

111TH CONGRESS
2D SESSION

S. 3803

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2010

Mr. ROBERTS (for himself and Mrs. LINCOLN) (by request) 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 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 2010”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) since January 1, 1998, employees have been
9 permitted to be owners of subchapter S corporations
10 through an employee stock ownership plan (hereafter

1 in this section referred to as an “ESOP”) pursuant
2 to Small Business Job Protection Act of 1996 (Pub-
3 lic Law 104–188);

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

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

14 (4) every United States worker who is an em-
15 ployee-owner of an S corporation company through
16 an ESOP has a valuable qualified retirement savings
17 account;

18 (5) studies also show that employee-owners of S
19 corporation ESOP companies have amassed mean-
20 ingful retirement savings through their S ESOP ac-
21 counts that will give them the means to retire with
22 dignity; and

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

1 **SEC. 3. DEFERRAL OF TAX FOR CERTAIN SALES OF EM-**
 2 **PLOYER STOCK TO EMPLOYEE STOCK OWN-**
 3 **ERSHIP PLAN SPONSORED BY S CORPORA-**
 4 **TION.**

5 (a) IN GENERAL.—Subparagraph (A) of section
 6 1042(c)(1) of the Internal Revenue Code of 1986 (defin-
 7 ing qualified securities) is amended by striking “domestic
 8 C corporation” and inserting “domestic corporation”.

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

12 **SEC. 4. DEDUCTION FOR INTEREST ON LOAN TO FINANCE**
 13 **PURCHASE OF EMPLOYER SECURITIES BY AN**
 14 **EMPLOYEE STOCK OWNERSHIP PLAN SPON-**
 15 **SORED BY AN S CORPORATION.**

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

19 **“SEC. 200. INTEREST ON CERTAIN LOANS FOR THE PUR-**
 20 **CHASE OF EMPLOYER SECURITIES BY AN EM-**
 21 **PLOYER STOCK OWNERSHIP PLAN SPON-**
 22 **SORED BY AN S CORPORATION.**

23 “(a) IN GENERAL.—There shall be allowed as a de-
 24 duction an amount equal to 50 percent of the interest re-
 25 ceived during the taxable year by a bank (within the mean-

ing of section 581) with respect to a securities acquisition loan.

“(b) SECURITIES ACQUISITION LOAN.—

“(1) IN GENERAL.—For purposes of this section, the term ‘securities acquisition loan’ means—

“(A) any loan to an employee stock ownership plan sponsored by an S corporation to the extent that the proceeds are used to acquire employer securities for the plan, and

“(B) any loan to an S corporation that sponsors an employee stock ownership plan to the extent that the proceeds of such loan are loaned to the employee stock ownership plan to acquire employer securities for the plan.

For purposes of this paragraph, the term ‘employer securities’ has the meaning given such term by section 409(l).

“(2) TERMS APPLICABLE TO CERTAIN SECURITIES ACQUISITION LOANS.—For purposes of paragraph (1)(B), the term ‘securities acquisition loan’ shall not include any loan to the S corporation unless the loan to the employee stock ownership plan has repayment terms which are substantially similar to the terms of the loan to the S corporation.

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

6 “(4) PLAN MUST HOLD MORE THAN 50 PER-
7 CENT OF STOCK AFTER ACQUISITION OR TRANS-
8 FER.—

9 “(A) IN GENERAL.—A loan shall not be
10 treated as a securities acquisition loan for pur-
11 poses of this section unless, immediately after
12 an acquisition of employer securities referred to
13 in paragraph (1), the employee stock ownership
14 plan owns more than 50 percent of the out-
15 standing stock of the S corporation.

16 “(B) FAILURE TO RETAIN MINIMUM STOCK
17 INTEREST.—

18 “(i) IN GENERAL.—Subsection (a)
19 shall not apply to any interest received
20 with respect to a securities acquisition loan
21 which is allocable to any period during
22 which the employee stock ownership plan
23 does not own stock meeting the require-
24 ments of subparagraph (A).

1 “(ii) EXCEPTION.—To the extent pro-
 2 vided by the Secretary, clause (i) shall not
 3 apply to any period if, within 90 days of
 4 the first date on which the failure occurred
 5 (or such longer period not in excess of 180
 6 days as the Secretary may prescribe), the
 7 plan acquires stock which results in its
 8 meeting the requirements of subparagraph
 9 (A).

10 “(C) STOCK.—For purposes of subpara-
 11 graph (A), the Secretary may provide that war-
 12 rants, options, contracts to acquire stock, con-
 13 vertible debt interests and other similar inter-
 14 ests be treated as stock for 1 or more purposes
 15 under subparagraph (A).

16 “(c) EMPLOYEE STOCK OWNERSHIP PLAN.—For
 17 purposes of this section, the term ‘employee stock owner-
 18 ship plan’ has the meaning given to such term by section
 19 4975(e)(7).”.

20 (b) CLERICAL AMENDMENT.—The table of sections
 21 for part VI of subchapter B of chapter 1 of such Code
 22 is amended by inserting after the item relating to section
 23 199 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.”.

