

108TH CONGRESS  
1ST SESSION

# H. R. 913

To amend the Internal Revenue Code of 1986 to provide incentives for the ownership and control of corporations by employees.

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 2003

Mr. ROHRABACHER introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide incentives for the ownership and control of corporations by 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. SHORT TITLE.**

4 This Act may be cited as the “Employee Ownership  
5 Act of 2003”.

6 **SEC. 2. OWNERSHIP POLICY FOR THE UNITED STATES.**

7 (a) FINDINGS.—The Congress finds that—

8 (1) there is considerable evidence that em-  
9 ployee-owned and employee-controlled corporations

1 are more productive and provide more wealth to  
2 their employees than corporations not so owned, and

3 (2) the workplace experience of employee-owned  
4 and employee-controlled corporations is proven to  
5 foster greater appreciation of the economic system of  
6 the United States that relies on ownership of private  
7 property and capitalism.

8 (b) POLICY.—It is the policy of the United States  
9 that by the year 2010, 30 percent of all United States  
10 corporations are owned and controlled by employees of the  
11 corporations.

12 **SEC. 3. TAX INCENTIVES RELATING TO EMPLOYEE-OWNED**  
13 **AND EMPLOYEE-CONTROLLED CORPORA-**  
14 **TIONS.**

15 (a) TRUST OF EMPLOYEE-OWNED AND EMPLOYEE-  
16 CONTROLLED CORPORATION EXEMPT FROM TAX-  
17 ATION.—

18 (1) IN GENERAL.—Section 501(c) of the Inter-  
19 nal Revenue Code of 1986 (relating to list of exempt  
20 organizations) is amended by adding at the end the  
21 following new paragraph:

22 “(29)(A) employee-owned and employee-con-  
23 trolled corporation trust.

24 “(B) For purposes of subparagraph (A), the  
25 term ‘employee-owned and employee-controlled cor-

1       poration trust’ means a trust which has as its pri-  
2       mary assets the employer securities (within the  
3       meaning of section 409(l)) of an employee-owned  
4       and employee-controlled corporation.”.

5           (2) EMPLOYEE-OWNED AND EMPLOYEE-CON-  
6       TROLLED CORPORATION DEFINED.—Subsection (a)  
7       of section 7701 of such Code (relating to definitions)  
8       is amended by adding at the end the following new  
9       paragraph:

10           “(48) EMPLOYEE-OWNED AND EMPLOYEE-CON-  
11       TROLLED CORPORATION.—The term ‘employee-  
12       owned and employee-controlled corporation’ means a  
13       corporation in which—

14           “(A) more than 50 percent of the voting  
15       stock of such corporation is held by a trust for  
16       the benefit of the employees of that corporation,

17           “(B) in all matters requiring the vote of  
18       stock, including the election of the board of di-  
19       rectors of the corporation, the trustee of such  
20       trust is obligated to vote the stock held in trust  
21       and allocated to participants in the trust in the  
22       manner in which the participants direct, on the  
23       basis of 1-employee 1-vote, and to vote any  
24       stock not so allocated as if it were so allocated,

1           “(C) at least 25 employees of such cor-  
2           poration are participants in and beneficiaries of  
3           such trust,

4           “(D) a minimum of 90 percent of the em-  
5           ployees who work at least 1,000 hours annually  
6           for such corporation are participants in such  
7           trust, and

8           “(E) the trustee administers such trust for  
9           the benefit of the employees of such corporation  
10          and complies with all requirements of this title  
11          relating to employee stock ownership plans (as  
12          defined in section 4975(e)(7)) pertaining to  
13          independent appraisal of shares not readily  
14          tradable and distribution of those shares.”.

15          (b) NO TAX ON CORPORATE INCOME OF EMPLOYEE-  
16          OWNED AND EMPLOYEE-CONTROLLED CORPORATION.—  
17          Subsection (a) of section 11 of such Code (relating to cor-  
18          porations in general) is amended by inserting before the  
19          period at the end the following: “(other than any em-  
20          ployee-owned and employee-controlled corporation)”.

