

104TH CONGRESS
2D SESSION

S. 2110

To amend the Internal Revenue Code of 1986 to provide special rules for certain gratuitous transfers of employer securities for the benefit of employees.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24 (legislative day, SEPTEMBER 20), 1996

Mr. DASCHLE 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 provide special rules for certain gratuitous transfers of employer securities for the benefit of employees.

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. GRATUITOUS TRANSFERS FOR THE BENEFIT**
4 **OF EMPLOYEES.**

5 (a) IN GENERAL.—Subparagraph (C) of section
6 664(d)(1) of the Internal Revenue Code of 1986 and sub-
7 paragraph (C) of section 664(d)(2) of such Code are each
8 amended by striking the period at the end and inserting
9 “or, to the extent the remainder interest is in qualified
10 employer securities (as defined in paragraph (3)(B)), is

1 to be transferred to an employee stock ownership plan (as
 2 defined in section 4975(e)(7)) in a qualified gratuitous
 3 transfer (as defined by paragraph (3)).”

4 (b) QUALIFIED GRATUITOUS TRANSFER DEFINED.—
 5 Subsection (d) of section 664 of such Code is amended
 6 by redesignating paragraph (3) as paragraph (4) and by
 7 inserting after paragraph (2) the following new paragraph:

8 “(3) QUALIFIED GRATUITOUS TRANSFER OF
 9 QUALIFIED EMPLOYER SECURITIES.—

10 “(A) IN GENERAL.—For purposes of this
 11 section, the term ‘qualified gratuitous transfer’
 12 means a transfer of qualified employer securi-
 13 ties to an employee stock ownership plan (as
 14 defined in section 4975(e)(7)) but only to the
 15 extent that—

16 “(i) the securities transferred pre-
 17 viously passed from a decedent to a trust
 18 described in paragraph (1) or (2);

19 “(ii) no deduction under section 404
 20 is allowable with respect to such transfer;

21 “(iii) such plan provides that the se-
 22 curities so transferred are allocated to plan
 23 participants in a manner consistent with
 24 section 401(a)(4);

1 “(iv) such plan treats such securities
 2 as being attributable to employer contribu-
 3 tions but without regard to the limitations
 4 otherwise applicable to such contributions
 5 under section 404;

6 “(v) such plan provides that such se-
 7 curities are held in a suspense account
 8 under the plan to be allocated each year,
 9 up to the limitations under section 415(c),
 10 after first allocating all other annual addi-
 11 tions for the limitation year, up to the lim-
 12 itations under sections 415 (c) and (e);
 13 and

14 “(vi) the employer whose employees
 15 are covered by the plan described in this
 16 subparagraph files with the Secretary a
 17 verified written statement consenting to
 18 the application of sections 4978 and
 19 4979A with respect to such employer.

20 “(B) QUALIFIED EMPLOYER SECURI-
 21 TIES.—For purposes of this section, the term
 22 ‘qualified employer securities’ means employer
 23 securities (as defined in section 409(l)) which
 24 are issued by a domestic corporation which has

1 no outstanding stock which is readily tradable
2 on an established securities market.

3 “(C) TREATMENT OF SECURITIES ALLO-
4 CATED BY EMPLOYEE STOCK OWNERSHIP PLAN
5 TO PERSONS RELATED TO DECEDENT OR 5-PER-
6 CENT SHAREHOLDERS.—

7 “(i) IN GENERAL.—If any portion of
8 the assets of the plan attributable to secu-
9 rities acquired by the plan in a qualified
10 gratuitous transfer are allocated to the ac-
11 count of—

12 “(I) any person who is related to
13 the decedent (within the meaning of
14 section 267(b)), or

15 “(II) any person who, at the time
16 of such allocation or at any time dur-
17 ing the 1-year period ending on the
18 date of the acquisition of qualified
19 employer securities by the plan, is a
20 5-percent shareholder of the employer
21 maintaining the plan,
22 the plan shall be treated as having distrib-
23 uted (at the time of such allocation) to
24 such person or shareholder the amount so
25 allocated.

