[JOINT COMMITTEE PRINT]

DESCRIPTION OF BILLS
RELATING TO
DEFERRED COMPENSATION PLANS, PENSION PLANS AND EMPLOYEE STOCK OWNERSHIP PLANS

SCHEDULED FOR A HEARING

BY THE

SUBCOMMITTEE ON PRIVATE PENSION PLANS AND EMPLOYEE FRINGE BENEFITS

OF THE

COMMITTEE ON FINANCE

ON DECEMBER 4–5, 1979

PREPARED FOR THE USE OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

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INTRODUCTION

The bills discussed in this pamphlet, S. 511, S. 989, S. 1089, S. 1090, S. 1091, S. 1092, S. 1958, and S. 1240, have been scheduled for a hearing on December 4–5, 1979, by the Subcommittee on Private Pension Plans and Employee Fringe Benefits of the Senate Committee on Finance. The bills relate to deferred compensation plans, pension plans, and employee stock ownership plans. (In addition, the hearing will cover the provisions of S. 209, other than sections 201–205, which were covered in a prior subcommittee hearing. S. 209 (the ERISA Improvements Act of 1979) has been approved by the Committee on Labor and Human Resources; and that committee has prepared a summary and description of the provisions of that bill.)

In connection with this hearing, the staff of the Joint Committee on Taxation has prepared a description of the bills (other than S. 209). The first part of the pamphlet is a summary of the bills. This is followed by a more detailed description of each bill, indicating the present law treatment, an explanation of what changes each bill would make, and its effective date. (The estimated revenue effects of the bills will be supplied to the Subcommittee prior to the December 4 hearing.)

(A previous hearing was held on various pension-related tax bills by the Subcommittee on Private Pension Plans and Employee Fringe Benefits on April 3, 1979; on S. 75, S. 94, secs. 201–205 of S. 209, and S. 557. These bills related to deductions for individual retirement savings and the treatment of tax-qualified employee plans.)

I. SUMMARY

A. DEFERRED COMPENSATION PLANS

S. 511—Senator Matsunaga

Treatment of Unfunded Deferred Compensation Plans Maintained by Tax-Exempt Organizations

The bill would treat unfunded deferred compensation plans of tax-exempt organizations under the rules presently applicable to unfunded deferred compensation plans maintained by State and local governments.

B. PENSION PLANS

1. S. 989—Senator Bentsen

Rollover of Distribution From a Money Purchase Pension Plan

The bill would permit the tax-free rollover of a total distribution from a money purchase pension plan whether or not the recipient also receives total distributions from defined benefit plans maintained by the employer.

2. S. 1089—Senator Bentsen

ERISA Simplification Act of 1979

The bill would reduce paperwork under ERISA by (1) providing that premiums payable to the Pension Benefit Guaranty Corporation (PBGC) will be collected by the Internal Revenue Service and that the report presently sent to the PBGC with the premiums will be merged with a report presently filed with the IRS, and (2) eliminating the requirement that a summary annual report be furnished to employees and beneficiaries. Also, the bill would authorize the Secretary of the Treasury to bring a civil action to enforce compliance with the requirements imposed by the Internal Revenue Code on tax-qualified plans. Additionally, the bill would require the Treasury and Labor Departments to prepare a booklet relating to recordkeeping systems under ERISA and would require the Treasury to publish a booklet relating to individual retirement accounts.

3. S. 1090 and S. 1091—Senators Talmadge, Bentsen, and Boren

Church Plans Permitted to Continue After 1982 to Provide Benefits for Employees of Organizations Controlled by or Associated With Churches

Under present law, the church plan rules (including exemption from post-ERISA tax-qualification standards) are applicable with respect to coverage of employees of a church-related agency only for plans in existence on January 1, 1974, and only until January 1, 1983.

The bill would apply the church plan rules regarding coverage of employees of church-related agencies to plans not yet in existence on January 1, 1974, and would remove the December 31, 1982, expiration date for the rules.

