

107TH CONGRESS
2^D SESSION

H. R. 5088

To amend the Internal Revenue Code of 1986 to encourage more responsible corporate governance.

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2002

Mr. MATSUI (for himself, Mr. GEPHARDT, Ms. PELOSI, Mr. RANGEL, Mr. NEAL of Massachusetts, and Mr. DOGGETT) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to encourage more responsible corporate governance.

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 “Executive Account-
5 ability Act of 2002”.

1 **SEC. 2. PERFORMANCE-BASED COMPENSATION EXCEPTION**
2 **TO \$1,000,000 LIMITATION ON DEDUCTIBLE**
3 **COMPENSATION NOT TO APPLY IN CERTAIN**
4 **CASES.**

5 (a) IN GENERAL.—Paragraph (4) of section 162(m)
6 of the Internal Revenue Code of 1986 is amended by add-
7 ing at the end the following new subparagraph:

8 “(G) CERTAIN FACTORS NOT PERMITTED
9 TO BE TAKEN INTO ACCOUNT IN DETERMINING
10 WHETHER PERFORMANCE GOALS ARE MET.—
11 Subparagraph (C) shall not apply if, in deter-
12 mining whether the performance goals are met,
13 any of the following are taken into account:

14 “(i) Cost savings as a result of
15 changes to any qualified employer plan (as
16 defined in section 4972(d)).

17 “(ii) Excess assets of such a plan or
18 earnings thereon.

19 “(iii) Any excess of the amount as-
20 sumed to be the return on the assets of
21 such a plan over the actual return on such
22 assets.”

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to taxable years beginning after
25 the date of the enactment of this Act.

1 **SEC. 3. INCLUSION IN GROSS INCOME OF FUNDED DE-**
 2 **FERRED COMPENSATION OF CORPORATE IN-**
 3 **SIDERS IF CORPORATION FUNDS DEFINED**
 4 **CONTRIBUTION PLAN WITH EMPLOYER**
 5 **STOCK.**

6 (a) IN GENERAL.—Subpart A of part I of subchapter
 7 D of chapter 1 of the Internal Revenue Code of 1986 is
 8 amended by adding at the end the following new section:

9 **“SEC. 409A. DENIAL OF DEFERRAL FOR FUNDED DEFERRED**
 10 **COMPENSATION OF CORPORATE INSIDERS IF**
 11 **CORPORATION FUNDS DEFINED CONTRIBU-**
 12 **TION PLAN WITH EMPLOYER STOCK.**

13 “(a) IN GENERAL.—If an employer maintains a de-
 14 fined contribution plan to which employer contributions
 15 are made in the form of employer stock and such employer
 16 maintains a funded deferred compensation plan—

17 “(1) compensation of any corporate insider
 18 which is deferred under such funded deferred com-
 19 pensation plan shall be included in the gross income
 20 of the insider or beneficiary for the 1st taxable year
 21 in which there is no substantial risk of forfeiture of
 22 the rights to such compensation, and

23 “(2) the tax treatment of any amount made
 24 available under the plan to a corporate insider or
 25 beneficiary shall be determined under section 72 (re-
 26 lating to annuities, etc.).

1 “(b) FUNDED DEFERRED COMPENSATION PLAN.—

2 For purposes of this section—

3 “(1) IN GENERAL.—The term ‘funded deferred
4 compensation plan’ means any plan providing for the
5 deferral of compensation unless—

6 “(A) the employee’s rights to the com-
7 pensation deferred under the plan are no great-
8 er than the rights of a general creditor of the
9 employer, and

10 “(B) all amounts set aside (directly or in-
11 directly) for purposes of paying the deferred
12 compensation, and all income attributable to
13 such amounts, remain (until made available to
14 the participant or other beneficiary) solely the
15 property of the employer (without being re-
16 stricted to the provision of benefits under the
17 plan), and

18 “(C) the amounts referred to in subpara-
19 graph (B) are available to satisfy the claims of
20 the employer’s general creditors at all times
21 (not merely after bankruptcy or insolvency).

22 Such term shall not include a qualified employer
23 plan.

24 “(2) SPECIAL RULES.—

1 “(A) EMPLOYEE’S RIGHTS.—A plan shall
2 be treated as failing to meet the requirements
3 of paragraph (1)(A) unless—

4 “(i) the compensation deferred under
5 the plan is paid only upon separation from
6 service, death, or at a specified time (or
7 pursuant to a fixed schedule), and

8 “(ii) the plan does not permit the ac-
9 celeration of the time such deferred com-
10 pensation is paid by reason of any event.

