

Hearing on Corporate Tax Reform

Subcommittee on Select Revenue Measures
Committee on Ways & Means

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Statement Submitted by J. Michael Keeling
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Chair Camp, ranking member McNulty and members of the Subcommittee on Select Revenue Measures of the Committee on Ways and Means.

My name is J. Michael Keeling, President of The ESOP Association, a national 501(c)(6) trade association with over 2400 members that represents corporations that sponsor employee ownership through Employee Stock Ownership Plans, or ESOPs.

You may feel it is out of place for the trade association representing ESOP companies to submit testimony to a hearing on Corporate Tax Reform.

Normally, The ESOP Association and ESOP advocates present testimony to the Ways and Means Committee when it holds a hearing on retirement income policy, as ESOPs are by law defined as a tax qualified deferred compensation plan under our nation's ERISA laws.

The House Ways and Means Committee has a long and positive record in support of employee ownership in general, and ESOPs specifically. While those with long memories often assume that ESOPs were a topic that the Senate Finance Committee focused on, due to the fact that the concept of employee ownership through ESOPs originated in the Senate under the leadership of former Senator Russell B. Long, the truth is it is the Ways and Means Committee that has had the most hearings on ESOP law and incentives, and since 1995, it is the Ways and Means Committee that has initiated amendments to ESOP law.

Now, today, the Subcommittee on Select Revenue Measures is focused on Corporate Tax Reform; this focus is partially driven by the report released November 1, 2005, by the Presidential Panel on Federal Tax Reform recommendations for massive changes in how business and individuals are taxed under our Federal income tax system.

The ESOP community is very disappointed with the Panel's recommendations. Why? It is not just because of a recommendation it makes with regard to savings plans that would eliminate ESOPs, but because the Panel failed to recognize anything about ESOPs, and did not take notice of what ESOPs can do for American business, American employees, and American competitiveness.

For you see, the law is clear. ESOPs serve a dual purpose. Let us quote for the members 90 Stat. 1590. P.L. 94-455:

“(h) Intent of Congress Concerning Employee Stock Ownership Plans. – The Congress, in a series of laws (the Regional Rail Reorganization Act of 1973, the Employee Retirement Income Security Act of 1974, and the Tax Reduction act of 1975) and this Act has made clear its interest in encouraging employee stock ownership plans as a bold and innovative method of strengthening the free private enterprise system which will solve the dual problems of securing capital funds for necessary capital growth and of bringing about stock ownership by all corporate employees. The Congress is deeply concerned that the objectives sought by this series of laws will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans, which reduce the freedom of the employee trust and employers

to take the necessary steps to implement the plans, and which otherwise block the establishment and success of these plans.”

As noted, this is the law; it is not a Congress resolution.

Our nation’s courts have taken note of this law in law suits involving ESOPs since 1975, citing the law as the primary reason that ESOPs are to be judged by standards that are different from the traditional ERISA plan. A typical phrase used by courts is “ESOPs are intended by Congress to be tools of corporate finance as well as retirement savings plans”. Often courts add, “ESOPs are to be ownership plans as well as retirement savings plans.”. See *Moensch v. Robertson et al*, Federal, 3rd Circuit, 1995.

Keeping in mind the purpose of ESOPs, let us not abandoned the wonderful concept that America should have more owners, or a true ownership society. We ESOP advocates were thrilled to hear President Bush say on January 20, 2005,

“To give every American a stake in the promise and future...we will ...build an ownership society. We will widen the ownership of homes and businesses, retirement savings, and health insurance—preparing our people for the challenges of life in a free society.

By making every citizen an agenda of his or her own destiny, we will give our fellow Americans greater freedom from want and fear and make our society more prosperous and just and equal.”

These very words resonate well with the Vision of The ESOP Association which provides,

“We believe that employee ownership improves American competitiveness...that it increases productivity through greater employee participation in the workplace...that it strengthens our free enterprise economy and creates a broader distribution of wealth...and that it maximizes human potential by enhancing the self-worth, dignity, and well-being of our people.

Therefore, we envision an America where employee ownership is widely recognized as a catalyst for economic prosperity...where the great majority of employees own stock in the companies where they work...and where employee ownership enables employees to share in the wealth they help create...”

So what is our purpose in submitting this testimony to a hearing on corporate tax reform?

We respectfully request that as the Subcommittee review details of how to make taxes on businesses more fair, and more simple, that the Subcommittee not overlook that we have a set of laws to make the tax on business more fair by encouraging businesses to be broadly owned by more people, their employees.

It may be that the changes you decide to make, if you do, will rearrange those ESOP laws that encourage current business owners to share their wealth by letting employees become what we like to say, “players” in the best economic system ever devised. If that is the case, then let us consider new ways, new approaches that encourage a more fair, more effective, and more productive pattern of ownership by continuing the Ways and Means’ long standing posture of supporting broadened ownership of our nation’s productive assets through ESOPs.

The ESOP community, as always, will stand ready to work constructively with the Committee and Committee staff to ensure laws promoting employee ownership are crafted in a manner to accomplish the goals of broad-based employee ownership.

On behalf of the ESOP community, I thank you for taking note of this testimony.