

115TH CONGRESS  
1ST SESSION

# S. 1444

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

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IN THE SENATE OF THE UNITED STATES

JUNE 27, 2017

Mr. WARNER (for himself and Mr. HELLER) 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 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 Employ-  
5 ees through Stock Ownership Act”.

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

7 (a) IN GENERAL.—Section 83 of the Internal Rev-  
8 enue Code of 1986 is amended by adding at the end the  
9 following new subsection:

10 “(i) QUALIFIED EQUITY GRANTS.—

1           “(1) IN GENERAL.—For purposes of this sub-  
2 title—

3           “(A) TIMING OF INCLUSION.—If qualified  
4 stock is transferred to a qualified employee who  
5 makes an election with respect to such stock  
6 under this subsection, subsection (a) shall be  
7 applied by including the amount determined  
8 under such subsection with respect to such  
9 stock in income of the employee in the taxable  
10 year determined under subparagraph (B) in lieu  
11 of the taxable year described in subsection (a).

12           “(B) TAXABLE YEAR DETERMINED.—The  
13 taxable year determined under this subpara-  
14 graph is the taxable year of the employee which  
15 includes the earliest of—

16           “(i) except as provided in subpara-  
17 graph (C), the first date such qualified  
18 stock becomes transferable (including, sole-  
19 ly for purposes of this clause, becoming  
20 transferable to the employer),

21           “(ii) the date the employee first be-  
22 comes an excluded employee,

23           “(iii) except as provided in subpara-  
24 graph (C), the first date on which any  
25 stock of the corporation which issued the

1 qualified stock becomes readily tradable on  
2 an established securities market (as deter-  
3 mined by the Secretary, but not including  
4 any market unless such market is recog-  
5 nized as an established securities market  
6 by the Secretary for purposes of a provi-  
7 sion of this title other than this sub-  
8 section),

9 “(iv) the date that is 7 years after the  
10 first date the rights of the employee in  
11 such stock are transferable or are not sub-  
12 ject to a substantial risk of forfeiture,  
13 whichever occurs earlier, or

14 “(v) the date on which the employee  
15 revokes (at such time and in such manner  
16 as the Secretary may provide) the election  
17 under this subsection with respect to such  
18 stock.

19 “(C) SPECIAL RULE FOR STOCK SUBJECT  
20 TO LOCK-UP PERIODS.—

21 “(i) IN GENERAL.—In the case of any  
22 qualified stock which is subject to a lock-  
23 up period—

1                   “(I) such stock shall not be treat-  
2                   ed as transferable under subpara-  
3                   graph (B)(i), and

4                   “(II) such stock shall not be  
5                   treated as readily tradable on an es-  
6                   tablished securities market under sub-  
7                   paragraph (B)(iii),

8                   before the end of the lock-up period.

9                   “(ii) LOCK-UP PERIOD.—For purposes  
10                  of this subparagraph, the term ‘lock-up pe-  
11                  riod’ means any period (not to exceed 180  
12                  days)—

13                   “(I) which begins on the date of  
14                   an initial public offering, and

15                   “(II) during which the qualified  
16                   employee agrees, pursuant to an un-  
17                   derwriting agreement entered into  
18                   pursuant to such initial public offer-  
19                   ing, not to sell, otherwise dispose of,  
20                   or hedge any qualified stock.

21                  “(2) QUALIFIED STOCK.—

22                   “(A) IN GENERAL.—For purposes of this  
23                   subsection, the term ‘qualified stock’ means,  
24                   with respect to any qualified employee, any

1 stock in a corporation which is the employer of  
2 such employee, if—

3 “(i) such stock is received—

4 “(I) in connection with the exer-  
5 cise of an option, or

6 “(II) in settlement of a restricted  
7 stock unit, and

8 “(ii) such option or restricted stock  
9 unit was granted by the corporation—

10 “(I) in connection with the per-  
11 formance of services as an employee,  
12 and

13 “(II) during a calendar year in  
14 which such corporation was an eligible  
15 corporation.

16 “(B) LIMITATION.—The term ‘qualified  
17 stock’ shall not include any stock if the em-  
18 ployee may sell such stock to, or otherwise re-  
19 ceive cash in lieu of stock from, the corporation  
20 at the time that the rights of the employee in  
21 such stock first become transferable or not sub-  
22 ject to a substantial risk of forfeiture.

