

104TH CONGRESS
1ST SESSION

H. R. 2741

To amend the Internal Revenue Code of 1986 and Employee Retirement Income Security Act of 1974 in order to promote and improve employee stock ownership plans.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 7, 1995

Mr. BALLENGER (for himself, Mr. ROHRABACHER, and Mr. PAYNE of Virginia) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 and Employee Retirement Income Security Act of 1974 in order to promote and improve employee stock ownership plans.

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 “ESOP Promotion Act
5 of 1995”.

6 **SEC. 2. CERTAIN CORPORATIONS ALLOWED TO SPONSOR**
7 **EMPLOYEE STOCK OWNERSHIP PLANS.**

8 (a) IN GENERAL.—Subparagraph (A) of section
9 1361(c)(2) of the Internal Revenue Code of 1986 (defin-

1 ing S corporation) is amended by adding at the end the
2 following new clause:

3 “(v) A trust established pursuant to
4 an employee stock ownership plan (as de-
5 fined in section 4975(e)(7)).”

6 (b) TRUSTEE TREATED AS SHAREHOLDER.—Sub-
7 paragraph (B) of section 1361(c)(2) of such Code is
8 amended by adding at the end the following new clause:

9 “(v) In the case of a trust described
10 in clause (v) of subparagraph (A), the
11 trustee shall be treated as the share-
12 holder.”

13 (c) S CORPORATION TO PAY ESOP’S UNRELATED
14 BUSINESS TAX.—

15 (1) IN GENERAL.—Section 1361 of such Code
16 is amended by adding at the end the following new
17 subsection:

18 “(e) SPECIAL RULE FOR EMPLOYEE STOCK OWNER-
19 SHIP TRUSTS.—A trust shall not be treated as described
20 in clause (v) of subsection (c)(2)(A) unless the S corpora-
21 tion sponsoring such trust pays, or guarantees the pay-
22 ment by such trust of, any tax imposed by section 511,
23 in such manner as the Secretary may prescribe, and pay-
24 ment by the corporation shall not be treated as a contribu-
25 tion to the trust under section 404(a).”

1 (2) CONFORMING AMENDMENTS.—

2 (A) Section 408(b) of the Employee Retirement
3 Income Security Act of 1974 (29 U.S.C.
4 1108(b)) is amended by adding at the end the
5 following new paragraph:

6 “(14) Any guarantee or payment of a tax liability
7 as described in section 1361(e) of the Internal
8 Revenue Code of 1986.”

9 (B) Subsection (d) of section 4975 of such
10 Code is amended by striking “or” at the end of
11 paragraph (14), by striking the period at the
12 end of paragraph (15) and inserting “; or”, and
13 by inserting after paragraph (15) the following:

14 “(16) any guarantee or payment of a tax liability
15 as described in section 1361(e).”

16 (d) S CORPORATION STOCK DISTRIBUTIONS TO
17 ESOP NOT TREATED AS CONTRIBUTIONS.—Section
18 404(a) of such Code is amended by adding at the end the
19 following new paragraph:

20 “(10) DISTRIBUTIONS WITH RESPECT TO
21 STOCK OF S CORPORATION.—Distributions with respect
22 to the stock of an S corporation made to an
23 employee stock ownership plan (as defined in section
24 4975(e)(7)) shall not be considered contributions for
25 purposes of this section or under section 415(c).”

1 (e) DEDUCTION FOR S CORPORATION STOCK DIS-
2 TRIBUTIONS.—Paragraph (6) of section 404(k) of such
3 Code is amended by adding at the end the following new
4 subparagraph:

5 “(C) DIVIDEND.—The term ‘dividend’
6 shall include distributions with respect to stock
7 of an S corporation which would be treated as
8 a dividend but for the application of section
9 1368(a).”

10 (f) RULES RELATING TO UNRELATED BUSINESS
11 TAX.—

12 (1) Subsection (b) of section 513 of such Code
13 is amended by inserting before the period “or by an
14 S corporation of which it is a shareholder”.

