

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5204

To amend the Internal Revenue Code of 1986 to provide incentives for awards to an employee under a performance-based reward plan and to direct the Administrator of the Small Business Administration to establish a program to promote implementation of performance-based reward plans and employee decisionmaking participation programs, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 1994

Mr. WYDEN introduced the following bill; which was referred jointly to the Committees on Ways and Means, Education and Labor, and Small Business

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## A BILL

To amend the Internal Revenue Code of 1986 to provide incentives for awards to an employee under a performance-based reward plan and to direct the Administrator of the Small Business Administration to establish a program to promote implementation of performance-based reward plans and employee decisionmaking participation programs, and for other purposes.

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 “Employee Partnership  
5 Reward Act of 1994”.

1 **TITLE I—REFUNDABLE INCOME**  
2 **TAX CREDIT FOR**  
3 **NONDEFERRED DISTRIBUTIONS FROM PERFORMANCE-**  
4 **BASED REWARD PLANS.**

6 **SEC. 101. REFUNDABLE INCOME TAX CREDIT FOR**  
7 **NONDEFERRED DISTRIBUTIONS FROM PER-**  
8 **FORMANCE-BASED REWARD PLANS.**

9 (a) IN GENERAL.—Subpart C of part IV of sub-  
10 chapter A of chapter 1 of the Internal Revenue Code of  
11 1986 (relating to refundable credits) is amended by redес-  
12 ignating section 35 as section 36 and by inserting after  
13 section 34 the following new section:

14 **“SEC. 35. NONDEFERRED DISTRIBUTIONS FROM PERFORM-**  
15 **ANCE-BASED REWARD PLANS.**

16 “(a) GENERAL RULE.—In the case of an eligible em-  
17 ployee, there shall be allowed as a credit against the tax  
18 imposed by this subtitle for the taxable year an amount  
19 equal to 10 percent of the value of the rewards received  
20 by such employee from a qualified performance-based re-  
21 ward plan for any plan year ending with or within such  
22 taxable year. The preceding sentence shall not apply to  
23 any reward with respect to a plan year which is made more  
24 than 2 months following the close of such plan year.

25 “(b) LIMITATIONS ON AMOUNT OF CREDIT.—

1           “(1) MAXIMUM CREDIT.—The credit allowed by  
2           subsection (a) for the taxable year shall not exceed  
3           \$500 with respect to each eligible employee.

4           “(2) MINIMUM CREDIT.—The credit allowed by  
5           subsection (a) for the taxable year shall not be less  
6           than \$100.

7           “(3) COST-OF-LIVING ADJUSTMENT.—In the  
8           case of any calendar year after 1994, each dollar  
9           amount in paragraph (1) or (2) shall be increased  
10          by an amount equal to—

11                   “(A) such dollar amount, multiplied by

12                   “(B) the cost-of-living adjustment deter-  
13                   mined under section 1(f)(3) for such calendar  
14                   year by substituting ‘1993’ for ‘1992’ in sub-  
15                   paragraph (B) thereof.

16          If any increase under the preceding sentence is not  
17          a multiple of \$50, such increase shall be rounded to  
18          the nearest multiple of \$50.

19          “(c) ELIGIBLE EMPLOYEE.—For purposes of this  
20          section, the term ‘eligible employee’ means any employee  
21          of an employer who is a participant in a qualified perform-  
22          ance-based reward plan of such employer. Such term shall  
23          not include any highly compensated employee (within the  
24          meaning of section 414(q)) and shall not include any em-  
25          ployee engaged in sales.

1       “(d) QUALIFIED PERFORMANCE-BASED REWARD  
2 PLAN.—For purposes of this section, the term ‘qualified  
3 performance-based reward plan’ means a written plan  
4 maintained by an employer—

5           “(1) the principal purpose of which is to im-  
6 prove the performance of the organization and re-  
7 ward employees as a function of that improvement,  
8 and

9           “(2) which meets—

10           “(A) the determination requirements of  
11 subsection (e),

12           “(B) the allocation requirements of sub-  
13 section (f),

14           “(C) the distribution requirements of sub-  
15 section (g),

16           “(D) the nondiscrimination requirements  
17 of subsection (h), and

18           “(E) the plan approval requirements of  
19 subsection (i).

