITIES ACQUISITION LOAN.—

18 “(1) IN GENERAL.—For purposes of this sec-  
 19 tion, the term ‘securities acquisition loan’ means—

20 “(A) any loan to an employee stock owner-  
 21 ship plan sponsored by an S corporation to the  
 22 extent that the proceeds are used to acquire  
 23 employer securities for the plan, and

24 “(B) any loan to an S corporation that  
 25 sponsors an employee stock ownership plan to  
 26 the extent that the proceeds of such loan are

1           loaned to the employee stock ownership plan to  
2           acquire employer securities for the plan.

3           For purposes of this paragraph, the term ‘employer  
4           securities’ has the meaning given such term by sec-  
5           tion 409(l).

6           “(2) TERMS APPLICABLE TO CERTAIN SECURI-  
7           TIES ACQUISITION LOANS.—For purposes of para-  
8           graph (1)(B), the term ‘securities acquisition loan’  
9           shall not include any loan to the S corporation un-  
10          less the loan to the employee stock ownership plan  
11          has repayment terms which are substantially similar  
12          to the terms of the loan to the S corporation.

13          “(3) TREATMENT OF REFINANCINGS.—The  
14          term ‘securities acquisition loan’ shall include any  
15          loan which is (or is part of a series of loans) used  
16          to refinance a loan described in paragraph (1) (after  
17          the application of paragraph (2)).

18          “(4) PLAN MUST HOLD MORE THAN 50 PER-  
19          CENT OF STOCK AFTER ACQUISITION OR TRANS-  
20          FER.—

21                 “(A) IN GENERAL.—A loan shall not be  
22                 treated as a securities acquisition loan for pur-  
23                 poses of this section unless, immediately after  
24                 an acquisition of employer securities referred to  
25                 in paragraph (1), the employee stock ownership

1 plan owns more than 50 percent of the out-  
2 standing stock of the S corporation.

3 “(B) FAILURE TO RETAIN MINIMUM STOCK  
4 INTEREST.—

5 “(i) IN GENERAL.—Subsection (a)  
6 shall not apply to any interest received  
7 with respect to a securities acquisition loan  
8 which is allocable to any period during  
9 which the employee stock ownership plan  
10 does not own stock meeting the require-  
11 ments of subparagraph (A).

12 “(ii) EXCEPTION.—To the extent pro-  
13 vided by the Secretary, clause (i) shall not  
14 apply to any period if, within 90 days of  
15 the first date on which the failure occurred  
16 (or such longer period not in excess of 180  
17 days as the Secretary may prescribe), the  
18 plan acquires stock which results in its  
19 meeting the requirements of subparagraph  
20 (A).

21 “(C) STOCK.—For purposes of subpara-  
22 graph (A), the Secretary may provide that war-  
23 rants, options, contracts to acquire stock, con-  
24 vertible debt interests and other similar inter-

1           ests be treated as stock for 1 or more purposes  
2           under subparagraph (A).

3           “(c) EMPLOYEE STOCK OWNERSHIP PLAN.—For  
4 purposes of this section, the term ‘employee stock owner-  
5 ship plan’ has the meaning given to such term by section  
6 4975(e)(7).”.

7           (b) CLERICAL AMENDMENT.—The table of sections  
8 for part VI of subchapter B of chapter 1 of such Code  
9 is amended by inserting after the item relating to section  
10 199 the following new item:

“Sec. 200. Interest on certain loans for the purchase of employer securities by  
an employee stock ownership plan sponsored by an S corpora-  
tion.”.

11          (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to interest accrued on loans made  
13 after the date of the enactment of this Act.

14 **SEC. 5. ASSUMPTION OF ESTATE TAX LIABILITY WITH RE-**  
15 **SPECT TO CERTAIN TRANSFERS OF EM-**  
16 **PLOYER SECURITIES TO AN EMPLOYEE**  
17 **STOCK OWNERSHIP PLAN SPONSORED BY AN**  
18 **S CORPORATION.**

19          (a) IN GENERAL.—Subchapter C of chapter 11 of the  
20 Internal Revenue Code of 1986 is amended by inserting  
21 after section 2209 the following new section:

1 **“SEC. 2209A. LIABILITY FOR PAYMENT OF ESTATE TAX LI-**  
2 **ABILITY IN CASE OF CERTAIN TRANSFERS OF**  
3 **EMPLOYER SECURITIES TO AN EMPLOYEE**  
4 **STOCK OWNERSHIP PLAN SPONSORED BY AN**  
5 **S CORPORATION.**

6 “(a) IN GENERAL.—If—

7 “(1) employer securities—

8 “(A) are transferred by gift by the dece-  
9 dent to an employee stock ownership plan spon-  
10 sored by an S corporation,

11 “(B) are transferred to such a plan by rea-  
12 son of the decedent’s death under the dece-  
13 dent’s will or a trust created by the decedent,  
14 or

15 “(C) are transferred by gift by the execu-  
16 tor of the estate of the decedent to such a plan,  
17 and

18 “(2) the executor of the estate of the decedent  
19 elects the application of this section and files the  
20 agreements described in subsection (e) before the  
21 due date (including extensions) for filing the return  
22 of tax imposed by section 2001,

23 then the executor of the estate of the decedent is relieved  
24 of liability for payment of that portion of the tax imposed  
25 by section 2001 which such employee stock ownership plan  
26 is required to pay under subsection (b).

