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116TH CONGRESS
1ST SESSION

S. 177

To amend the Internal Revenue Code of 1986 and the Small Business Act to expand the availability of employee stock ownership plans in S corporations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 17, 2019

Mr. ROBERTS (for himself, Mr. CARDIN, Mr. TILLIS, Mr. PORTMAN, Mr. CRAPO, Ms. CANTWELL, Mr. RISCH, Mr. WHITEHOUSE, Mr. LEAHY, Ms. KLOBUCHAR, Ms. STABENOW, Ms. BALDWIN, Mr. CASEY, Mr. MORAN, Mr. VAN HOLLEN, Mr. PETERS, Ms. ERNST, Mr. ISAKSON, Mr. REED, Mr. HOEVEN, Mr. THUNE, Mrs. MURRAY, Ms. DUCKWORTH, Mr. TESTER, Ms. COLLINS, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Internal Revenue Code of 1986 and the Small Business Act to expand the availability of employee stock ownership plans in S corporations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Promotion and Expansion of Private Employee Ownership Act of 2019''.

SEC. 2. FINDINGS.

Congress finds that—

(1) on January 1, 1998—nearly 25 years after the Employee Retirement Income Security Act of 1974 was enacted and the employee stock ownership plan (hereafter in this section referred to as an ''ESOP'') was created—employees were first permitted to be owners of subchapter S corporations pursuant to the Small Business Job Protection Act of 1996 (Public Law 104–188);

(2) with the passage of the Taxpayer Relief Act of 1997 (Public Law 105–34), Congress designed incentives to encourage businesses to become ESOP-owned S corporations;

(3) since that time, several thousand companies have become ESOP-owned S corporations, creating an ownership interest for several million Americans in companies in every State in the country, in industries ranging from heavy manufacturing to technology development to services;

(4) while estimates show that 40 percent of working Americans have no formal retirement account at all, every United States worker who is an employee-owner of an S corporation company through an ESOP has a valuable qualified retirement savings account;

(5) recent studies have shown that employees of ESOP-owned S corporations enjoy greater job stability than employees of comparable companies;

(6) studies also show that employee-owners of S corporation ESOP companies have amassed meaningful retirement savings through their S ESOP accounts that will give them the means to retire with dignity;

(7) under the Small Business Act (15 U.S.C. 631 et seq.) and the regulations promulgated by the Administrator of the Small Business Administration, a small business concern that was eligible under the Small Business Act for the numerous preferences of the Act is denied treatment as a small business concern after an ESOP acquires more than 49 percent of the business, even if the number of employees, the revenue of the small business concern, and the racial, gender, or other criteria used under the Act to determine whether the small business concern is eligible for benefits under the Act remain the same, solely because of the acquisition by the ESOP; and

(8) it is the goal of Congress to both preserve and foster employee ownership of S corporations through ESOPs.

SEC. 3. DEFERRAL OF TAX FOR CERTAIN SALES OF EMPLOYER STOCK TO EMPLOYEE STOCK OWNERSHIP PLAN SPONSORED BY S CORPORATION.

(a) IN GENERAL.—Subparagraph (A) of section 1042(c)(1) of the Internal Revenue Code of 1986 is amended by striking ''domestic C corporation'' and inserting ''domestic corporation''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales after the date of the enactment of this Act.

SEC. 4. DEPARTMENT OF THE TREASURY TECHNICAL ASSISTANCE OFFICE.

(a) ESTABLISHMENT REQUIRED.—Before the end of the 90-day period beginning on the date of enactment of this Act, the Secretary of the Treasury shall establish the S Corporation Employee Ownership Assistance Office to foster increased employee ownership of S corporations.

(b) DUTIES OF THE OFFICE.—The S Corporation Employee Ownership Assistance Office shall provide—

(1) education and outreach to inform companies and individuals about the possibilities and benefits of employee ownership of S corporations; and

(2) technical assistance to assist S corporations in sponsoring employee stock ownership plans.

SEC. 5. SMALL BUSINESS AND EMPLOYEE STOCK OWNERSHIP.

(a) IN GENERAL.—The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 49 as section 50; and

(2) by inserting after section 48 the following:

"SEC. 49. EMPLOYEE STOCK OWNERSHIP PLANS.

"(a) DEFINITIONS.—In this section—

"(1) the term 'ESOP' means an employee stock ownership plan, as defined in section 4975(e)(7) of the Internal Revenue Code of 1986, as amended; and

"(2) the term 'ESOP business concern' means a business concern that was a small business concern eligible for a loan, preference, or other program under this Act before the date on which more than 49 percent of the business concern was acquired by an ESOP.

"(b) CONTINUED ELIGIBILITY.—In determining whether an ESOP business concern qualifies as a small business concern for purposes of a loan, preference, or other program under this Act, each ESOP participant shall be treated as directly owning his or her proportionate share of the stock in the ESOP business concern owned by the ESOP.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1 of the first calendar year beginning after the date of the enactment of this Act.

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