

103D CONGRESS  
1ST SESSION

# S. 948

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

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IN THE SENATE OF THE UNITED STATES

MAY 13 (legislative day, APRIL 19), 1993

Mr. DASCHLE 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 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 thereof and in-  
9 serting “or, to the extent the remainder interest is in  
10 qualified employer securities (as defined in paragraph

1 (3)(C)), is to be transferred to an employee stock owner-  
2 ship plan (as defined in section 4975(e)(7)) in a qualified  
3 gratuitous transfer (as defined in 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           “(vi) such plan provides that no por-  
14 tion of the assets of the plan attributable  
15 to securities acquired by the plan in such  
16 transfer may at any time accrue for the  
17 benefit of any person who is related to the  
18 decedent (within the meaning of section  
19 267(b)) or any person who owns (after ap-  
20 plication of section 318(a)) more than 5  
21 percent of—

22           “(I) any class of outstanding  
23 stock of the corporation which issued  
24 such qualified employer securities or  
25 of any corporation which is a member

1 of the same controlled group of cor-  
2 porations (within the meaning of sec-  
3 tion 409(l)(4)) as such corporation, or

4 “(II) the total value of any class  
5 of outstanding stock of any such cor-  
6 poration; and

7 “(vii) the employer whose employees  
8 are covered by the plan described in this  
9 subparagraph files with the Secretary a  
10 verified written statement consenting to  
11 the application of sections 4978 and  
12 4979A with respect to such employer.

13 For purposes of clause (vi), section 318(a) shall  
14 be applied without regard to the exception in  
15 paragraph (2)(B)(i) thereof.

16 “(B) 5-PERCENT SHAREHOLDERS.—A per-  
17 son shall be treated as failing to meet the more  
18 than 5 percent ownership limitation of subpara-  
19 graph (A)(vi) if such person fails such limita-  
20 tion—

21 “(i) at any time during the 1-year pe-  
22 riod ending on the date of the acquisition  
23 of qualified employer securities by the  
24 plan, or

1           “(ii) on any date as of which qualified  
2           employer securities are allocated to partici-  
3           pants in the plan.

4           “(C) QUALIFIED EMPLOYER SECURI-  
5           TIES.—For purposes of this section, the term  
6           ‘qualified employer securities’ means employer  
7           securities (as defined in section 409(l)) which  
8           are issued by a domestic corporation which has  
9           no outstanding stock which is readily tradable  
10          on an established securities market.

11          “(D) FAILURE TO MEET REQUIRE-  
12          MENTS.—If a plan fails to meet the require-  
13          ments of subparagraph (A)(vi)—

14                 “(i) the plan shall be treated as hav-  
15                 ing distributed to the person described in  
16                 subparagraph (A)(vi) the amount allocated  
17                 to the account of such person in violation  
18                 of subparagraph (A)(vi) at the time of  
19                 such allocation,

20                 “(ii) the provisions of section 4979A  
21                 shall apply, and

22                 “(iii) the statutory period for the as-  
23                 sessment of any tax imposed by section  
24                 4979A shall not expire before the date  
25                 which is 3 years from the later of—

1           “(I) the 1st allocation of em-  
2           ployer securities in connection with a  
3           qualified gratuitous transfer to which  
4           this section applies, or

5           “(II) the date on which the Sec-  
6           retary is notified of such failure.”.

7           (c) CONFORMING AMENDMENTS.—

8           (1) Section 415(e) of such Code is amended—

9           (A) by redesignating paragraph (6) as  
10          paragraph (7), and

11          (B) by inserting after paragraph (5) the  
12          following new paragraph:

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

19          (2) Section 415(c)(6) of such Code is amended  
20          by adding at the end thereof the following new  
21          sentence:

22          “The amount of any qualified gratuitous transfer  
23          (as defined in section 664(d)(3)(A)) allocated to a  
24          participant for any limitation year shall not exceed  
25          the limitations imposed by this section, but such

1 amount shall not be taken into account in determin-  
2 ing whether any other amount exceeds the limita-  
3 tions imposed by this section.”.

