ESPPs. For three decades, the published IRS ruling position (Rev. Rul. 71–52) has been that transactions under qualified stock option plans do not give rise to income that is subject to employment taxes. In Notice 87–49, the IRS extended the principles of this ruling to incentive stock options (ISOs). In a series of private letter rulings, the IRS applied the same position to ESPP transactions, which are generally governed by the same Code provisions as qualified and incentive stock options. The IRS has periodically indicated that it may reconsider the positions in Rev. Rul. 71–52 and Notice 87–49, but no further official guidance has been forthcoming.

Rev. Rul. 71–52 and Notice 87–49 remain the best statements of current law and represent the only publicly published IRS position on current law. Nevertheless, IRS agents have selectively begun seeking to collect retroactive assessments of employment taxes, including withholdings, from employers who reasonably relied on these rulings and did not subject transactions under ESPPs to such taxes.

The IRS's actions in this area are inconsistent with long-standing published IRS positions. This legislation would clarify that any income arising from transactions under ISOs and ESPPs, either upon grant or exercise, or qualifying and disqualifying disposition, is not subject to employment taxes or federal income tax withholding.

ESPPs are the primary vehicle through which rank and file workers purchase stock in their companies. However, additional tax liabilities on employees and high administrative costs for plan administration will discourage employers from offering these programs that encourage broad-based employee stock ownership. Imposing employment taxes on otherwise nontaxable transactions will weaken incentives for employees to participate. The taxes involved are very modest when compared with the compliance costs and the unfair burdens on rank-and-file workers generally.

This legislation will clarify what is sensible tax policy regarding ESPPs. More important, it will empower workers during their working years because they will be both employees and owners of the company as well as additional providers of their own retirement security. Furthermore, it will thwart the arbitrary and selective IRS actions, contrary to all previously published Treasury and IRS policies.

I am introducing the Worker Investment Protection Act in the closing days of the 106th Congress with the hope that the Secretary of the Treasury, Lawrence Summers, will clarify longstanding IRS policy, and therefore preclude the need for this legislation. If not, I intend to pursue this legislation aggressively during the next session of Congress. I urge my colleagues to support the Worker Investment Protection Act.

Mr. President, I ask unanimous consent the attached letters from the American Electronic Association, Micron Technology, and the National Association of Manufacturers in support of my efforts regarding employee stock purchase plans be made a part of the RECORD, immediately following my remarks.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AMERICAN ELECTRONICS ASSOCIATION,
Washington, DC, September 20, 2000.

Re tax withholding on employee stock purchase plans.

Hon. LARRY CRAIG,
U.S. Senate,
Washington, DC.

DEAR SENATOR CRAIG: On behalf of the more than 3,000 small, medium and large company members of the American Electronics Association (AEA), I am writing to express our serious concern over the issue of payroll tax withholding on stock obtained from an employee stock purchase plan (ESPP) qualified under section 423 of the Internal Revenue Code. Many of our member companies' ESPPs have been an important part of their overall compensation packages, benefiting over hundreds of thousands high-tech employees.

We are writing to express our strong support of your effort to amend the Community Renewal and New Markets Act of 2000 to ensure that purchases from Employee Stock Purchase Plans (''ESPP'') continue to enjoy the favorable tax treatment that was intended.

AeA understands that the favorable tax treatment of equity ownership by employees is in jeopardy. The Treasury is working on guidance that could reverse 30 years of IRS precedent and business practice in this area by imposing employment taxes when employees exercise ESPP options. There simply is no reason to impose employment taxes on amounts that are not subject to current income tax, and no law has changed that validates the IRS' change in position. Sound tax policy supports rules that encourage companies to continue these plans and does not weaken the incentives for rank-and-file employees to participate in them.

We support your amendment to the Community Renewal and New Markets Act of 2000 legislation that would reaffirm the positions that taxpayers have been following in good faith in this area, consistent with Congressional intent. Please feel free to contact me or AEA's Tax Counsel, Caroline Graves Hurley, if we can provide you any additional information on this matter. We appreciate your attention to this important issue.

Sincerely,

JOHN P. PALAFOUTAS,
Sr. Vice President.

MICRON TECHNOLOGY, INC.,
Boise, ID, September 20, 2000.

Hon. LARRY CRAIG,
U.S. Senate,
Washington, DC.

DEAR MR. CRAIG: Micron Technology is writing to seek your support of legislation that would confirm the long-standing treatment under the tax code of Employee Stock Purchase Plans (''ESPPs''). This issue is very important to companies like ours who encourage employee-ownership.

