

115TH CONGRESS
1ST SESSION

S. 1444

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

IN THE SENATE OF THE UNITED STATES

JUNE 27, 2017

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.

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

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

7 (a) IN GENERAL.—Section 83 of the Internal Rev-
8 enue Code of 1986 is amended by adding at the end the
9 following new subsection:

10 “(i) QUALIFIED EQUITY GRANTS.—

1 “(1) IN GENERAL.—For purposes of this sub-
2 title—

3 “(A) TIMING OF INCLUSION.—If qualified
4 stock is transferred to a qualified employee who
5 makes an election with respect to such stock
6 under this subsection, subsection (a) shall be
7 applied by including the amount determined
8 under such subsection with respect to such
9 stock in income of the employee in the taxable
10 year determined under subparagraph (B) in lieu
11 of the taxable year described in subsection (a).

12 “(B) TAXABLE YEAR DETERMINED.—The
13 taxable year determined under this subpara-
14 graph is the taxable year of the employee which
15 includes the earliest of—

16 “(i) except as provided in subpara-
17 graph (C), the first date such qualified
18 stock becomes transferable (including, sole-
19 ly for purposes of this clause, becoming
20 transferable to the employer),

21 “(ii) the date the employee first be-
22 comes an excluded employee,

23 “(iii) except as provided in subpara-
24 graph (C), the first date on which any
25 stock of the corporation which issued the

1 qualified stock becomes readily tradable on
2 an established securities market (as deter-
3 mined by the Secretary, but not including
4 any market unless such market is recog-
5 nized as an established securities market
6 by the Secretary for purposes of a provi-
7 sion of this title other than this sub-
8 section),

9 “(iv) the date that is 7 years after the
10 first date the rights of the employee in
11 such stock are transferable or are not sub-
12 ject to a substantial risk of forfeiture,
13 whichever occurs earlier, or

14 “(v) the date on which the employee
15 revokes (at such time and in such manner
16 as the Secretary may provide) the election
17 under this subsection with respect to such
18 stock.

19 “(C) SPECIAL RULE FOR STOCK SUBJECT
20 TO LOCK-UP PERIODS.—

21 “(i) IN GENERAL.—In the case of any
22 qualified stock which is subject to a lock-
23 up period—

1 “(I) such stock shall not be treat-
 2 ed as transferable under subpara-
 3 graph (B)(i), and

4 “(II) such stock shall not be
 5 treated as readily tradable on an es-
 6 tablished securities market under sub-
 7 paragraph (B)(iii),
 8 before the end of the lock-up period.

9 “(ii) LOCK-UP PERIOD.—For purposes
 10 of this subparagraph, the term ‘lock-up pe-
 11 riod’ means any period (not to exceed 180
 12 days)—

13 “(I) which begins on the date of
 14 an initial public offering, and

15 “(II) during which the qualified
 16 employee agrees, pursuant to an un-
 17 derwriting agreement entered into
 18 pursuant to such initial public offer-
 19 ing, not to sell, otherwise dispose of,
 20 or hedge any qualified stock.

21 “(2) QUALIFIED STOCK.—

22 “(A) IN GENERAL.—For purposes of this
 23 subsection, the term ‘qualified stock’ means,
 24 with respect to any qualified employee, any

1 stock in a corporation which is the employer of
 2 such employee, if—

3 “(i) such stock is received—

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

6 “(II) in settlement of a restricted
 7 stock unit, and

8 “(ii) such option or restricted stock
 9 unit was granted by the corporation—

10 “(I) in connection with the per-
 11 formance of services as an employee,
 12 and

13 “(II) during a calendar year in
 14 which such corporation was an eligible
 15 corporation.

16 “(B) LIMITATION.—The term ‘qualified
 17 stock’ shall not include any stock if the em-
 18 ployee may sell such stock to, or otherwise re-
 19 ceive cash in lieu of stock from, the corporation
 20 at the time that the rights of the employee in
 21 such stock first become transferable or not sub-
 22 ject to a substantial risk of forfeiture.

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

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

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

11 “(II) such corporation has a writ-
12 ten plan for such calendar year which
13 meets the requirements of clause (ii).