15 (2) Subsection (c) of section 512 of such Code
16 is amended by striking the subsection heading and
17 paragraph (1) and inserting the following:

18 “(c) SPECIAL RULES APPLICABLE TO PARTNER-
19 SHIPS AND S CORPORATIONS.—

20 “(1) IN GENERAL.—If a trade or business regu-
21 larly carried on by a partnership of which an organi-
22 zation is a member or an S corporation of which an
23 employee stock ownership trust is a shareholder is
24 an unrelated trade or business with respect to such
25 organization or trust, such organization or trust, in

1 computing its unrelated business taxable income
2 shall, subject to the exceptions, additions, and limi-
3 tations contained in subsection (b), include its share
4 (whether or not distributed) of the gross income of
5 the partnership or S corporation from such unre-
6 lated trade or business and its share of the partner-
7 ship or S corporation deductions directly connected
8 with such gross income.”

9 (g) ESOP MAY DISTRIBUTE CASH.—The second sen-
10 tence of paragraph (2) of section 409(h) of such Code is
11 amended to read as follows: “In the case of an employer
12 that is an S corporation or whose charter or bylaws re-
13 strict the ownership of substantially all outstanding em-
14 ployer securities to employees or to a trust described in
15 section 401(a), a plan which otherwise meets the require-
16 ments of this subsection or section 4975(e)(7) shall not
17 be considered to have failed to meet the requirements of
18 this subsection or section 401(a) merely because it does
19 not permit a participant to exercise the right described
20 in paragraph (1)(A) if such plan provides that participants
21 entitled to a distribution from the plan shall have a right
22 to receive such distribution in cash, except that such plan
23 may distribute employer securities subject to a require-
24 ment that such securities may be resold to the employer

1 under terms which meet the requirements of paragraph
2 (1)(B).”

3 (h) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on the date of the enactment
5 of this Act.

6 **SEC. 3. ESOP ASSUMPTION OF ESTATE TAX.**

7 (a) IN GENERAL.—Subchapter C of chapter 11 of the
8 Internal Revenue Code of 1986 (relating to miscellaneous
9 estate tax provisions) is amended by adding at the end
10 thereof the following new section:

11 **“SEC. 2210. LIABILITY FOR PAYMENT IN CASE OF TRANS-**
12 **FER OF EMPLOYER SECURITIES TO AN EM-**
13 **PLOYEE STOCK OWNERSHIP PLAN OR A**
14 **WORKER-OWNED COOPERATIVE.**

15 “(a) IN GENERAL.—If—

16 “(1) employer securities—

17 “(A) are acquired from the decedent by an
18 employee stock ownership plan or by an eligible
19 worker-owned cooperative from any decedent,

20 “(B) pass from the decedent to such a
21 plan or cooperative, or

22 “(C) are transferred by the executor to
23 such a plan or cooperative, and

24 “(2) the executor of the estate of the decedent
25 may (without regard to this section) make an elec-

1 tion under section 6166 with respect to that portion
2 of the tax imposed by section 2001 which is attrib-
3 utable to employer securities; and
4 then the executor is relieved of liability for payment of
5 that portion of the tax imposed by section 2001 which
6 such employee stock ownership plan or cooperative is re-
7 quired to pay under subsection (b).

8 “(b) PAYMENT OF TAX BY EMPLOYEE STOCK OWN-
9 ERSHIP PLAN OR COOPERATIVE.—

10 “(1) IN GENERAL.—An employee stock owner-
11 ship plan or eligible worker-owned cooperative—

12 “(A) which has acquired employer securi-
13 ties from the decedent, or to which such securi-
14 ties have passed from the decedent or been
15 transferred by the executor, and

16 “(B) with respect to which an agreement
17 described in subsection (e)(1) is in effect,
18 shall pay that portion of the tax imposed by section
19 2001 with respect to the taxable estate of the dece-
20 dent which is described in paragraph (2).

