



The Swerdlin Quarterly

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Senate Introduces Pro-ESOP Bill

The "Promotion and Expansion of Private Employee Ownership Act of 2011" (H.R. 1244) was introduced on March 29, 2011 by a bi-partisan group of key members of the House Ways and Means Committee. These members are Congressmen David G. Reichert (R-WA), Ron Kind (D-WI), Charles W. Boustany, Jr. (R-LA), Earl Blumenauer (D-OR), Erik Paulsen (R-MN), and Bill Pascrell (D-NJ).

If passed, this bill will:

1. Permit owners of S Corporation stock to sell the stock to an ESOP and defer the capital gains tax if the proceeds are reinvested in U.S. equities. This benefit is currently available under IRC §1042 to owners of C Corporations;
2. Permit lenders to S Corporations, which are at least 50% owned by an ESOP, to exclude 50% of the interest income from the loan used to purchase the stock for the ESOP;



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It's the time of year for me to make my annual declaration. The year 2012 has great significance. Some are of the belief that the Mayan calendar, which ends on December 21, 2012, predicts the end of the world. Various prophets throughout the years have

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also predicted significant changes around this time. I believe humankind is about to change for the good. I believe that our consciousness is ready to expand to such a degree as to eliminate many of our world's problems. I have no idea how this expansion will come about. I do think we will suffer greatly in letting go of the old ways, but the new world is worth the suffering. I think we'd all agree that our current world with the greed, wars, terrorism, hunger, hate, and so forth, could use some improvement.

So, for 2012 my declaration is: The Year of Transformation. To me, transformation means a complete change,

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What's Happenin'

We welcome one new employee this quarter: **Jennifer Beattie**, a Consulting Actuary on the Actuarial Team.

Anniversaries we celebrate this quarter: **Laura O'Connor**, 17 years; **Cynthia Clark** and **Lee Swerdlin**, 13 years; **Adrian Farnon** and **Ricky Cox**, 9 years; **Eric Myers** and **Marjorie Cade**, 5 years; **Janet Wadlington**, 4 years; and **Catie Smith**, 1 year.

Congratulations to **Tianna Barron** who passed Part 1 of the Retirement Plan Fundamentals exam.

Janet Wadlington was awarded the Individual Excellence Award. This award is given to an employee who is nominated by his or her co-workers.

Julie Isom and **Lee Swerdlin** spoke before a CPA group in Boston, Massachusetts on September 27.

On October 1, **Penret** was a sponsor for the Cystic Fibrosis Bike Ride in Holliston, Massachusetts. Several Penret employees and their family members participated in the bike ride. Dorn and Joanne Swerdlin flew up for the occasion; however, neither did any bike riding!

The **Defined Contribution Team** hosted its final lunch fundraiser of the year on October 4. Employees enjoyed a variety of homemade soups and desserts, raising \$230 for the Swerdlin Charity Fund.

Adrian Farnon, Janet Wadlington, Lorene Pierre and **Susan Petrirena** attended the quarterly Women in Pensions (WIPs) meeting at Atlanta restaurant, Soho, on October 5.

On October 6, **Kim Hall** and **Rita Teague** enjoyed a beautiful evening at Atlanta restaurant, Canoe, for the Bobby Dodd Synergy event. This is an annual event for Bobby Dodd Institute, one of our long-term clients, to thank their supporters.

Connie Woodmansee, Ed Ilano, Joanne Swerdlin and **Susan Petrirena** attended the ESOP New South Chapter Conference on October 6 in Atlanta.

Xytex Cryo International, a Swerdlin client, announced its 100% ESOP status on October 13. The Mayor and other Augusta community leaders attended the ceremony. Georgia Governor Nathan Deal sent a congratulatory letter and issued his proclamation citing October 13 as "Employee-Owner Day" and October 2011 as "Employee Ownership Month" in the State of Georgia.

On October 14, **Adrian Farnon** attended the Kennesaw State University Scholarship Luncheon on behalf of WEB Atlanta.

Joanne Swerdlin and **Susan Petrirena** participated in the ESOP Tri Chapter Conference in Minneapolis, Minnesota in September. They also flew to Portland, Maine to attend the New England ESOP Chapter Conference in October.

At the company's annual **Fall Carnival** on October 28, employees celebrated fall birthdays, played games and won several door prizes. This event raised \$335 for the Swerdlin Charity Fund.