4. S. 1092—Senators Talmadge, Bentsen, and Boren

Changes in Rules Governing Tax-Sheltered Annuities for Ministers and Lay Employees of Churches

Under present law, certain employees covered by tax-sheltered annuities are permitted special elections to increase employer payments to the annuities. The bill would extend to church employees the same limits on excludible employer payments for tax-sheltered annuities applicable under present law to teachers and certain other employees. Also, the bill would allow church employees to include service with all affiliated churches, etc. of the same religious denomination in determining the limitation on excludible employer payments for a tax-sheltered annuity.

5. S. 1958—Senator Matsunaga

Investment by Money Purchase Pension Plan in Employer Real Property

Under present law, a money purchase pension plan not in existence on September 2, 1974, may not invest more than 10 percent of its assets in qualifying employer real property. The bill would remove this limitation and would expand the definition of qualifying employer real property.

C. EMPLOYEE STOCK OWNERSHIP PLANS

S. 1240—Senators Long and Gravel

Employee Stock Ownership Improvements Act of 1979

The bill would make numerous changes to the rules governing TRASOPs and ESOPs and other qualified plans. The bill includes provisions which would:

(1) Make the TRASOP permanent;

(2) Allow a corporation a tax credit based on wages for contributions to a TRASOP as an alternative to an additional amount of investment tax credit;

(3) Allow a deduction for certain contributions to a TRASOP or an ESOP by persons other than the employer;

(4) Allow the allocation of extraordinary forfeitures to a participant's account under an ESOP;

(5) Delete the rule of present law which would, after December 31, 1979, require certain defined contribution plans to pass through to participants the voting rights on closely held stock allocated to participants accounts;

(6) Allow stock bonus plans to distribute cash subject to the employee's right to receive stock; and

(7) Give certain small business employers a credit of up to $5,000 for the cost of establishing an ESOP.

II. DESCRIPTION OF BILLS

A. DEFERRED COMPENSATION PLANS

S. 511—Senator Matsunaga

Treatment of Unfunded Deferred Compensation Plans Maintained by Tax-Exempt Organizations

Present law

On February 3, 1978, the Internal Revenue Service published proposed regulations which provided generally that, if under an unfunded plan or arrangement (other than a tax-qualified plan), payment of an amount of a taxpayer's fixed, basic, or regular compensation is deferred at the taxpayer's individual election to a taxable year later than that in which the amount would have been payable but for the election, the deferred amount will be treated as received in the earlier taxable year. These proposed regulations would have applied to plans maintained by private businesses, State and local governments, and tax-exempt organizations. However, the Revenue Act of 1978 provided that (1) benefits under unfunded deferred compensation plans maintained by private businesses are to be taxed under the law in existence before the publication of the proposed regulations, and (2) subject to certain limitations, benefits under State and local governmental (and rural electric cooperative) unfunded deferred compensation plans meeting certain standards are not to be taxed currently. The 1978 Act contained no provision regarding unfunded deferred compensation plans maintained by tax-exempt organizations (other than rural electric cooperatives).

Explanation of the bill

The bill would provide that, subject to certain limitations, an amount deferred under an eligible unfunded deferred compensation plan maintained by a tax-exempt organization would not be includible in a participant's gross income until paid or otherwise made available under the rules applicable to deferred compensation plans of State and local governments. Under the applicable limitations, the amount which could be deferred each year generally could not exceed the lesser of (1) $7,500, or (2) 33⅓ percent of compensation includible in the participant's gross income. A plan would be an "eligible" unfunded deferred compensation plan if it meets the standards applicable under present law to unfunded deferred compensation plans maintained by State and local governments.

Effective date

The provisions of the bill would generally be effective for taxable years beginning after December 31, 1979.