21          (c) EXCLUSION OF INCOME FROM SALE OF EM-  
22          PLOYEE-OWNED AND EMPLOYEE-CONTROLLED COR-  
23          PORATION STOCK BY EMPLOYEE OWNER.—

24                  (1) IN GENERAL.—Part III of subchapter B of  
25          chapter 1 of such Code (relating to items specifically

1 excluded from gross income) is amended by redesignig-  
2 nating section 140 as section 140A and by inserting  
3 after section 139 the following new section:

4 **“SEC. 140. INCOME FROM EMPLOYEE OWNER SALE OF EM-**  
5 **PLOYER SECURITIES DISTRIBUTED FROM**  
6 **EMPLOYEE-OWNED AND EMPLOYEE-CON-**  
7 **TROLLED CORPORATION TRUST.**

8 “(a) IN GENERAL.—In the case of an individual,  
9 gross income shall not include any proceeds from the  
10 qualified sale of employer securities.

11 “(b) QUALIFIED SALE OF EMPLOYER SECURITIES.—  
12 The term ‘qualified sale of employer securities’ means the  
13 sale of employer securities (as defined in section 409(l))  
14 which were distributed to a participant in the employe-  
15 owned and employee-controlled corporation trust to—

16 “(1) an employee of the employee-owned and  
17 employee-controlled corporation which issued such  
18 securities,

19 “(2) such corporation, or

20 “(3) such trust.”.

21 (2) CLERICAL AMENDMENT.—The table of sec-  
22 tions for part III of subchapter B of chapter 1 of  
23 such Code is amended by striking the item relating  
24 to section 140 and inserting after the item relating  
25 to section 139 the following new items:

“Sec. 140. Income from employee owner sale of employer securities distributed from employee-owned and employee-controlled corporation trust.

“Sec. 140A. Cross references to other Acts.”.

1 (d) RECEIPT OF STOCK IN AN EMPLOYEE OWNED  
2 AND CONTROLLED CORPORATION DURING 3-YEAR TRAN-  
3 SITION PERIOD.—Section 83 of such Code (relating to  
4 property transferred in connection with performance of  
5 services) is amended by adding at the end the following  
6 new subsection:

7 “(i) RECEIPT OF STOCK IN AN EMPLOYEE OWNED  
8 AND CONTROLLED CORPORATION DURING 3-YEAR TRAN-  
9 SITION PERIOD.—

10 “(1) IN GENERAL.—In the case of an employee,  
11 this section shall not apply to the transfer in lieu of  
12 compensation of employer securities in an employer  
13 owned and controlled corporation during the 3-year  
14 period beginning on the effective date of the election  
15 of a corporation to become an employee owned and  
16 controlled corporation.

17 “(2) EXCEPTION.—If, on the day after the end  
18 of the 3-year period referred to in paragraph (1),  
19 such corporation is not an employee owned and con-  
20 trolled corporation, paragraph (1) shall not apply  
21 and the following sum shall be included in the gross  
22 income of such employee:

1           “(A) an amount equal to the fair market  
2 value of all of such securities at the time of  
3 transfer (determined without regard to any re-  
4 striction other than a restriction which by its  
5 terms will never lapse) to the employee in lieu  
6 of compensation for such period, plus

7           “(B) an amount equal to 10 percent of the  
8 amount determined under subparagraph (A).”.

9           (e) NO TAX ON GAIN ON SALES OR TRANSFERS TO  
10 EMPLOYEE-OWNED AND EMPLOYEE-CONTROLLED COR-  
11 PORATION TRUST.—

12           (1) IN GENERAL.—Part III of subchapter O of  
13 chapter 1 of such Code (relating to common non-  
14 taxable exchanges) is amended by adding at the end  
15 the following new section:

16 **“SEC. 1046. SALE OF SECURITIES TO EMPLOYEE-OWNED**  
17 **AND EMPLOYEE-CONTROLLED CORPORATION**  
18 **TRUST.**

19           “(a) NONRECOGNITION OF GAIN.—If the taxpayer  
20 elects the application of this section, in the case of the  
21 sale or transfer of employer securities (as defined in sec-  
22 tion 409(l)) to an employee-owned and employee-con-  
23 trolled corporation trust, gain on such sale or transfer  
24 shall not be recognized if the requirements of subsection  
25 (b) are met.