21 “(2) AMOUNT OF TAX TO BE PAID.—The por-
22 tion of the tax imposed by section 2001 with respect
23 to the taxable estate of the decedent that is referred
24 to in paragraph (1) is equal to the lesser of:

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

4 “(B) the tax imposed by section 2001 with
5 respect to such taxable estate reduced by the
6 sum of the credits allowable against such tax.

7 “(c) INSTALLMENT PAYMENTS.—

8 “(1) IN GENERAL.—If—

9 “(A) the executor of the estate of the dece-
10 dent (without regard to this section) elects to
11 have the provisions of section 6166 (relating to
12 extensions of time for payment of estate tax
13 where estate consists largely of interest in close-
14 ly-held business) apply to payment of that por-
15 tion of the tax imposed by section 2001 with re-
16 spect to such estate which is attributable to em-
17 ployer securities, and

18 “(B) the plan administrator or the cooper-
19 ative provides to the executor the agreement de-
20 scribed in subsection (e)(1),

21 then the plan administrator or any authorized officer
22 of the cooperative may elect, before the due date (in-
23 cluding extensions) for filing the return of such tax,
24 to pay all or part of the tax described in subsection

1 (b)(2) in installments under the provisions of section
2 6166.

3 “(2) INTEREST ON INSTALLMENTS.—In deter-
4 mining the 4-percent portion for purposes of section
5 6601(j)—

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

9 “(B) the portion of such tax for which an
10 employee stock ownership plan or an eligible
11 worker-owned cooperative is liable,
12 shall be aggregated.

13 “(3) SPECIAL RULES FOR APPLICATION OF SEC-
14 TION 6166(g).—In the case of any transfer of em-
15 ployer securities to an employee stock ownership
16 plan or eligible worker-owned cooperative to which
17 this section applies—

18 “(A) TRANSFER DOES NOT TRIGGER AC-
19 CELERATION.—Such transfer shall not be treat-
20 ed as a disposition of withdrawal to which sec-
21 tion 6166(g) applies.

22 “(B) SEPARATE APPLICATION TO ESTATE
23 AND PLAN INTERESTS.—Section 6166(g) shall
24 be applied separately to the interests held after

1 such transfer by the estate and such plan or
2 cooperative.

3 “(C) REQUIRED DISTRIBUTION NOT TAKEN
4 INTO ACCOUNT.—In the case of any distribution
5 of such securities by such plan which is de-
6 scribed in section 4978(d)(1)—

7 “(i) such distribution shall not be
8 treated as a disposition or withdrawal for
9 purposes of section 6166(g), and

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

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

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

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

18 and any eligible worker-owned cooperative shall guarantee
19 (in such manner as the Secretary may prescribe) the pay-
20 ment of any amount such plan or cooperative, respectively,
21 is required to pay under subsection (b).

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

24 “(1) A written agreement signed by the plan
25 administrator, or by any authorized officer of the eli-

1 gible worker-owned cooperative, consenting to the
2 application of subsection (b) to such plan or cooper-
3 ative.

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

8 “(f) EXEMPTION FROM TAX ON PROHIBITED TRANS-
9 ACTIONS.—The liability which is assumed under this sec-
10 tion by an employee stock ownership plan of any portion
11 of the liability for any portion of the tax imposed by sec-
12 tion 2001 shall be treated as a loan described in section
13 4975(d)(3).

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

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

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

21 “(3) ELIGIBLE WORKER-OWNED COOPERA-
22 TIVE.—The term ‘eligible worker-owned cooperative’
23 has the meaning given to such term by section
24 1042(c)(2).

1 items not deductible in computing earnings and profits)
2 is amended by adding at the end thereof the following:

3 “(v) TREATMENT OF ESOP DIVI-
4 DENDS.—Clause (i) shall not apply to any
5 deduction allowable under section 404(k) if
6 the deduction is allowed for dividends paid
7 on employer securities held by an employee
8 stock ownership plan established or author-
9 ized to be established before March 15,
10 1991.”