B. PENSION PLANS

1. S. 989—Senator Bentsen

Rollover of Distribution From a Money Purchase Pension Plan

Present law

An employee who receives a lump sum distribution from a tax-qualified pension, profit-sharing, or stock bonus plan may defer tax on the

distribution by rolling over the proceeds (net of any employee contributions) within 60 days of receipt (1) to an IRA (an individual retirement account, annuity, or bond), or (2) to another qualified pension, etc., plan. The rollover rule also applies to the spouse of an employee who receives a lump sum distribution on account of the employee's death. A lump sum distribution from a qualified plan is eligible for favorable income tax treatment (e.g., 10-year income-averaging) if no portion of the distribution is rolled over.

A lump sum distribution is a distribution of the balance to the credit of an employee under a qualified pension, etc., plan, made within one taxable year of the recipient. Generally, the distribution must have been made on account of death, separation from service, or the attainment of age 59½. If an employer maintains more than one qualified plan, certain plans are aggregated for the purpose of determining whether the balance to the credit of an employee has been distributed. Under the aggregation rules, all pension plans (defined benefit and money purchase) maintained by the employer are treated as a single plan, all profit-sharing plans maintained by the employer are treated as a single plan, and all stock bonus plans maintained by the employer are treated as a single plan.

Explanation of the bill

The bill would allow an employee who receives a total distribution from a money purchase pension plan to roll over the distribution to an IRA or to another qualified plan where the employer also maintains a defined benefit pension plan covering the employee and a total distribution is not made from the defined benefit plan in the same taxable year. The bill would also apply to the spouse of an employee if the spouse receives such a total distribution on account of the employee's death.

If the recipient rolls over a total distribution from a money purchase pension plan under the bill and, in a subsequent taxable year, receives a total distribution from another qualified pension plan maintained by the employer, the later plan distribution could be rolled over tax-free but would not otherwise be eligible for the favorable income tax treatment accorded lump sum distributions.

Effective date

The provisions of the bill would apply for taxable years beginning after December 31, 1974.

2. S. 1089—Senator Bentsen

ERISA Simplification Act of 1979

Present law

Present law requires that sponsors or administrators of pension benefit plans file information annually for use by the Internal Revenue Service, the Department of Labor and, in the case of plans covered by termination insurance, the Pension Benefit Guaranty Corporation (PBGC). Generally, the annual reporting requirements for plans have been consolidated so that a single annual filing with the Internal Revenue Service satisfies all annual filing requirements imposed on pension benefit plans. In the case of defined benefit pension plans subject to the

termination insurance provisions of the Employee Retirement Income Security Act of 1974 (ERISA), however, a separate annual filing is required in connection with the payment of insurance premiums to the PBGC (premium payments are required to be accompanied by Form PBGC–1 filed annually with the PBGC). Form PBGC–1 is generally required to be filed (and premium payments are due) within 7 months after the close of the plan year.

In addition, an employer who claims a deduction for a contribution to a pension benefit plan is required to provide certain information to the Internal Revenue Service on the income tax return or information return for the taxable year for which the contribution is made.

Under present law, within 210 days after the close of a plan year, plan participants are to be furnished by the plan with a summary annual report of the plan. The summary annual report includes information relating to the assets and liabilities of a plan, receipt and disbursements, and certain transactions.

Under present law, if the Internal Revenue Service determines that a pension, profit-sharing, or stock bonus plan does not meet the requirements for tax-qualification under the Internal Revenue Code, the Service treats the plan as nonqualified. This treatment may result in adverse tax consequences for employees and beneficiaries (benefits may become taxable before they are distributed or made available to employees and beneficiaries), employers (deductions for employer contributions may be disallowed), and a trust under the plan (the trust may not be tax-exempt). In addition, penalty excise taxes are imposed by the Code, and administered by the Internal Revenue Service, where employers fail to meet the funding standard of ERISA and where self-dealers engage in transactions prohibited by ERISA. Also, the Code provides penalty excise taxes where excess contributions are made to an H.R. 10 plan or an IRA (an individual retirement account or annuity, or a retirement bond). Further, the Code provides for civil penalties where specified reporting requirements are not met. The Code also provides for criminal penalties for certain willful failures to make a return, to keep records, or to supply information.

