

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

# H. R. 5242

To amend the Internal Revenue Code of 1986 to encourage the granting of employee stock options.

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IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2002

Mr. HOUGHTON (for himself and Mr. BOEHNER) 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 encourage the granting of employee stock options.

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 “Workplace Employee  
5       Stock Option Act of 2002”.

6       **SEC. 2. INCENTIVES TO GRANT EMPLOYEE STOCK OP-**  
7       **TIONS.**

8       (a) IN GENERAL.—Section 423 of the Internal Rev-  
9       enue Code of 1986 (relating to employee stock purchase

1 plans) is amended by adding at the end the following new  
2 subsection:

3 “(d) SPECIAL INCENTIVES WITH RESPECT TO EM-  
4 PLOYEE STOCK PURCHASE PLANS WHICH MEET CER-  
5 TAIN ADDITIONAL REQUIREMENTS.—

6 “(1) IN GENERAL.—If—

7 “(A) section 421(a) would (but for this  
8 subsection) apply with respect to the transfer of  
9 stock to an individual by reason of this section,  
10 and

11 “(B) the requirements of paragraph (2)  
12 are met with respect to such transfer,  
13 the rules of paragraph (3) shall apply in lieu of the  
14 rules of section 421(a) and section 56(b)(3) shall  
15 not apply.

16 “(2) REQUIREMENTS.—A transfer of stock to  
17 an individual meets the requirements of this para-  
18 graph if—

19 “(A) the price paid by the individual for  
20 the stock under the option is paid only through  
21 payroll deductions in substantially equal  
22 amounts over a period of not less than 12  
23 months and not more than 60 months,

24 “(B) such payroll deductions are held in a  
25 trust described in paragraph (5),

1           “(C) the price of the stock acquired under  
2 the option is not less than the fair market value  
3 of the stock at the time the option is granted,

4           “(D) ownership of the stock is transferred  
5 to the individual at the end of the payroll de-  
6 duction period (or, if earlier, the date that the  
7 price of the stock under the option is fully  
8 paid),

9           “(E) the individual’s election to commence  
10 withholding to purchase such stock pursuant to  
11 the option is made during the 30-day period be-  
12 ginning on the earliest date that the individual  
13 could have made the election to commence with-  
14 holding to acquire stock pursuant to such op-  
15 tion, and

16           “(F) the stock acquired by the individual  
17 pursuant to the option—

18                   “(i) is held by the trust described in  
19 paragraph (5) until the individual elects to  
20 dispose of such stock, or

21                   “(ii) at the election of the individual,  
22 is transferred to the individual.

23           “(3) SPECIAL TAX TREATMENT.—

1           “(A) TREATMENT OF PAYROLL DEDUC-  
2 TIONS.—With respect to the payroll deductions  
3 referred to in paragraph (2)(A)—

4           “(i) the gross income of the individual  
5 shall not include an amount equal to such  
6 deductions,

7           “(ii) for purposes of subtitle C, the in-  
8 dividual’s remuneration for employment  
9 shall not include an amount equal to such  
10 deductions, and

11           “(iii) the deduction otherwise allow-  
12 able under section 162 for remuneration  
13 paid to such individual shall be reduced by  
14 an amount equal to such deductions.

15           The aggregate amount to which the preceding  
16 sentence applies for any taxable year of an indi-  
17 vidual shall not exceed the limitation under sec-  
18 tion 402(g)(1) for such taxable year.

19           “(B) TREATMENT WHEN SHARE TRANS-  
20 FERRED TO INDIVIDUAL.—

21           “(i) EMPLOYEE.—No amount shall be  
22 includible in the gross income of an indi-  
23 vidual (or treated as remuneration for pur-  
24 poses of subtitle C) by reason of the trans-  
25 fer of ownership of stock acquired pursu-

1 ant to an option to which this subsection  
2 applies.

3 “(ii) EMPLOYER.—There shall be al-  
4 lowed as a deduction under section 162 to  
5 the person whose deduction was reduced  
6 under subparagraph (A)(iii) (for the tax-  
7 able year in which such transfer of owner-  
8 ship occurs) an amount equal to the fair  
9 market value of the stock at the time of  
10 such transfer.