14 “(ii) PLAN REQUIREMENTS.—A writ-
15 ten plan meets the requirements of this
16 clause with respect to any calendar year
17 if—

18 “(I) not less than 80 percent of
19 all employees who first become em-
20 ployees of such corporation during
21 such calendar year are granted stock
22 options, or restricted stock units, with
23 the same rights and privileges to re-
24 ceive qualified stock, and

1 “(II) not less than 80 percent of
2 all employees who were employees of
3 such corporation during the preceding
4 calendar year hold stock options, or
5 restricted stock units, with the same
6 rights and privileges to receive quali-
7 fied stock.

8 “(iii) SAME RIGHTS AND PRIVI-
9 LEGES.—For purposes of clause (ii)—

10 “(I) except as provided in sub-
11 clauses (II) and (III), the determina-
12 tion of rights and privileges with re-
13 spect to stock shall be made in a simi-
14 lar manner as under section
15 423(b)(5),

16 “(II) employees shall not fail to
17 be treated as having the same rights
18 and privileges to receive qualified
19 stock solely because the number of
20 shares available to all employees is not
21 equal in amount, so long as the num-
22 ber of shares available to each em-
23 ployee is more than a de minimis
24 amount, and

1 “(III) rights and privileges with
2 respect to the exercise of an option
3 shall not be treated as the same as
4 rights and privileges with respect to
5 the settlement of a restricted stock
6 unit.

7 “(iv) EMPLOYEE.—For purposes of
8 clause (ii), the term ‘employee’ shall not
9 include—

10 “(I) any employee described in
11 section 4980E(d)(4),

12 “(II) any excluded employee, and

13 “(III) with respect to any cor-
14 poration for any calendar year, any
15 individual who provides services for
16 such corporation in the United States
17 (or any possession of the United
18 States) for a period of less than 90
19 days during such calendar year.

20 “(v) SPECIAL RULE FOR CALENDAR
21 YEARS BEFORE 2020.—In the case of any
22 calendar year beginning before January 1,
23 2020, clause (ii) shall be applied without
24 regard to whether the rights and privileges

1 with respect to the qualified stock are the
 2 same.

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

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

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

8 “(ii) agrees in the election made
 9 under this subsection to meet such require-
 10 ments as are determined by the Secretary
 11 to be necessary to ensure that the with-
 12 holding requirements of the corporation
 13 under chapter 24 with respect to the quali-
 14 fied stock are met.

15 “(B) EXCLUDED EMPLOYEE.—The term
 16 ‘excluded employee’ means, with respect to any
 17 corporation, any individual—

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

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

1 “(I) the chief executive officer of
 2 such corporation or an individual act-
 3 ing in such a capacity, or

4 “(II) the chief financial officer of
 5 such corporation or an individual act-
 6 ing in such a capacity,

7 “(iii) who bears a relationship de-
 8 scribed in section 318(a)(1) to any indi-
 9 vidual described in subclause (I) or (II) of
 10 clause (ii), or

11 “(iv) who was for any of the 10 pre-
 12 ceding taxable years one of the 4 highest
 13 compensated officers of such corporation,
 14 determined with respect to each such tax-
 15 able year on the basis of the shareholder
 16 disclosure rules for compensation under
 17 the Securities Exchange Act of 1934 (as if
 18 such rules applied to such corporation).

19 “(4) ELECTION.—

20 “(A) TIME FOR MAKING ELECTION.—An
 21 election with respect to qualified stock shall be
 22 made under this subsection no later than 30
 23 days after the first date the rights of the em-
 24 ployee in such stock are transferable or are not
 25 subject to a substantial risk of forfeiture,

1 whichever occurs earlier, and shall be made in
2 a manner similar to the manner in which an
3 election is made under subsection (b).

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

7 “(i) the qualified employee has made
8 an election under subsection (b) with re-
9 spect to such qualified stock,

10 “(ii) any stock of the corporation
11 which issued the qualified stock is readily
12 tradable on an established securities mar-
13 ket (as determined under paragraph
14 (1)(B)(iii)) at any time before the election
15 is made, or

16 “(iii) such corporation purchased any
17 of its outstanding stock in the calendar
18 year preceding the calendar year which in-
19 cludes the first date the rights of the em-
20 ployee in such stock are transferable or are
21 not subject to a substantial risk of for-
22 feiture, unless—

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

1 “(II) the determination of which
 2 individuals from whom deferral stock
 3 is purchased is made on a reasonable
 4 basis.

