

114TH CONGRESS  
2D SESSION

# H. R. 5719

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 2016

Received

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## AN ACT

To amend the Internal Revenue Code of 1986 to modify  
the tax treatment of certain equity grants.

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 “Empowering Employ-  
3 ees through Stock Ownership Act”.

4 **SEC. 2. TREATMENT OF QUALIFIED EQUITY GRANTS.**

5 (a) IN GENERAL.—

6 (1) ELECTION TO DEFER INCOME.—Section 83  
7 of the Internal Revenue Code of 1986 is amended by  
8 adding at the end the following new subsection:

9 “(i) QUALIFIED EQUITY GRANTS.—

10 “(1) IN GENERAL.—For purposes of this sub-  
11 title, if qualified stock is transferred to a qualified  
12 employee who makes an election with respect to such  
13 stock under this subsection—

14 “(A) except as provided in subparagraph  
15 (B), no amount shall be included in income  
16 under subsection (a) for the first taxable year  
17 in which the rights of the employee in such  
18 stock are transferable or are not subject to a  
19 substantial risk of forfeiture, whichever is appli-  
20 cable, and

21 “(B) an amount equal to the amount  
22 which would be included in income of the em-  
23 ployee under subsection (a) (determined without  
24 regard to this subsection) shall be included in  
25 income for the taxable year of the employee  
26 which includes the earliest of—

1           “(i) the first date such qualified stock  
2 becomes transferable (including transfer-  
3 able to the employer),

4           “(ii) the date the employee first be-  
5 comes an excluded employee,

6           “(iii) the first date on which any stock  
7 of the corporation which issued the quali-  
8 fied stock becomes readily tradable on an  
9 established securities market (as deter-  
10 mined by the Secretary, but not including  
11 any market unless such market is recog-  
12 nized as an established securities market  
13 by the Secretary for purposes of a provi-  
14 sion of this title other than this sub-  
15 section),

16           “(iv) the date that is 7 years after the  
17 first date the rights of the employee in  
18 such stock are transferable or are not sub-  
19 ject to a substantial risk of forfeiture,  
20 whichever occurs earlier, or

21           “(v) the date on which the employee  
22 revokes (at such time and in such manner  
23 as the Secretary may provide) the election  
24 under this subsection with respect to such  
25 stock.

1 “(2) QUALIFIED STOCK.—

2 “(A) IN GENERAL.—For purposes of this  
3 subsection, the term ‘qualified stock’ means,  
4 with respect to any qualified employee, any  
5 stock in a corporation which is the employer of  
6 such employee, if—

7 “(i) such stock is received—

8 “(I) in connection with the exer-  
9 cise of an option, or

10 “(II) in settlement of a restricted  
11 stock unit, and

12 “(ii) such option or restricted stock  
13 unit was provided by the corporation—

14 “(I) in connection with the per-  
15 formance of services as an employee,  
16 and

17 “(II) during a calendar year in  
18 which such corporation was an eligible  
19 corporation.

20 “(B) LIMITATION.—The term ‘qualified  
21 stock’ shall not include any stock if the em-  
22 ployee may sell such stock to, or otherwise re-  
23 ceive cash in lieu of stock from, the corporation  
24 at the time that the rights of the employee in

1           such stock first become transferable or not sub-  
2           ject to a substantial risk of forfeiture.

3           “(C) ELIGIBLE CORPORATION.—For pur-  
4           poses of subparagraph (A)(ii)(II)—

5           “(i) IN GENERAL.—The term ‘eligible  
6           corporation’ means, with respect to any  
7           calendar year, any corporation if—

8           “(I) no stock of such corporation  
9           (or any predecessor of such corpora-  
10          tion) is readily tradable on an estab-  
11          lished securities market (as deter-  
12          mined under paragraph (1)(B)(iii))  
13          during any preceding calendar year,  
14          and

15          “(II) such corporation has a writ-  
16          ten plan under which, in such cal-  
17          endar year, not less than 80 percent  
18          of all employees who provide services  
19          to such corporation in the United  
20          States (or any possession of the  
21          United States) are granted stock op-  
22          tions, or restricted stock units, with  
23          the same rights and privileges to re-  
24          ceive qualified stock.