1 “(b) REQUIREMENTS.—

2 “(1) IN GENERAL.—The requirements of this  
3 subsection are that—

4 “(A) the employee-owned and employee-  
5 controlled corporation trust acquiring such se-  
6 curities from the taxpayer agrees—

7 “(i) to hold such securities for the 3-  
8 year period beginning on the date of such  
9 transfer or sale, and

10 “(ii) to notify the taxpayer upon the  
11 transfer of such securities before the end  
12 of such period, and

13 “(B) the taxpayer agrees to the provisions  
14 of subsection (b).

15 “(2) EXCEPTIONS.—Paragraph (1) shall not  
16 apply—

17 “(A) in a case where such securities are se-  
18 curities of an employee-owned and employee-  
19 controlled corporation which are distributed  
20 within such 3-year period to an employee of  
21 such corporation, and

22 “(B) in the case of the sale or transfer of  
23 stock of an employee-owned and employee-con-  
24 trolled corporation in connection with the sale  
25 or reorganization of such corporation, if such

1 sale or reorganization is approved by the em-  
2 ployees of such corporation in a vote held on a  
3 1-employee 1-vote basis.

4 “(c) RECAPTURE OF TAX.—If, during any year with-  
5 in the 3-year period referred to in subsection (b)(1), secu-  
6 rities subject to subsection (a) are sold or transferred in  
7 a manner that does not meet the requirements of sub-  
8 section (b), then gain on the sale or transfer described  
9 in subsection (a) shall be recognized for the year in which  
10 such requirements are not met.”.

11 (2) CLERICAL AMENDMENT.—The table of sec-  
12 tions for part III of subchapter O of chapter 1 of  
13 such Code is amended by adding at the end the fol-  
14 lowing new item:

“Sec. 1046. Sale of securities to employee-owned and employee-  
controlled corporation trust.”.

15 (f) CREDIT FOR TRANSFER OF STOCK FROM ESTATE  
16 TO EMPLOYEE-OWNED AND EMPLOYEE-CONTROLLED  
17 CORPORATION.—

18 (1) IN GENERAL.—Part II of subchapter A of  
19 chapter 11 of such Code (relating to credits against  
20 tax) is amended by redesignating section 2016 as  
21 section 2017 and by inserting after section 2015 the  
22 following new section:

1 **“SEC. 2016. CREDIT FOR TRANSFER OF EMPLOYEE SECURI-**  
2 **TIES FROM ESTATE TO EMPLOYEE-OWNED**  
3 **AND EMPLOYEE-CONTROLLED CORPORATION**  
4 **TRUST.**

5 “(a) GENERAL RULE.—The tax imposed by section  
6 2001 shall be credited with the amount of employer securi-  
7 ties considered to have been acquired from or to have  
8 passed from the decedent to an employee-owned and em-  
9 ployee-controlled corporation trust.

10 “(b) LIMITATION.—Such credit may not exceed the  
11 tax imposed by section 2001, reduced under this part  
12 (other than by this section).

13 “(c) VALUE OF STOCK NOT READILY TRADABLE.—  
14 No credit shall be allowed under subsection (a) in the case  
15 of employer securities which are not readily tradable on  
16 an established securities market unless the value of such  
17 employer securities is established by an independent ap-  
18 praiser. For purposes of the preceding sentence, the term  
19 ‘independent appraiser’ means any appraiser meeting re-  
20 quirements similar to the requirements of the regulations  
21 prescribed under section 170(a)(1).

22 “(d) DEFINITIONS.—For purposes of subsection  
23 (a)—

24 “(1) ACQUIRED FROM OR PASSED FROM A DE-  
25 CEDENT.—Employer securities shall be considered to  
26 have been acquired from or to have passed from a

1 decedent if the basis of such property in the hands  
2 of the employee-owned and employee-controlled cor-  
3 poration trust is determined under section 1014 by  
4 reference to paragraph (1), (2), (4), or (9) of sub-  
5 section (b) of such section.

6 “(2) EMPLOYER SECURITIES.—The term ‘em-  
7 ployer securities’ has the meaning given such term  
8 by section 409(l), except that such term shall not  
9 include any security which is not voting common  
10 stock.”.

