

114TH CONGRESS
2D SESSION

S. 3152

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

IN THE SENATE OF THE UNITED STATES

JULY 11, 2016

Mr. WARNER (for himself and Mr. HELLER) 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 modify
the tax treatment of certain equity grants.

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 “Empowering Employ-
5 ees through Stock Ownership Act”.

6 **SEC. 2. TREATMENT OF QUALIFIED EQUITY GRANTS.**

7 (a) IN GENERAL.—

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

1 “(i) QUALIFIED EQUITY GRANTS.—

2 “(1) IN GENERAL.—For purposes of this sub-
3 title, if qualified stock is transferred to a qualified
4 employee who makes an election under this sub-
5 section—

6 “(A) no amount shall be included in in-
7 come under subsection (a) in the first taxable
8 year in which the rights of the employee in such
9 stock are transferable or are not subject to a
10 substantial risk of forfeiture, whichever is appli-
11 cable, and

12 “(B) an amount equal to the amount
13 which would be included in income of the em-
14 ployee under subsection (a) (determined without
15 regard to this subsection) shall be included in
16 income in the taxable year of the employee
17 which includes the earliest of—

18 “(i) the date such qualified stock is
19 sold, exchanged, or otherwise transferred,

20 “(ii) the date the employee first be-
21 comes an excluded employee,

22 “(iii) the first date on which any stock
23 of the corporation which issued the quali-
24 fied stock becomes readily tradable on an
25 established securities market,

1 “(iv) the date that is 7 years after the
2 first date the rights of the employee in
3 such stock are transferable or are not sub-
4 ject to a substantial risk of forfeiture,
5 whichever occurs earlier, or

6 “(v) the date on which the employee
7 elects under this clause to include the
8 amount in income.

9 “(2) QUALIFIED STOCK.—

10 “(A) IN GENERAL.—For purposes of this
11 subsection, the term ‘qualified stock’ means any
12 stock in a corporation if—

13 “(i) the right to receive such stock
14 was provided by the corporation—

15 “(I) in connection with the per-
16 formance of services as an employee,
17 and

18 “(II) such right was received in
19 year in which such corporation was an
20 eligible corporation, and

21 “(ii) such stock is received—

22 “(I) in connection with the exer-
23 cise of an option, or

24 “(II) in settlement of a restricted
25 stock unit.

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

“(C) ELIGIBLE CORPORATION.—For purposes of subparagraph (A)(i)(II)—

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

“(I) no stock of such corporation is readily tradable on an established securities market during such calendar year or any preceding calendar year, and

“(II) such corporation has a written plan under which not less than 80 percent of all employees have the same rights and privileges to receive qualified stock for such calendar year.

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

1 “(I) except as provided in sub-
2 clauses (II) and (III), the determina-
3 tion of rights and privileges with re-
4 spect to stock shall be determined in
5 a similar manner as provided under
6 section 423(b)(5),

7 “(II) employees shall not fail to
8 be treated as having the same rights
9 and privileges to receive qualified
10 stock solely because the number of
11 shares available to all employees are
12 not equal in amount, so long as the
13 number of shares available to each
14 employee is more than a de minimis
15 amount, and

16 “(III) the right to receive quali-
17 fied stock described subparagraph
18 (A)(ii)(I) shall not be treated as the
19 same right or privilege as the right to
20 receive qualified stock described in
21 subparagraph (A)(ii)(II).

22 “(iii) EMPLOYEE.—For purposes of
23 clause (i)(II), the term ‘employee’ shall not
24 include any employee described in section
25 4980E(d)(4) or any excluded employee.

1 “(iv) SPECIAL RULE FOR CALENDAR
 2 YEARS BEFORE 2017.—In the case of any
 3 calendar year beginning before January 1,
 4 2017, clause (i)(II) shall be applied with-
 5 out regard to whether the rights and privi-
 6 leges with respect to the qualified stock are
 7 the same.

8 “(3) QUALIFIED EMPLOYEE; EXCLUDED EM-
 9 PLOYEE.—For purposes of this subsection—

10 “(A) IN GENERAL.—The term ‘qualified
 11 employee’ means any individual who—

12 “(i) is not an excluded employee, and

13 “(ii) agrees to meet such requirements
 14 as determined by the Secretary to be nec-
 15 essary to ensure that the withholding re-
 16 quirements of the corporation under chap-
 17 ter 24 with respect to the qualified stock
 18 are met.

19 “(B) EXCLUDED EMPLOYEE.—The term
 20 ‘excluded employee’ means, with respect to any
 21 corporation, any individual—

22 “(i) who is or has been at any prior
 23 time a 1-percent owner (within the mean-
 24 ing of section 416(i)(1)(B)(ii)),

1 “(ii) who is or has been at any prior
2 time—

3 “(I) the chief executive officer of
4 such corporation or an individual act-
5 ing in such a capacity, or

6 “(II) the chief financial officer of
7 such corporation or an individual act-
8 ing in such a capacity,

9 “(iii) who bears a relationship de-
10 scribed in section 318(a)(1) to any indi-
11 vidual described in subclause (I) or (II) of
12 clause (ii), or

13 “(iv) who is or has been for any prior
14 taxable year one of the 4 highest com-
15 pensated officers of such corporation deter-
16 mined on the basis of the shareholder dis-
17 closure rules for compensation under the
18 Securities Exchange Act of 1934 (as if
19 such rules applied to such corporation).

