

108TH CONGRESS
2D SESSION

S. 2298

To amend the Internal Revenue Code of 1986 to improve the operation of employee stock ownership plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 7, 2004

Mr. BREAUX introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to improve the operation of employee stock ownership plans, 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 “Employee Stock Own-
5 ership Plan Promotion and Improvement Act of 2004”.

6 **SEC. 2. DISTRIBUTIONS BY AN S CORPORATION TO AN EM-**
7 **PLOYEE STOCK OWNERSHIP PLAN.**

8 (a) IN GENERAL.—Section 1368 of the Internal Rev-
9 enue Code of 1986 (relating to distributions) is amended
10 by adding at the end the following new subsection:

1 “(f) DISTRIBUTIONS BY AN S CORPORATION TO AN
2 EMPLOYEE STOCK OWNERSHIP PLAN.—Any distribution
3 described in subsection (a) to an employee stock ownership
4 plan (as defined in section 4975(e)(7)) shall be treated
5 as a dividend under section 404(k)(2)(A).”.

6 (b) TECHNICAL AMENDMENT.—Section 404(a)(9)(C)
7 of the Internal Revenue Code of 1986 (relating to S cor-
8 porations) is amended to read as follows:

9 “(C) S CORPORATIONS.—The deduction
10 provided in this paragraph shall not apply to an
11 S corporation.”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to distributions received after De-
14 cember 31, 1998.

15 (d) WAIVER OF LIMITATIONS.—If refund or credit of
16 any overpayment of tax resulting from the application of
17 the amendments made by this section is prevented at any
18 time before the close of the 1-year period beginning on
19 the date of the enactment of this Act by the operation
20 of any law or rule of law (including res judicata), such
21 refund or credit may nevertheless be made or allowed if
22 claim therefor is filed before the close of such period.

1 **SEC. 3. ESOP DIVIDEND EXCEPTION TO ADJUSTMENTS**
2 **BASED ON ADJUSTED CURRENT EARNINGS.**

3 (a) **IN GENERAL.**—Section 56(g)(4)(C) of the Inter-
4 nal Revenue Code of 1986 (relating to disallowance of
5 items not deductible in computing earnings and profits)
6 is amended by adding at the end the following new clause:

7 “(v) **TREATMENT OF ESOP DIVI-**
8 **DENDS.**—Clause (i) shall not apply to any
9 deduction allowable under section 404(k) if
10 the deduction is allowed for dividends paid
11 on employer securities held by an employee
12 stock ownership plan established or author-
13 ized to be established before March 15,
14 1991.”.

15 (b) **EFFECTIVE DATE.**—The amendment made by
16 this section shall apply to taxable years beginning after
17 December 31, 1989.

18 (c) **WAIVER OF LIMITATIONS.**—If refund or credit of
19 any overpayment of tax resulting from the application of
20 the amendment made by this section is prevented at any
21 time before the close of the 1-year period beginning on
22 the date of the enactment of this Act by the operation
23 of any law or rule of law (including res judicata), such
24 refund or credit may nevertheless be made or allowed if
25 claim therefor is filed before the close of such period.

1 **SEC. 4. AMENDMENTS RELATED TO SECTION 1042.**

2 (a) DEFERRAL OF TAX FOR CERTAIN SALES TO EM-
 3 PLOYEE STOCK OWNERSHIP PLAN SPONSORED BY S COR-
 4 PORATION.—

5 (1) IN GENERAL.—Section 1042(c)(1)(A) of the
 6 Internal Revenue Code of 1986 (defining qualified
 7 securities) is amended by striking “C”.

8 (2) EFFECTIVE DATE.—The amendment made
 9 by paragraph (1) shall apply to sales after the date
 10 of the enactment of this Act.

11 (b) REINVESTMENT IN CERTAIN MUTUAL FUNDS
 12 PERMITTED.—

13 (1) IN GENERAL.—Clause (ii) of section
 14 1042(c)(4)(B) of the Internal Revenue Code of 1986
 15 (defining operating corporation) is amended to read
 16 as follows:

17 “(ii) FINANCIAL INSTITUTIONS, IN-
 18 SURANCE COMPANIES, AND MUTUAL
 19 FUNDS.—The term ‘operating corporation’
 20 shall include—

21 “(I) any financial institution de-
 22 scribed in section 581,

23 “(II) any insurance company
 24 subject to tax under subchapter L,
 25 and

1 “(III) any regulated investment
2 company if substantially all of the se-
3 curities held by such company are se-
4 curities issued by operating corpora-
5 tions (determined without regard to
6 this subclause).”.