4 (3) Section 4979A(b) of such Code is amended  
5 by striking “and” at the end of paragraph (1), by  
6 redesignating paragraph (2) as paragraph (3), and  
7 by inserting after paragraph (1) the following new  
8 paragraph:

9 “(2) any allocation of qualified employer securi-  
10 ties acquired by an employee stock ownership plan  
11 pursuant to a qualified gratuitous transfer, as de-  
12 scribed in section 664(d)(3), which fails to meet the  
13 requirements of section 664(d)(3)(A)(vi), and”.

14 (4) Section 664(d) of such Code, as amended  
15 by subsection (b), is amended by adding at the end  
16 thereof the following new paragraph:

17 “(5) Notwithstanding subsections (d)(1)(B) and  
18 (d)(2)(B), a qualified gratuitous transfer of qualified  
19 employer securities to an employee stock ownership  
20 plan shall be permitted.”.

21 (5) Section 2055(a) of such Code is amended—

22 (A) by striking “or” at the end of para-  
23 graph (3),

24 (B) by striking the period at the end of  
25 paragraph (4) and inserting “; or”, and

1 (C) by inserting after paragraph (4) the  
2 following new paragraph:

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

7 (6) Section 4947(b) of such Code is amended  
8 by adding at the end the following new paragraph:

9 “(4) SECTION 507.—The provisions of section  
10 507(a) shall not apply to a trust which is described  
11 in subsection (a)(2) by reason of a distribution of  
12 qualified employer securities (as defined in section  
13 664(d)(3)(C)) to an employee stock ownership plan  
14 (as defined in section 4975(e)(7)) in a qualified gra-  
15 tuitous transfer (as defined in section 664(d)(3)).”.

16 (7) Section 404(a)(9) of such Code is amended  
17 by adding at the end the following new subpara-  
18 graph:

19 “(C) A qualified gratuitous transfer (as de-  
20 fined in section 664(d)(3)(A)) shall have no ef-  
21 fect on the amount or amounts otherwise de-  
22 ductible under paragraph (3) or (7) or under  
23 this paragraph.”.

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

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

5           (9) Paragraph (4) of section 674(b) of such  
6 Code is amended to read as follows:

7           “(4) POWER TO ALLOCATE AMONG CHARITABLE  
8 BENEFICIARIES.—A power to determine the bene-  
9 ficial enjoyment of the corpus or the income there-  
10 from if the corpus or income is irrevocably payable  
11 for a purpose specified in section 170(c) (relating to  
12 definition of charitable contributions) or to an em-  
13 ployee stock ownership plan (as defined in section  
14 4975(e)(7)) in a qualified gratuitous transfer (as de-  
15 fined in section 664(d)(3)).”.

16           (10) Paragraph (8) of section 2056(b) of such  
17 Code is amended to read as follows:

18           “(8) SPECIAL RULE FOR CHARITABLE REMAIN-  
19 DER TRUSTS.—

20           “(A) IN GENERAL.—If the surviving  
21 spouse of the decedent is the only noncharitable  
22 or nonqualified ESOP beneficiary of a qualified  
23 charitable remainder trust, paragraph (1) shall  
24 not apply to any interest in such trust which

1 passes or has passed from the decedent to such  
2 surviving spouse.

3 “(B) DEFINITIONS.—For purposes of sub-  
4 paragraph (A)—

5 “(i) NONCHARITABLE BENE-  
6 FICIARY.—The term ‘noncharitable bene-  
7 ficiary’ means any beneficiary of the quali-  
8 fied charitable remainder trust other than  
9 an organization described in section  
10 170(c).

11 “(ii) NONQUALIFIED ESOP BENE-  
12 FICIARY.—The term ‘nonqualified ESOP  
13 beneficiary’ means any beneficiary of the  
14 qualified charitable remainder trust other  
15 than an employee stock ownership plan (as  
16 defined in section 4975(e)(7)) that holds a  
17 remainder interest in qualified employer  
18 securities (as defined in section  
19 664(d)(3)(C)) to be transferred to such  
20 plan in a qualified gratuitous transfer (as  
21 defined in section 664(d)(3)).