In addition to the penalties and tax sanctions provided by the Code with respect to pension, etc., plans, ERISA provides that the Department of Labor, and plan participants, beneficiaries, and fiduciaries can bring civil actions to enforce specified ERISA requirements or enjoin designated violations of the Act. In addition, the Department of Labor (and in some circumstances the Internal Revenue Service) may intervene in certain civil suits brought by plan participants, beneficiaries, or fiduciaries.

In addition to administering the termination insurance program, the PBGC is directed by ERISA to provide advice and assistance to individuals with respect to evaluating the economic desirability of establishing IRAs and the desirability of using tax-free rollovers with respect to lump sum distributions from pension plans.

Explanation of the bill

Under the bill, the Secretary of the Treasury, rather than the PBGC, would collect premiums under the termination insurance program. The report presently required to accompany premium payments by a plan (PBGC–1) would be merged with the annual report filed by the Internal Revenue Service. Under the bill, premium collections

would be deposited in the pension benefit guaranty funds for use under the termination insurance program. The bill would also permit taxpayers to file forms required by ERISA at the same time the annual income tax return is required to be filed.

The bill would eliminate the requirement that plan participants and beneficiaries be furnished with a copy of a summary annual report of the plan. Under the bill, plan administrators would post at the work place of employees, a notice which would include a brief description of the financial status of the plan, a copy of the latest summary plan description, identification of a company official who can provide additional information about the plan, and a statement explaining an employee's rights under the plan.

Under the bill, the Secretary of the Treasury and the Secretary of Labor would be directed to publish a booklet to assist plan sponsors (particularly smaller businesses) in developing or revising recordkeeping systems in order to simplify compliance with ERISA. In addition, the Secretary of the Treasury would be required to publish a booklet for taxpayers summarizing rules for IRAs.

The bill also would authorize the Secretary of the Treasury to bring a civil action to enforce compliance by a plan or trust with the standards of the Internal Revenue Code with respect to tax-qualified plans.

Effective date

The provisions of the bill would be effective for taxable years beginning after December 31, 1979.

3. S. 1090 and S. 1091—Senators Talmadge, Bentsen and Boren

Church Plans Permitted to Continue After 1982 to Provide Benefits for Employees of Organizations Controlled by or Associated with Churches

Present law

Under present law, the standards provided by the labor law provisions of ERISA generally do not apply to the pension plan of a church for its employees. Church plans are also generally exempt from the tax qualification standards which correspond to the labor standards.

Under present law, a church plan may cover employees of a tax-exempt agency related to a church only if the plan was in existence on January 1, 1974. For taxable years beginning after December 31, 1982, a church plan no longer will be able to cover such employees.

Explanation of the bill

The bill would permit a church plan to cover employees of a tax-exempt agency controlled by or affiliated with a church or a convention or association of churches. This would include ministers and other clerical employees as well as lay employees of the church agency. Thus, for plans in existence on January 1, 1974, present law would be continued after December 31, 1982, and for other plans present law would be modified. Also, the bill would provide a period of time during which a plan intended to qualify as a church plan but failing to do so could be amended to so qualify without penalty.

Effective date

The provisions of the bill would be effective as of January 1, 1974.

4. S. 1092—Senators Talmadge, Bentsen and Boren

Changes in Rules Governing Tax-Sheltered Annuities for Ministers and Lay Employees of Churches

Present law

Under present law, employers which are tax-exempt organizations and public schools may make payments on behalf of their employees to purchase tax-sheltered annuities (sec. 403(b)). The amount paid by the employer for a tax-sheltered annuity is excluded from an employee's gross income to the extent that it does not exceed 20 percent of the employee's includible compensation times the number of the employee's years of service, and is reduced by amounts already contributed by the employer to the annuity. In computing the amount excludible from an employee's gross income, service with the contributing employer and payments by that employer are taken into account. In addition, the payments are subject to the limitations on contributions and benefits generally applicable to qualified retirement plans (sec. 415). Certain special elections (1) to increase these limitations on payments for tax-sheltered annuities, or (2) to increase the amount of the tax-sheltered annuity payments excludible from gross income, apply to employees of educational institutions, hospitals, and home health service agencies.