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall apply to taxable years beginning after
13 December 31, 1989.

14 (c) STATUTE OF LIMITATIONS.—If refund or credit
15 of any overpayment of tax resulting from the application
16 of subsection (a) is prevented at any time before the close
17 of the 1-year period beginning on the date of the enact-
18 ment of this Act by the operation of any law or rule of
19 law (including res judicata), refund or credit of such over-
20 payment (to the extent attributable to the application of
21 subsection (a)) may, nevertheless, be made or allowed if
22 claim therefor is filed before the close of such 1-year pe-
23 riod.

1 **SEC. 5. AMENDMENTS RELATED TO SECTION 1042.**

2 (a) EXTENSION OF SECTION 1042 PRINCIPLES TO
3 STOCK RECEIVED AS COMPENSATION FOR SERVICES.—

4 (1) IN GENERAL.—Section 83 of the Internal
5 Revenue Code of 1986 (relating to property trans-
6 ferred in connection with performance of services) of
7 the Internal Revenue Code of 1986 is amended by
8 adding at the end thereof the following new sub-
9 section:

10 “(i) EXCEPTION FOR TRANSFERS OF QUALIFIED SE-
11 CURITIES SOLD TO EMPLOYEE STOCK OWNERSHIP
12 PLANS.—

13 “(1) EXCLUSION FROM INCOME.—Subsections
14 (a) and (b) shall not apply to, and no amount shall
15 be includible in gross income with respect to, the
16 transfer of any qualified security (as defined in sec-
17 tion 1042(c)(1)) in connection with the performance
18 of services if, and to the extent that, within 60 days
19 after the event which would cause the recognition of
20 income pursuant to subsection (a) or (b) in the ab-
21 sence of this subsection, the transferee sells such
22 qualified security to an employee stock ownership
23 plan (as defined in section 4975(e)(7)) and the re-
24 quirements of section 1042(a) are met with respect
25 to such sale.

1 “(2) NO DEDUCTION BY EMPLOYER.—Notwith-
2 standing the provisions of subsection (h), the person
3 for whom were performed the services in connection
4 with which any qualified security is transferred shall
5 not be entitled to a deduction with respect to such
6 transfer if, and to the extent that, paragraph (1) ap-
7 plies to such transfer.”

8 (2) CONFORMING AMENDMENTS.—

9 (A) Section 424(c)(1) of such Code is
10 amended by striking “or” at the end of sub-
11 paragraph (B), by striking the period at the
12 end of subparagraph (C) and inserting “, or”,
13 and by adding at the end thereof the following
14 new subparagraph:

15 “(D) a sale to which 1042 applies.”

16 (B) Section 1042(a) of such Code is
17 amended—

18 (i) by striking “which would be recog-
19 nized as long-term capital gain” from the
20 first sentence thereof, and

21 (ii) by adding at the end thereof the
22 following new sentence: “If any gain is rec-
23 ognized after the application of the preced-
24 ing sentence, the portion of such recog-
25 nized gain (up to the whole of such recog-

1 nized gain) which is equal to the amount
2 of ordinary income, if any, that was not
3 recognized with respect to such qualified
4 securities by virtue of section 83(i) or
5 424(c)(1)(D) shall be treated as ordinary
6 income.”.

7 (C) Section 1042(b)(4) of such Code is
8 amended by adding at the end thereof the fol-
9 lowing new sentence: “The requirements of the
10 preceding sentence shall not apply to qualified
11 securities received by the taxpayer in a transfer
12 to which section 83 or 422 applied (or to which
13 section 422 or 424 (as in effect on the day be-
14 fore the date of enactment of the Revenue Rec-
15 onciliation Act of 1990) applied).”.

16 (D) Section 1042(c)(1)(B) of such Code is
17 amended to read as follows:

18 “(B) were not received by the taxpayer
19 in—

20 “(i) a distribution from a plan de-
21 scribed in section 401(a), or

22 “(ii) a transfer pursuant to a right to
23 acquire stock to which section 423 ap-
24 plied.”