23 “(C) ELIGIBLE CORPORATION.—For pur-  
24 poses of subparagraph (A)(ii)(II)—

1           “(i) IN GENERAL.—The term ‘eligible  
2 corporation’ means, with respect to any  
3 calendar year, any corporation if—

4                   “(I) no stock of such corporation  
5                   (or any predecessor of such corpora-  
6                   tion) is readily tradable on an estab-  
7                   lished securities market (as deter-  
8                   mined under paragraph (1)(B)(iii))  
9                   during any preceding calendar year,  
10                  and

11                  “(II) such corporation has a writ-  
12                  ten plan for such calendar year which  
13                  meets the requirements of clause (ii).

14           “(ii) PLAN REQUIREMENTS.—A writ-  
15           ten plan meets the requirements of this  
16           clause with respect to any calendar year  
17           if—

18                   “(I) not less than 80 percent of  
19                   all employees who first become em-  
20                   ployees of such corporation during  
21                   such calendar year are granted stock  
22                   options, or restricted stock units, with  
23                   the same rights and privileges to re-  
24                   ceive qualified stock, and

1           “(II) not less than 80 percent of  
2           all employees who were employees of  
3           such corporation during the preceding  
4           calendar year hold stock options, or  
5           restricted stock units, with the same  
6           rights and privileges to receive quali-  
7           fied stock.

8           “(iii) SAME RIGHTS AND PRIVI-  
9           LEGES.—For purposes of clause (ii)—

10           “(I) except as provided in sub-  
11           clauses (II) and (III), the determina-  
12           tion of rights and privileges with re-  
13           spect to stock shall be made in a simi-  
14           lar manner as under section  
15           423(b)(5),

16           “(II) employees shall not fail to  
17           be treated as having the same rights  
18           and privileges to receive qualified  
19           stock solely because the number of  
20           shares available to all employees is not  
21           equal in amount, so long as the num-  
22           ber of shares available to each em-  
23           ployee is more than a de minimis  
24           amount, and

1           “(III) rights and privileges with  
2           respect to the exercise of an option  
3           shall not be treated as the same as  
4           rights and privileges with respect to  
5           the settlement of a restricted stock  
6           unit.

7           “(iv) EMPLOYEE.—For purposes of  
8           clause (ii), the term ‘employee’ shall not  
9           include—

10           “(I) any employee described in  
11           section 4980E(d)(4),

12           “(II) any excluded employee, and

13           “(III) with respect to any cor-  
14           poration for any calendar year, any  
15           individual who provides services for  
16           such corporation in the United States  
17           (or any possession of the United  
18           States) for a period of less than 90  
19           days during such calendar year.

20           “(v) SPECIAL RULE FOR CALENDAR  
21           YEARS BEFORE 2020.—In the case of any  
22           calendar year beginning before January 1,  
23           2020, clause (ii) shall be applied without  
24           regard to whether the rights and privileges

1 with respect to the qualified stock are the  
2 same.

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

5 “(A) IN GENERAL.—The term ‘qualified  
6 employee’ means any individual who—

7 “(i) is not an excluded employee, and

8 “(ii) agrees in the election made  
9 under this subsection to meet such require-  
10 ments as are determined by the Secretary  
11 to be necessary to ensure that the with-  
12 holding requirements of the corporation  
13 under chapter 24 with respect to the quali-  
14 fied stock are met.

15 “(B) EXCLUDED EMPLOYEE.—The term  
16 ‘excluded employee’ means, with respect to any  
17 corporation, any individual—

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

22 “(ii) who is or has been at any prior  
23 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 was for any of the 10 pre-  
12          ceding taxable years one of the 4 highest  
13          compensated officers of such corporation,  
14          determined with respect to each such tax-  
15          able year on the basis of the shareholder  
16          disclosure rules for compensation under  
17          the Securities Exchange Act of 1934 (as if  
18          such rules 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 date the rights of the em-  
24                 ployee in such stock are transferable or are not  
25                 subject to a substantial risk of forfeiture,

1           whichever occurs earlier, and shall be made in  
2           a manner similar to the manner in which an  
3           election 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 re-  
9                   spect 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 mar-  
13                   ket (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  
18                   year preceding the calendar year which in-  
19                   cludes the first date the rights of the em-  
20                   ployee in such stock are transferable or are  
21                   not subject to a substantial risk of for-  
22                   feiture, unless—

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

8                   “(i) DEFERRAL STOCK.—For pur-  
9                   poses of this paragraph, the term ‘deferral  
10                  stock’ means stock with respect to which  
11                  an election is in effect under this sub-  
12                  section.