Explanation of the bill

The bill would provide that, with respect to a minister or lay employee of a church (or convention or association of churches), all years of service with the church, etc., and all contributions to tax-sheltered annuities by the church, etc., would be aggregated for purposes of determining the contribution to a tax-sheltered annuity excludible from gross income. In addition, the special elections (1) to increase the limitation on payments for tax-sheltered annuities, or (2) to increase the amount of the tax-sheltered annuity payments excludible from gross income, would apply to ministers and lay employees of a church, etc. Also, the annual limitation on contributions and for any employee eligible for the special elections would be at least $10,000, and would be adjusted for future cost-of-living increases.

Effective date

The provisions of the bill would be effective for taxable years beginning after December 31, 1977.

5. S. 1958—Senator Matsunaga

Investment by Money Purchase Pension Plan in Employer Real Property

Present law

Under ERISA a money purchase pension plan is not permitted to invest in employer real property other than qualifying employer real property and may not invest more than 10 percent of its assets in qualifying employer real property. This percentage limitation does not apply to a plan which on September 2, 1974, invested primarily in employer securities. For employer real property to constitute qualify-

ing employer real property, it must generally consist of several parcels of leased real property which are geographically dispersed and are suitable for more than one use.

Explanation of the bill

The bill would generally permit money purchase pension plans to invest in qualifying employer real property without regard to any percentage limitation. In addition, the definition of qualifying employer real property would be expanded (1) to include a single parcel of real property meeting certain specified requirements, and (2) to consider multiple parcels of real property as geographically dispersed although they are located within a single State.

Effective date

The provision of the bill would be effective on its date of enactment.

C. EMPLOYEE STOCK OWNERSHIP PLANS

S. 1240—Senators Long and Gravel

Employee Stock Ownership Improvements Act of 1979

1. Tax credit employee stock ownership plan (TRASOP) made permanent (sec. 2 of the bill and sec. 46(a)(2)(E) of the Code)

Present law

Under present law, the provisions of the Code which allow a tax credit to a corporate employer for amounts contributed to a TRASOP (an employee stock ownership plan funded with an additional percentage of investment tax credit) will expire on December 31, 1983.

Explanation of the provision

Under the bill, the tax credit available to an employer for contributions to a TRASOP would be made permanent.

Effective date

The provision would be effective for periods beginning after December 31, 1979.

2. Credit for establishing TRASOP (sec. 3 of the bill and new sec. 44D of the Code)

Present law

Under present law, a corporate employer is entitled to an additional percentage point of investment tax credit (i.e., 11 percent rather than 10 percent) if it contributes an amount equal to the additional credit to a TRASOP. In addition to the 1 percent credit, up to ½ percent of extra investment tax credit is allowed where an employer contributes the extra credit amount to the TRASOP and the employer's extra contribution is matched by employee contributions.

Explanation of provision

Under the bill, a corporate employer maintaining a TRASOP, could elect to take a tax credit for a contribution to the TRASOP based on a percentage of payroll in lieu of an additional percentage of investment tax credit. This wage base credit would be nonrefundable and could not exceed 1 percent of the aggregate participants' compensation of a plan participant for the year.

Effective date

The provision would be effective for taxable years beginning after December 31, 1980.

3. Deduction of certain TRASOP and ESOP contributions, bequests, etc. (sec. 4 of the bill and secs. 404 and 409A of the Code)

Present law

Under present law, a corporation is not entitled to deductions for dividends paid to shareholders.

Under present law, a corporate employer is allowed, within certain limits, a deduction for contributions to certain tax-qualified plans; however, no person other than the employer is allowed a deduction for such a contribution.