1                   “(ii) SAME RIGHTS AND PRIVI-  
2 LEGES.—For purposes of clause (i)(II)—

3                   “(I) except as provided in sub-  
4 clauses (II) and (III), the determina-  
5 tion of rights and privileges with re-  
6 spect to stock shall be determined in  
7 a similar manner as provided under  
8 section 423(b)(5),

9                   “(II) employees shall not fail to  
10 be treated as having the same rights  
11 and privileges to receive qualified  
12 stock solely because the number of  
13 shares available to all employees is not  
14 equal in amount, so long as the num-  
15 ber of shares available to each em-  
16 ployee is more than a de minimis  
17 amount, and

18                   “(III) rights and privileges with  
19 respect to the exercise of an option  
20 shall not be treated as the same as  
21 rights and privileges with respect to  
22 the settlement of a restricted stock  
23 unit.

24                   “(iii) EMPLOYEE.—For purposes of  
25 clause (i)(II), the term ‘employee’ shall not

1 include any employee described in section  
2 4980E(d)(4) or any excluded employee.

3 “(iv) SPECIAL RULE FOR CALENDAR  
4 YEARS BEFORE 2017.—In the case of any  
5 calendar year beginning before January 1,  
6 2017, clause (i)(II) shall be applied with-  
7 out regard to whether the rights and privi-  
8 leges with respect to the qualified stock are  
9 the same.

10 “(3) QUALIFIED EMPLOYEE; EXCLUDED EM-  
11 PLOYEE.—For purposes of this subsection—

12 “(A) IN GENERAL.—The term ‘qualified  
13 employee’ means any individual who—

14 “(i) is not an excluded employee, and

15 “(ii) agrees in the election made  
16 under this subsection to meet such require-  
17 ments as determined by the Secretary to  
18 be necessary to ensure that the with-  
19 holding requirements of the corporation  
20 under chapter 24 with respect to the quali-  
21 fied stock are met.

22 “(B) EXCLUDED EMPLOYEE.—The term  
23 ‘excluded employee’ means, with respect to any  
24 corporation, any individual—

1           “(i) who was a 1-percent owner (with-  
2           in the meaning of section 416(i)(1)(B)(ii))  
3           at any time during the 10 preceding cal-  
4           endar years,

5           “(ii) who is or has been at any prior  
6           time—

7                   “(I) the chief executive officer of  
8                   such corporation or an individual act-  
9                   ing in such a capacity, or

10                   “(II) the chief financial officer of  
11                   such corporation or an individual act-  
12                   ing in such a capacity,

13           “(iii) who bears a relationship de-  
14           scribed in section 318(a)(1) to any indi-  
15           vidual described in subclause (I) or (II) of  
16           clause (ii), or

17           “(iv) who has been for any of the 10  
18           preceding taxable years one of the 4 high-  
19           est compensated officers of such corpora-  
20           tion determined with respect to each such  
21           taxable year on the basis of the share-  
22           holder disclosure rules for compensation  
23           under the Securities Exchange Act of 1934  
24           (as if such rules applied to such corpora-  
25           tion).



1 “(4) ELECTION.—

2 “(A) TIME FOR MAKING ELECTION.—An  
3 election with respect to qualified stock shall be  
4 made under this subsection no later than 30  
5 days after the first time the rights of the em-  
6 ployee in such stock are transferable or are not  
7 subject to a substantial risk of forfeiture,  
8 whichever occurs earlier, and shall be made in  
9 a manner similar to the manner in which an  
10 election is made under subsection (b).

11 “(B) LIMITATIONS.—No election may be  
12 made under this section with respect to any  
13 qualified stock if—

14 “(i) the qualified employee has made  
15 an election under subsection (b) with re-  
16 spect to such qualified stock,

17 “(ii) any stock of the corporation  
18 which issued the qualified stock is readily  
19 tradable on an established securities mar-  
20 ket (as determined under paragraph  
21 (1)(B)(iii)) at any time before the election  
22 is made, or

23 “(iii) such corporation purchased any  
24 of its outstanding stock in the calendar  
25 year preceding the calendar year which in-

1 includes the first time the rights of the em-  
2 ployee in such stock are transferable or are  
3 not subject to a substantial risk of for-  
4 feiture, unless—

5 “(I) not less than 25 percent of  
6 the total dollar amount of the stock so  
7 purchased is deferral stock, and

8 “(II) the determination of which  
9 individuals from whom deferral stock  
10 is purchased is made on a reasonable  
11 basis.

12 “(C) DEFINITIONS AND SPECIAL RULES  
13 RELATED TO LIMITATION ON STOCK REDEMP-  
14 TIONS.—

15 “(i) DEFERRAL STOCK.—For pur-  
16 poses of this paragraph, the term ‘deferral  
17 stock’ means stock with respect to which  
18 an election is in effect under this sub-  
19 section.

