

112TH CONGRESS  
1ST SESSION

# H. R. 786

To amend the Internal Revenue Code of 1986 to exclude from gross income compensation received by employees consisting of qualified distributions of employer stock.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 17, 2011

Mr. ROHRABACHER (for himself, Mr. JONES, Mr. McCOTTER, and Mr. MCKINLEY) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to exclude from gross income compensation received by employees consisting of qualified distributions of employer stock.

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. QUALIFIED STOCK DISTRIBUTIONS TO EM-**  
4 **PLOYEES.**

5 (a) IN GENERAL.—Part III of subchapter B of chap-  
6 ter 1 of the Internal Revenue Code of 1986 is amended  
7 by inserting after section 83 the following new section:

1 **“SEC. 83A. QUALIFIED STOCK DISTRIBUTIONS TO EMPLOY-**  
2 **EES.**

3 “(a) IN GENERAL.—If an employee elects to have this  
4 section apply with respect to any qualified employee stock  
5 distribution, gross income shall not include—

6 “(1) so many shares of employer securities re-  
7 ceived by an individual in a qualified employee stock  
8 distribution of such individual’s employer as does  
9 not exceed the maximum stock amount,

10 “(2) any gain on employer securities excluded  
11 from gross income under paragraph (1) if such em-  
12 ployer security is held by such individual for not less  
13 than 10 years, and

14 “(3) in the case of any qualified disposition of  
15 an employer security which is described in para-  
16 graph (2) (and which meets the holding requirement  
17 of such paragraph), any gain on so much stock ac-  
18 quired during the 60-day period beginning on the  
19 date of such disposition as does not exceed the fair  
20 market value of the employer security so disposed  
21 (determined as of the time of disposition).

22 “(b) DEFINITIONS.—For purposes of this section—

23 “(1) EMPLOYER SECURITIES.—The term ‘em-  
24 ployer securities’ has the meaning given such term  
25 in section 409(l), except that paragraph (3) thereof  
26 shall be applied by substituting ‘the date of the

1 qualified employee stock distribution’ for ‘the date of  
2 the acquisition by the tax credit employee stock own-  
3 ership plan’.

4 “(2) QUALIFIED EMPLOYEE STOCK DISTRIBUTU-  
5 TION.—The term ‘qualified employee stock distribu-  
6 tion’ means a distribution by an employer of em-  
7 ployer securities to employees (determined as of the  
8 date of the distribution) of such employer as com-  
9 pensation for services, except that there may be dis-  
10 regarded any employee who (as of the date of the  
11 distribution)—

12 “(A) has not attained age 18,

13 “(B) has not completed 12 months of serv-  
14 ice with the employer,

15 “(C) is a nonresident alien,

16 “(D) is a citizen or resident of a foreign  
17 jurisdiction (including any individual who is  
18 also a citizen or resident of the United States)  
19 if the distribution to such individual is prohib-  
20 ited under the laws of such foreign jurisdiction,

21 “(E) holds 10 percent or more of the out-  
22 standing stock of the employer, or

23 “(F) is an employee whose compensation  
24 from the employer is subject to disclosure under

1 rules promulgated by the Securities and Ex-  
2 change Commission.

3 “(3) MAXIMUM STOCK AMOUNT.—The term  
4 ‘maximum stock amount’ means, with respect to any  
5 distribution, the lowest number of employer securi-  
6 ties received by any employee of the employer in  
7 such distribution.

8 “(4) QUALIFIED DISPOSITION.—

9 “(A) IN GENERAL.—The term ‘qualified  
10 disposition’ means, with respect to the disposi-  
11 tion of any employer security described in para-  
12 graph (2) of subsection (a) (and which meets  
13 the holding requirement of such paragraph)  
14 during any calendar year, the disposition of a  
15 number of shares of such security not in excess  
16 of the excess of—

17 “(i) the applicable percentage of the  
18 aggregate number of shares of such secu-  
19 rity received during the calendar year that  
20 such security was received, over

21 “(ii) the aggregate number of shares  
22 of such security taken into account under  
23 this subparagraph for all prior calendar  
24 years.

