

112TH CONGRESS
1ST SESSION

H. R. 1244

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2011

Mr. REICHERT (for himself, Mr. KIND, Mr. BOUSTANY, Mr. BLUMENAUER, Mr. PAULSEN, and Mr. PASCRELL) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce and Small Business, 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

A BILL

To amend the Internal Revenue Code of 1986 and the Small Business Act 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 “Promotion and Expan-
5 sion of Private Employee Ownership Act of 2011”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) on January 1, 1998—nearly 25 years after
4 the Employee Retirement Income Security Act of
5 1974 was enacted and the employee stock ownership
6 plan (hereafter in this section referred to as an
7 “ESOP”) was created—employees were first per-
8 mitted to be owners of subchapter S corporations
9 pursuant to the Small Business Job Protection Act
10 of 1996 (Public Law 104–188);

11 (2) with the passage of the Taxpayer Relief Act
12 of 1997 (Public Law 105–34), Congress designed in-
13 centives to encourage businesses to become ESOP-
14 owned S corporations;

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

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

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

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

9 (7) under the Small Business Act (15 U.S.C.
10 631 et seq.) and the regulations promulgated by the
11 Administrator of the Small Business Administration,
12 a small business concern that was eligible under the
13 Small Business Act for the numerous preferences of
14 the Act is denied treatment as a small business con-
15 cern after an ESOP acquires more than 49 percent
16 of the business, even if the number of employees, the
17 revenue of the small business concern, and the ra-
18 cial, gender, or other criteria used under the Act to
19 determine whether the small business concern is eli-
20 gible for benefits under the Act remain the same,
21 solely because of the acquisition by the ESOP; and
22 (8) it is the goal of Congress to both preserve
23 and foster employee ownership of S corporations
24 through ESOPs.

1 **SEC. 3. DEFERRAL OF TAX FOR CERTAIN SALES OF EM-**
2 **EMPLOYER 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 **PLOYEE 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-

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

3 “(b) QUALIFIED SECURITIES ACQUISITION LOAN.—

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

7 “(A) any loan to an employee stock owner-
8 ship plan sponsored by an S corporation to the
9 extent that the proceeds are used to acquire
10 employer securities for the plan, and

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

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

19 “(2) TERMS APPLICABLE TO CERTAIN QUALI-
20 FIED SECURITIES ACQUISITION LOANS.—For pur-
21 poses of paragraph (1)(B), the term ‘qualified secu-
22 rities acquisition loan’ shall not include any loan to
23 the S corporation unless the loan to the employee
24 stock ownership plan has repayment terms which are

1 substantially similar to the terms of the loan to the
2 S corporation.

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

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

11 “(A) IN GENERAL.—A loan shall not be
12 treated as a qualified securities acquisition loan
13 for purposes of this section unless, immediately
14 after an acquisition of employer securities re-
15 ferred to in paragraph (1), the employee stock
16 ownership plan owns more than 50 percent of
17 the outstanding stock of the S corporation.

18 “(B) FAILURE TO RETAIN MINIMUM STOCK
19 INTEREST.—

20 “(i) IN GENERAL.—Subsection (a)
21 shall not apply to any interest received
22 with respect to a qualified securities acqui-
23 sition loan which is allocable to any period
24 during which the employee stock ownership

1 plan does not own stock meeting the re-
2 quirements of subparagraph (A).

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

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

18 “(c) EMPLOYEE STOCK OWNERSHIP PLAN.—For
19 purposes of this section, the term ‘employee stock owner-
20 ship plan’ has the meaning given to such term by section
21 4975(e)(7).”.

22 (b) CLERICAL AMENDMENT.—The table of sections
23 for part VI of subchapter B of chapter 1 of such Code
24 is amended by inserting after the item relating to section
25 199 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 corporation.”.

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. DEPARTMENT OF TREASURY TECHNICAL ASSIST-**
5 **ANCE OFFICE.**

6 (a) ESTABLISHMENT REQUIRED.—Before the end of
7 the 90-day period beginning on the date of enactment of
8 this Act, the Secretary of Treasury shall establish the S
9 Corporation Employee Ownership Assistance Office to fos-
10 ter increased employee ownership of S corporations.

11 (b) DUTIES OF THE OFFICE.—The S Corporation
12 Employee Ownership Assistance Office shall provide—

13 (1) education and outreach to inform companies
14 and individuals about the possibilities and benefits of
15 employee ownership of S corporations; and

16 (2) technical assistance to assist S corporations
17 in sponsoring employee stock ownership plans.

18 **SEC. 6. SMALL BUSINESS AND EMPLOYEE STOCK OWNER-**
19 **SHIP.**

20 (a) IN GENERAL.—The Small Business Act (15
21 U.S.C. 631 et seq.) is amended—

22 (1) by redesignating section 45 as section 46;
23 and

24 (2) by inserting after section 44 the following:

1 **“SEC. 45. EMPLOYEE STOCK OWNERSHIP PLANS.**

2 “(a) DEFINITIONS.—In this section—

3 “(1) the term ‘ESOP’ means an employee stock
4 ownership plan, as defined in section 4975(e)(7) of
5 the Internal Revenue Code of 1986, as amended;
6 and

7 “(2) the term ‘ESOP business concern’ means
8 a business concern that was a small business con-
9 cern eligible for a loan or to participate in a con-
10 tracting assistance or business development program
11 under this Act before the date on which more than
12 49 percent of the business concern was acquired by
13 an ESOP.

14 “(b) CONTINUED ELIGIBILITY.—In determining
15 whether an ESOP business concern qualifies as a small
16 business concern for purposes of a loan, preference, or
17 other program under this Act, each ESOP participant
18 shall be treated as directly owning his or her proportionate
19 share of the stock in the ESOP business concern owned
20 by the ESOP.”.

21 (b) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on January 1 of the first cal-
23 endar year beginning after the date of the enactment of
24 this Act.

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