

Union Calendar No. 581

114TH CONGRESS
2^D SESSION

H. R. 5719

[Report No. 114-748]

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

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2016

Mr. PAULSEN introduced the following bill; which was referred to the Committee on Ways and Means

SEPTEMBER 16, 2016

Additional sponsors: Mr. CROWLEY, Ms. ESHOO, and Mr. HULTGREN

SEPTEMBER 16, 2016

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on July 11, 2016]

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 Employees*
5 *through Stock Ownership Act”.*

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

7 *(a) IN GENERAL.—*

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

11 *“(i) QUALIFIED EQUITY GRANTS.—*

12 *“(1) IN GENERAL.—For purposes of this subtitle,*
13 *if qualified stock is transferred to a qualified em-*
14 *ployee who makes an election with respect to such*
15 *stock under this subsection—*

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

23 *“(B) an amount equal to the amount which*
24 *would be included in income of the employee*
25 *under subsection (a) (determined without regard*

1 to this subsection) shall be included in income
2 for the taxable year of the employee which in-
3 cludes the earliest of—

4 “(i) the first date such qualified stock
5 becomes transferable (including transferable
6 to the employer),

7 “(ii) the date the employee first be-
8 comes an excluded employee,

9 “(iii) the first date on which any stock
10 of the corporation which issued the qualified
11 stock becomes readily tradable on an estab-
12 lished securities market (as determined by
13 the Secretary, but not including any market
14 unless such market is recognized as an es-
15 tablished securities market by the Secretary
16 for purposes of a provision of this title other
17 than this subsection),

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

23 “(v) the date on which the employee re-
24 vokes (at such time and in such manner as
25 the Secretary may provide) the election

1 *under this subsection with respect to such*
2 *stock.*

3 “(2) *QUALIFIED STOCK.*—

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

9 “(i) *such stock is received—*

10 “(I) *in connection with the exer-*
11 *cise of an option, or*

12 “(II) *in settlement of a restricted*
13 *stock unit, and*

14 “(ii) *such option or restricted stock*
15 *unit was provided by the corporation—*

16 “(I) *in connection with the per-*
17 *formance of services as an employee,*
18 *and*

19 “(II) *during a calendar year in*
20 *which such corporation was an eligible*
21 *corporation.*

22 “(B) *LIMITATION.*—*The term ‘qualified*
23 *stock’ shall not include any stock if the employee*
24 *may sell such stock to, or otherwise receive cash*
25 *in lieu of stock from, the corporation at the time*

1 *that the rights of the employee in such stock first*
2 *become transferable or not subject to a substan-*
3 *tial risk of forfeiture.*

4 “(C) *ELIGIBLE CORPORATION.*—*For pur-*
5 *poses of subparagraph (A)(i)(II)—*

6 “(i) *IN GENERAL.*—*The term ‘eligible*
7 *corporation’ means, with respect to any cal-*
8 *endar year, any corporation if—*

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

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

24 “(ii) *SAME RIGHTS AND PRIVILEGES.*—
25 *For purposes of clause (i)(II)—*

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

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

15 “(III) *rights and privileges with*
16 *respect to the exercise of an option*
17 *shall not be treated as the same as*
18 *rights and privileges with respect to*
19 *the settlement of a restricted stock unit.*

20 “(iii) *EMPLOYEE.—For purposes of*
21 *clause (i)(II), the term ‘employee’ shall not*
22 *include any employee described in section*
23 *4980E(d)(4) or any excluded employee.*

24 “(iv) *SPECIAL RULE FOR CALENDAR*
25 *YEARS BEFORE 2017.—In the case of any*

1 *calendar year beginning before January 1,*
2 *2017, clause (i)(II) shall be applied without*
3 *regard to whether the rights and privileges*
4 *with respect to the qualified stock are the*
5 *same.*

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

8 “(A) *IN GENERAL.—The term ‘qualified em-*
9 *ployee’ means any individual who—*

10 “(i) *is not an excluded employee, and*

11 “(ii) *agrees in the election made under*
12 *this subsection to meet such requirements as*
13 *determined by the Secretary to be necessary*
14 *to ensure that the withholding requirements*
15 *of the corporation under chapter 24 with re-*
16 *spect to the qualified stock are met.*