22 “(iii) QUALIFIED CHARITABLE RE-  
23 MAINDER TRUST.—The term ‘qualified  
24 charitable remainder trust’ means a chari-  
25 table remainder annuity trust or a chari-

1 table remainder unitrust (described in sec-  
2 tion 664).”.

3 (11) Paragraph (7) of section 4975(e) of such  
4 Code is amended to read as follows:

5 “(7) EMPLOYEE STOCK OWNERSHIP PLAN.—  
6 The term ‘employee stock ownership plan’ means a  
7 defined contribution plan—

8 “(A) which is a stock bonus plan which is  
9 qualified, or a stock bonus and a money pur-  
10 chase plan both of which are qualified under  
11 section 401(a) and which are designed to invest  
12 primarily in qualifying employer securities; and

13 “(B) which is otherwise defined in regula-  
14 tions prescribed by the Secretary.

15 A plan shall not be treated as an employee stock  
16 ownership plan unless it meets the requirements of  
17 section 409(h), section 409(o), and, if applicable,  
18 section 409(n) and section 664(d)(3), and, if the em-  
19 ployer has a registration-type class of securities (as  
20 defined in section 409(e)(4)), it meets the require-  
21 ments of section 409(e).”.

22 (12) Subsection (a) of section 4978 of such  
23 Code is amended to read as follows:

24 “(a) TAX ON DISPOSITIONS OF SECURITIES TO  
25 WHICH SECTION 664(d)(3) OR SECTION 1042 APPLIES

1 BEFORE CLOSE OF MINIMUM HOLDING PERIOD.—If,  
2 during the 3-year period after the date on which the em-  
3 ployee stock ownership plan or eligible worker-owned coop-  
4 erative acquired any qualified securities in a sale to which  
5 section 1042 applied or in a qualified gratuitous transfer  
6 to which section 664(d)(3) applied, such plan or coopera-  
7 tive disposes of any qualified securities and—

8           “(1) the total number of shares held by such  
9           plan or cooperative after such disposition is less  
10          than the total number of employer securities held  
11          immediately after such sale or such qualified gratu-  
12          itous transfer, or

13           “(2) except to the extent provided in regula-  
14          tions, the value of qualified securities held by such  
15          plan or cooperative after such disposition is less  
16          than 30 percent of the total value of all employer se-  
17          curities as of such disposition,

18 there is hereby imposed a tax on the disposition equal to  
19 the amount determined under subsection (b).”.

20           (13) Paragraph (2) of section 4978(b) of such  
21 Code is amended to read as follows:

22           “(2) LIMITATION.—The amount realized taken  
23          into account under paragraph (1) shall not exceed  
24          that portion allocable to qualified securities acquired  
25          in the sale to which section 1042 applied or in the

1 qualified gratuitous transfer to which section  
2 664(d)(3) applied determined as if such securities  
3 were disposed of—

4 “(A) first, from section 133 securities (as  
5 defined in section 4978B(e)(2)) acquired during  
6 the 3-year period ending on the date of such  
7 disposition, beginning with the securities first  
8 so acquired,

9 “(B) second, from section 133 securities  
10 (as so defined) acquired before such 3-year pe-  
11 riod unless such securities (or proceeds from  
12 the disposition) have been allocated to accounts  
13 of participants or beneficiaries,

14 “(C) third, from qualified securities to  
15 which section 1042 applied or to which section  
16 664(d)(3) applied during the 3-year period end-  
17 ing on the date of such disposition, beginning  
18 with the securities first so acquired, and

19 “(D) then, from any other employer securi-  
20 ties.

21 If subsection (d) or section 4978B(d) applies to a  
22 disposition, the disposition shall be treated as made  
23 from employer securities in the opposite order of the  
24 preceding sentence.”.

1           (14) Subsection (c) of section 4978 of such  
2 Code is amended to read as follows:

3           “(c) LIABILITY FOR PAYMENT OF TAXES.—The tax  
4 imposed by this section shall be paid by—

5           “(1) the employer, or

6           “(2) the eligible worker-owned cooperative,  
7 that made the written statement described in section  
8 664(d)(3) or in section 1042(b)(3).”.

9           (d) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to transfers made by trusts to, or  
11 for the use of, an employee stock ownership plan after the  
12 date of the enactment of this Act.

○