1 (E) The first sentence of section 1042(d)
2 of such Code is amended to read as follows:
3 “The basis of the taxpayer in qualified replace-
4 ment property purchased by the taxpayer dur-
5 ing the replacement period shall be reduced by
6 the amount of gain or ordinary income not rec-
7 ognized by virtue of such purchase, taking into
8 account the application of subsection (a) and, if
9 applicable, the application of section 83(i) or
10 section 424(c)(1)(D).”

11 (F) Section 1042(e)(1) of such Code is
12 amended to read as follows:

13 “(1) IN GENERAL.—If a taxpayer disposes of
14 any qualified replacement property, then, notwith-
15 standing any other provision of this title, gain (if
16 any) shall be recognized to the extent of the gain or
17 ordinary income which was not recognized by reason
18 of the acquisition by such taxpayer of such qualified
19 replacement property, taking into account the appli-
20 cation of subsection (a) and, if applicable, the appli-
21 cation of section 83(i) or 424(c)(1)(D). The portion
22 of such gain (up to the whole thereof) equal to the
23 amount of ordinary income that was not recognized
24 by reason of such acquisition shall be treated as or-
25 dinary income.”

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to sales of qualified se-
3 curities on or after the date of the enactment of this
4 Act.

5 (b) MODIFICATION TO 25-PERCENT SHAREHOLDER
6 RULE.—

7 (1) IN GENERAL.—Section 409(n)(1)(B) of
8 such Code is amended to read as follows:

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

12 “(i) the total combined voting power
13 of all classes of stock of the corporation
14 which issued such employer securities or of
15 any corporation which is a member of the
16 same controlled group of corporations
17 (within the meaning of subsection (l)(4))
18 as such corporation, or

19 “(ii) the total value of all classes of
20 stock of any such corporation.”

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

1 **SEC. 6. CLARIFICATION OF VOTING RIGHTS REQUIREMENT**
2 **UNDER EXCLUSION FOR INTEREST ON LOANS**
3 **USED TO ACQUIRE EMPLOYER SECURITIES.**

4 (a) IN GENERAL.—Subparagraph (A) of section
5 133(b)(7) of the Internal Revenue Code of 1986 (relating
6 to voting rights of employer securities) is amended by
7 striking “section 409(e)(2)” and inserting “paragraph (2)
8 or (5) of section 409(e)”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall apply to loans made after July 10,
11 1989.

12 (c) STATUTE OF LIMITATIONS.—If refund or credit
13 of any overpayment of tax resulting from the application
14 of subsection (a) is prevented at any time before the close
15 of the 1-year period beginning on the date of the enact-
16 ment of this Act by the operation of any law or rule of
17 law (including res judicata), refund or credit of such over-
18 payment (to the extent attributable to the application of
19 subsection (a)) may, nevertheless, be made or allowed if
20 claim therefor is filed before the close of such 1-year pe-
21 riod.

22 **SEC. 7. GRATUITOUS TRANSFERS FOR THE BENEFIT OF EM-**
23 **PLOYEES.**

24 (a) IN GENERAL.—Subparagraph (C) of section
25 664(d)(1) of the Internal Revenue Code of 1986 and sub-
26 paragraph (C) of section 664(d)(2) of such Code are each

1 amended by striking the period at the end thereof and in-
2 serting “or, to the extent the remainder interest is in
3 qualified employer securities (as defined in paragraph
4 (3)(C)), is to be transferred to an employee stock owner-
5 ship plan (as defined in section 4975(e)(7)) in a qualified
6 gratuitous transfer (as defined by paragraph (3)).”

