

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3622

To amend the Internal Revenue Code of 1986 to extend the golden parachute excise tax to sales of company stock by corporate insiders occurring when the company prevents rank-and-file employees from selling company stock held in their 401(k) plan, and to ensure more accurate reporting of liabilities to workers and shareholders.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2002

Mr. RANGEL (for himself, Mr. GEPHARDT, Mr. STARK, Mr. MATSUI, Mr. COYNE, Mr. McDERMOTT, Mr. KLECZKA, Mr. LEWIS of Georgia, Mr. NEAL of Massachusetts, Mr. JEFFERSON, Mr. BECERRA, Mr. DOGGETT, Mr. LAFALCE, Mr. LEVIN, and Mr. McNULTY) 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 to extend the golden parachute excise tax to sales of company stock by corporate insiders occurring when the company prevents rank-and-file employees from selling company stock held in their 401(k) plan, and to ensure more accurate reporting of liabilities to workers and shareholders.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Emergency Worker  
3 and Investor Protection Act of 2002”.

4 **SEC. 2. CERTAIN SALES OF COMPANY STOCK BY COR-**  
5 **PORATE INSIDERS TO BE SUBJECT TO EX-**  
6 **CISE TAX ON GOLDEN PARACHUTE PAY-**  
7 **MENTS.**

8 (a) IN GENERAL.—Section 4999 of the Internal Rev-  
9 enue Code of 1986 (relating to golden parachute pay-  
10 ments) is amended by redesignating subsection (c) as sub-  
11 section (d) and by inserting after subsection (b) the fol-  
12 lowing new subsection:

13 “(c) CERTAIN SALES OF COMPANY STOCK BY COR-  
14 PORATE INSIDERS.—

15 “(1) IN GENERAL.—For purposes of this sec-  
16 tion, the term ‘excess parachute payment’ includes  
17 any amount realized by a corporate insider on the  
18 sale or exchange of stock in the corporation with re-  
19 spect to which the individual is a corporate insider  
20 if such sale or exchange occurs while such corpora-  
21 tion (or any other entity consolidated with such cor-  
22 poration for purposes of reporting to the Securities  
23 and Exchange Commission) maintains a transfer-re-  
24 stricted 401(k) plan.

25 “(2) CORPORATE INSIDER.—For purposes of  
26 this subsection, the term ‘corporate insider’ means,

1 with respect to a corporation, any individual who is  
2 subject to the requirements of section 16(a) of the  
3 Securities Exchange Act of 1934 with respect to  
4 such corporation.

5 “(3) TRANSFER-RESTRICTED 401(k) PLAN.—  
6 For purposes of this subsection, the term ‘transfer-  
7 restricted 401(k) plan’ means, with respect to any  
8 period, any qualified cash or deferred arrangement  
9 (as defined in section 401(k)(2)) if, during such pe-  
10 riod, any participant in such arrangement is not able  
11 to freely sell employer stock—

12 “(A) which is held in such participant’s ac-  
13 count under such arrangement, and

14 “(B) which is attributable to employee con-  
15 tributions, employer contributions, or earnings  
16 thereon.

17 “(4) APPLICATION OF SUBSECTION.—This sub-  
18 section shall apply to sales and exchanges during the  
19 6-month period beginning on the date of the enact-  
20 ment of this subsection.”

21 (b) EFFECTIVE DATE.—The amendment made by  
22 this section shall apply to sales and exchanges on or after  
23 the date of the enactment of this Act.

1 **SEC. 3. DENIAL OF DEDUCTION FOR PAYMENTS ON DEBT**  
2 **INSTRUMENTS NOT INCLUDED AS LIABIL-**  
3 **ITIES FOR PURPOSES OF SHAREHOLDER RE-**  
4 **PORTING.**

5 (a) IN GENERAL.—Paragraph (2) of section 163(l)  
6 of the Internal Revenue Code of 1986 (relating to dis-  
7 allowance of deduction on certain debt instruments of cor-  
8 porations) is amended to read as follows:

9 “(2) DISQUALIFIED DEBT INSTRUMENT.—For  
10 purposes of this subsection, the term ‘disqualified  
11 debt instrument’ means—

12 “(A) any indebtedness of a corporation  
13 which is payable in equity of the issuer or a re-  
14 lated party, and

15 “(B) in the case of an SEC registrant—

16 “(i) any indebtedness of such reg-  
17 istrant if such indebtedness is not shown  
18 in the certified annual report as part of  
19 the total liabilities of such registrant, and

20 “(ii) any indebtedness of an off-bal-  
21 ance-sheet entity if the proceeds from the  
22 issuance of such indebtedness are used di-  
23 rectly or indirectly to acquire stock (or  
24 other ownership interest) in such reg-  
25 istrant.”

1 (b) DEFINITIONS.—Subsection (l) of section 163 of  
2 such Code is amended by redesignating paragraph (5) as  
3 paragraph (8) and by inserting after paragraph (4) the  
4 following new paragraphs:

5 “(5) CERTIFIED ANNUAL REPORT.—For pur-  
6 poses of this subsection, the term ‘certified annual  
7 report’ means, with respect to any taxable year, any  
8 annual report (or financial statement) covering all or  
9 part of such taxable year—

10 “(A) which is required to be filed with the  
11 Securities and Exchange Commission, and

12 “(B) which is required to be certified by an  
13 independent public accountant.

14 “(6) SEC REGISTRANT.—The term ‘SEC reg-  
15 istrant’ means—

16 “(A) any corporation which is required to  
17 file a certified annual report with the Securities  
18 and Exchange Commission, and

19 “(B) any other entity the assets and liabil-  
20 ities of which are consolidated with a corpora-  
21 tion described in subparagraph (A) for purposes  
22 of such a report.

23 “(7) OFF-BALANCE-SHEET ENTITY.—For pur-  
24 poses of this subsection, the term ‘off-balance-sheet  
25 entity’ means, with respect to any SEC registrant,

1 an entity in which such registrant holds an owner-  
2 ship interest if—

3 “(A) the assets and liabilities of such enti-  
4 ty are not consolidated as part of the assets  
5 and liabilities of the registrant for purposes of  
6 such registrant’s certified annual report, and

7 “(B) for purposes of this title, such entity  
8 is treated as a partnership or trust or is dis-  
9 regarded as an entity separate from its owner  
10 pursuant to regulations issued by the Sec-  
11 retary.”

12 (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to instruments issued after the  
14 date of the enactment of this Act.

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