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

IN THE SENATE OF THE UNITED STATES

JULY 11, 2016

Mr. WARNER (for himself and Mr. HELLER) 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 modify the tax treatment of certain equity grants.

Be it enacted by the Senate and House of Representa-
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-
es through Stock Ownership Act”.

3 SEC. 2. TREATMENT OF QUALIFIED EQUITY GRANTS.
4 (a) IN GENERAL.—
5 (1) ELECTION TO DEFER INCOME.—Section 83
6 of the Internal Revenue Code of 1986 is amended by
7 adding at the end the following new subsection:
“(i) QUALIFIED EQUITY GRANTS.—

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

“(A) no amount shall be included in income under subsection (a) in the first taxable year in which the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable, and

“(B) an amount equal to the amount which would be included in income of the employee under subsection (a) (determined without regard to this subsection) shall be included in income in the taxable year of the employee which includes the earliest of—

“(i) the date such qualified stock is sold, exchanged, or otherwise transferred,

“(ii) the date the employee first becomes an excluded employee,

“(iii) the first date on which any stock of the corporation which issued the qualified stock becomes readily tradable on an established securities market,
“(iv) the date that is 7 years after the first date the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, or

“(v) the date on which the employee elects under this clause to include the amount in income.

“(2) QUALIFIED STOCK.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘qualified stock’ means any stock in a corporation if—

“(i) the right to receive such stock was provided by the corporation—

“(I) in connection with the performance of services as an employee, and

“(II) such right was received in year in which such corporation was an eligible corporation, and

“(ii) such stock is received—

“(I) in connection with the exercise of an option, or

“(II) in settlement of a restricted stock unit.
“(B) LIMITATION.—The term ‘qualified stock’ shall not include any stock if the employee may sell to, or otherwise receive cash in lieu of stock from, the corporation at the time that the rights of the employee are transferrable or are not subject to a substantial risk of forfeiture.

“(C) ELIGIBLE CORPORATION.—For purposes of subparagraph (A)(i)(II)—

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

“(I) no stock of such corporation is readily tradable on an established securities market during such calendar year or any preceding calendar year, and

“(II) such corporation has a written plan under which not less than 80 percent of all employees have the same rights and privileges to receive qualified stock for such calendar year.

“(ii) SAME RIGHTS AND PRIVILEGES.—For purposes of clause (i)(II)—
“(I) except as provided in sub-
clauses (II) and (III), the determina-
tion of rights and privileges with re-
spect to stock shall be determined in
a similar manner as provided under
section 423(b)(5),

“(II) employees shall not fail to
be treated as having the same rights
and privileges to receive qualified
stock solely because the number of
shares available to all employees are
not equal in amount, so long as the
number of shares available to each
employee is more than a de minimis
amount, and

“(III) the right to receive quali-
fied stock described subparagraph
(A)(ii)(I) shall not be treated as the
same right or privilege as the right to
receive qualified stock described in
subparagraph (A)(ii)(II).

“(iii) EMPLOYEE.—For purposes of
clause (i)(II), the term ‘employee’ shall not
include any employee described in section
4980E(d)(4) or any excluded employee.
“(iv) Special rule for calendar years before 2017.—In the case of any calendar year beginning before January 1, 2017, clause (i)(II) shall be applied without regard to whether the rights and privileges with respect to the qualified stock are the same.

“(3) Qualified employee; excluded employee.—For purposes of this subsection—

“(A) In general.—The term ‘qualified employee’ means any individual who—

“(i) is not an excluded employee, and

“(ii) agrees to meet such requirements as determined by the Secretary to be necessary to ensure that the withholding requirements of the corporation under chapter 24 with respect to the qualified stock are met.

“(B) Excluded employee.—The term ‘excluded employee’ means, with respect to any corporation, any individual—

“(i) who is or has been at any prior time a 1-percent owner (within the meaning of section 416(i)(1)(B)(ii)),

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

“(I) the chief executive officer of such corporation or an individual acting in such a capacity, or

“(II) the chief financial officer of such corporation or an individual acting in such a capacity,

“(iii) who bears a relationship described in section 318(a)(1) to any individual described in subclause (I) or (II) of clause (ii), or

“(iv) who is or has been for any prior taxable year one of the 4 highest compensated officers of such corporation determined on the basis of the shareholder disclosure rules for compensation under the Securities Exchange Act of 1934 (as if such rules applied to such corporation).