Explanation of provision

Under the bill, a corporation would be entitled to a deduction for dividends paid during the taxable year on employer securities held by a TRASOP or by an employee stock ownership plan (ESOP), provided that the dividend received by the plan is distributed to the employees participating in the plan not later than 60 days after the end of the plan year in which it is received.

Under the bill, an individual could make a contribution or bequest of employer securities to a TRASOP or to an ESOP, and such contribution could qualify as a charitable contribution and would be deductible by the individual (within the normal limits on the deductibility of charitable contributions). To qualify as a charitable contribution under this provision, the contribution or bequest of employer securities to a TRASOP or an ESOP could not be allocated under the plan for the benefit of the donor, any person related to the donor, or any person who owns more than 25 percent in value of any class of outstanding employer securities. The TRASOP or ESOP would specifically have to provide for the acceptance of such contributions and bequests.

Effective date

The provisions would be effective for taxable years beginning after December 31, 1979.

4. Exception from section 415 limitations for extraordinary forfeiture allocations (sec. 5 of the bill and sec. 415(c)(6) of the Code)

Present law

Under present law, contributions and other additions (including forfeitures) to a participant's account under a qualified defined contribution plan generally cannot exceed the lesser of $25,000 (adjusted annually for inflation since 1974) or 25 percent of the participant's compensation. In the case of certain ESOPs or TRASOPs, the dollar limit is doubled.

Explanation of provision

Under the bill, the limitation on contributions and other additions to a participant's account under an ESOP would be increased if extraordinary forfeitures under the plan (as determined under regu-

lations), when combined with the employer contributions necessary to permit the plan to amortize a loan, exceeded the present-law limitation on contributions and other additions on behalf of a participant.

Effective date

The provision would be effective for taxable years beginning after December 31, 1979.

5. Limitation on stock distributions (sec. 6 of the bill and sec. 409A(h) of the Code)

Present law

Under present law, a participant in either a TRASOP or an ESOP must have the right to demand that benefits be distributed in the form of employer securities.

Explanation of provision

The bill would create an exception to the present-law rule that a participant entitled to a distribution from a TRASOP or an ESOP must have the right to demand the distribution in the form of employer securities. Under the bill, a TRASOP or an ESOP could not be required to distribute employer securities to a participant entitled to a distribution if the charter or by-laws of the employer (1) restricted ownership of employer securities to present employees of the employer or to qualified plans, and (2) required an employee to resell such securities upon termination of service.

Effective date

The provision would be effective for taxable years beginning after December 31, 1979.

6. Voting rights (sec. 7 of the bill and sec. 401(a)(22) of the Code)

Present law

Under present law, a tax-qualified defined contribution plan is required to pass through voting rights on employer securities to plan participants with respect to major corporate issues in certain circumstances. The vote pass-through applies if (1) the employer which established the plan does not have a class of publicly traded stock, (2) the plan acquired employer securities after December 31, 1979, and (3) after the acquisition more than 10 percent of the plan's assets are employer securities.

Explanation of provision

The bill would delete the provision of present law which, after December 31, 1979, would require certain contribution plans which hold more than 10 percent of its assets in employer securities to pass through voting rights to participants on major corporate issues.

Effective date

The provision would be effective for taxable years beginning after December 31, 1979.

7. Cash distribution option and put option for stock bonus plans (sec. 8 of the bill and new sec. 401(a)(22) of the Code)

Present law

Under present law, stock bonus plans must generally distribute stock to participants entitled to a distribution. A TRASOP or an ESOP

which is a stock bonus plan, however, may distribute cash, subject to a participant's right to demand that benefits be distributed in the form of employer securities.

Explanation of provision

The bill would permit a stock bonus plan to distribute cash to a participant entitled to a distribution, subject to the participant's right to demand that benefits be distributed in the form of stock. If the stock is not readily tradable on an established market, the participant would have the right to require the employer to repurchase the stock.