20       “(e) DETERMINATION REQUIREMENTS.—A plan  
21 meets the requirements of this subsection if the amount  
22 to be distributed under the plan for any year is determined  
23 in accordance with a fixed formula set forth in the plan  
24 which is based on a measurable and auditable indicator  
25 of the employer’s performance or, at the election of the

1 employer, of the organizational unit in which the employ-  
2 ees covered by the plan perform services.

3 “(f) ALLOCATION REQUIREMENTS.—

4 “(1) IN GENERAL.—A plan meets the require-  
5 ments of this subsection if, under the plan, amounts  
6 are distributed to employees of the employer main-  
7 taining the plan only in accordance with a fixed for-  
8 mula set forth in the plan.

9 “(2) CHANGE IN FORMULA.—For purposes of  
10 paragraph (1), a formula shall be treated as a fixed  
11 formula only if under the plan any change in the  
12 formula may not take effect until the plan year fol-  
13 lowing the plan year in which the change is adopted  
14 by the plan.

15 “(g) DISTRIBUTION REQUIREMENTS.—

16 “(1) IN GENERAL.—A plan meets the require-  
17 ments of this subsection if the plan requires that,  
18 for each year, the total value of rewards made under  
19 the plan to nonhighly compensated employees is not  
20 less than the lesser of—

21 “(A) 2 percent of the total wages paid to  
22 such employees during such year by the em-  
23 ployer maintaining such plan, or

24 “(B) the amount which, when added to the  
25 total rewards made under the plan to such em-

1 employees during the 2 preceding years, is equal  
2 to 2 percent of the sum of the total wages paid  
3 to such employees by such employer during  
4 such year and such 2 preceding years.

5 “(2) WAGES.—For purposes of paragraph (1),  
6 the term ‘wages’ has the meaning given such term  
7 by section 3306(b), except that—

8 “(A) any dollar limitation in such section  
9 shall be disregarded, and

10 “(B) rewards from a qualified perform-  
11 ance-based reward plan shall not be taken into  
12 account.

13 “(h) ANTIDISCRIMINATION REQUIREMENTS.—

14 “(1) IN GENERAL.—A plan meets the require-  
15 ments of this subsection if the plan benefits such  
16 employees as qualify under a classification set up by  
17 the employer and found by the Secretary not to be  
18 discriminatory in favor of highly compensated em-  
19 ployees (within the meaning of section 414(q)).

20 “(2) EXCLUDED EMPLOYEES.—In determining  
21 whether the requirements of paragraph (1) are met,  
22 there shall be excluded from consideration employees  
23 described in section 414(q)(8).

24 “(3) BENEFITS MAY BEAR UNIFORM RELATION-  
25 SHIP TO COMPENSATION.—A plan shall not be con-

1       sidered discriminatory merely because the benefits  
2       under the plan bear a uniform relationship to the  
3       compensation (within the meaning of section 414(s))  
4       of the employees.

5       “(i) PLAN APPROVAL REQUIREMENTS.—A plan  
6       meets the requirements of this subsection if the plan—

7               “(1) is submitted to the Secretary in such form  
8       and manner as the Secretary may provide, and

9               “(2) is approved by the Secretary.

10       “(j) SPECIAL RULE AND DEFINITION.—For purposes  
11       of this subsection—

12               “(1) PLANS WHICH ARE PART OF DEFERRED  
13       PLAN.—A plan shall not be treated as failing to be  
14       a qualified performance-based reward plan merely  
15       because such plan includes a qualified cash or de-  
16       ferred arrangement (as defined in section  
17       401(k)(2)).

18               “(2) SELF-EMPLOYED INDIVIDUALS.—The term  
19       ‘employee’ does not include an individual who is an  
20       employee (within the meaning of section 401(c)(1)).

21       “(k) EMPLOYEE RIGHTS.—For purposes of section  
22       502 of Employee Retirement Income Security Act of 1974,  
23       a qualified performance-based reward plan shall be treated  
24       as a welfare benefit plan.”

25       (b) CONFORMING AMENDMENT.—



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

4 **SEC. 103. STUDY OF EFFECT OF CREDIT.**

5 The Secretary of the Treasury, in consultation with  
6 the Secretary of Commerce and the Secretary of Labor,  
7 shall—

8 (1) conduct a study of the effect of the credit  
9 under section 35 of the Internal Revenue Code of  
10 1986 (as added by this Act) in stimulating produc-  
11 tivity and full employment, and

12 (2) report the results of such study to the Con-  
13 gress no later than January 1, 2002.

