II

114TH CONGRESS
2D SESSION

H. R. 5719

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 2016
Received

AN ACT

To amend the Internal Revenue Code of 1986 to modify the tax treatment of certain equity grants.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Empowering Employees through Stock Ownership Act’’.

SEC. 2. TREATMENT OF QUALIFIED EQUITY GRANTS.

(a) IN GENERAL.—

(1) ELECTION TO DEFER INCOME.—Section 83 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

‘‘(i) QUALIFIED EQUITY GRANTS.—

‘‘(1) IN GENERAL.—For purposes of this subtitle, if qualified stock is transferred to a qualified employee who makes an election with respect to such stock under this subsection—

‘‘(A) except as provided in subparagraph (B), no amount shall be included in income under subsection (a) for the first taxable year in which the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable, and

‘‘(B) an amount equal to the amount which would be included in income of the employee under subsection (a) (determined without regard to this subsection) shall be included in income for the taxable year of the employee which includes the earliest of—

"(i) the first date such qualified stock becomes transferable (including transferable to the employer),

"(ii) the date the employee first becomes an excluded employee,

"(iii) the first date on which any stock of the corporation which issued the qualified stock becomes readily tradable on an established securities market (as determined by the Secretary, but not including any market unless such market is recognized as an established securities market by the Secretary for purposes of a provision of this title other than this subsection),

"(iv) the date that is 7 years after the first date the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, or

"(v) the date on which the employee revokes (at such time and in such manner as the Secretary may provide) the election under this subsection with respect to such stock.

‘‘(2) QUALIFIED STOCK.—

‘‘(A) IN GENERAL.—For purposes of this subsection, the term ‘qualified stock’ means, with respect to any qualified employee, any stock in a corporation which is the employer of such employee, if—

‘‘(i) such stock is received—

‘‘(I) in connection with the exercise of an option, or

‘‘(II) in settlement of a restricted stock unit, and

‘‘(ii) such option or restricted stock unit was provided by the corporation—

‘‘(I) in connection with the performance of services as an employee, and

‘‘(II) during a calendar year in which such corporation was an eligible corporation.

‘‘(B) LIMITATION.—The term ‘qualified stock’ shall not include any stock if the employee may sell such stock to, or otherwise receive cash in lieu of stock from, the corporation at the time that the rights of the employee in such stock first become transferable or not subject to a substantial risk of forfeiture.

"(C) ELIGIBLE CORPORATION.—For purposes of subparagraph (A)(ii)(II)—

"(i) IN GENERAL.—The term 'eligible corporation' means, with respect to any calendar year, any corporation if—

"(I) no stock of such corporation (or any predecessor of such corporation) is readily tradable on an established securities market (as determined under paragraph (1)(B)(iii)) during any preceding calendar year, and

"(II) such corporation has a written plan under which, in such calendar year, not less than 80 percent of all employees who provide services to such corporation in the United States (or any possession of the United States) are granted stock options, or restricted stock units, with the same rights and privileges to receive qualified stock.

"(ii) SAME RIGHTS AND PRIVILEGES.—For purposes of clause (i)(II)—

"(I) except as provided in subclauses (II) and (III), the determination of rights and privileges with respect to stock shall be determined in a similar manner as provided under section 423(b)(5),

"(II) employees shall not fail to be treated as having the same rights and privileges to receive qualified stock solely because the number of shares available to all employees is not equal in amount, so long as the number of shares available to each employee is more than a de minimis amount, and

"(III) rights and privileges with respect to the exercise of an option shall not be treated as the same as rights and privileges with respect to the settlement of a restricted stock unit.

"(iii) EMPLOYEE.—For purposes of clause (i)(II), the term 'employee' shall not include any employee described in section 4980E(d)(4) or any excluded employee.

"(iv) SPECIAL RULE FOR CALENDAR YEARS BEFORE 2017.—In the case of any calendar year beginning before January 1, 2017, clause (i)(II) shall be applied without regard to whether the rights and privileges with respect to the qualified stock are the same.

"(3) QUALIFIED EMPLOYEE; EXCLUDED EMPLOYEE.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified employee' means any individual who—

"(i) is not an excluded employee, and

"(ii) agrees in the election made under this subsection to meet such requirements as determined by the Secretary to be necessary to ensure that the withholding requirements of the corporation under chapter 24 with respect to the qualified stock are met.