1       “(b) PAYMENT OF TAX BY EMPLOYEE STOCK OWN-  
2       ERSHIP PLAN.—

3               “(1) IN GENERAL.—An employee stock owner-  
4       ship plan—

5                       “(A)(i) to which employer securities have  
6       been transferred by gift by the decedent,

7                       “(ii) to which such securities have been  
8       transferred by reason of the decedent’s death  
9       under the decedent’s will or a trust created by  
10      the decedent, or

11                      “(iii) to which such securities have been  
12      transferred by gift by the executor of the estate  
13      of the decedent, and

14                      “(B) with respect to which an agreement  
15      described in subsection (e)(1) is in effect,  
16      shall pay that portion of the tax imposed by section  
17      2001 with respect to the taxable estate of the dece-  
18      dent which is described in paragraph (2).

19               “(2) AMOUNT OF TAX TO BE PAID.—The por-  
20      tion of the tax imposed by section 2001 with respect  
21      to the taxable estate of the decedent described in  
22      this paragraph is equal to the lesser of—

23                      “(A) the value of the employer securities  
24      described in subsection (a)(1) which is included  
25      in the gross estate of the decedent, or

1           “(B) the tax imposed by section 2001 with  
2           respect to such taxable estate reduced by the  
3           sum of the credits allowable against such tax.

4           “(c) INSTALLMENT PAYMENTS.—

5           “(1) IN GENERAL.—If—

6           “(A) the executor of the estate of the dece-  
7           dent (without regard to this section) elects to  
8           have the provisions of section 6166 (relating to  
9           extensions of time for payment of estate tax  
10          where the estate consists largely of interests in  
11          a closely held business) apply to payment of  
12          that portion of the tax imposed by section 2001  
13          with respect to such estate which is attributable  
14          to employer securities, and

15          “(B) the plan administrator provides to  
16          the executor the agreement described in sub-  
17          section (e)(1),

18          then the plan administrator may elect, before the  
19          due date (including extensions) for filing the return  
20          of such tax, to pay all or part of the tax described  
21          in subsection (b)(2) in installments under the provi-  
22          sions of section 6166.

23          “(2) INTEREST ON INSTALLMENTS.—In deter-  
24          mining the 2-percent portion for purposes of section  
25          6601(j)—

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

4           “(B) the portion of such tax for which an  
5           employee stock ownership plan is liable, shall be  
6           aggregated.

7           “(3) SPECIAL RULES FOR APPLICATION OF SEC-  
8           TION 6166(G).—In the case of any transfer of em-  
9           ployer securities to an employee stock ownership  
10          plan to which this section applies—

11          “(A) TRANSFER DOES NOT TRIGGER AC-  
12          CELERATION.—Such transfer shall not be treat-  
13          ed as a disposition or withdrawal to which sec-  
14          tion 6166(g) applies.

15          “(B) SEPARATE APPLICATION TO ESTATE  
16          AND PLAN INTERESTS.—Section 6166(g) shall  
17          be applied separately to the interests held after  
18          such transfer by the estate and such plan.

19          “(C) REQUIRED DISTRIBUTION NOT TAKEN  
20          INTO ACCOUNT.—In the case of any distribution  
21          of such securities (or sale of such securities) by  
22          such plan which is described in section  
23          4978(d)(1)—

1 “(i) such distribution shall not be  
2 treated as a disposition or withdrawal for  
3 purposes of section 6166(g), and

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

7 “(D) DISPOSITION TO MEET DIVERSIFICA-  
8 TION REQUIREMENTS.—Any disposition of such  
9 securities which is made to meet the require-  
10 ments of section 401(a)(28)—

11 “(i) shall not treated as a disposition  
12 or withdrawal for purposes of section  
13 6166(g), and

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

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

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

20 “(2) who has entered into an agreement de-  
21 scribed in subsection (e)(2) which is in effect,

22 shall guarantee (in such manner as the Secretary may pre-  
23 scribe) the payment of any amount such plan is required  
24 to pay under subsection (b).

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

3               “(1) A written agreement signed by the plan  
4 administrator consenting to the application of sub-  
5 section (b) to such plan.

6               “(2) A written agreement signed by the em-  
7 ployer whose employees are covered by the plan de-  
8 scribed in subsection (b) consenting to the applica-  
9 tion of subsection (d).