14 **SEC. 104. COLLECTION OF STATISTICS.**

15 (a) PERFORMANCE-BASED REWARD PLANS.—The  
16 Secretary of Labor and the Director of the Federal Medi-  
17 ation and Conciliation Service each shall—

18 (1) collect statistics on the extent of perform-  
19 ance-based reward plans in the United States; and

20 (2) prepare studies which describe the nature  
21 and terms of these performance-based reward plans.

22 Such studies shall differentiate between various types of  
23 such plans and between plans which do and do not have  
24 fixed formulas for determining amounts payable to  
25 employees.

1 (b) PROFIT-SHARING AND EMPLOYEE STOCK OWN-  
2 ERSHIP PLANS.—The Director of the Office of Manage-  
3 ment and Budget shall publish annually estimates of the  
4 annual tax expenditures for deferred profit-sharing plans  
5 and employee stock ownership plans.

6 **TITLE II—ESTABLISHMENT OF**  
7 **PROGRAM TO PROMOTE PER-**  
8 **FORMANCE-BASED REWARD**  
9 **PLANS AND EMPLOYEE DECI-**  
10 **SIONMAKING PARTICIPATION**  
11 **PROGRAMS**

12 **SEC. 201. EMPLOYEE PARTNERSHIP PILOT PROGRAM.**

13 (a) ESTABLISHMENT.—The Administrator, in con-  
14 sultation with the Secretary of Labor, shall establish and  
15 carry out an Employee Partnership Pilot Program (in this  
16 section referred to as the “program”) in accordance with  
17 the requirements of this section.

18 (b) GRANT AWARDS.—Under the program, the Ad-  
19 ministrator shall make grants to not to exceed 5 eligible  
20 entities for the purpose of promoting implementation of  
21 performance-based reward plans and employee decision-  
22 making participation programs.

23 (c) SELECTION OF GRANT RECIPIENTS.—The Ad-  
24 ministrator shall select eligible entities to receive grants  
25 under the program on the basis of competitive, merit-

1 based criteria to be established by the Administrator, in  
2 consultation with the Secretary of Labor. Such criteria,  
3 at a minimum, shall provide for consideration of the  
4 following:

5 (1) The ability of an applicant to carry out the  
6 purposes of the program.

7 (2) The ability of an applicant to integrate im-  
8 plementation of the program with existing Federal  
9 and State business assistance resources.

10 (3) The ability of an applicant to continue to  
11 carry out the purposes of the program after termi-  
12 nation of the program.

13 (d) USE OF GRANT AMOUNTS.—Amounts from  
14 grants received under the program shall be used for activi-  
15 ties which promote the purposes of the program, including  
16 the following:

17 (1) The collection and dissemination of infor-  
18 mation regarding successful implementation of per-  
19 formance-based reward plans and employee decision-  
20 making participation programs.

21 (2) The development of best practices guidelines  
22 concerning performance-based reward plans and em-  
23 ployee decisionmaking participation programs.

24 (3) The provision of technical assistance and  
25 training to aid firms in designing and implementing

1 performance-based reward plans and employee deci-  
2 sionmaking participation programs.

3 (4) Proactive education and outreach to key  
4 groups such as business owners, unions, managers,  
5 trade associations, and community associations to  
6 inform such groups about the benefits of perform-  
7 ance-based reward plans and employee decisionmak-  
8 ing participation programs.

9 (e) NON-FEDERAL SHARE.—In order to be eligible  
10 for a grant under the program, an eligible entity shall  
11 agree to provide from non-Federal sources for activities  
12 described in subsection (d) an amount at least equal to  
13 the amount of the grant.

14 (f) TERM OF PROGRAM.—The program shall termi-  
15 nate on the last day of the 5th fiscal year beginning after  
16 the date of the enactment of this Act.

17 (g) REPORT.—The Administrator shall transmit to  
18 Congress a report containing an evaluation of the pro-  
19 gram, together with recommendations for appropriate leg-  
20 islative and administrative actions.

21 (h) DEFINITIONS.—For the purposes of this section,  
22 the following definitions apply:

23 (1) ADMINISTRATOR.—The term “Adminis-  
24 trator” means the Administrator of the Small Busi-  
25 ness Administration.

1           (2) ELIGIBLE ENTITY.—The term “eligible en-  
2           tity” means an educational institution, a non-profit  
3           organization, or a unit of State or local government.

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