Effective date

The provision would be effective for taxable years beginning after December 31, 1979.

8. Availability of additional percentage for TRASOPs (sec. 9 of the bill and sec. 46(f) of the Code)

Present law

Under present law, a corporation is allowed an additional investment tax credit of up to one and one-half percent if the corporation makes contributions in that amount to a TRASOP. However, the credit is not available to public utilities if the agencies which regulate them do not comply with normalization rules concerning the credit.

Explanation of provision

The bill would make a technical change to the provision of present law which allows a public utility an investment tax credit of up to one and one-half percent if the utility makes a contribution equal to the amount of additional investment tax credit to a TRASOP and if there is compliance with certain normalization rules concerning the credit.

Effective date

The provision would be effective for taxable years beginning after December 31, 1979.

9. Special limitation for employee stock ownership plans (sec. 10 of the bill and sec. 415(c)(6)(A) of the Code)

Present law

Under present law, the dollar limitation on contributions with respect to a participant in a TRASOP or in an ESOP may be increased, provided certain requirements with respect to allocations are met. The amount of increase is the lesser of (1) the existing limitation on contributions or other additions to a participant's account, or (2) the amount of employer securities contributed to the employee stock ownership plan.

Explanation of provision

Under the bill, the increase in the contribution limitation for TRASOPs or ESOPs (provided certain requirements are met with respect to allocations under the plan) would be the lesser of (1) the existing limitation on contributions or other additions to a participant's account, or (2) the amount of employer securities allocated to a participant's account (rather than securities contributed to the plan).

Effective date

The provision would be effective for taxable years beginning after December 31, 1979.

10. Tax credit for the establishment of ESOPs by small employers (sec. 11 of the bill and new sec. 44E of the Code)

Present law

Under present law, generally an employer would be allowed a deduction for the cost of establishing an ESOP.

Explanation of provision

Under the bill, a small business employer which established an ESOP would be allowed a credit against its Federal income tax in an amount equal to the lesser of $5,000 or the actual cost of establishing the plan. A small business employer is defined as an employer which had a monthly average of not more than 100 employees during the taxable year immediately preceding the taxable year for which the ESOP is established.

Effective date

The provision would be effective for taxable years beginning after December 31, 1980.

11. Retirement savings by TRASOP participants (sec. 12 of the bill and sec. 219(c)(4) of the Code)

Present law

Under present law, an employee who is an active participant in a tax-qualified plan during a year is not eligible to make deductible contributions to an IRA (individual retirement account, individual retirement annuity, or retirement bond. Therefore, if an employee is an active participant in a TRASOP during a year, such employee is ineligible for an IRA.

Explanation of provision

Under the bill, an individual who is an active participant in a TRASOP would not be precluded from making deductible contributions to an IRA solely because of participation in the TRASOP.

Effective date

The provision would be effective for taxable years beginning after December 31, 1979.

12. Making of qualified matching employee contributions to TRASOPs (sec. 13 of the bill and sec. 48(n) and new sec. 404(j) of the Code)

Present law

Under present law, a corporate employer is entitled to an additional percentage point of investment tax credit (i.e., 11 percent rather than 10 percent) if it contributes an amount equal to the additional credit to a TRASOP. In addition up to ½ percent of extra investment tax credit is allowed where an employer contributes the extra amount to the TRASOP and the employer's extra contribution is matched by employee contributions.

Explanation of provision

Under the bill, an employer would be allowed to contribute both the matching employer and employee contributions to a TRASOP. If the employer made both matching employer and employee contributions, the employer would be allowed a deduction for the amount of the

matching employee contributions in addition to the additional ½ percent of extra investment tax credit for the amount of the matching employer contributions.

Effective date

The provision would be effective for taxable years beginning after December 31, 1979.

13. Special provisions for small distributions from TRASOPs (sec. 14 of the bill and sec. 402(a) of the Code)

Present law

Under present law, if employer securities are distributed in a lump sum distribution from a tax-qualified plan, the basis of the securities (i.e., the value of the securities when contributed to or acquired by the plan) is includible in income by the recipient in the year of the distribution. The net unrealized appreciation on the employer securities is not taxed until the securities are sold or exchanged.