To provide some background, an employer is generally required to withhold income and employment taxes on ''wages'' paid to an employee. However, the IRS ruled in 1971 that the acquisition of stock by an employee pursuant to a qualified stock option does not result in the payment of ''wages'' and, therefore, is not subject to income tax withholding and employment taxes. Employers and the IRS have followed this principles for almost 30 years.

Recently, and without proper notification to taxpayers, the IRS changed its position and instructed its auditors to retroactively impose deficiency assessments on companies that failed to withhold income and employment taxes on the benefits afforded by qualified ESPPs.

There are compelling legal and policy reasons to support the position that ESPP transactions are exempt from employment taxes and Federal income tax withholding. The IRS's change of position will discourage broad-based employee stock ownership; will weaken the incentives for workers to participate in these programs; and will increase corporate compliance costs far in excess of the potential tax amounts involved.

Sincerely,

RODERIC W. LEWIS,
Vice President and General Counsel.

NATIONAL ASSOCIATION
OF MANUFACTURERS,
Washington, DC, September 20, 2000.

Hon. WILLIAM V. ROTH,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the National Association of Manufacturers (NAM), the ''18 million people who make things in America'' and our 14,000 small, mid-sized and large member companies, I urge you to take action this year on a proposal to clarify the tax treatment of employee stock purchase plans (ESPPs). Specifically, I encourage you to include in your Chairman's Mark of the Community Renewal and New Markets Act of 2000 an ESPP amendment officer by committee member Larry Craig.

The tax code currently includes incentives for ESPPs that employees to purchase company stock at a discount of up of 15%. For nearly 30 years, IRS has taken the position in published guidance that ESPP transactions are exempt from employment taxes and federal income tax withholding. However, over the past two years, IRS agents have sought to collect employment taxes from employers who did not subject these transactions to such taxes. The amendment offered by Sen. Craig confirms that any income from ESPP transactions is not subject to employment taxes or federal income tax withholding.

Based on our experience, ESPPs motivate employees and create entrepreneurial zeal by giving workers a stake in their company's future. In contrast, the additional tax liabilities and administrative costs of IRS' change in position will discourage employers from offering these programs. At the same time, imposing employment taxes on ESPP transactions will confuse employees and weaken incentives for them to participate. The Craig amendment will ensure that employers continue to offer ESPPs and that employees continue to benefit from company ownership. Thank you in advance for supporting this important initiative.

Sincerely,

DOROTHY COLEMAN,
Vice President, Tax Policy.

ADDITIONAL COSPONSORS

S. 751

At the request of Mr. LEAHY, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 751, a bill to combat nursing

home fraud and abuse, increase protections for victims of telemarketing fraud, enhance safeguards for pension plans and health care benefit programs, and enhance penalties for crimes against seniors, and for other purposes.

S. 861

At the request of Mr. DURBIN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 861, a bill to designate certain Federal land in the State of Utah as wilderness, and for other purposes.

S. 1020

At the request of Mr. GRASSLEY, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1020, a bill to amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process relating to motor vehicle franchise contracts.

S. 1510

At the request of Mr. MCCAIN, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 1510, a bill to revise the laws of the United States appertaining to United States cruise vessels, and for other purposes.

S. 2280

At the request of Mr. MCCONNELL, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. 2280, a bill to provide for the effective punishment of online child molesters.

S. 2718

At the request of Mr. SMITH of New Hampshire, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2718, a bill to amend the Internal Revenue Code of 1986 to provide incentives to introduce new technologies to reduce energy consumption in buildings.

S. 2887

At the request of Mr. GRASSLEY, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 2887, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 3116

At the request of Mr. BREAUX, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 3116, a bill to amend the Harmonized Tariff Schedule of the United States to prevent circumvention of the sugar tariff-rate quotas.

S. 3139

At the request of Mr. ABRAHAM, the name of the Senator from Minnesota (Mr. WELLSTONE) was added as a cosponsor of S. 3139, a bill to ensure that no alien is removed, denied a benefit under the Immigration and Nationality Act, or otherwise deprived of liberty, based on evidence that is kept secret from the alien.

S. 3152

At the request of Mr. ROTH, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 3152, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives for distressed areas, and for other purposes.

S. 3242

At the request of Mr. HARKIN, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 3242, a bill to amend the Consolidated Farm and Rural Development Act to encourage equity investment in rural cooperatives and other rural businesses, and for other purposes.