1           “(B) APPLICABLE PERCENTAGE.—For  
 2 purposes of clause (i), the applicable percentage  
 3 is, with respect to any calendar year following  
 4 the calendar year in which such security was re-  
 5 ceived, the percentage determined in accordance  
 6 with the following table:

<b>“In the case of:</b>	<b>The applicable percentage is:</b>
The first through tenth such calendar years .....	0 percent
The eleventh such calendar year .....	10 percent
The twelfth such calendar year .....	20 percent
The thirteenth such calendar year .....	30 percent
The fourteenth such calendar year .....	40 percent
The fifteenth such calendar year .....	50 percent
The sixteenth such calendar year .....	60 percent
The seventeenth such calendar year .....	70 percent
The eighteenth such calendar year .....	80 percent
The nineteenth such calendar year .....	90 percent
Any subsequent calendar year .....	100 percent.

7           “(c) EMPLOYMENT TAXES.—Amounts excluded from  
 8 gross income under subsection (a)(1) shall not be taken  
 9 into account as wages for purposes of chapters 21, 22,  
 10 23, 23A, and 24.

11           “(d) COORDINATION WITH SECTION 83.—In the case  
 12 of a transfer of employer securities to which subsection  
 13 (a)(1) applies—

14           “(1) IN GENERAL.—Section 83 shall not apply.

15           “(2) DEDUCTION BY EMPLOYER.—There shall  
 16 be allowed as a deduction under section 162, to the  
 17 person for whom were performed the services in con-  
 18 nection with which such securities were transferred,  
 19 an amount equal to the fair market value of such se-

1 curities (determined as of the time of such transfer).  
2 Such deduction shall be allowed for the taxable year  
3 which includes the date of such transfer.

4 “(e) RECAPTURE IF STOCK DISPOSED DURING RE-  
5 QUIRED HOLDING PERIOD.—If an amount is excluded  
6 from gross income under subsection (a)(1) with respect  
7 to any employer security and the individual disposes of  
8 such security at any time during the 5-year period begin-  
9 ning on the date that such individual received such secu-  
10 rity—

11 “(1) the gross income of such individual for the  
12 taxable year which includes the date of such disposi-  
13 tion shall be increased by the amount so excluded,  
14 and

15 “(2) the tax imposed by this chapter for such  
16 taxable year shall be increased by the sum of the  
17 amounts of tax which would have been imposed  
18 under subchapters A and B of chapters 21 and 22  
19 if subsection (e) had not applied with respect to such  
20 amount.

21 For purposes of this title and the Social Security Act, any  
22 increase in tax under paragraph (2) shall be treated as  
23 imposed under the provision of chapter 21 or 22 with re-  
24 spect to which such increase relates.

1       “(f) BASIS OF STOCK EQUAL TO FAIR MARKET  
2 VALUE AT TIME OF TRANSFER.—Notwithstanding section  
3 1012, in the case of a transfer of employer securities to  
4 which subsection (a)(1) applies, the basis of such securi-  
5 ties in the hands of the transferee immediately after such  
6 transfer shall be equal to the fair market value of such  
7 securities (determined as of the time of such transfer).

8       “(g) AGGREGATION RULE.—Two or more persons  
9 who are treated as a single employer under subsection (b),  
10 (c), (m), or (o) of section 414 shall be treated as a single  
11 employer for purposes of this section.

12       “(h) ELECTION.—The election under subsection (a)  
13 shall be made at such time and in such manner as the  
14 Secretary may prescribe. Once made, such election may  
15 be revoked only with the consent of the Secretary.

16       “(i) REGULATIONS.—The Secretary shall issue such  
17 regulations or other guidance as may be necessary or ap-  
18 propriate to carry out this section, including regulations  
19 or other guidance which—

20               “(1) provide for the application of this section  
21 to stock options,

22               “(2) provide mechanisms by which to satisfy  
23 the requirements of this section in the event that an  
24 employee is inadvertently excluded from a distribu-  
25 tion of employer securities (including a case where

1 a service provider is treated as not an employee by  
2 the employer, but is determined to be an employee),  
3 and

4 “(3) require such reporting under sections 6045  
5 and 6051 with respect to transfers of stock to which  
6 subsection (a) applies as the Secretary determines to  
7 be necessary or appropriate to carry out this sec-  
8 tion.”.

9 (b) CLERICAL AMENDMENT.—The table of section  
10 for such part is amended by inserting after the item relat-  
11 ing to section 83 the following new item:

“Sec. 83A. Qualified stock distributions to employees.”.

12 (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to stock received by employees  
14 after the date of the enactment of this Act.

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