7 (b) QUALIFIED GRATUITOUS TRANSFER DEFINED.—
8 Subsection (d) of section 664 of such Code is amended
9 by redesignating paragraph (3) as paragraph (4) and by
10 inserting after paragraph (2) the following new paragraph:

11 “(3) QUALIFIED GRATUITOUS TRANSFER OF
12 QUALIFIED EMPLOYER SECURITIES.—

13 “(A) IN GENERAL.—For purposes of this
14 section, the term ‘qualified gratuitous transfer’
15 means a transfer of qualified employer securi-
16 ties to an employee stock ownership plan (as
17 defined in section 4975(e)(7)) but only to the
18 extent that—

19 “(i) the securities transferred pre-
20 viously passed from a decedent to a trust
21 described in paragraph (1) or (2);

22 “(ii) no deduction under section 404
23 is allowable with respect to such transfer;

24 “(iii) such plan provides that the se-
25 curities so transferred are allocated to plan

1 participants in a manner consistent with
2 section 401(a)(4);

3 “(iv) such plan treats such securities
4 as being attributable to employer contribu-
5 tions but without regard to the limitations
6 otherwise applicable to such contributions
7 under section 404;

8 “(v) such plan provides that such se-
9 curities are held in a suspense account
10 under the plan to be allocated each year,
11 up to the limitations under section 415(c),
12 after first allocating all other annual addi-
13 tions for the limitation year, up to the lim-
14 itations under sections 415(c) and (e); and

15 “(vi) the employer whose employees
16 are covered by the plan described in this
17 subparagraph files with the Secretary a
18 verified written statement consenting to
19 the application of sections 4978 and
20 4979A with respect to such employer.

21 “(B) QUALIFIED EMPLOYER SECURI-
22 TIES.—For purposes of this section, the term
23 ‘qualified employer securities’ means employer
24 securities (as defined in section 409(l)) which
25 are issued by a domestic corporation which has

1 no outstanding stock which is readily tradable
2 on an established securities market.

3 “(C) TREATMENT OF SECURITIES ALLO-
4 CATED BY EMPLOYEE STOCK OWNERSHIP PLAN
5 TO PERSONS RELATED TO DECEDENT OR 5-PER-
6 CENT SHAREHOLDERS.—

7 “(i) IN GENERAL.—If any portion of
8 the assets of the plan attributable to secu-
9 rities acquired by the plan in a qualified
10 gratuitous transfer are allocated to the ac-
11 count of—

12 “(I) any person who is related to
13 the decedent (within the meaning of
14 section 267(b)), or

15 “(II) any person who, at the time
16 of such allocation or at any time dur-
17 ing the 1-year period ending on the
18 date of the acquisition of qualified
19 employer securities by the plan, is a
20 5-percent shareholder of the employer
21 maintaining the plan,

22 the plan shall be treated as having distrib-
23 uted (at the time of such allocation) to
24 such person or shareholder the amount so
25 allocated.

1 “(ii) 5-PERCENT SHAREHOLDER.—
2 For purposes of clause (i), the term ‘5-per-
3 cent shareholder’ means any person who
4 owns (directly or through the application
5 of section 318(a)) more than 5 percent
6 of—

7 “(I) any class of outstanding
8 stock of the corporation which issued
9 such qualified employer securities or
10 of any corporation which is a member
11 of the same controlled group of cor-
12 porations (within the meaning of sec-
13 tion 409(l)(4)) as such corporation, or

14 “(II) the total value of any class
15 of outstanding stock of any such cor-
16 poration; and

17 For purposes of the preceding sentence,
18 section 318(a) shall be applied without re-
19 gard to the exception in paragraph
20 (2)(B)(i) thereof.

21 “(iii) CROSS REFERENCE.—

**“For excise tax on allocations described in clause
 (i), see section 4979A.”**

22 (c) CONFORMING AMENDMENTS.—

23 (1) Section 401(a)(1) of such Code is amended
24 by inserting “or by a charitable remainder trust pur-

1 suant to a qualified gratuitous transfer (as defined
2 in section 664(d)(3)(A)),” after “stock bonus
3 plans),”.