20 “(ii) DEFERRAL STOCK WITH RE-  
21 SPECT TO ANY INDIVIDUAL NOT TAKEN  
22 INTO ACCOUNT IF INDIVIDUAL HOLDS DE-  
23 FERRAL STOCK WITH LONGER DEFERRAL  
24 PERIOD.—Stock purchased by a corpora-  
25 tion from any individual shall not be treat-

1 ed as deferral stock for purposes of clause  
2 (iii) if such individual (immediately after  
3 such purchase) holds any deferral stock  
4 with respect to which an election has been  
5 in effect under this subsection for a longer  
6 period than the election with respect to the  
7 stock so purchased.

8 “(iii) PURCHASE OF ALL OUT-  
9 STANDING DEFERRAL STOCK.—The re-  
10 quirements of subclauses (I) and (II) of  
11 subparagraph (B)(iii) shall be treated as  
12 met if the stock so purchased includes all  
13 of the corporation’s outstanding deferral  
14 stock.

15 “(iv) REPORTING.—Any corporation  
16 which has outstanding deferral stock as of  
17 the beginning of any calendar year and  
18 which purchases any of its outstanding  
19 stock during such calendar year shall in-  
20 clude on its return of tax for the taxable  
21 year in which, or with which, such calendar  
22 year ends the total dollar amount of its  
23 outstanding stock so purchased during  
24 such calendar year and such other infor-

1                   mation as the Secretary may require for  
2                   purposes of administering this paragraph.

3                   “(5) CONTROLLED GROUPS.—For purposes of  
4                   this subsection, all corporations which are members  
5                   of the same controlled group of corporations (as de-  
6                   fined in section 1563(a)) shall be treated as one cor-  
7                   poration.

8                   “(6) NOTICE REQUIREMENT.—Any corporation  
9                   that transfers qualified stock to a qualified employee  
10                  shall, at the time that (or a reasonable period be-  
11                  fore) an amount attributable to such stock would  
12                  (but for this subsection) first be includible in the  
13                  gross income of such employee—

14                  “(A) certify to such employee that such  
15                  stock is qualified stock, and

16                  “(B) notify such employee—

17                          “(i) that the employee may elect to  
18                          defer income on such stock under this sub-  
19                          section, and

20                          “(ii) that, if the employee makes such  
21                          an election—

22                                  “(I) the amount of income recog-  
23                                  nized at the end of the deferral period  
24                                  will be based on the value of the stock  
25                                  at the time at which the rights of the

1 employee in such stock first become  
2 transferable or not subject to substan-  
3 tial risk of forfeiture, notwithstanding  
4 whether the value of the stock has de-  
5 clined during the deferral period,

6 “(II) the amount of such income  
7 recognized at the end of the deferral  
8 period will be subject to withholding  
9 under section 3401(i) at the rate de-  
10 termined under section 3402(t), and

11 “(III) the responsibilities of the  
12 employee (as determined by the Sec-  
13 retary under paragraph (3)(A)(ii))  
14 with respect to such withholding.”.

15 (2) DEDUCTION BY EMPLOYER.—Subsection (h)  
16 of section 83 of the Internal Revenue Code of 1986  
17 is amended by striking “or (d)(2)” and inserting  
18 “(d)(2), or (i)”.

19 (b) WITHHOLDING.—

20 (1) TIME OF WITHHOLDING.—Section 3401 of  
21 the Internal Revenue Code of 1986 is amended by  
22 adding at the end the following new subsection:

23 “(i) QUALIFIED STOCK FOR WHICH AN ELECTION IS  
24 IN EFFECT UNDER SECTION 83(i).—For purposes of sub-  
25 section (a), qualified stock (as defined in section 83(i))

1 with respect to which an election is made under section  
2 83(i) shall be treated as wages—

3 “(1) received on the earliest date described in  
4 section 83(i)(1)(B), and

5 “(2) in an amount equal to the amount in-  
6 cluded in income under section 83 for the taxable  
7 year which includes such date.”.

8 (2) AMOUNT OF WITHHOLDING.—Section 3402  
9 of such Code is amended by adding at the end the  
10 following new subsection:

11 “(t) RATE OF WITHHOLDING FOR CERTAIN  
12 STOCK.—In the case of any qualified stock (as defined in  
13 section 83(i)) with respect to which an election is made  
14 under section 83(i)—

15 “(1) the rate of tax under subsection (a) shall  
16 not be less than the maximum rate of tax in effect  
17 under section 1, and

18 “(2) such stock shall be treated for purposes of  
19 section 3501(b) in the same manner as a non-cash  
20 fringe benefit.”.