"(B) EXCLUDED EMPLOYEE.—The term 'excluded employee' means, with respect to any corporation, any individual—

"(i) who was a 1-percent owner (within the meaning of section 416(i)(1)(B)(ii)) at any time during the 10 preceding calendar years,

"(ii) who is or has been at any prior time—

"(I) the chief executive officer of such corporation or an individual acting in such a capacity, or

"(II) the chief financial officer of such corporation or an individual acting in such a capacity,

"(iii) who bears a relationship described in section 318(a)(1) to any individual described in subclause (I) or (II) of clause (ii), or

"(iv) who has been for any of the 10 preceding taxable years one of the 4 highest compensated officers of such corporation determined with respect to each such taxable year on the basis of the shareholder disclosure rules for compensation under the Securities Exchange Act of 1934 (as if such rules applied to such corporation).

"(4) ELECTION.—

"(A) TIME FOR MAKING ELECTION.—An election with respect to qualified stock shall be made under this subsection no later than 30 days after the first time the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, and shall be made in a manner similar to the manner in which an election is made under subsection (b).

"(B) LIMITATIONS.—No election may be made under this section with respect to any qualified stock if—

"(i) the qualified employee has made an election under subsection (b) with respect to such qualified stock,

"(ii) any stock of the corporation which issued the qualified stock is readily tradable on an established securities market (as determined under paragraph (1)(B)(iii)) at any time before the election is made, or

"(iii) such corporation purchased any of its outstanding stock in the calendar year preceding the calendar year which includes the first time the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, unless—

"(I) not less than 25 percent of the total dollar amount of the stock so purchased is deferral stock, and

"(II) the determination of which individuals from whom deferral stock is purchased is made on a reasonable basis.

"(C) DEFINITIONS AND SPECIAL RULES RELATED TO LIMITATION ON STOCK REDEMPTIONS.—

"(i) DEFERRAL STOCK.—For purposes of this paragraph, the term 'deferral stock' means stock with respect to which an election is in effect under this subsection.

"(ii) DEFERRAL STOCK WITH RESPECT TO ANY INDIVIDUAL NOT TAKEN INTO ACCOUNT IF INDIVIDUAL HOLDS DEFERRAL STOCK WITH LONGER DEFERRAL PERIOD.—Stock purchased by a corporation from any individual shall not be treated as deferral stock for purposes of clause (iii) if such individual (immediately after such purchase) holds any deferral stock with respect to which an election has been in effect under this subsection for a longer period than the election with respect to the stock so purchased.

"(iii) PURCHASE OF ALL OUTSTANDING DEFERRAL STOCK.—The requirements of subclauses (I) and (II) of subparagraph (B)(iii) shall be treated as met if the stock so purchased includes all of the corporation's outstanding deferral stock.

"(iv) REPORTING.—Any corporation which has outstanding deferral stock as of the beginning of any calendar year and which purchases any of its outstanding stock during such calendar year shall include on its return of tax for the taxable year in which, or with which, such calendar year ends the total dollar amount of its outstanding stock so purchased during such calendar year and such other information as the Secretary may require for purposes of administering this paragraph.

"(5) CONTROLLED GROUPS.—For purposes of this subsection, all corporations which are members of the same controlled group of corporations (as defined in section 1563(a)) shall be treated as one corporation.

"(6) NOTICE REQUIREMENT.—Any corporation that transfers qualified stock to a qualified employee shall, at the time that (or a reasonable period before) an amount attributable to such stock would (but for this subsection) first be includible in the gross income of such employee—

"(A) certify to such employee that such stock is qualified stock, and

"(B) notify such employee—

"(i) that the employee may elect to defer income on such stock under this subsection, and

"(ii) that, if the employee makes such an election—

"(I) the amount of income recognized at the end of the deferral period will be based on the value of the stock at the time at which the rights of the employee in such stock first become transferable or not subject to substantial risk of forfeiture, notwithstanding whether the value of the stock has declined during the deferral period,

"(II) the amount of such income recognized at the end of the deferral period will be subject to withholding under section 3401(i) at the rate determined under section 3402(t), and

"(III) the responsibilities of the employee (as determined by the Secretary under paragraph (3)(A)(ii)) with respect to such withholding.".