SENATE CONCURRENT RESOLUTION 157—EXPRESSING THE SENSE OF THE CONGRESS THAT THE GOVERNMENT OF MEXICO SHOULD ADHERE TO THE TERMS OF THE 1944 UTILIZATION OF WATERS OF THE COLORADO AND TIJUANA RIVERS AND OF THE RIO GRANDE TREATY BETWEEN THE UNITED STATES AND MEXICO

Mrs. HUTCHISON (for herself and Mr. GRAMM) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 157

Whereas, the United States and Mexico signed a Treaty on Water Utilization on February 3, 1944, to divide the waters of the Rio Grande and Colorado River systems, and;

Whereas, the Treaty required Mexico to deliver a minimum of 350,000 acre feet of water per year on a five year average from six Mexican tributaries, and;

Whereas, the Treaty required the United States to deliver a minimum of 1,500,000 acre feet of water per year from the Colorado River, and;

Whereas, the United States has never failed to meet its obligations under the Treaty, and;

Whereas, during the period of 1992–1997, Mexico failed to meet its obligations under the treaty by 1,024,000 acre feet, and;

Whereas, a recent study conducted by the Texas A&M University agriculture program has determined the economic impact to South Texas from this water loss due to noncompliance with the Treaty at $441,000,000 per year;

Whereas, the Government of Mexico has not presented any plan to repay its entire water debt, as required by the Treaty; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that:

(1) The President of the United States should promptly utilize the full power of his office to bring about compliance with the 1944 Treaty on Water Utilization in order that the full requirement of water be available for United States use during the next full crop season.

(2) The United States Section of the International Boundary and Water Commission should work to bring about full compliance with the 1944 Treaty on Water Utilization and not accept any water debt or deficit repayment plan which does not provide for the full repayment of water owed.

SENATE CONCURRENT RESOLUTION 158—EXPRESSING THE SENSE OF CONGRESS REGARDING APPROPRIATE ACTIONS OF THE UNITED STATES GOVERNMENT TO FACILITATE THE SETTLEMENT OF CLAIMS OF FORMER MEMBERS OF THE ARMED FORCES AGAINST JAPANESE COMPANIES THAT PROFITED FROM THE SLAVE LABOR THAT THOSE PERSONNEL WERE FORCED TO PERFORM FOR THOSE COMPANIES AS PRISONERS OF WAR OF JAPAN DURING WORLD WAR II

Mr. HATCH (for himself, Mrs. FEINSTEIN, Mr. BINGAMAN, Mr. CONRAD, and Mrs. HUTCHISON) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 158

Whereas from December 1941 to April 1942, members of the United States Armed Forces fought valiantly against overwhelming Japanese military forces on the Bataan peninsula of the Island of Luzon in the Philippines, thereby preventing Japan from accomplishing strategic objectives necessary for achieving early military victory in the Pacific during World War II;

Whereas after receiving orders to surrender on April 9, 1942, many of those valiant combatants were taken prisoner of war by Japan and forced to march 85 miles from the Bataan peninsula to a prisoner-of-war camp at former Camp O'Donnell;

Whereas, of the members of the United States Armed Forces captured by Imperial Japanese forces during the entirety of World War II, a total of 36,260 of them survived their capture and transit to Japanese prisoner-of-war camps to be interned in those camps, and 37.3 percent of those prisoners of war died during their imprisonment in those camps:

Whereas that march resulted in more than 10,000 deaths by reason of starvation, disease, and executions;

Whereas many of those prisoners of war were transported to Japan where they were forced to perform slave labor for the benefit of private Japanese companies under barbaric conditions that included torture and inhumane treatment as to such basic human needs as shelter, feeding, sanitation, and health care;

Whereas the private Japanese companies unjustly profited from the uncompensated labor cruelly exacted from the American personnel in violation of basic human rights;

Whereas these Americans do not make any claims against the Japanese Government or the people of Japan, but, rather, seek some measure of justice from the Japanese companies that profited from their slave labor;

Whereas they have asserted claims for compensation against the private Japanese companies in various courts in the United States;

Whereas the United States Government has, to date, opposed the efforts of these Americans to receive redress for the slave labor and inhumane treatment, and has not made any efforts to facilitate discussions among the parties;

Whereas in contrast to the claims of the Americans who were prisoners of war in Japan, the Department of State has facilitated a settlement of the claims made against private German businesses by individuals who were forced into slave labor by the Government of the Third Reich of Germany for the benefit of the German businesses during World War II: Now, therefore, be it