11 “(C) TREATMENT WHEN SHARE DISPOSED  
12 OF.—At the time the stock is disposed of, so  
13 much of the gain as does not exceed the deduc-  
14 tion allowed under subparagraph (B)(ii) shall  
15 be treated as ordinary income.

16 “(D) FAILURE TO INCLUDE PROPER  
17 AMOUNT OF ORDINARY INCOME.—If—

18 “(i) the gain on any disposition of  
19 stock acquired pursuant to an option to  
20 which this subsection applies exceeds the  
21 deduction allowed under subparagraph  
22 (B)(ii), and

23 “(ii) the individual fails to include in  
24 gross income as ordinary income at least  
25 the amount of such deduction,

1 then the entire amount of gain shall be included  
2 in gross income as ordinary income.

3 “(4) SPECIAL RULES.—

4 “(A) DETERMINATION OF OPTION  
5 PRICE.—For purposes of paragraph (2), an op-  
6 tion to acquire stock shall be treated as being  
7 granted on the earliest date that the individual  
8 could have made the election to acquire stock  
9 pursuant to such option.

10 “(B) RETURN OF PAYROLL DEDUC-  
11 TIONS.—Nothing in this subsection shall pre-  
12 vent the return of an individual’s payroll deduc-  
13 tions to the individual if the individual elects  
14 not to use the deducted amounts to acquire the  
15 stock. The amount so returned shall be included  
16 in the gross income of such individual for the  
17 taxable year in which paid to the individual and  
18 shall be treated for purposes of subtitle C as re-  
19 munerated from employment.

20 “(C) TERMINATION OF EMPLOYMENT.—If  
21 an individual terminates employment with the  
22 person who granted the option to acquire stock,  
23 paragraph (2)(A) shall not apply to amounts  
24 paid within 3 months after such termination to  
25 the extent such amounts do not exceed the

1 amount payable under options granted before  
2 the date of such termination. In the case of an  
3 individual who is disabled or who dies before  
4 the close of such 3 months, the preceding sen-  
5 tence shall be applied by substituting ‘1 year’  
6 for ‘3 months’.

7 “(D) TREATMENT OF NONRESIDENT  
8 ALIENS.—If an individual is a nonresident alien  
9 individual for any portion of the taxable year,  
10 this subsection shall apply only if—

11 “(i) such individual is treated as a  
12 resident alien of the United States for pur-  
13 poses of this chapter by reason of an elec-  
14 tion under subsection (g) or (h) of section  
15 6013, or

16 “(ii) such individual has income from  
17 sources within the United States or which  
18 is effectively connected with the conduct of  
19 a trade or business in the United States.

20 “(E) CERTAIN EMPLOYEES MAY BE EX-  
21 CLUDED.—In applying subsection (b)(4) for  
22 purposes of this subsection, there may be ex-  
23 cluded employees included in a unit of employ-  
24 ees covered by an agreement between employee  
25 representatives and one or more employers

1           which the Secretary finds to be a collective bar-  
2           gaining agreement, if the benefits provided  
3           under this subsection were the subject of good  
4           faith bargaining between such employee rep-  
5           resentatives and such employer or employers.

6           “(5) RATE OF CASH COMPENSATION MUST BE  
7           UNAFFECTED.—The grant of any options under the  
8           arrangement may not be directly linked with a sys-  
9           tematic reduction in the annual rate at which basic  
10          or regular cash compensation is paid to employees  
11          under the arrangement, as determined under regula-  
12          tions prescribed by the Secretary of the Treasury.

13          “(6) TRUST HOLDING PAYROLL DEDUCTIONS.—  
14          A trust is described in this paragraph if—

15                 “(A) the trust is created or organized in  
16                 the United States exclusively for the purposes  
17                 of holding payroll deductions pursuant to this  
18                 subsection and stock acquired with such payroll  
19                 deductions,

20                 “(B) a separate account is maintained for  
21                 each individual, and

22                 “(C) any earnings on payroll deductions of  
23                 an individual are paid not less often than annu-  
24                 ally to such individual.