7 (2) EFFECTIVE DATE.—The amendment
8 made by paragraph (1) shall apply to sales of
9 qualified securities after the date of the enact-
10 ment of this Act.

11 (c) MODIFICATION TO 25-PERCENT SHAREHOLDER
12 RULE.—

13 (1) IN GENERAL.—Subparagraph (B) of section
14 409(n)(1) of the Internal Revenue Code of 1986 (re-
15 lating to securities received in certain transactions)
16 is amended to read as follows:

17 “(B) for the benefit of any other person
18 who owns (after the application of section
19 318(a)) more than 25 percent of—

20 “(i) the total combined voting power
21 of all classes of stock of the corporation
22 which issued such employer securities or of
23 any corporation which is a member of the
24 same controlled group of corporations

1 (within the meaning of subsection (l)(4))
 2 as such corporation, or

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

5 (2) EFFECTIVE DATE.—The amendment made
 6 by paragraph (1) shall take effect on the date of the
 7 enactment of this Act.

8 **SEC. 5. EARLY DISTRIBUTIONS FROM EMPLOYEE STOCK**
 9 **OWNERSHIP PLANS FOR HIGHER EDUCATION**
 10 **EXPENSES AND FIRST-TIME HOMEBUYER**
 11 **PURCHASES.**

12 (a) IN GENERAL.—Paragraph (2) of section 72(t) of
 13 the Internal Revenue Code of 1986 (relating to 10-percent
 14 additional tax on early distributions from qualified retire-
 15 ment plans) is amended by adding at the end the following
 16 new subparagraph:

17 “(G) DISTRIBUTIONS FROM EMPLOYEE
 18 STOCK OWNERSHIP PLANS FOR HIGHER EDU-
 19 CATION EXPENSES AND FIRST-TIME HOME-
 20 BUYER PURCHASES.—

21 “(i) IN GENERAL.—Distributions
 22 made to the employee from an employee
 23 stock ownership plan (within the meaning
 24 of section 4975(e)(7)), the amount of
 25 which does not exceed the sum of—

1 “(I) qualified higher education
2 expenses (as defined by paragraph
3 (7)) reduced by the amount of such
4 expenses taken into account under
5 subparagraph (E), and

6 “(II) qualified first-time home-
7 buyer distributions (as defined by
8 paragraph (8)) reduced by the amount
9 of such distributions taken into ac-
10 count under subparagraph (F).

11 “(ii) LIMITATION.—A distribution
12 may only be taken into account under
13 clause (i) if—

14 “(I) such distribution is in the
15 form of either employer securities
16 (within the meaning of section 409(l))
17 or cash proceeds resulting from the
18 sale of such securities made not more
19 than 180 days before the date of such
20 distribution for the purposes of such
21 distribution,

22 “(II) such securities so distrib-
23 uted or sold were held by such plan
24 for at least 5 years before the date of

1 such distribution or, if applicable,
2 sale, and

3 “(III) the number of shares in
4 each class of such securities so dis-
5 tributed or sold, when added to all
6 previous distributions and sales of
7 each such class of such securities for
8 such purposes on behalf of such em-
9 ployee, does not exceed 10 percent of
10 the aggregate number of shares of
11 each class of such securities allocated
12 to the account of such employee under
13 such plan.

14 “(iii) VALUATION OF DISTRIBUTED
15 SECURITIES.—For purposes of clause (ii),
16 the value of a security shall be the value
17 of such security on the date of distribu-
18 tion.”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Paragraph (7) of section 72(t) of such Code
21 is amended by striking “paragraph (2)(E)” and in-
22 sserting “subparagraphs (E) and (G) of paragraph
23 (2)”.

24 (2) Paragraph (8) of section 72(t) of such Code
25 is amended by striking “paragraph (2)(F)” and in-

1 serting “subparagraphs (F) and (G) of paragraph
2 (2)”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to distributions made after the
5 date of the enactment of this Act.

○