20 “(4) ELECTION.—

21 “(A) TIME FOR MAKING ELECTION.—An
22 election with respect to qualified stock shall be
23 made under this subsection no later than 30
24 days after the first time the rights of the em-
25 ployee in such stock are transferable or are not

1 subject to a substantial risk of forfeiture,
 2 whichever occurs earlier.

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

6 “(i) the qualified employee has made
 7 an election under subsection (b) with re-
 8 spect to such qualified stock, or

9 “(ii) any stock of the corporation
 10 which issued the qualified stock is readily
 11 tradable on an established securities mar-
 12 ket at any time before the election is made.

13 “(5) OTHER RULES.—

14 “(A) CONTROLLED GROUPS.—For pur-
 15 poses of this subsection, all corporations which
 16 are members of the same controlled group of
 17 corporations (as defined in section 1563(a))
 18 shall be treated as one corporation.

19 “(B) NOTICE REQUIREMENT.—Any cor-
 20 poration that transfers qualified stock to an
 21 employee shall notify such employee that—

22 “(i) the employee may elect to defer
 23 income on such stock under this sub-
 24 section, and

1 “(ii) if the employee makes such an
 2 election, the amount of income recognized
 3 at the end of the deferral period will be
 4 based on the value of the stock at the time
 5 at which the rights of the employee in such
 6 stock are transferable or are not subject to
 7 substantial risk of forfeiture, notwith-
 8 standing whether the value of the stock
 9 has declined during the deferral period.”.

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

14 (b) WITHHOLDING.—

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

18 “(i) QUALIFIED STOCK FOR WHICH AN ELECTION IS
 19 IN EFFECT UNDER SECTION 83(i).—For purposes of sub-
 20 section (a), qualified stock (as defined in section 83(i))
 21 with respect to which an election is made under section
 22 83(i) shall be treated as wages—

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

1 “(2) in an amount equal to the amount in-
 2 cluded in income under section 83 for the taxable
 3 year which includes such date.”.

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

7 “(t) RATE OF WITHHOLDING FOR CERTAIN
 8 STOCK.—In the case of any qualified stock (as defined in
 9 section 83(i)) with respect to which an election is made
 10 under section 83(i), the rate of tax under subsection (a)
 11 shall not be less than the maximum rate of tax in effect
 12 under section 1.”.

13 (c) COORDINATION WITH OTHER DEFERRED COM-
 14 PENSATION RULES.—

15 (1) ELECTION TO APPLY DEFERRAL TO STATU-
 16 TORY OPTIONS.—

17 (A) INCENTIVE STOCK OPTIONS.—Section
 18 422(b) of the Internal Revenue Code of 1986 is
 19 amended by inserting “or any option with re-
 20 spect to which an election is made under section
 21 83(i)” after “as an incentive stock option”.

22 (B) EMPLOYEE STOCK PURCHASE
 23 PLANS.—Section 423(a) of such Code is amend-
 24 ed by adding at the end the following flush sen-
 25 tence:

1 “The preceding sentence shall not apply to any share of
 2 stock or option with respect to which an election is made
 3 under section 83(i).”.

4 (2) EXCLUSION FROM DEFINITION OF NON-
 5 QUALIFIED DEFERRED COMPENSATION PLAN.—Sub-
 6 section (d) of section 409A of the Internal Revenue
 7 Code of 1986 is amended by adding at the end the
 8 following new paragraph:

9 “(7) TREATMENT OF QUALIFIED STOCK.—Re-
 10 ceipt of stock shall not be treated as a nonqualified
 11 deferred compensation plan solely because of an elec-
 12 tion under 83(i).”.

13 (d) INFORMATION REPORTING.—Section 6051 of the
 14 Internal Revenue Code of 1986 is amended by inserting
 15 after paragraph (6) the following new paragraph:

16 “(7) the amounts subject to subparagraphs (A)
 17 and (B) of section 83(i)(1),”.

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

22 “(o) FAILURE TO PROVIDE NOTICE UNDER SECTION
 23 83(i).—In the case of each failure to provide a notice as
 24 required by section 83(i)(5)(B), at the time prescribed
 25 therefor, unless it is shown that such failure is due to rea-

1 sonable cause and not to willful neglect, there shall be
 2 paid, on notice and demand of the Secretary and in the
 3 same manner as tax, by the person failing to provide such
 4 notice, an amount equal to \$100 for each such failure,
 5 but the total amount imposed on such person for all such
 6 failures during any calendar year shall not exceed
 7 \$50,000.”.

8 (f) EFFECTIVE DATES.—

9 (1) IN GENERAL.—Except as provided in para-
 10 graph (2), the amendments made by this section
 11 shall apply to any property—

12 (A) in which the rights of the person who
 13 has the beneficial interest in such property are
 14 not transferable before January 1, 2017, and

15 (B) which is subject to a substantial risk
 16 of forfeiture before such date.

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

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