1 The Employee Retirement Income Security Act of  
2 1974 shall not apply to any trust described in this  
3 paragraph.

4 “(7) REGULATIONS.—The Secretary shall pre-  
5 scribe such regulations as may be appropriate to  
6 carry out this subsection.”

7 (b) EXEMPTION FROM TAX FOR TRUST HOLDING  
8 PAYROLL DEDUCTIONS, ETC.—Subsection (a) of section  
9 501 of such Code is amended by striking “or section  
10 401(a)” and inserting “, section 401(a), or section  
11 423(d)(5)”.

12 (c) INFORMATION REPORTING.—

13 (1) IN GENERAL.—Subpart B of part III of  
14 subchapter A of chapter 61 of such Code is amended  
15 by adding at the end the following new section:

16 **“SEC. 6050T. RETURNS RELATING TO TRANSFER OF OWN-**  
17 **ERSHIP OF STOCK ACQUIRED PURSUANT TO**  
18 **CERTAIN STOCK OPTIONS.**

19 “(a) IN GENERAL.—Any person who is allowed a de-  
20 duction for any taxable year under section  
21 423(d)(3)(B)(ii) with respect to the transfer of ownership  
22 of stock to any individual shall make the return described  
23 in subsection (b) with respect to such transfer at such  
24 time as the Secretary may by regulations prescribe.

1       “(b) FORM AND MANNER OF RETURNS.—A return  
2 is described in this subsection if such return—

3           “(1) is in such form as the Secretary may pre-  
4 scribe,

5           “(2) contains—

6               “(A) the name, address, and TIN of the  
7 individual to whom the stock ownership was so  
8 transferred,

9               “(B) the amount of the deduction allowed  
10 under section 423(d)(3)(B)(ii) with respect to  
11 such transfer, and

12               “(C) such other information as the Sec-  
13 retary may prescribe.

14       “(c) STATEMENTS TO BE FURNISHED TO PERSONS  
15 WITH RESPECT TO WHOM INFORMATION IS RE-  
16 QUIRED.—Every person required to make a return under  
17 subsection (a) shall furnish to each individual whose name  
18 is required to be set forth in such return a written state-  
19 ment showing—

20           “(1) the name, address, and phone number of  
21 the information contact of the person required to  
22 make such return, and

23           “(2) the amount of the deduction described in  
24 subsection (a) with respect to stock ownership trans-  
25 ferred to such individual.

1 The written statement required under the preceding sen-  
2 tence shall be furnished to the person on or before Janu-  
3 ary 31 of the year following the calendar year for which  
4 the return under subsection (a) was required to be made.”

5 (2) ASSESSABLE PENALTIES.—

6 (A) Subparagraph (B) of section  
7 6724(d)(1) of such Code (relating to defini-  
8 tions) is amended by redesignating clauses (xi)  
9 through (xvii) as clauses (xii) through (xviii),  
10 respectively, and by inserting after clause (x)  
11 the following new clause:

12 “(xi) section 6050T (relating to re-  
13 turns relating to transfers of ownership of  
14 stock acquired pursuant to certain stock  
15 options),”.

16 (B) Paragraph (2) of section 6724(d) of  
17 such Code is amended by striking “or” at the  
18 end of the next to last subparagraph, by strik-  
19 ing the period at the end of the last subpara-  
20 graph and inserting “, or”, and by adding at  
21 the end the following new subparagraph:

22 “(BB) section 6050T(c) (relating to re-  
23 turns relating to transfers of ownership of stock  
24 acquired pursuant to certain stock options).”.

1           (3) CLERICAL AMENDMENT.—The table of sec-  
2           tions for subpart B of part III of subchapter A of  
3           chapter 61 of such Code is amended by inserting  
4           after the item relating to section 6050S the fol-  
5           lowing new item:

                  “Sec. 6050T. Returns relating to transfers of ownership of stock  
                  acquired pursuant to certain stock options.”.

6           (d) EFFECTIVE DATE.—The amendments made by  
7           this section shall apply to options granted after the date  
8           of the enactment of this Act.

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