1 “(ii) 5-PERCENT SHAREHOLDER.—

2 For purposes of clause (i), the term ‘5-per-
3 cent shareholder’ means any person who
4 owns (directly or through the application
5 of section 318(a)) more than 5 percent
6 of—

7 “(I) any class of outstanding
8 stock of the corporation which issued
9 such qualified employer securities or
10 of any corporation which is a member
11 of the same controlled group of cor-
12 porations (within the meaning of sec-
13 tion 409(l)(4)) as such corporation, or

14 “(II) the total value of any class
15 of outstanding stock of any such cor-
16 poration; and

17 For purposes of the preceding sentence,
18 section 318(a) shall be applied without re-
19 gard to the exception in paragraph
20 (2)(B)(i) thereof.

21 “(iii) CROSS REFERENCE.—

**“For excise tax on allocations described in clause
(i), see section 4979A.”**

22 (c) CONFORMING AMENDMENTS.—

23 (1) Section 401(a)(1) of such Code is amended
24 by inserting “or by a charitable remainder trust pur-

1 suant to a qualified gratuitous transfer (as defined
 2 in section 664(d)(3)(A)),” after “stock bonus
 3 plans),”.

4 (2) Section 404(a)(9) of such Code is amended
 5 by inserting after subparagraph (B) the following
 6 new subparagraph:

7 “(C) A qualified gratuitous transfer (as de-
 8 fined in section 664(d)(3)(A)) shall have no ef-
 9 fect on the amount or amounts otherwise de-
 10 ductible under paragraph (3) or (7) or under
 11 this paragraph.”

12 (3) Section 415(c)(6) of such Code is amended
 13 by adding at the end the following new sentence:

14 “The amount of any qualified gratuitous transfer
 15 (as defined in section 664(d)(3)(A)) allocated to a
 16 participant for any limitation year shall not exceed
 17 the limitations imposed by this section, but such
 18 amount shall not be taken into account in determin-
 19 ing whether any other amount exceeds the limita-
 20 tions imposed by this section.”

21 (4) Section 415(e) of such Code is amended—

22 (A) by redesignating paragraph (6) as
 23 paragraph (7), and

24 (B) by inserting after paragraph (5) the
 25 following new paragraph:

1 “(6) SPECIAL RULE FOR QUALIFIED GRATU-
 2 ITOUS TRANSFERS.—Any qualified gratuitous trans-
 3 fer of qualified employer securities (as defined by
 4 section 664(d)(3)) shall not be taken into account in
 5 calculating, and shall not be subject to, the limita-
 6 tions provided in this subsection.”

7 (5) Paragraph (3) of section 644(e) of such
 8 Code is amended to read as follows:

9 “(3) acquired by a charitable remainder annuity
 10 trust (as defined in section 664(d)(1)) or a chari-
 11 table remainder unitrust (as defined in sections
 12 664(d) (2) and (4)), or”.

13 (6) Subparagraph (B) of section 664(d)(1) of
 14 such Code and subparagraph (B) of section
 15 664(d)(2) of such Code are each amended by insert-
 16 ing “and other than qualified gratuitous transfers
 17 described in subparagraph (C)” after “subparagraph
 18 (A)”.

19 (7) Paragraph (4) of section 674(b) of such
 20 Code is amended by inserting before the period “or
 21 to an employee stock ownership plan (as defined in
 22 section 4975(e)(7)) in a qualified gratuitous transfer
 23 (as defined in section 664(d)(3))”.

24 (8)(A) Section 2055(a) of such Code is amend-
 25 ed—

1 (i) by striking “or” at the end of para-
 2 graph (3),

3 (ii) by striking the period at the end of
 4 paragraph (4) and inserting “; or”, and

5 (iii) by inserting after paragraph (4) the
 6 following new paragraph:

7 “(5) to an employee stock ownership plan if
 8 such transfer qualifies as a qualified gratuitous
 9 transfer of qualified employer securities within the
 10 meaning of section 664(d)(3).”

11 (B) Clause (ii) of section 2055(e)(3)(C) of such
 12 Code is amended by striking “section 664(d)(3)”
 13 and inserting “section 664(d)(4)”.

14 (9) Paragraph (8) of section 2056(b) of such
 15 Code is amended to read as follows:

16 “(8) SPECIAL RULE FOR CHARITABLE REMAIN-
 17 DER TRUSTS.—

18 “(A) IN GENERAL.—If the surviving
 19 spouse of the decedent is the only beneficiary of
 20 a qualified charitable remainder trust who is
 21 not a charitable beneficiary nor an ESOP bene-
 22 ficiary, paragraph (1) shall not apply to any in-
 23 terest in such trust which passes or has passed
 24 from the decedent to such surviving spouse.

