

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2088

To amend the Internal Revenue Code of 1986 in order to promote and improve employee stock ownership plans.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1993

Mr. BALLENGER (for himself, Mr. ROHRABACHER, Mr. PICKLE, Mr. ARMEY, Mr. BARCIA, Mr. BOEHNER, Mr. BUNNING, Mr. BURTON of Indiana, Mrs. CLAYTON, Mr. COBLE, Mr. CONDIT, Mr. COX, Mr. DOOLITTLE, Mr. DUNCAN, Mr. EWING, Mr. FAWELL, Mr. GEREN of Texas, Mr. GINGRICH, Mr. GRAMS, Mr. GUNDERSON, Mr. HANCOCK, Mrs. JOHNSON of Connecticut, Mr. SAM JOHNSON of Texas, Mr. KOLBE, Mr. KYL, Mr. LANCASTER, Mr. LINDER, Mr. MCCRERY, Mr. McMILLAN, Mrs. MORELLA, Mr. PACKARD, Mr. PAXON, Mr. PETRI, Mr. POSHARD, Mr. SHAYS, Mr. SOLOMON, Mr. STENHOLM, Mr. TAUZIN, Mr. THOMAS of Wyoming, Mr. TRAFICANT, Mr. TAYLOR of North Carolina, and Mr. WOLF) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 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 and  
5       Improvement Act of 1993”.

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

3 (a) IN GENERAL.—Subparagraph (A) of section  
4 1361(c)(2) of the Internal Revenue Code of 1986 (defin-  
5 ing S corporation) is amended by adding at the end the  
6 following new clause:

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

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

13 “(v) In the case of a trust described  
14 in clause (v) of subparagraph (A), the  
15 trustee shall be treated as the share-  
16 holder.”

17 (c) S CORPORATION TO PAY ESOP’S UNRELATED  
18 BUSINESS TAX.—

19 (1) IN GENERAL.—Section 1361 of such Code  
20 is amended by adding at the end the following new  
21 subsection:

22 “(e) SPECIAL RULE FOR EMPLOYEE STOCK OWNER-  
23 SHIP TRUSTS.—A trust shall not be treated as described  
24 in clause (v) of subsection (c)(2)(A) unless the S corpora-  
25 tion sponsoring such trust pays, or guarantees the pay-  
26 ment by such trust of, any tax imposed by section 511,

1 in such manner as the Secretary may prescribe, and pay-  
2 ment by the corporation shall not be treated as a contribu-  
3 tion to the trust under section 404(a).”

4 (2) CONFORMING AMENDMENTS.—

5 (A) Section 408(b) of the Employee Retire-  
6 ment Income Security Act of 1974 is amended  
7 by adding at the end the following new para-  
8 graph:

9 “(14) any guarantee or payment of a tax liabil-  
10 ity as described in section 1361(e) of the Internal  
11 Revenue Code of 1986.”

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

17 “(16) any guarantee or payment of a tax liabil-  
18 ity as described in section 1361(e).”

19 (d) S CORPORATION STOCK DISTRIBUTIONS TO  
20 ESOP NOT TREATED AS CONTRIBUTIONS.—Section  
21 404(a) of such Code is amended by adding at the end the  
22 following new paragraph:

23 “(10) DISTRIBUTIONS WITH RESPECT TO  
24 STOCK OF S CORPORATION.—Distributions with re-  
25 spect to the stock of an S corporation made to an

1 employee stock ownership plan (as defined in section  
2 4975(e)(7)) shall not be considered contributions for  
3 purposes of this section or under section 415(c).”

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

8 “(C) DIVIDEND.—The term ‘dividend’  
9 shall include distributions with respect to stock  
10 of an S corporation which would be treated as  
11 a dividend but for the application of section  
12 1368(a).”

13 (f) RULES RELATING TO UNRELATED BUSINESS  
14 TAX.—

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

18 (2) Subsection (c) of section 512 of such Code  
19 is amended by striking the subsection heading and  
20 paragraph (1) and inserting the following:

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

23 “(1) IN GENERAL.—If a trade or business regu-  
24 larly carried on by a partnership of which an organi-  
25 zation is a member or an S corporation of which an

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

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

1 may distribute employer securities subject to a require-  
2 ment that such securities may be resold to the employer  
3 under terms which meet the requirements of paragraph  
4 (1)(B).”