4 (2) Section 404(a)(9) of such Code is amended
5 by inserting after subparagraph (B) the following
6 new subparagraph:

7 “(C) A qualified gratuitous transfer (as de-
8 fined in section 664(d)(3)(A)) shall have no ef-
9 fect on the amount or amounts otherwise de-
10 ductible under paragraph (3) or (7) or under
11 this paragraph.”

12 (3) Section 415(e)(6) of such Code is amended
13 by adding at the end thereof the following new sen-
14 tence:

15 “The amount of any qualified gratuitous transfer
16 (as defined in section 664(d)(3)(A)) allocated to a
17 participant for any limitation year shall not exceed
18 the limitations imposed by this section, but such
19 amount shall not be taken into account in determin-
20 ing whether any other amount exceeds the limita-
21 tions imposed by this section.”

22 (4) Section 415(e) of such Code is amended—
23 (A) by redesignating paragraph (6) as
24 paragraph (7), and

1 (B) by inserting after paragraph (5) the
2 following new paragraph:

3 “(6) SPECIAL RULE FOR QUALIFIED GRATU-
4 ITOUS TRANSFERS.—Any qualified gratuitous trans-
5 fer of qualified employer securities (as defined by
6 section 664(d)(3)) shall not be taken into account in
7 calculating, and shall not be subject to, the limita-
8 tions provided in this subsection.”

9 (5) Paragraph (3) of section 644(e) of such
10 Code is amended to read as follows:

11 “(3) acquired by a charitable remainder annuity
12 trust (as defined in section 664(d)(1)) or a chari-
13 table remainder unitrust (as defined in sections
14 664(d)(2) and (4)), or”.

15 (6) Subparagraph (B) of section 664(d)(1) of
16 such Code and subparagraph (B) of section
17 664(d)(2) of such Code are each amended by insert-
18 ing “and other than qualified gratuitous transfers
19 described in subparagraph (C)” after “subparagraph
20 (A)”.

21 (7) Paragraph (4) of section 674(b) of such
22 Code is amended by inserting before the period “or
23 to an employee stock ownership plan (as defined in
24 section 4975(e)(7)) in a qualified gratuitous transfer
25 (as defined in section 664(d)(3))”.

1 (8)(A) Section 2055(a) of such Code is amend-
2 ed—

3 (i) by striking “or” at the end of para-
4 graph (3),

5 (ii) by striking the period at the end of
6 paragraph (4) and inserting “; or”, and

7 (iii) by inserting after paragraph (4) the
8 following new paragraph:

9 “(5) to an employee stock ownership plan if
10 such transfer qualifies as a qualified gratuitous
11 transfer of qualified employer securities within the
12 meaning of section 664(d)(3).”

13 (B) Clause (ii) of section 2055(e)(3)(C) of such
14 Code is amended by striking “section 664(d)(3)”
15 and inserting “section 664(d)(4)”.

16 (9) Paragraph (8) of section 2056(b) of such
17 Code is amended to read as follows:

18 “(8) SPECIAL RULE FOR CHARITABLE REMAIN-
19 DER TRUSTS.—

20 “(A) IN GENERAL.—If the surviving
21 spouse of the decedent is the only beneficiary of
22 a qualified charitable remainder trust who is
23 not a charitable beneficiary nor an ESOP bene-
24 ficiary, paragraph (1) shall not apply to any in-

1 terest in such trust which passes or has passed
2 from the decedent to such surviving spouse.

3 “(B) DEFINITIONS.—For purposes of sub-
4 paragraph (A)—

5 “(i) CHARITABLE BENEFICIARY.—The
6 term ‘charitable beneficiary’ means any
7 beneficiary which is an organization de-
8 scribed in section 170(c).

9 “(ii) ESOP BENEFICIARY.—The term
10 ‘ESOP beneficiary’ means any beneficiary
11 which is an employee stock ownership plan
12 (as defined in section 4975(e)(7)) that
13 holds a remainder interest in qualified em-
14 ployer securities (as defined in section
15 664(d)(3)) to be transferred to such plan
16 in a qualified gratuitous transfer (as de-
17 fined in section 664(d)(3)).

