



ABA Subchapter S News



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Subchapter S Bill Introduced in Congress

On September 16, H.R. 3586 – The S Corporation ESOP Promotion and Expansion Act of 2009 - was introduced by Reps. Ron Kind (D-Wis.) and Earl Blumenauer (D-Ore.). The introductory section of the bill notes that because of the numerous incentives that Congress has provided to encourage businesses to become ESOP-owned, many S corporations are currently owned by their employees through employee stock ownership plans (ESOPs). This type of ownership structure should be encouraged because it provides the employee-owners of the S corporation ESOP valuable qualified retirement savings accounts. The goal of the bill is to “both preserve and foster employee ownership of S corporations” by expanding the availability of ESOPs in S corporations. The goal will be achieved through the following provisions:

- The nonrecognition of gain provision in the code relating to the sale of securities by a C corporation to an ESOP is amended to allow nonrecognition of gain treatment when an S corporation sells securities to an ESOP. In general, when certain conditions are met, a domestic C corporation that sells securities to an employee ESOP will not recognize gain on such sale. This current law provision does not apply to a sub S corporation that sells securities to an ESOP;
- A bank that receives interest payments with respect to a loan to an S corporation sponsored ESOP that is used to finance the purchase of employer securities would be allowed a 50% deduction allowance on such interest payments;
- If employer securities are transferred to an S corporation sponsored ESOP – by a decedent by gift or will; or by gift by the estate of the decedent – the ESOP, rather than the executor of the estate of the decedent will be liable for the tax required to be paid with respect to such transfer;
- Where employer securities, which are includable in the gross estate of a decedent, are sold to an S corporation sponsored ESOP prior to the due date for filing an Estate tax return, the value of the estate will be determined by deducting 50% of the gross proceeds of the sale from the gross estate for purposes of determining the tax due on the return;
- Shortly after the legislation is passed, the S corporation ESOP Assistance Office will be created for the purpose of providing technical assistance to S corporation sponsored ESOPs and educating taxpayers on the benefits of employee ownership of S corporations through ESOPs.

ABA supports legislation that will enhance and promote flexible and less restrictive ownership structures of S corporations. Click [here](#) to view the text of H.R. 3586.



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