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

8 **SEC. 3. DOUBLING THE LIMITATIONS FOR CERTAIN ESOP**  
9 **CONTRIBUTIONS.**

10 (a) IN GENERAL.—Paragraph (6) of section 415(c)  
11 of the Internal Revenue Code of 1986 is amended by add-  
12 ing at the end the following new sentence:

13 “In the case of a participant in an employee stock  
14 ownership plan (as so defined) who is not a highly  
15 compensated employee and whose compensation for  
16 the year does not exceed the amount referred to in  
17 paragraph (1)(A), ‘50 percent’ shall be substituted  
18 for ‘25 percent’ in applying paragraph (1)(B) to  
19 such plan.”

20 (b) EFFECTIVE DATE.—The amendment made by  
21 subsection (a) shall apply to years beginning after the date  
22 of enactment of this Act.

23 **SEC. 4. ESOP ASSUMPTION OF ESTATE TAX.**

24 (a) IN GENERAL.—Subchapter C of chapter 11 of the  
25 Internal Revenue Code of 1986 (relating to miscellaneous

1 estate tax provisions) is amended by adding at the end  
2 thereof the following new section:

3 **“SEC. 2210. LIABILITY FOR PAYMENT IN CASE OF TRANS-**  
4 **FER OF EMPLOYER SECURITIES TO AN EM-**  
5 **PLOYEE STOCK OWNERSHIP PLAN OR A**  
6 **WORKER-OWNED COOPERATIVE.**

7 “(a) IN GENERAL.—If—

8 “(1) employer securities—

9 “(A) are acquired from the decedent by an  
10 employee stock ownership plan or by an eligible  
11 worker-owned cooperative from any decedent,

12 “(B) pass from the decedent to such a  
13 plan or cooperative, or

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

16 “(2) the executor of the estate of the decedent  
17 may (without regard to this section) make an elec-  
18 tion under section 6166 with respect to that portion  
19 of the tax imposed by section 2001 which is attrib-  
20 utable to employer securities; and

21 then the executor is relieved of liability for payment of  
22 that portion of the tax imposed by section 2001 which  
23 such employee stock ownership plan or cooperative is re-  
24 quired to pay under subsection (b).

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

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

5                       “(A) which has acquired employer securi-  
6       ties from the decedent, or to which such securi-  
7       ties have passed from the decedent or been  
8       transferred by the executor, and

9                       “(B) with respect to which an agreement  
10       described in subsection (e)(1) is in effect,  
11       shall pay that portion of the tax imposed by section  
12       2001 with respect to the taxable estate of the dece-  
13       dent which is described in paragraph (2).

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

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

21                       “(B) the tax imposed by section 2001 with  
22       respect to such taxable estate reduced by the  
23       sum of the credits allowable against such tax.

24       “(c) INSTALLMENT PAYMENTS.—

25               “(1) IN GENERAL.—If—



1           “(A) the executor of the estate of the dece-  
2           dent (without regard to this section) elects to  
3           have the provisions of section 6166 (relating to  
4           extensions of time for payment of estate tax  
5           where estate consists largely of interest in close-  
6           ly-held business) apply to payment of that por-  
7           tion of the tax imposed by section 2001 with re-  
8           spect to such estate which is attributable to em-  
9           ployer securities, and

10           “(B) the plan administrator or the cooper-  
11           ative provides to the executor the agreement de-  
12           scribed in subsection (e)(1),

13           then the plan administrator or any authorized officer  
14           of the cooperative may elect, before the due date (in-  
15           cluding extensions) for filing the return of such tax,  
16           to pay all or part of the tax described in subsection  
17           (b)(2) in installments under the provisions of section  
18           6166.

19           “(2) INTEREST ON INSTALLMENTS.—In deter-  
20           mining the 4-percent portion for purposes of section  
21           6601(j)—

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

1           “(B) the portion of such tax for which an  
2           employee stock ownership plan or an eligible  
3           worker-owned cooperative is liable,  
4           shall be aggregated.

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

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

14           “(B) SEPARATE APPLICATION TO ESTATE  
15           AND PLAN INTERESTS.—Section 6166(g) shall  
16           be applied separately to the interests held after  
17           such transfer by the estate and such plan or  
18           cooperative.

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

23           “(i) such distribution shall not be  
24           treated as a disposition or withdrawal for  
25           purposes of section 6166(g), and

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

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

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

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

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

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

15                   “(1) A written agreement signed by the plan  
16                   administrator, or by any authorized officer of the eli-  
17                   gible worker-owned cooperative, consenting to the  
18                   application of subsection (b) to such plan or cooper-  
19                   ative.