11 If the employer and employee agree to a modi-
12 fication of the plan that accelerates the time for
13 payment of any deferred compensation, then all
14 compensation previously deferred under the
15 plan shall be includible in gross income for the
16 taxable year during which such modification
17 takes effect and the taxpayer shall pay interest
18 at the underpayment rate on the underpay-
19 ments that would have occurred had the de-
20 ferred compensation been includible in gross in-
21 come when deferred.

22 “(B) CREDITOR’S RIGHTS.—A plan shall
23 be treated as failing to meet the requirements
24 of paragraph (1)(B) with respect to amounts
25 set aside in a trust unless—

1 “(i) the employee has no beneficial in-
2 terest in the trust,

3 “(ii) assets in the trust are available
4 to satisfy claims of general creditors at all
5 times (not merely after bankruptcy or in-
6 solvency), and

7 “(iii) there is no factor (such as the
8 location of the trust outside the United
9 States) that would make it more difficult
10 for general creditors to reach the assets in
11 the trust than it would be if the trust as-
12 sets were held directly by the employer in
13 the United States.

14 “(c) CORPORATE INSIDER.—For purposes of this sec-
15 tion, the term ‘corporate insider’ means, with respect to
16 a corporation, any individual who is subject to the require-
17 ments of section 16(a) of the Securities Exchange Act of
18 1934 with respect to such corporation.

19 “(d) OTHER DEFINITIONS.—For purposes of this
20 section—

21 “(1) PLAN INCLUDES ARRANGEMENTS, ETC.—
22 The term ‘plan’ includes any agreement or arrange-
23 ment.

24 “(2) SUBSTANTIAL RISK OF FORFEITURE.—The
25 rights of a person to compensation are subject to a

1 substantial risk of forfeiture if such person’s rights
 2 to such compensation are conditioned upon the fu-
 3 ture performance of substantial services by any indi-
 4 vidual.”

5 (b) CLERICAL AMENDMENT.—The table of sections
 6 for such subpart A is amended by adding at the end the
 7 following new item:

“Sec. 409A. Denial of deferral for funded deferred compensation
 of corporate insiders if corporation funds defined
 contribution plan with employer stock.”

8 (c) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to amounts deferred after the date
 10 of the enactment of this Act.

11 **SEC. 4. INCLUSION IN INCOME OF CERTAIN DEFERRED**
 12 **AMOUNTS OF INSIDERS OF CORPORATIONS**
 13 **WHICH EXPATRIATE TO AVOID UNITED**
 14 **STATES INCOME TAX.**

15 (a) IN GENERAL.—Part II of subchapter B of chap-
 16 ter 1 of the Internal Revenue Code of 1986 (relating to
 17 items specifically included in gross income) is amended by
 18 adding at the end the following new section:

19 **“SEC. 91. UNREALIZED GAIN ON STOCK OPTIONS OF INSID-**
 20 **ERS OF CORPORATIONS WHICH EXPATRIATE**
 21 **TO AVOID UNITED STATES INCOME TAX.**

22 “(a) IN GENERAL.—In the case of a corporate insider
 23 of any expatriate corporation, the gross income of such
 24 insider (for the taxable year during which such corpora-

1 tion becomes an expatriate corporation) shall include as
2 ordinary income the net unrealized built-in gain on options
3 held by such insider to acquire stock in such corporation
4 or in any member of the expanded affiliated group which
5 includes such corporation. Proper adjustments shall be
6 made in the amount of any gain or loss subsequently real-
7 ized with respect to such options for any amount included
8 in gross income under the preceding sentence.

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

10 “(1) CORPORATE INSIDER.—The term ‘cor-
11 porate insider’ means, with respect to a corporation,
12 any individual who is subject to the requirements of
13 section 16(a) of the Securities Exchange Act of
14 1934 with respect to such corporation.

15 “(2) EXPATRIATE CORPORATION.—

16 “(A) IN GENERAL.—The term ‘expatriate
17 corporation’ means the acquiring corporation in
18 a corporate expatriation transaction.

19 “(B) CORPORATE EXPATRIATION TRANS-
20 ACTION.—For purposes of this paragraph—

21 “(i) IN GENERAL.—The term ‘cor-
22 porate expatriation transaction’ means any
23 transaction if—

24 “(I) a nominally foreign corpora-
25 tion (referred to in this subparagraph

1 as the ‘acquiring corporation’) ac-
2 quires, as a result of such transaction,
3 directly or indirectly substantially all
4 of the properties held directly or indi-
5 rectly by a domestic corporation, and

6 “(II) immediately after the trans-
7 action, more than 80 percent of the
8 stock (by vote or value) of the acquir-
9 ing corporation is held by former
10 shareholders of the domestic corpora-
11 tion by reason of holding stock in the
12 domestic corporation.