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

4 **SEC. 5. ASSUMPTION OF ESTATE TAX LIABILITY WITH RE-**
 5 **SPECT TO CERTAIN TRANSFERS OF EM-**
 6 **PLOYER SECURITIES TO AN EMPLOYEE**
 7 **STOCK OWNERSHIP PLAN SPONSORED BY AN**
 8 **S CORPORATION.**

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

12 **“SEC. 2209A. LIABILITY FOR PAYMENT OF ESTATE TAX LI-**
 13 **ABILITY IN CASE OF CERTAIN TRANSFERS OF**
 14 **EMPLOYER SECURITIES TO AN EMPLOYEE**
 15 **STOCK OWNERSHIP PLAN SPONSORED BY AN**
 16 **S CORPORATION.**

17 “(a) IN GENERAL.—If—

18 “(1) employer securities—

19 “(A) are transferred by gift by the dece-
 20 dent to an employee stock ownership plan spon-
 21 sored by an S corporation,

22 “(B) are transferred to such a plan by rea-
 23 son of the decedent’s death under the dece-
 24 dent’s will or a trust created by the decedent,
 25 or

1 “(C) are transferred by gift by the execu-
 2 tor of the estate of the decedent to such a plan,
 3 and

4 “(2) the executor of the estate of the decedent
 5 elects the application of this section and files the
 6 agreements described in subsection (e) before the
 7 due date (including extensions) for filing the return
 8 of tax imposed by section 2001,
 9 then the executor of the estate of the decedent is re-
 10 lieved of liability for payment of that portion of the
 11 tax imposed by section 2001 which such employee
 12 stock ownership plan is required to pay under sub-
 13 section (b).

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

16 “(1) IN GENERAL.—An employee stock owner-
 17 ship plan—

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

20 “(ii) to which such securities have been
 21 transferred by reason of the decedent’s death
 22 under the decedent’s will or a trust created by
 23 the decedent, or

1 “(iii) to which such securities have been
 2 transferred by gift by the executor of the estate
 3 of the decedent, and

4 “(B) with respect to which an agreement
 5 described in subsection (e)(1) is in effect,
 6 shall pay that portion of the tax imposed by section
 7 2001 with respect to the taxable estate of the dece-
 8 dent which is described in paragraph (2).

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

13 “(A) the value of the employer securities
 14 described in subsection (a)(1) which is included
 15 in the gross estate of the decedent, or

16 “(B) the tax imposed by section 2001 with
 17 respect to such taxable estate reduced by the
 18 sum of the credits allowable against such tax.

19 “(c) INSTALLMENT PAYMENTS.—

20 “(1) IN GENERAL.—If—

21 “(A) the executor of the estate of the dece-
 22 dent (without regard to this section) elects to
 23 have the provisions of section 6166 (relating to
 24 extensions of time for payment of estate tax
 25 where the estate consists largely of interests in

1 a closely held business) apply to payment of
 2 that portion of the tax imposed by section 2001
 3 with respect to such estate which is attributable
 4 to employer securities, and

5 “(B) the plan administrator provides to
 6 the executor the agreement described in sub-
 7 section (e)(1),

8 then the plan administrator may elect, before the
 9 due date (including extensions) for filing the return
 10 of such tax, to pay all or part of the tax described
 11 in subsection (b)(2) in installments under the provi-
 12 sions of section 6166.

13 “(2) INTEREST ON INSTALLMENTS.—In deter-
 14 mining the 2-percent portion for purposes of section
 15 6601(j)—

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

19 “(B) the portion of such tax for which an
 20 employee stock ownership plan is liable, shall be
 21 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
 25 plan to which this section applies—

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

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

9 “(C) REQUIRED DISTRIBUTION NOT TAKEN
10 INTO ACCOUNT.—In the case of any distribution
11 of such securities (or sale of such securities) by
12 such plan which is described in section
13 4978(d)(1)—

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

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

20 “(D) DISPOSITION TO MEET DIVERSIFICA-
21 TION REQUIREMENTS.—Any disposition of such
22 securities which is made to meet the require-
23 ments of section 401(a)(28)—

1 “(i) shall not treated as a disposition
 2 or withdrawal for purposes of section
 3 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) GUARANTEE OF PAYMENTS.—Any employer—
 8 “(1) whose employees are covered by an em-
 9 ployee stock ownership plan, and
 10 “(2) who has entered into an agreement de-
 11 scribed in subsection (e)(2) which is in effect,
 12 shall guarantee (in such manner as the Secretary may pre-
 13 scribe) the payment of any amount such plan is required
 14 to pay under subsection (b).

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

17 “(1) A written agreement signed by the plan
 18 administrator consenting to the application of sub-
 19 section (b) to such plan.

20 “(2) A written agreement signed by the em-
 21 ployer whose employees are covered by the plan de-
 22 scribed in subsection (b) consenting to the applica-
 23 tion of subsection (d).

24 “(f) EXEMPTION FROM TAX ON PROHIBITED TRANS-
 25 ACTIONS.—The assumption under this section by an em-

1 ployee stock ownership plan of any portion of the liability
 2 for the tax imposed by section 2001 shall be treated as
 3 a loan described in section 4975(d)(3).

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

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

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

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

14 “(4) 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) CLERICAL AMENDMENT.—The table of sections
 19 for subchapter C of chapter 11 of such Code is amended
 20 by inserting after the item relating to section 2209 the
 21 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.”.

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

1 **SEC. 6. DEPARTMENT OF THE TREASURY TECHNICAL AS-**
2 **SISTANCE OFFICE.**

3 (a) **ESTABLISHMENT REQUIRED.**—Before the end of
4 the 90-day period beginning on the date of enactment of
5 this Act, the Secretary of the Treasury shall establish the
6 S Corporation Employee Ownership Assistance Office to
7 foster increased employee ownership of S corporations.

8 (b) **DUTIES OF THE OFFICE.**—The S Corporation
9 Employee Ownership Assistance Office shall provide—

10 (1) education and outreach to inform people
11 about the possibilities and benefits of employee own-
12 ership of S corporations; and

13 (2) technical assistance to assist S corporations
14 to sponsor employee stock ownership plans.

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