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Serving the entire ESOP community

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House Ways and Means Committee
1102 Longworth House Office Building
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Following is a statement from The ESOP Association for the Ways and Means Committee's March 7, 2012 hearing: Hearing on the Treatment of Closely-Held Businesses in the Context of Tax Reform.

The statement is being submitted by

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The ESOP Association is the national trade association for companies with employee stock ownership plans (ESOPs). The Association's primary members are U.S. corporations that sponsor ESOPs. The mission of The ESOP Association is simple: To advocate for, and educate about, employee ownership through the ESOP model.

Statement follows:

Mr. Chairman Camp, Ranking Member Levin, and distinguished members of the House Committee on Ways and Means, the 2010 General Social Survey (GSS) evidences that during the Great Recession companies that had broad-based employee stock ownership programs, such as an ESOP, laid off employees at a rate of less than 3%, whereas conventionally owned companies laid off employees at a rate greater than 12%!

Why would a spokesperson for The ESOP Association, a national 501(c)(6) trade association whose primary members are U.S. corporations sponsoring ESOPs, begin his statement to the Committee on pass-through entities for tax purposes on the results of the most prestigious survey of Americans' work and living patterns?

Because, of the Association's nearly 1,500 corporate members that are all, or partially employee-owned, approximately 70% are S corporations, and of this group of over 1,000 U.S. corporations, approximately two-thirds, are owned 100% by the ESOP on behalf of the employees.

Thus, when the Committee, when the Congress, and when the current Administration, as it set forth in "The President's Framework for Business Tax Reform," address the tax treatment of S corporations, it is a fiduciary duty of this Association to provide this Committee's history in authorizing legislation for S corporations to sponsor ESOPs.

One myth about ESOPs is that all ESOP laws were developed by the U.S. Senate due to the leadership of former Senator Russell B. Long in his roll as Chair or ranking member of the Senate Committee on Finance. Granted, as the original advocate for more ownership in America using the ESOP model, Senator Long is a revered figure among those who believe that we would have a more competitive, more fair, economic situation if there were more owners in our capitalistic society.

But, in 1997, ten years after Senator Long retired, the Ways and Means Committee adopted, with no dissent, an amendment permitting S corporations for the first time, commencing in 1998, to have broad-based employee stock ownership through the ESOP model.

Thus, while no one claims that past action by the Ways and Means Committee dictates what the Committee decides later with regard to S corporations and ESOPs, we do emphasize that S corporations and ESOPs are not something that just the Senate should think about in the move to reform our Federal tax code.

We would also like to clarify a myth that the media often says, and it seems law students and lawyers like to repeat in law school journals, that S corporation ESOP companies are tax exempt. What Congress did in 1997 was permit a deferral of taxation of S corporation shareholders who were paid, via a distribution, from the ESOP on the value of S assets --- in other words, the ESOP participant pays taxes on her or his account

when it is distributed in cash to the employee owner who retires, leaves the company vested, or is sadly disabled, or dies while an employee.

Thus, the cost to the Treasury of the ESOP S regime is not the bulk of the so-called tax expenditures that encourage a policy that has tons, and yes, I say tons, of evidence from very reputable social and economic researchers that show employee-owned companies, in the vast majority of instances, are more productive, more profitable, and provide sustainable jobs that are locally-controlled here in the U.S.

The ESOP community respects the call by this Committee, by the leadership of both political parties, and the Administration for policies that will “create” jobs; we understand that differences arise over the precise policies that should be implemented to “create” jobs as well.

We, however, with all due respect to our national leaders, including those who sit on this Committee, note that unemployment rises to unacceptable levels when people lose their jobs, when they are laid off. Thus, it would seem that encouraging a policy that results in fewer lay offs, in sustaining employees in the jobs they have, is perhaps the best approaches to making sure those who want to work have jobs.

In that regard, we take note that 15 members of this Committee have introduced and co-sponsored H.R. 1244, the Promotion and Expansion of Private Employee Ownership Act of 2011. We, of course, express our strong support for this legislation, which is primarily focused on increasing employee stock ownership among S corporations by expanding the attractiveness of the ESOP to men and women who have reached a point in life when they have to ‘exit’ their ownership of an S corporation. The precise mechanism is a provision applied first in 1984 to C corporations that are not publicly traded by deferring the capital gains tax on the sale of privately held stock to an ESOP if the ESOP holds more than 30% of the sponsoring corporation’s stock, and if the seller reinvests her/his proceeds in the securities of other U.S. corporations [IRC 1042]. In particular we tip our hats to Congressmen Reichert, Kind, Boustany, Blumenauer, Paulsen, and Pascrell, who introduced this legislation on March 29, 2011. Not only have nine colleagues of this Committee joined them, so have 49 other members of the House. Similar legislation, with support from both sides of the chamber, is pending in the U.S. Senate --- S. 1512.

We respectfully request that as the Committee works on reforming the Federal tax code, it works as it did in 1985, Congress needs to take steps to encourage greater ownership of productive assets in our nation by remaining firm in its support of employee stock ownership through the ESOP model.

And with that we close with a salute to the leadership of the Committee, in particular Chair Camp, who has made it clear that piecemeal reform of the tax code, by addressing only those provisions that impact businesses organized as C corporations, and the rates on which their taxes are calculated, is not in the best interests of American businesses, nor individual taxpayers. In this regard, a total, holistic approach to making

our tax code support jobs, our free enterprise system, with fairness, is the pathway this Committee is following. History proves that such an approach is the correct approach.

We appreciate your hearing on the potential impact of tax reform on pass through entities, and the openness with which you are conducting your review.