“(B) DEFINITIONS.—For purposes of subparagraph (A)—

“(i) CHARITABLE BENEFICIARY.—The term ‘charitable beneficiary’ means any beneficiary which is an organization described in section 170(c).

“(ii) ESOP BENEFICIARY.—The term ‘ESOP beneficiary’ means any beneficiary which is an employee stock ownership plan (as defined in section 4975(e)(7)) that holds a remainder interest in qualified employer securities (as defined in section 664(d)(3)) to be transferred to such plan in a qualified gratuitous transfer (as defined in section 664(d)(3)).

“(iii) QUALIFIED CHARITABLE REMAINDER TRUST.—The term ‘qualified charitable remainder trust’ means a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664).”

(10) Section 4947(b) of such Code is amended by inserting after paragraph (3) the following new paragraph:

1 “(4) SECTION 507.—The provisions of section
2 507(a) shall not apply to a trust which is described
3 in subsection (a)(2) by reason of a distribution of
4 qualified employer securities (as defined in section
5 664(d)(3)) to an employee stock ownership plan (as
6 defined in section 4975(e)(7)) in a qualified gratu-
7 itous transfer (as defined by section 664(d)(3)).”

8 (11) The last sentence of section 4975(e)(7) of
9 such Code is amended by inserting “and section
10 664(d)(3)” after “section 409(n)”

11 (12) Subsection (a) of section 4978 of such
12 Code is amended by inserting “or acquired any
13 qualified employer securities in a qualified gratu-
14 itous transfer to which section 664(d)(3) applied”
15 after “section 1042 applied”.

16 (13) Paragraph (2) of section 4978(b) of such
17 Code is amended—

18 (A) by inserting “or acquired in the quali-
19 fied gratuitous transfer to which section
20 664(d)(3) applied” after “section 1042 ap-
21 plied”, and

22 (B) by inserting “or to which section
23 664(d)(3) applied” after “section 1042 applied”
24 in subparagraph (C) thereof.

1 (14) Subsection (c) of section 4978 of such
 2 Code is amended by striking “written statement”
 3 and all that follows and inserting “written statement
 4 described in section 664(d)(3)(A)(vi) or in section
 5 1042(b)(3) (as the case may be).”

6 (15) Paragraph (2) of section 4978(e) of such
 7 Code is amended by striking the period and insert-
 8 ing “; except that such section shall be applied with-
 9 out regard to subparagraph (B) thereof for purposes
 10 of applying this section and section 4979A with re-
 11 spect to securities acquired in a qualified gratuitous
 12 transfer (as defined in section 664(d)(3)(A)).”

13 (16) Subsection (a) of section 4979A of such
 14 Code is amended to read as follows:

15 “(a) IMPOSITION OF TAX.—If—

16 “(1) there is a prohibited allocation of qualified
 17 securities by any employee stock ownership plan or
 18 eligible worker-owned cooperative, or

19 “(2) there is an allocation described in section
 20 663(d)(3)(C)(i),

21 there is hereby imposed a tax on such allocation equal to
 22 50 percent of the amount involved.”

23 (17) Subsection (c) of section 4979A of such
 24 Code is amended to read as follows:

1 “(c) LIABILITY FOR TAX.—The tax imposed by this
2 section shall be paid by—

3 “(1) the employer sponsoring such plan, or

4 “(2) the eligible worker-owned cooperative,

5 which made the written statement described in section
6 664(d)(3)(A)(vi) or in section 1042(b)(3)(B) (as the case
7 may be).”

8 (18) Section 4979A of such Code is amended
9 by redesignating subsection (d) as subsection (e) and
10 by inserting after subsection (c) the following new
11 subsection:

12 “(d) SPECIAL STATUTE OF LIMITATIONS FOR TAX
13 ATTRIBUTABLE TO CERTAIN ALLOCATIONS.—The statu-
14 tory period for the assessment of any tax imposed by this
15 section on an allocation described in subsection (a)(2) of
16 qualified employer securities shall not expire before the
17 date which is 3 years from the later of—

18 “(1) the 1st allocation of such securities in con-
19 nection with a qualified gratuitous transfer (as de-
20 fined in section 664(d)(3)(A)), or

21 “(2) the date on which the Secretary is notified
22 of the allocation described in subsection (a)(2).”

23 (d) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to transfers made by trusts to, or

- 1 for the use of, an employee stock ownership plan after the
- 2 date of the enactment of this Act.