(2) DEDUCTION BY EMPLOYER.—Subsection (h) of section 83 of the Internal Revenue Code of 1986 is amended by striking "or (d)(2)" and inserting "(d)(2), or (i)".

(b) WITHHOLDING.—

(1) TIME OF WITHHOLDING.—Section 3401 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(i) QUALIFIED STOCK FOR WHICH AN ELECTION IS IN EFFECT UNDER SECTION 83(i).—For purposes of subsection (a), qualified stock (as defined in section 83(i)) with respect to which an election is made under section 83(i) shall be treated as wages—

"(1) received on the earliest date described in section 83(i)(1)(B), and

"(2) in an amount equal to the amount included in income under section 83 for the taxable year which includes such date.".

(2) AMOUNT OF WITHHOLDING.—Section 3402 of such Code is amended by adding at the end the following new subsection:

"(t) RATE OF WITHHOLDING FOR CERTAIN STOCK.—In the case of any qualified stock (as defined in section 83(i)) with respect to which an election is made under section 83(i)—

"(1) the rate of tax under subsection (a) shall not be less than the maximum rate of tax in effect under section 1, and

"(2) such stock shall be treated for purposes of section 3501(b) in the same manner as a non-cash fringe benefit.".

(c) COORDINATION WITH OTHER DEFERRED COMPENSATION RULES.—

(1) ELECTION TO APPLY DEFERRAL TO STATUTORY OPTIONS.—

(A) INCENTIVE STOCK OPTIONS.—Section 422(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following: "Such term shall not include any option if an election is made under section 83(i) with respect to the stock received in connection with the exercise of such option.".

(B) EMPLOYEE STOCK PURCHASE PLANS.—Section 423(a) of such Code is amended by adding at the end the following flush sentence:

"The preceding sentence shall not apply to any share of stock with respect to which an election is made under section 83(i).".

(2) EXCLUSION FROM DEFINITION OF NONQUALIFIED DEFERRED COMPENSATION PLAN.—Subsection (d) of section 409A of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(7) TREATMENT OF QUALIFIED STOCK.—An arrangement under which an employee may receive qualified stock (as defined in section 83(i)(2)) shall not be treated as a nonqualified deferred compensation plan solely because of an employee's ability to defer recognition of income pursuant to an election under section 83(i).''.

(d) INFORMATION REPORTING.—Section 6051(a) of the Internal Revenue Code of 1986 is amended by striking ''and'' at the end of paragraph (13), by striking the period at the end of paragraph (14) and inserting a comma, and by inserting after paragraph (14) the following new paragraphs:

''(15) the amount excludable from gross income under subparagraph (A) of section 83(i)(1),

''(16) the amount includible in gross income under subparagraph (B) of section 83(i)(1) with respect to an event described in such subparagraph which occurs in such calendar year, and

''(17) the aggregate amount of income which is being deferred pursuant to elections under section 83(i), determined as of the close of the calendar year.''.

(e) PENALTY FOR FAILURE OF EMPLOYER TO PROVIDE NOTICE OF TAX CONSEQUENCES.—Section 6652 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(o) FAILURE TO PROVIDE NOTICE UNDER SECTION 83(i).—In the case of each failure to provide a notice as required by section 83(i)(6), at the time prescribed there-for, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such notice, an amount equal to $100 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $50,000.''.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to stock attributable to options exercised, or restricted stock units settled, after December 31, 2016.

(2) REQUIREMENT TO PROVIDE NOTICE.—The amendments made by subsection (e) shall apply to failures after December 31, 2016.

(g) TRANSITION RULE.—Until such time as the Secretary (or the Secretary's delegate) issue regulations or other guidance for purposes of implementing the requirements of paragraph (2)(C)(i)(II) of section 83(i) of the Internal Revenue Code of 1986 (as added by this section), or the requirements of paragraph (6) of such section, a corporation shall be treated as being in compliance with such requirements (respectively) if such corporation complies with a reasonable good faith interpretation of such requirements.

Passed the House of Representatives September 22, 2016.

Attest: KAREN L. HAAS,

Clerk.