11 (2) CLERICAL AMENDMENT.—The table of sec-  
12 tions for part II of subchapter A of chapter 11 of  
13 such Code (relating to credits against tax) is amend-  
14 ed by striking the item relating to section 2016 and  
15 adding at the end the following new items:

“Sec. 2016. Credit for transfer of employee securities from estate  
to employee-owned and employee-controlled cor-  
poration trust.

“Sec. 2017. Recovery of taxes claimed as credit.”.

16 (g) EFFECTIVE DATE.—

17 (1) IN GENERAL.—Except as provided in para-  
18 graph (2), the amendments made by this section  
19 shall apply to taxable years beginning after the date  
20 of the enactment of this Act.

21 (2) CREDIT FOR TRANSFER OF STOCK FROM  
22 ESTATE TO EMPLOYEE-OWNED AND EMPLOYEE-CON-  
23 TROLLED CORPORATION.—The amendments made

1 by subsection (f) shall apply to estates of decedents  
2 dying after the date of the enactment of this Act.

3 **SEC. 4. STUDY OF GOVERNMENT POLICIES AFFECTING EM-**  
4 **EMPLOYEE-OWNED AND EMPLOYEE-CON-**  
5 **TROLLED CORPORATIONS.**

6 The Comptroller General of the United States shall—

7 (1) conduct a study of all Federal Government  
8 regulations and policies that might impact the cre-  
9 ation and operation of an employee-owned and em-  
10 ployee-controlled corporation as defined in section  
11 7701(a)(47) of the Internal Revenue Code of 1986,

12 (2) identify those regulations and policies that  
13 are barriers to employee ownership and control of  
14 such a corporation, and

15 (3) not later than one year after the date of the  
16 enactment of this Act, submit a report on the find-  
17 ings of such study, together with such recommenda-  
18 tions as the Comptroller General determines appro-  
19 priate, to the Congress.

20 **SEC. 5. PRESIDENTIAL COMMISSION ON EMPLOYEE OWN-**  
21 **ERSHIP.**

22 (a) ESTABLISHMENT.—Not later than one year after  
23 the date of the enactment of this Act, the President shall  
24 establish a commission to be known as the “Presidential

1 Commission on Employee Ownership” (hereafter in this  
2 section referred to as the “Commission”).

3 (b) DUTIES AND REPORT.—The Commission shall—

4 (1) conduct a study concerning all issues that  
5 affect ownership of businesses in the United States,  
6 with a primary focus on the issues that affect em-  
7 ployee ownership of such businesses, and

8 (2) not later than two years after the date of  
9 its establishment, submit a final report to the Presi-  
10 dent and the Congress which includes the findings  
11 and recommendations of the Commission.

12 (c) MEMBERSHIP.—The Commission shall be com-  
13 posed of 15 members appointed by the President as fol-  
14 lows:

15 (1) Three individuals, each of whom is an em-  
16 ployee of a corporation that has at least 50 percent  
17 of its voting stock in a trust for the benefit of em-  
18 ployees and who is not an officer or senior manager  
19 of that corporation.

20 (2) Three individuals, each of whom is an em-  
21 ployee of a corporation that has at least 50 percent  
22 of its voting stock in a trust for the benefit of em-  
23 ployees and who is an officer or senior manager of  
24 that corporation.

1           (3) Three individuals, each of whom is a pro-  
2           fessor employed by an institution of higher learning.

3           (4) Three individuals, each of whom is em-  
4           ployed by a not-for-profit entity that has as its pri-  
5           mary mission issues arising from employee owner-  
6           ship of businesses.

7           (5) The Secretary of Labor, or his designee, the  
8           Secretary of the Treasury, or his designee, and the  
9           Director of the Office of Management and Budget,  
10          or his designee.

11          (d) STAFF.—The Commission shall have such num-  
12          ber of staff as the President shall determine, except that  
13          such staff shall include not less than five full-time employ-  
14          ees.

15          (e) GIFTS AND BEQUESTS.—The Commission may  
16          accept, use, and dispose of gifts or bequests or services  
17          or personal property for the purpose of aiding or facili-  
18          tating the work of the Commission. Gifts or bequests of  
19          money and proceeds from sales of other property received  
20          as gifts or bequests shall be deposited in the Treasury and  
21          shall be available for disbursement upon order of the Com-  
22          mission.

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