13                  “(ii) DEFERRAL STOCK WITH RE-  
14                  SPECT TO ANY INDIVIDUAL NOT TAKEN  
15                  INTO ACCOUNT IF INDIVIDUAL HOLDS DE-  
16                  FERRAL STOCK WITH LONGER DEFERRAL  
17                  PERIOD.—Stock purchased by a corpora-  
18                  tion from any individual shall not be treat-  
19                  ed as deferral stock for purposes of sub-  
20                  paragraph (B)(iii) if such individual (im-  
21                  mediately after such purchase) holds any  
22                  deferral stock with respect to which an  
23                  election has been in effect under this sub-  
24                  section for a longer period than the elec-

1                   tion with respect to the stock so pur-  
2                   chased.

3                   “(iii) PURCHASE OF ALL OUT-  
4                   STANDING DEFERRAL STOCK.—The re-  
5                   quirements of subclauses (I) and (II) of  
6                   subparagraph (B)(iii) shall be treated as  
7                   met if the stock so purchased includes all  
8                   of the corporation’s outstanding deferral  
9                   stock.

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

22                  “(5) CONTROLLED GROUPS.—For purposes of  
23                  this subsection, all corporations which are treated as  
24                  a single employer under section 414(b) shall be  
25                  treated as one corporation.

1           “(6) NOTICE REQUIREMENT.—Any corporation  
2           which transfers qualified stock to a qualified em-  
3           ployee shall, at the time that (or a reasonable period  
4           before) an amount attributable to such stock would  
5           (but for this subsection) first be includible in the  
6           gross income of such employee—

7                   “(A) certify to such employee that such  
8                   stock is qualified stock, and

9                   “(B) notify such employee—

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

13                   “(ii) that, if the employee makes such  
14                   an election—

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

24                           “(II) the amount of such income  
25                           recognized at the end of the deferral

1 period will be subject to withholding  
2 under section 3401(i) at the rate de-  
3 termined under section 3402(t), and

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

8 (b) WITHHOLDING.—

9 (1) TIME OF WITHHOLDING.—Section 3401 of  
10 the Internal Revenue Code of 1986 is amended by  
11 adding at the end the following new subsection:

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

17 “(1) received on the earliest date described in  
18 section 83(i)(1)(B), and

19 “(2) in an amount equal to the amount in-  
20 cluded in income under section 83 for the taxable  
21 year which includes such date.”.

22 (2) AMOUNT OF WITHHOLDING.—Section 3402  
23 of such Code is amended by adding at the end the  
24 following new subsection:

1       “(t) RATE OF WITHHOLDING FOR CERTAIN  
2 STOCK.—In the case of any qualified stock (as defined in  
3 section 83(i)(2)) with respect to which an election is made  
4 under section 83(i)—

5           “(1) the rate of tax under subsection (a) shall  
6 not be less than the maximum rate of tax in effect  
7 under section 1, and

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

11       (c) COORDINATION WITH OTHER DEFERRED COM-  
12 PENSATION RULES.—

13           (1) ELECTION TO APPLY DEFERRAL TO STATU-  
14 TORY OPTIONS.—

15           (A) INCENTIVE STOCK OPTIONS.—Section  
16 422(b) of the Internal Revenue Code of 1986 is  
17 amended by adding at the end the following:  
18 “Such term shall not include any option if an  
19 election is made under section 83(i) with re-  
20 spect to the stock received in connection with  
21 the exercise of such option.”.

22           (B) EMPLOYEE STOCK PURCHASE  
23 PLANS.—Section 423 of such Code is amend-  
24 ed—

1 (i) by adding at the end of subsection  
2 (a) the following flush sentence:

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

6 (ii) in subsection (b)(5), by striking  
7 “and” before “the plan” and by inserting  
8 “, and the rules of section 83(i) shall apply  
9 in determining which employees have a  
10 right to make an election under such sec-  
11 tion” before the semicolon at the end.

12 (C) CONFORMING AMENDMENTS.—

13 (i) Section 3121(a)(22)(A) of the In-  
14 ternal Revenue Code of 1986 is amended  
15 by inserting “(other than qualified stock  
16 (as defined in section 83(i)(2)) with re-  
17 spect to which an election is in effect  
18 under section 83(i))” after “a share of  
19 stock”.