17 “(B) *EXCLUDED EMPLOYEE.—The term ‘ex-*
18 *cluded employee’ means, with respect to any cor-*
19 *poration, any individual—*

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

24 “(ii) *who is or has been at any prior*
25 *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 has been for any of the 10
12 preceding taxable years one of the 4 highest
13 compensated officers of such corporation de-
14 termined with respect to each such taxable
15 year on the basis of the shareholder disclo-
16 sure rules for compensation under the Secu-
17 rities Exchange Act of 1934 (as if such rules
18 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 time the rights of the em-
24 ployee in such stock are transferable or are not
25 subject to a substantial risk of forfeiture, which-

1 *ever occurs earlier, and shall be made in a man-*
2 *ner similar to the manner in which an election*
3 *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 respect*
9 *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 market*
13 *(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 year*
18 *preceding the calendar year which includes*
19 *the first time the rights of the employee in*
20 *such stock are transferable or are not subject*
21 *to a substantial risk of forfeiture, unless—*

22 “(I) *not less than 25 percent of*
23 *the total dollar amount of the stock so*
24 *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 RE-*
6 *LATED TO LIMITATION ON STOCK REDEMP-*
7 *TIONS.—*

8 “(i) *DEFERRAL STOCK.—For purposes*
9 *of this paragraph, the term ‘deferral stock’*
10 *means stock with respect to which an elec-*
11 *tion is in effect under this subsection*

12 “(ii) *DEFERRAL STOCK WITH RESPECT*
13 *TO ANY INDIVIDUAL NOT TAKEN INTO AC-*
14 *COUNT IF INDIVIDUAL HOLDS DEFERRAL*
15 *STOCK WITH LONGER DEFERRAL PERIOD.—*
16 *Stock purchased by a corporation from any*
17 *individual shall not be treated as deferral*
18 *stock for purposes of clause (iii) if such in-*
19 *dividual (immediately after such purchase)*
20 *holds any deferral stock with respect to*
21 *which an election has been in effect under*
22 *this subsection for a longer period than the*
23 *election with respect to the stock so pur-*
24 *chased.*

1 “(iii) *PURCHASE OF ALL OUTSTANDING*
2 *DEFERRAL STOCK.*—*The requirements of*
3 *subclauses (I) and (II) of subparagraph*
4 *(B)(iii) shall be treated as met if the stock*
5 *so purchased includes all of the corpora-*
6 *tion’s outstanding deferral stock.*

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

19 “(5) *CONTROLLED GROUPS.*—*For purposes of*
20 *this subsection, all corporations which are members of*
21 *the same controlled group of corporations (as defined*
22 *in section 1563(a)) shall be treated as one corpora-*
23 *tion.*

24 “(6) *NOTICE REQUIREMENT.*—*Any corporation*
25 *that transfers qualified stock to a qualified employee*

1 *shall, at the time that (or a reasonable period before)*
2 *an amount attributable to such stock would (but for*
3 *this subsection) first be includible in the gross income*
4 *of such employee—*

5 “(A) *certify to such employee that such*
6 *stock is qualified stock, and*

7 “(B) *notify such employee—*

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

11 “(ii) *that, if the employee makes such*
12 *an election—*

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

22 “(II) *the amount of such income*
23 *recognized at the end of the deferral pe-*
24 *riod will be subject to withholding*

1 under section 3401(i) at the rate deter-
2 mined under section 3402(t), and

3 “(III) the responsibilities of the
4 employee (as determined by the Sec-
5 retary under paragraph (3)(A)(ii))
6 with respect to such withholding.”.

7 (2) *DEDUCTION BY EMPLOYER.*—Subsection (h)
8 of section 83 of the Internal Revenue Code of 1986 is
9 amended by striking “or (d)(2)” and inserting
10 “(d)(2), or (i)”.

11 (b) *WITHHOLDING.*—

12 (1) *TIME OF WITHHOLDING.*—Section 3401 of
13 the Internal Revenue Code of 1986 is amended by
14 adding at the end the following new subsection:

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

20 “(1) *received on the earliest date described in*
21 *section 83(i)(1)(B), and*

22 “(2) *in an amount equal to the amount included*
23 *in income under section 83 for the taxable year which*
24 *includes such date.*”.