21 (c) COORDINATION WITH OTHER DEFERRED COM-  
22 PENSATION RULES.—

23 (1) ELECTION TO APPLY DEFERRAL TO STATU-  
24 TORY OPTIONS.—

1           (A) INCENTIVE STOCK OPTIONS.—Section  
2           422(b) of the Internal Revenue Code of 1986 is  
3           amended by adding at the end the following:  
4           “Such term shall not include any option if an  
5           election is made under section 83(i) with re-  
6           spect to the stock received in connection with  
7           the exercise of such option.”.

8           (B) EMPLOYEE STOCK PURCHASE  
9           PLANS.—Section 423(a) of such Code is amend-  
10          ed by adding at the end the following flush sen-  
11          tence:

12         “The preceding sentence shall not apply to any share of  
13         stock with respect to which an election is made under sec-  
14         tion 83(i).”.

15          (2) EXCLUSION FROM DEFINITION OF NON-  
16         QUALIFIED DEFERRED COMPENSATION PLAN.—Sub-  
17         section (d) of section 409A of the Internal Revenue  
18         Code of 1986 is amended by adding at the end the  
19         following new paragraph:

20                 “(7) TREATMENT OF QUALIFIED STOCK.—An  
21                 arrangement under which an employee may receive  
22                 qualified stock (as defined in section 83(i)(2)) shall  
23                 not be treated as a nonqualified deferred compensa-  
24                 tion plan solely because of an employee’s ability to

1 defer recognition of income pursuant to an election  
2 under section 83(i).”.

3 (d) INFORMATION REPORTING.—Section 6051(a) of  
4 the Internal Revenue Code of 1986 is amended by striking  
5 “and” at the end of paragraph (13), by striking the period  
6 at the end of paragraph (14) and inserting a comma, and  
7 by inserting after paragraph (14) the following new para-  
8 graphs:

9 “(15) the amount excludable from gross income  
10 under subparagraph (A) of section 83(i)(1),

11 “(16) the amount includible in gross income  
12 under subparagraph (B) of section 83(i)(1) with re-  
13 spect to an event described in such subparagraph  
14 which occurs in such calendar year, and

15 “(17) the aggregate amount of income which is  
16 being deferred pursuant to elections under section  
17 83(i), determined as of the close of the calendar  
18 year.”.

19 (e) PENALTY FOR FAILURE OF EMPLOYER TO PRO-  
20 VIDE NOTICE OF TAX CONSEQUENCES.—Section 6652 of  
21 the Internal Revenue Code of 1986 is amended by adding  
22 at the end the following new subsection:

23 “(o) FAILURE TO PROVIDE NOTICE UNDER SECTION  
24 83(i).—In the case of each failure to provide a notice as  
25 required by section 83(i)(6), at the time prescribed there-



1 for, unless it is shown that such failure is due to reason-  
2 able cause and not to willful neglect, there shall be paid,  
3 on notice and demand of the Secretary and in the same  
4 manner as tax, by the person failing to provide such no-  
5 tice, an amount equal to \$100 for each such failure, but  
6 the total amount imposed on such person for all such fail-  
7 ures during any calendar year shall not exceed \$50,000.”.

8 (f) EFFECTIVE DATES.—

9 (1) IN GENERAL.—Except as provided in para-  
10 graph (2), the amendments made by this section  
11 shall apply to stock attributable to options exercised,  
12 or restricted stock units settled, after December 31,  
13 2016.

14 (2) REQUIREMENT TO PROVIDE NOTICE.—The  
15 amendments made by subsection (e) shall apply to  
16 failures after December 31, 2016.

17 (g) TRANSITION RULE.—Until such time as the Sec-  
18 retary (or the Secretary’s delegate) issue regulations or  
19 other guidance for purposes of implementing the require-  
20 ments of paragraph (2)(C)(i)(II) of section 83(i) of the  
21 Internal Revenue Code of 1986 (as added by this section),  
22 or the requirements of paragraph (6) of such section, a  
23 corporation shall be treated as being in compliance with  
24 such requirements (respectively) if such corporation com-

1 plies with a reasonable good faith interpretation of such  
2 requirements.

Passed the House of Representatives September 22,  
2016.

Attest:

KAREN L. HAAS,

*Clerk.*