20 (ii) Section 209(a)(19)(A) of the So-  
21 cial Security Act (42 U.S.C. 409) is  
22 amended by “(other than qualified stock  
23 (as defined in section 83(i)(2) of the Inter-  
24 nal Revenue Code of 1986) with respect to  
25 which an election is in effect under section

1           83(i) of such Code)” after “a share of  
2           stock”.

3           (iii) Section 3231(e)(12)(A) of the In-  
4           ternal Revenue Code of 1986 is amended  
5           by inserting “(other than qualified stock  
6           (as defined in section 83(i)(2)) with re-  
7           spect to which an election is in effect  
8           under section 83(i))” after “a share of  
9           stock”.

10          (iv) Section 3306(b)(19)(A) of the In-  
11          ternal Revenue Code of 1986 is amended  
12          by inserting “(other than qualified stock  
13          (as defined in section 83(i)(2)) with re-  
14          spect to which an election is in effect  
15          under section 83(i))” after “a share of  
16          stock”.

17          (2) TREATMENT UNDER NONQUALIFIED DE-  
18          FERRED COMPENSATION PLAN.—Subsection (d) of  
19          section 409A of such Code is amended by adding at  
20          the end the following new paragraph:

21                 “(7) TREATMENT OF QUALIFIED STOCK.—An  
22          arrangement under which an employee may receive  
23          qualified stock (as defined in section 83(i)(2)) shall  
24          not be treated as a nonqualified deferred compensa-  
25          tion plan, or as failing to meet the requirements of

1 this section, solely because of an employee’s election,  
2 or ability to make an election, to defer recognition  
3 of income under section 83(i).”.

4 (d) INFORMATION REPORTING.—Section 6051(a) of  
5 the Internal Revenue Code of 1986 is amended by striking  
6 “and” at the end of paragraph (14), by striking the period  
7 at the end of paragraph (15) and inserting a comma, and  
8 by inserting after paragraph (15) the following new para-  
9 graphs:

10 “(16) the amount includible in gross income  
11 under subparagraph (A) of section 83(i)(1) with re-  
12 spect to an event described in subparagraph (B) of  
13 such section which occurs in such calendar year, and

14 “(17) the aggregate amount of income which is  
15 being deferred pursuant to elections under section  
16 83(i), determined as of the close of the calendar  
17 year.”.

18 (e) PENALTY FOR FAILURE OF EMPLOYER TO PRO-  
19 VIDE NOTICE OF TAX CONSEQUENCES.—Section 6652 of  
20 the Internal Revenue Code of 1986 is amended by adding  
21 at the end the following new subsection:

22 “(p) FAILURE TO PROVIDE NOTICE UNDER SECTION  
23 83(i).—In the case of each failure to provide a notice as  
24 required by section 83(i)(6), at the time prescribed there-  
25 for, unless it is shown that such failure is due to reason-

1 able cause and not to willful neglect, there shall be paid,  
2 on notice and demand of the Secretary and in the same  
3 manner as tax, by the person failing to provide such no-  
4 tice, an amount equal to \$100 for each such failure, but  
5 the total amount imposed on such person for all such fail-  
6 ures during any calendar year shall not exceed \$50,000.”.

7 (f) GUIDANCE.—Not later than December 31, 2018,  
8 the Secretary of the Treasury (or the Secretary’s delegate)  
9 shall issue guidance with respect to section 83(i) of the  
10 Internal Revenue Code of 1986 (as added by this section),  
11 including guidance relating to—

12 (1) the determination the time stock first be-  
13 comes transferable under such section;

14 (2) the determination of rights and privileges  
15 with respect to stock under paragraph (2)(C)(iii) of  
16 such section; and

17 (3) the requirements of paragraphs  
18 (2)(C)(i)(II) and (6) of such section.

19 (g) EFFECTIVE DATES.—

20 (1) IN GENERAL.—Except as provided in para-  
21 graph (2), the amendments made by this section  
22 shall apply to stock attributable to options exercised,  
23 or restricted stock units settled, after December 31,  
24 2019.

1           (2) REQUIREMENT TO PROVIDE NOTICE.—The  
2           amendments made by subsection (e) shall apply to  
3           failures after December 31, 2019.

○