“(4) ELECTION.—

“(A) TIME FOR MAKING ELECTION.—An election with respect to qualified stock shall be made under this subsection no later than 30 days after the first time the rights of the employee in such stock are transferable or are not
subject to a substantial risk of forfeiture, whichever occurs earlier.

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

“(i) the qualified employee has made an election under subsection (b) with respect to such qualified stock, or

“(ii) any stock of the corporation which issued the qualified stock is readily tradable on an established securities market at any time before the election is made.

“(5) OTHER RULES.—

“(A) CONTROLLED GROUPS.—For purposes of this subsection, all corporations which are members of the same controlled group of corporations (as defined in section 1563(a)) shall be treated as one corporation.

“(B) NOTICE REQUIREMENT.—Any corporation that transfers qualified stock to an employee shall notify such employee that—

“(i) the employee may elect to defer income on such stock under this subsection, and
“(ii) if the employee makes such an election, the amount of income recognized at the end of the deferral period will be based on the value of the stock at the time at which the rights of the employee in such stock are transferable or are not subject to substantial risk of forfeiture, notwithstanding whether the value of the stock has declined during the deferral period.”.

(2) Deduction by employer.—Subsection (h) of section 83 of the Internal Revenue Code of 1986 is amended by striking “or (d)(2)” and inserting “(d)(2), or (i)”.

(b) Withholding.—

(1) Time of withholding.—Section 3401 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(i) Qualified stock for which an election is in effect under section 83(i).—For purposes of subsection (a), qualified stock (as defined in section 83(i)) with respect to which an election is made under section 83(i) shall be treated as wages—

“(1) received on the earliest date described in section 83(i)(1)(B), and...
“(2) in an amount equal to the amount included in income under section 83 for the taxable year which includes such date.”.

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

“(t) RATE OF WITHHOLDING FOR CERTAIN STOCK.—In the case of any qualified stock (as defined in section 83(i)) with respect to which an election is made under section 83(i), the rate of tax under subsection (a) shall not be less than the maximum rate of tax in effect under section 1.”.

(e) COORDINATION WITH OTHER DEFERRED COMPENSATION RULES.—

(1) ELECTION TO APPLY DEFERRAL TO STATUTORY OPTIONS.—

(A) INCENTIVE STOCK OPTIONS.—Section 422(b) of the Internal Revenue Code of 1986 is amended by inserting “or any option with respect to which an election is made under section 83(i)” after “as an incentive stock option”.

(B) EMPLOYEE STOCK PURCHASE PLANS.—Section 423(a) of such Code is amended by adding at the end the following flush sentence:
“The preceding sentence shall not apply to any share of stock or option with respect to which an election is made under section 83(i).”.

(2) Exclusion from definition of non-qualified deferred compensation plan.—Subsection (d) of section 409A of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(7) Treatment of qualified stock.—Receipt of stock shall not be treated as a nonqualified deferred compensation plan solely because of an election under 83(i).”.

(d) Information reporting.—Section 6051 of the Internal Revenue Code of 1986 is amended by inserting after paragraph (6) the following new paragraph:

“(7) the amounts subject to subparagraphs (A) and (B) of section 83(i)(1),”.

(e) Penalty for failure of employer to provide notice of tax consequences.—Section 6652 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(o) Failure to provide notice under section 83(i).—In the case of each failure to provide a notice as required by section 83(i)(5)(B), at the time prescribed therefor, unless it is shown that such failure is due to rea-
sonable cause and not to willful neglect, there shall be
paid, on notice and demand of the Secretary and in the
same manner as tax, by the person failing to provide such
notice, an amount equal to $100 for each such failure,
but the total amount imposed on such person for all such
failures during any calendar year shall not exceed
$50,000.”.

(f) Effective Dates.—

(1) In general.—Except as provided in para-

graph (2), the amendments made by this section

shall apply to any property—

(A) in which the rights of the person who

has the beneficial interest in such property are

not transferable before January 1, 2017, and

(B) which is subject to a substantial risk

of forfeiture before such date.

(2) Requirement to provide notice.—The

amendments made by subsection (e) shall apply to

failures after December 31, 2016.