18 “(iii) QUALIFIED CHARITABLE RE-
19 MAINDER TRUST.—The term ‘qualified
20 charitable remainder trust’ means a chari-
21 table remainder annuity trust or a chari-
22 table remainder unitrust (described in sec-
23 tion 664).”

1 (10) Section 4947(b) of such Code is amended
2 by inserting after paragraph (3) the following new
3 paragraph:

4 “(4) SECTION 507.—The provisions of section
5 507(a) shall not apply to a trust which is described
6 in subsection (a)(2) by reason of a distribution of
7 qualified employer securities (as defined in section
8 664(d)(3)) to an employee stock ownership plan (as
9 defined in section 4975(e)(7)) in a qualified gratu-
10 itous transfer (as defined by section 664(d)(3)).”

11 (11) The last sentence of section 4975(e)(7) of
12 such Code is amended by inserting “and section
13 664(d)(3)” after “section 409(n)”

14 (12) Subsection (a) of section 4978 of such
15 Code is amended by inserting “or acquired any
16 qualified employer securities in a qualified gratu-
17 itous transfer to which section 664(d)(3) applied”
18 after “section 1042 applied”.

19 (13) Paragraph (2) of section 4978(b) of such
20 Code is amended—

21 (A) by inserting “or acquired in the quali-
22 fied gratuitous transfer to which section
23 664(d)(3) applied” after “section 1042 ap-
24 plied”, and

1 (B) by inserting “or to which section
2 664(d)(3) applied” after “section 1042 applied”
3 in subparagraph (C) thereof.

4 (14) Subsection (c) of section 4978 of such
5 Code is amended by striking “written statement”
6 and all that follows and inserting “written statement
7 described in section 664(d)(3)(A)(vi) or in section
8 1042(b)(3) (as the case may be).”

9 (15) Paragraph (2) of section 4978(e) of such
10 Code is amended by striking the period and insert-
11 ing “; except that such section shall be applied with-
12 out regard to subparagraph (B) thereof for purposes
13 of applying this section and section 4979A with re-
14 spect to securities acquired in a qualified gratuitous
15 transfer (as defined in section 664(d)(3)(A)).”

16 (16) Subsection (a) of section 4979A of such
17 Code is amended to read as follows:

18 “(a) IMPOSITION OF TAX.—If—

19 “(1) there is a prohibited allocation of qualified
20 securities by any employee stock ownership plan or
21 eligible worker-owned cooperative, or

22 “(2) there is an allocation described in section
23 663(d)(3)(C)(i),

24 there is hereby imposed a tax on such allocation equal to
25 50 percent of the amount involved.”

1 (17) Subsection (c) of section 4979A of such
2 Code is amended to read as follows:

3 “(c) LIABILITY FOR TAX.—The tax imposed by this
4 section shall be paid by—

5 “(1) the employer sponsoring such plan, or

6 “(2) the eligible worker-owned cooperative,

7 which made the written statement described in section
8 664(d)(3)(A)(vi) or in section 1042(b)(3)(B) (as the case
9 may be).”

10 (18) Section 4979A of such Code is amended by re-
11 designating subsection (d) as subsection (e) and by insert-
12 ing after subsection (c) the following new subsection:

13 “(d) SPECIAL STATUTE OF LIMITATIONS FOR TAX
14 ATTRIBUTABLE TO CERTAIN ALLOCATIONS.—The statu-
15 tory period for the assessment of any tax imposed by this
16 section on an allocation described in subsection (a)(2) of
17 qualified employer securities shall not expire before the
18 date which is 3 years from the later of—

19 “(1) the 1st allocation of such securities in con-
20 nection with a qualified gratuitous transfer (as de-
21 fined in section 664(d)(3)(A)), or

22 “(2) the date on which the Secretary is notified
23 of the allocation described in subsection (a)(2).”

24 (d) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to transfers made by trusts to, or

1 for the use of, an employee stock ownership plan after the
2 date of the enactment of this Act.

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