13 “(ii) LOWER STOCK OWNERSHIP RE-
14 QUIREMENT IN CERTAIN CASES.—Sub-
15 clause (II) of clause (i) shall be applied by
16 substituting ‘50 percent’ for ‘80 percent’
17 with respect to any nominally foreign cor-
18 poration if—

19 “(I) such corporation does not
20 have substantial business activities
21 (when compared to the total business
22 activities of the expanded affiliated
23 group) in the foreign country in which
24 or under the law of which the corpora-
25 tion is created or organized, and

1 “(II) the stock of the corporation
2 is publicly traded and the principal
3 market for the public trading of such
4 stock is in the United States.

5 “(iii) PARTNERSHIP TRANSACTIONS.—
6 The term ‘corporate expatriation trans-
7 action’ includes any transaction if—

8 “(I) a nominally foreign corpora-
9 tion (referred to in this paragraph as
10 the ‘acquiring corporation’) acquires,
11 as a result of such transaction, di-
12 rectly or indirectly properties consti-
13 tuting a trade or business of a domes-
14 tic partnership,

15 “(II) immediately after the trans-
16 action, more than 80 percent of the
17 stock (by vote or value) of the acquir-
18 ing corporation is held by former
19 partners of the domestic partnership
20 or related foreign partnerships (deter-
21 mined without regard to stock of the
22 acquiring corporation which is sold in
23 a public offering related to the trans-
24 action), and

1 “(III) the acquiring corporation
2 meets the requirements of subclauses
3 (I) and (II) of clause (ii).

4 “(iv) SPECIAL RULES.—For purposes
5 of this subparagraph—

6 “(I) a series of related trans-
7 actions shall be treated as 1 trans-
8 action, and

9 “(II) stock held by members of
10 the expanded affiliated group which
11 includes the acquiring corporation
12 shall not be taken into account in de-
13 termining ownership.

14 “(v) NOMINALLY FOREIGN CORPORA-
15 TION.—The term ‘nominally foreign cor-
16 poration’ means any corporation which
17 would (but for this subparagraph) be treat-
18 ed as a foreign corporation.

19 “(3) NET REALIZED BUILT-IN GAIN.—The term
20 ‘net unrealized built-in gain’ means, with respect to
21 options to acquire stock in any corporation, the
22 amount which would be required to be included in
23 gross income were such options exercised.

24 “(4) EXPANDED AFFILIATED GROUP.—The
25 term ‘expanded affiliated group’ means an affiliated

1 group (as defined in section 1504(a) without regard
2 to section 1504(b)).”

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for such part II is amended by adding at the end the fol-
5 lowing new item:

“Sec. 91. Certain deferred amounts of insiders of corporations
which expatriate to avoid United States income
tax.”

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply with respect to corporate expatria-
8 tion transactions completed after September 11, 2001,
9 and to taxable years ending after such date.

10 **SEC. 5. GOLDEN PARACHUTE EXCISE TAX TO APPLY TO DE-**
11 **FERRED COMPENSATION PAID BY CORPORA-**
12 **TION AFTER MAJOR DECLINE IN STOCK**
13 **VALUE OR CORPORATION DECLARES BANK-**
14 **RUPTCY.**

15 (a) IN GENERAL.—Section 4999 of the Internal Rev-
16 enue Code of 1986 (relating to golden parachute pay-
17 ments) is amended by redesignating subsection (c) as sub-
18 section (d) and by inserting after subsection (b) the fol-
19 lowing new subsection:

20 “(c) TAX TO APPLY TO DEFERRED COMPENSATION
21 PAID AFTER MAJOR STOCK VALUE DECLINE OR BANK-
22 RUPTCY.—

23 “(1) IN GENERAL.—For purposes of this sec-
24 tion, the term ‘excess parachute payment’ includes

1 severance pay, and any other payment of deferred
2 compensation, which is received by a corporate in-
3 sider after the date that the insider ceases to be em-
4 ployed by the corporation if—

5 “(A) there is at least a 75-percent decline
6 in the value of the stock in such corporation
7 during the 1-year period ending on such date,
8 or

9 “(B) such corporation becomes a debtor in
10 a title 11 or similar case (as defined in section
11 368(a)(3)(A)) during the 180-day period begin-
12 ning 90 days before such date.

13 Such term shall not include any payment from a
14 qualified employer plan.

15 “(2) CORPORATE INSIDER.—For purposes of
16 paragraph (1), the term ‘corporate insider’ means,
17 with respect to a corporation, any individual who is
18 subject to the requirements of section 16(a) of the
19 Securities Exchange Act of 1934 with respect to
20 such corporation.”

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply with respect to cessations of em-
23 ployment after the date of the enactment of this Act.

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