5 “(C) DEFINITIONS AND SPECIAL RULES
 6 RELATED TO LIMITATION ON STOCK REDEMP-
 7 TIONS.—

8 “(i) DEFERRAL STOCK.—For pur-
 9 poses of this paragraph, the term ‘deferral
 10 stock’ means stock with respect to which
 11 an election is in effect under this sub-
 12 section.

13 “(ii) DEFERRAL STOCK WITH RE-
 14 SPECT TO ANY INDIVIDUAL NOT TAKEN
 15 INTO ACCOUNT IF INDIVIDUAL HOLDS DE-
 16 FERRAL STOCK WITH LONGER DEFERRAL
 17 PERIOD.—Stock purchased by a corpora-
 18 tion from any individual shall not be treat-
 19 ed as deferral stock for purposes of sub-
 20 paragraph (B)(iii) if such individual (im-
 21 mediately after such purchase) holds any
 22 deferral stock with respect to which an
 23 election has been in effect under this sub-
 24 section for a longer period than the elec-

1 tion with respect to the stock so pur-
2 chased.

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

10 “(iv) REPORTING.—Any corporation
11 which has outstanding deferral stock as of
12 the beginning of any calendar year and
13 which purchases any of its outstanding
14 stock during such calendar year shall in-
15 clude on its return of tax for the taxable
16 year in which, or with which, such calendar
17 year ends the total dollar amount of its
18 outstanding stock so purchased during
19 such calendar year and such other infor-
20 mation as the Secretary may require for
21 purposes of administering this paragraph.

22 “(5) CONTROLLED GROUPS.—For purposes of
23 this subsection, all corporations which are treated as
24 a single employer under section 414(b) shall be
25 treated as one corporation.

1 “(6) NOTICE REQUIREMENT.—Any corporation
2 which transfers qualified stock to a qualified em-
3 ployee shall, at the time that (or a reasonable period
4 before) an amount attributable to such stock would
5 (but for this subsection) first be includible in the
6 gross income of such employee—

7 “(A) certify to such employee that such
8 stock is qualified stock, and

9 “(B) notify such employee—

10 “(i) that the employee may elect to
11 defer income on such stock under this sub-
12 section, and

13 “(ii) that, if the employee makes such
14 an election—

15 “(I) the amount of income recog-
16 nized at the end of the deferral period
17 will be based on the value of the stock
18 at the time at which the rights of the
19 employee in such stock first become
20 transferable or not subject to substan-
21 tial risk of forfeiture, notwithstanding
22 whether the value of the stock has de-
23 clined during the deferral period,

24 “(II) the amount of such income
25 recognized at the end of the deferral

1 period will be subject to withholding
 2 under section 3401(i) at the rate de-
 3 termined under section 3402(t), and
 4 “(III) the responsibilities of the
 5 employee (as determined by the Sec-
 6 retary under paragraph (3)(A)(ii))
 7 with respect to such withholding.”.

8 (b) WITHHOLDING.—

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

12 “(i) QUALIFIED STOCK FOR WHICH AN ELECTION IS
 13 IN EFFECT UNDER SECTION 83(i).—For purposes of sub-
 14 section (a), qualified stock (as defined in section 83(i))
 15 with respect to which an election is made under section
 16 83(i) shall be treated as wages—

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

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

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

1 “(t) RATE OF WITHHOLDING FOR CERTAIN
 2 STOCK.—In the case of any qualified stock (as defined in
 3 section 83(i)(2)) with respect to which an election is made
 4 under section 83(i)—

5 “(1) the rate of tax under subsection (a) shall
 6 not be less than the maximum rate of tax in effect
 7 under section 1, and

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

11 (c) COORDINATION WITH OTHER DEFERRED COM-
 12 PENSATION RULES.—

13 (1) ELECTION TO APPLY DEFERRAL TO STATU-
 14 TORY OPTIONS.—

15 (A) INCENTIVE STOCK OPTIONS.—Section
 16 422(b) of the Internal Revenue Code of 1986 is
 17 amended by adding at the end the following:
 18 “Such term shall not include any option if an
 19 election is made under section 83(i) with re-
 20 spect to the stock received in connection with
 21 the exercise of such option.”.