1 (2) *AMOUNT OF WITHHOLDING.*—Section 3402 of
2 *such Code is amended by adding at the end the fol-*
3 *lowing new subsection:*

4 “(t) *RATE OF WITHHOLDING FOR CERTAIN STOCK.*—
5 *In the case of any qualified stock (as defined in section*
6 *83(i)) with respect to which an election is made under sec-*
7 *tion 83(i)—*

8 “*(1) the rate of tax under subsection (a) shall*
9 *not be less than the maximum rate of tax in effect*
10 *under section 1, and*

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

14 (c) *COORDINATION WITH OTHER DEFERRED COM-*
15 *PENSATION RULES.*—

16 (1) *ELECTION TO APPLY DEFERRAL TO STATU-*
17 *TORY OPTIONS.*—

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

1 (B) *EMPLOYEE STOCK PURCHASE PLANS.*—

2 Section 423(a) of such Code is amended by add-
3 ing at the end the following flush sentence:

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

7 (2) *EXCLUSION FROM DEFINITION OF NON-*
8 *QUALIFIED DEFERRED COMPENSATION PLAN.*—Sub-
9 section (d) of section 409A of the Internal Revenue
10 Code of 1986 is amended by adding at the end the fol-
11 lowing new paragraph:

12 “(7) *TREATMENT OF QUALIFIED STOCK.*—An ar-
13 rangement under which an employee may receive
14 qualified stock (as defined in section 83(i)(2)) shall
15 not be treated as a nonqualified deferred compensa-
16 tion plan solely because of an employee’s ability to
17 defer recognition of income pursuant to an election
18 under section 83(i).”.

19 (d) *INFORMATION REPORTING.*—Section 6051(a) of the
20 Internal Revenue Code of 1986 is amended by striking
21 “and” at the end of paragraph (13), by striking the period
22 at the end of paragraph (14) and inserting a comma, and
23 by inserting after paragraph (14) the following new para-
24 graphs:

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

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

7 “(17) the aggregate amount of income which is
8 being deferred pursuant to elections under section
9 83(i), determined as of the close of the calendar
10 year.”.

11 (e) *PENALTY FOR FAILURE OF EMPLOYER TO PRO-*
12 *VIDE NOTICE OF TAX CONSEQUENCES.*—Section 6652 of the
13 *Internal Revenue Code of 1986 is amended by adding at*
14 *the end the following new subsection:*

15 “(o) *FAILURE TO PROVIDE NOTICE UNDER SECTION*
16 *83(i).*—*In the case of each failure to provide a notice as*
17 *required by section 83(i)(6), at the time prescribed therefor,*
18 *unless it is shown that such failure is due to reasonable*
19 *cause and not to willful neglect, there shall be paid, on no-*
20 *tice and demand of the Secretary and in the same manner*
21 *as tax, by the person failing to provide such notice, an*
22 *amount equal to \$100 for each such failure, but the total*
23 *amount imposed on such person for all such failures during*
24 *any calendar year shall not exceed \$50,000.”.*

25 (f) *EFFECTIVE DATES.*—

1 (1) *IN GENERAL.*—*Except as provided in para-*
2 *graph (2), the amendments made by this section shall*
3 *apply to stock attributable to options exercised, or re-*
4 *stricted stock units settled, after December 31, 2016.*

5 (2) *REQUIREMENT TO PROVIDE NOTICE.*—*The*
6 *amendments made by subsection (e) shall apply to*
7 *failures after December 31, 2016.*

8 (g) *TRANSITION RULE.*—*Until such time as the Sec-*
9 *retary (or the Secretary’s delegate) issue regulations or*
10 *other guidance for purposes of implementing the require-*
11 *ments of paragraph (2)(C)(i)(II) of section 83(i) of the In-*
12 *ternal Revenue Code of 1986 (as added by this section), or*
13 *the requirements of paragraph (6) of such section, a cor-*
14 *poration shall be treated as being in compliance with such*
15 *requirements (respectively) if such corporation complies*
16 *with a reasonable good faith interpretation of such require-*
17 *ments.*

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