

ESOP PROMOTION AND IMPROVEMENT ACT OF 2009

S. 1612

Explanation of “Employee Stock Ownership Plan Promotion and Improvement Act of 2009”

Note: These provisions are included in the 2009 pro-ESOP legislation introduced by Senator Blanche L. Lincoln (D-AR). The ESOP community should work to have House ESOP Champions introduce the same, or similar, pro-ESOP legislation.

- S. 1612 would repeal the punitive 10% penalty tax on S corporations distributions from current earnings, also referred to as dividends, placed on ESOP stock that are passed through to ESOP participants in cash.
- S. 1612 would clarify that dividends paid by C corporations on ESOP stock are not a preference item in calculating the corporate alternative minimum tax.
- 1042 ESOP tax deferred rollover provisions are improved by
 - (a) permitting sellers to the ESOP of an S corporation to utilize the ESOP tax benefit referred to as the tax deferred rollover, or the so-called 1042 treatment;
 - (b) permitting proceeds received from a 1042 transaction to be reinvested in mutual funds consisting of operating U.S. corporation securities; and
 - (c) redefining what is a 25% owner, for purposes of IRC 1042, as 25% ownership or more of voting stock, or 25% ownership or more of all stock of the corporation, instead of current law definition the ownership of 25% of any class of stock is a 25% owner for purposes of IRC 1042.
- S. 1612 would eliminate a bias against minority owned ESOP companies by making clear that a non-ESOP small businesses currently eligible for any Small Business Administration program is still eligible for the SBA program if becoming a majority owned ESOP company with the same characteristics it had before becoming a majority owned ESOP company. (A majority owned ESOP company is 50% plus owned by the ESOP on behalf of the employees.)