22 (B) EMPLOYEE STOCK PURCHASE
 23 PLANS.—Section 423 of such Code is amend-
 24 ed—

1 (i) by adding at the end of subsection
 2 (a) the following flush sentence:

3 “The preceding sentence shall not apply to any share of
 4 stock with respect to which an election is made under sec-
 5 tion 83(i).”; and

6 (ii) in subsection (b)(5), by striking
 7 “and” before “the plan” and by inserting
 8 “, and the rules of section 83(i) shall apply
 9 in determining which employees have a
 10 right to make an election under such sec-
 11 tion” before the semicolon at the end.

12 (C) CONFORMING AMENDMENTS.—

13 (i) Section 3121(a)(22)(A) of the In-
 14 ternal Revenue Code of 1986 is amended
 15 by inserting “(other than qualified stock
 16 (as defined in section 83(i)(2)) with re-
 17 spect to which an election is in effect
 18 under section 83(i))” after “a share of
 19 stock”.

20 (ii) Section 209(a)(19)(A) of the So-
 21 cial Security Act (42 U.S.C. 409) is
 22 amended by “(other than qualified stock
 23 (as defined in section 83(i)(2) of the Inter-
 24 nal Revenue Code of 1986) with respect to
 25 which an election is in effect under section

1 83(i) of such Code)” after “a share of
2 stock”.

3 (iii) Section 3231(e)(12)(A) of the In-
4 ternal Revenue Code of 1986 is amended
5 by inserting “(other than qualified stock
6 (as defined in section 83(i)(2)) with re-
7 spect to which an election is in effect
8 under section 83(i))” after “a share of
9 stock”.

10 (iv) Section 3306(b)(19)(A) of the In-
11 ternal Revenue Code of 1986 is amended
12 by inserting “(other than qualified stock
13 (as defined in section 83(i)(2)) with re-
14 spect to which an election is in effect
15 under section 83(i))” after “a share of
16 stock”.

17 (2) TREATMENT UNDER NONQUALIFIED DE-
18 FERRED COMPENSATION PLAN.—Subsection (d) of
19 section 409A of such Code is amended by adding at
20 the end the following new paragraph:

21 “(7) TREATMENT OF QUALIFIED STOCK.—An
22 arrangement under which an employee may receive
23 qualified stock (as defined in section 83(i)(2)) shall
24 not be treated as a nonqualified deferred compensa-
25 tion plan, or as failing to meet the requirements of

1 this section, solely because of an employee’s election,
 2 or ability to make an election, to defer recognition
 3 of income under section 83(i).”.

4 (d) INFORMATION REPORTING.—Section 6051(a) of
 5 the Internal Revenue Code of 1986 is amended by striking
 6 “and” at the end of paragraph (14), by striking the period
 7 at the end of paragraph (15) and inserting a comma, and
 8 by inserting after paragraph (15) the following new para-
 9 graphs:

10 “(16) the amount includible in gross income
 11 under subparagraph (A) of section 83(i)(1) with re-
 12 spect to an event described in subparagraph (B) of
 13 such section which occurs in such calendar year, and
 14 “(17) the aggregate amount of income which is
 15 being deferred pursuant to elections under section
 16 83(i), determined as of the close of the calendar
 17 year.”.

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

22 “(p) FAILURE TO PROVIDE NOTICE UNDER SECTION
 23 83(i).—In the case of each failure to provide a notice as
 24 required by section 83(i)(6), at the time prescribed there-
 25 for, unless it is shown that such failure is due to reason-

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

7 (f) GUIDANCE.—Not later than December 31, 2018,
 8 the Secretary of the Treasury (or the Secretary’s delegate)
 9 shall issue guidance with respect to section 83(i) of the
 10 Internal Revenue Code of 1986 (as added by this section),
 11 including guidance relating to—

12 (1) the determination the time stock first be-
 13 comes transferable under such section;

14 (2) the determination of rights and privileges
 15 with respect to stock under paragraph (2)(C)(iii) of
 16 such section; and

17 (3) the requirements of paragraphs
 18 (2)(C)(i)(II) and (6) of such section.

19 (g) EFFECTIVE DATES.—

20 (1) IN GENERAL.—Except as provided in para-
 21 graph (2), the amendments made by this section
 22 shall apply to stock attributable to options exercised,
 23 or restricted stock units settled, after December 31,
 24 2019.

1 (2) REQUIREMENT TO PROVIDE NOTICE.—The
2 amendments made by subsection (e) shall apply to
3 failures after December 31, 2019.

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