Explanation of provision

Under the bill, if employer securities are distributed in a lump sum distribution from a TRASOP, and if the participant from whose account the distribution is made was a participant in the plan for at least three years, then the lesser of $5,000 or the basis in the employer securities would be excluded from the recipient's gross income.

Effective date

The provision would be effective for taxable years beginning after December 31, 1979.

14. Use of nonvoting stock in TRASOPs and ESOPs (sec. 15 of the bill and sec. 409A(l) of the Code)

Present law

Under present law, the only type of closely held employer security which can be contributed to a TRASOP or an ESOP is common stock issued by the employer having a combination of voting power and dividend rights equal to or in excess of the class of common stock of the employer having the greatest voting power and the class of stock of the employer having the greatest dividend rights.

Explanation of provision

The bill would permit another type of closely held employer security to be contributed to a TRASOP or an ESOP. A TRASOP or an ESOP could acquire nonvoting common stock of a closely held employer if (1) the stock was acquired from a shareholder, but not from the corporation, and (2) the stock was held by shareholders for at least 24 months prior to the acquisition by the TRASOP or the ESOP.

Effective date

The provision would be effective for taxable years beginning after December 31, 1979.

15. Valuation of employer securities in TRASOPs (sec. 16 of the bill and sec. 48(n)(6)(B)(i) of the Code)

Present law

Under present law, the value of employer securities listed on a national exchange which are contributed to a TRASOP is the average of

closing prices for such securities for the 20 consecutive trading days immediately preceding the due date for filing the employer's tax return for the year (including extensions).

Explanation of provision

Under the bill, the value of employer securities listed on a national exchange contributed to a TRASOP would be the average of the closing prices of such securities for the 20 consecutive trading days immediately preceding the date of contribution to the plan.

Effective date

The provision would be effective for taxable years beginning after December 31, 1979.

16. Special requirements for qualified plans

Present law

Under present law, an employer is generally allowed a deduction for profit-sharing or stock bonus plan contributions which do not exceed 15 percent of the compensation of all employees under the profit-sharing or stock bonus plan. If the contributions are made to two or more profit-sharing or stock bonus trusts, such trusts will be looked at as one trust for the purpose of applying the limitation on contributions.

Under present law, if a qualified plan (i.e., H.R. 10 plan) provides for contributions or benefits for an employee who is considered to be an "owner-employee," the assets of such plan must be held by a bank, an insured credit union, or other approved trustee, or invested in an insurance contract. An owner-employee is an individual who owns the entire interest in an unincorporated trade or business or in the case of a partnership who has more than a 10 percent interest in the partnership. Under present law, if this plan is later merged into or transfers assets to a plan which does not cover an owner-employee the plan receiving assets from the restricted plan is also required to have as its trustee a bank, etc.

Explanation of provision

Under the bill, an employer generally would be allowed a deduction for contributions to one or more profit-sharing plans and one or more stock bonus plans which does not exceed 25 percent of the compensation of employees under the plans.

Under the bill, if a qualified plan which provides contributions or benefits for a person who is an owner-employee is merged into or transfers assets to a qualified plan which does not cover an owner-employee, the plan receiving assets from the restricted plan would not be required to have a bank or other independent trustee as its trustee.

Effective date

The provision would be effective for taxable years beginning after December 31, 1979.

17. Flexible benefit

Present law

Under present law, a cafeteria plan is an employee benefit plan under which a participant may choose between taxable benefits and one or more nontaxable welfare benefits. Such plans are not permitted to provide deferred compensation.

Explanation of the provision

The bill would permit a cafeteria plan to provide deferred compensation under the rules applicable to cash or deferred profit-sharing and stock bonus plans.

Effective date

The provision would be effective for taxable years beginning after December 31, 1979.

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