10       “(f) EXEMPTION FROM TAX ON PROHIBITED TRANS-  
11 ACTIONS.—The assumption under this section by an em-  
12 ployee stock ownership plan of any portion of the liability  
13 for the tax imposed by section 2001 shall be treated as  
14 a loan described in section 4975(d)(3).

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

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

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

22               “(3) PLAN ADMINISTRATOR.—The term ‘plan  
23 administrator’ has the meaning given such term by  
24 section 414(g).

1           “(4) TAX IMPOSED BY SECTION 2001.—The  
 2           term ‘tax imposed by section 2001’ includes any in-  
 3           terest, penalty, addition to tax, or additional amount  
 4           relating to any tax imposed by section 2001.”.

5           (b) CLERICAL AMENDMENT.—The table of sections  
 6           for subchapter C of chapter 11 of such Code is amended  
 7           by inserting after the item relating to section 2209 the  
 8           following new item:

          “Sec. 2209A. Liability for payment of estate tax liability in case of certain  
                     transfers of employer securities to an employee stock ownership  
                     plan sponsored by an S corporation.”.

9           (c) EFFECTIVE DATE.—The amendments made by  
 10          this section shall apply to transfers of employer securities  
 11          after the date of the enactment of this Act.

12   **SEC. 6. ESTATE TAX DEDUCTION FOR CERTAIN SALES OF**  
 13                   **EMPLOYER SECURITIES TO AN EMPLOYEE**  
 14                   **STOCK OWNERSHIP PLAN SPONSORED BY AN**  
 15                   **S CORPORATION.**

16          (a) IN GENERAL.—Part IV of subchapter A of chap-  
 17          ter 11 of the Internal Revenue Code of 1986 is amended  
 18          by inserting after section 2057 the following new section:

19   **“SEC. 2057A. SALES OF EMPLOYER SECURITIES TO AN EM-**  
 20                   **PLOYEE STOCK OWNERSHIP PLAN SPON-**  
 21                   **SORED BY AN S CORPORATION.**

22          “(a) GENERAL RULE.—For purposes of the tax im-  
 23          posed by section 2001, in the case of a sale of any quali-  
 24          fied employer securities to an employee stock ownership

1 plan sponsored by an S corporation on or before the date  
 2 on which the return of the tax imposed by section 2001  
 3 is required to be filed (determined by taking into account  
 4 any extension of time for filing), the value of the taxable  
 5 estate shall be determined by deducting from the value  
 6 of the gross estate an amount equal to 50 percent of the  
 7 proceeds of such sale.

8 “(b) QUALIFIED EMPLOYER SECURITIES.—

9 “(1) IN GENERAL.—The term ‘qualified em-  
 10 ployer securities’ means employer securities—

11 “(A) which are includible in the gross es-  
 12 tate of the decedent,

13 “(B) which would have been includible in  
 14 the gross estate of the decedent if the decedent  
 15 had died at any time during the 5-year period  
 16 ending on the date of death, and

17 “(C) with respect to which the executor  
 18 elects the application of this section in the man-  
 19 ner prescribed by the Secretary.

20 “(2) CERTAIN ASSETS HELD BY SPOUSE.—For  
 21 purposes of paragraph (1)(B), any employer security  
 22 which would have been includible in the gross estate  
 23 of the spouse of a decedent during the period de-  
 24 scribed in paragraph (1)(B) if the spouse had died

1 during such period shall be treated as includible in  
 2 the gross estate of the decedent during such period.

3 “(c) OTHER DEFINITIONS.—For purposes of this  
 4 section—

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

8 “(2) EMPLOYEE STOCK OWNERSHIP PLAN.—  
 9 The term ‘employee stock ownership plan’ means a  
 10 plan described in section 4975(e)(7).”.

11 (b) CLERICAL AMENDMENT.—The table of sections  
 12 for part IV of subchapter A of chapter 11 of such Code  
 13 is amended by inserting after the item relating to section  
 14 2057 the following new item:

“Sec. 2057A. Sales of employer securities to an employee stock ownership plan  
 sponsored by an S corporation.”.

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

18 **SEC. 7. DEPARTMENT OF LABOR TECHNICAL ASSISTANCE**  
 19 **OFFICE.**

20 (a) ESTABLISHMENT REQUIRED.—Before the end of  
 21 the 90-day period beginning on the date of enactment of  
 22 this Act, the Secretary of Labor shall establish the S Cor-  
 23 poration Employee Ownership Assistance Office to foster  
 24 increased employee ownership of S corporations.

- 1       (b) DUTIES OF THE OFFICE.—The S Corporation  
2 Employee Ownership Assistance Office shall provide—  
3           (1) education and outreach to inform people  
4       about the possibilities and benefits of employee own-  
5       ership of S corporations; and  
6           (2) technical assistance to assist S corporations  
7       to sponsor employee stock ownership plans.

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