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 liability which is assumed under this sec-

1 tion by an employee stock ownership plan of any portion  
2 of the liability for any portion of the tax imposed by sec-  
3 tion 2001 shall be treated as a loan described in section  
4 4975(d)(3).

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

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

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

12 “(3) ELIGIBLE WORKER-OWNED COOPERA-  
13 TIVE.—The term ‘eligible worker-owned cooperative’  
14 has the meaning given to such term by section  
15 1042(c)(2).

16 “(4) PLAN ADMINISTRATOR.—The term ‘plan  
17 administrator’ has the meaning given such term by  
18 section 414(g).

19 “(5) TAX IMPOSED BY SECTION 2001.—The  
20 term ‘tax imposed by section 2001’ includes any in-  
21 terest, penalty, addition to tax, or additional amount  
22 relating to any tax imposed by section 2001.”

23 (b) CONFORMING AMENDMENT.—Section 408(b) of  
24 the Employee Retirement Income Security Act of 1974 is

1 amended by adding at the end the following new para-  
2 graph:

3 “(15) Any transaction described in section 2210  
4 of the Internal Revenue Code of 1986.”

5 (c) CLERICAL AMENDMENT.—The table of sections  
6 for subchapter C of chapter 11 of such Code is amended  
7 by adding at the end thereof the following new item:

“Sec. 2210. Liability for payment in case of transfer of employer  
securities to an employee stock ownership plan or  
a worker-owned cooperative.”

8 (d) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to transfers of employer securities  
10 after the date of enactment of this Act.

11 **SEC. 5. ESOP DIVIDEND EXCEPTION TO ADJUSTMENTS**  
12 **BASED ON ADJUSTED CURRENT EARNINGS.**

13 (a) IN GENERAL.—Section 56(g)(4)(C) of the Inter-  
14 nal Revenue Code of 1986 (relating to disallowance of  
15 items not deductible in computing earnings and profits)  
16 is amended by adding at the end thereof the following:

17 “(v) TREATMENT OF ESOP DIVI-  
18 DENDS.—Clause (i) shall not apply to any  
19 deduction allowable under section 404(k).”

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

1 **SEC. 6. 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 (relating to prop-  
5 erty transferred in connection with performance of  
6 services) of the Internal Revenue Code of 1986 is  
7 amended by adding at the end thereof the following  
8 new subsection:

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

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

25 “(2) NO DEDUCTION BY EMPLOYER.—Notwith-  
26 standing the provisions of subsection (h), the person

1 for whom were performed the services in connection  
2 with which any qualified security is transferred shall  
3 not be entitled to a deduction with respect to such  
4 transfer if, and to the extent that, paragraph (1) ap-  
5 plies to such transfer.”

6 (2) CONFORMING AMENDMENTS.—

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

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

14 (B) Section 1042(a) of such Code is  
15 amended—

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

19 (ii) by adding at the end thereof the  
20 following new sentence: “If any gain is rec-  
21 ognized after the application of the preced-  
22 ing sentence, the portion of such recog-  
23 nized gain (up to the whole of such recog-  
24 nized gain) which is equal to the amount  
25 of ordinary income, if any, that was not

1 recognized with respect to such qualified  
2 securities by virtue of section 83(i) or  
3 424(c)(1)(D) shall be treated as ordinary  
4 income.”.

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

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

16 “(B) were not received by the taxpayer  
17 in—

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

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

23 (E) The first sentence of section 1042(d)  
24 of such Code is amended to read as follows:

25 “The basis of the taxpayer in qualified replace-



1           ment property purchased by the taxpayer dur-  
2           ing the replacement period shall be reduced by  
3           the amount of gain or ordinary income not rec-  
4           ognized by virtue of such purchase, taking into  
5           account the application of subsection (a) and, if  
6           applicable, the application of section 83(i) or  
7           section 424(c)(1)(D).”

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

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

23          (3) EFFECTIVE DATE.—The amendments made  
24          by this subsection shall apply to sales of qualified se-

1 securities on or after the date of the enactment of this  
2 Act.

3 (b) MODIFICATION TO 25-PERCENT SHAREHOLDER  
4 RULE.—

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

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

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

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

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

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HR 2088 IH—2