Connie Woodmansee, Dorn and Joanne Swerdlin, Scott Foreman and **Susan Petrirena** attended the ESOP Technical Conference in Las Vegas on November 2-4.

Julie Isom was a presenter at the Cobb Galleria in Atlanta for the Georgia Tax Forum on November 4. She was also a presenter at the Georgia CPA Conference in Savannah, December 2, where she discussed qualified plan design, administration and industry trends.

On November 10, we held an Open House at the **Penret** offices to meet and greet our clients, advisors and friends in the Boston community.

Adrian Farnon, JoAnna Terry, Kristin Hamilton and **Mike Raker** attended the "Soul Celebration: A Gala Benefiting St. Jude Children's Research Hospital" on Friday, November 11.

Adrian Farnon, Dee Robbins and **Joanne Swerdlin** attended a meeting celebrating the 20th anniversary of WEB Atlanta, held at Maggiano's on November 17. Swerdlin has been a part of this organization since 1997.

The "**St. Jude Give Thanks Walk**" was held on November 19, at Zoo Atlanta. Swerdlin employees participated in this event for the second year, raising approximately \$2,500.

David Benoit was recently selected by his peers for inclusion in the 2012 edition of The Best Lawyers in America® in the practice area of Employee Benefits (ERISA) Law.

O'Neal, Inc., an employee-owned company and a long-term client of Swerdlin, was recently named General Contractor of the Year by Associated Builders and Contractors, Inc. of the Carolinas.



Ribbon Cutting Ceremony

(left) Swerdlin client Xytex Cryo International held a ribbon cutting ceremony at their Augusta, Georgia location on October 13 to celebrate 100% ESOP status.

Las Vegas ESOP Convention

(right) Susan Petirena, Joanne Swerdlin, Connie Woodmansee and Dorn Swerdlin are pictured at the ESOP Technical Conference in Las Vegas.

(below) Jim Smith and Gale Alexander of American Health Companies visit the Swerdlin booth. Pictured also are Susan Petirena and Scott Foreman from Swerdlin.



Penret Open House

On November 10, we held an Open House at the Penret offices: (above) Dorn Swerdlin and Jon Flitter; (below) Glenda Devechio, Joan Lennox and Sandi Vriesema; (bottom) Joanne Swerdlin, Jon Kemp and Susan Bertolino.



Adrian Farnon, Kristin Hamilton and JoAnna Terry attended the St. Jude Soul Celebration on November 11.



A Family Affair — How Family Attribution Rules Relate to Plan Administration

Do you ever wonder why we ask for ownership and family relationship information each year? You may think we are just nosey, but this information is critical to ensure all discrimination testing is performed correctly. In the retirement plan world, family relationships are referred to as Family Attribution. This concept applies ownership of a company to certain family members of the shareholder.

Attribution rules are applied to a spouse and lineal descendants of an owner. Through attribution, these family members are also considered to own stock.

Shareholders who own 5% or more of the company's stock are considered Highly Compensated Employees (HCEs), as well as Key Employees, for testing purposes. If other family members start working for the company and attribution applies, you may suddenly go from one HCE to multiple HCEs. The same applies to Key Employees. Increasing

the number of HCEs and Keys will impact discrimination testing and can have a financial impact.

In IRC §318, the IRS defines an individual as owning stock if the stock is owned directly or indirectly by his or her spouse, children, grandchildren or parents. The table below shows different examples of how the attribution rules apply based on the following family business scenario:

The family: John and Jane Doe are married and have two children, Bobby Joe (age 27) and Betty Sue (age 16). John's parents are Jim and Judy.

As you can see from the table below, the family attribution rules can be complicated. However, in a family-owned business, it is very important to review the ownership and family relationships among the employees.

So, in the future, when you are asked for this information, you will know we are not being nosey, just thorough! ■

Attribution Type – Family Relation	Deemed Ownership	Example
Spouse	Yes	Both spouses are considered to own the other's stock.
Parent & child under 21	Yes	Betty Sue is considered to own the stock of her parents.
Parent & child over 21	Yes	Bobby Joe is considered to own the stock of his parents.
Child to parent	Yes	John and Jane are considered to own stock of Bobby Joe and Betty Sue.
Grandchild to grandparent	Yes	Jim and Judy are considered to own any shares owned by Bobby Joe and Betty Sue.
Grandparent to grandchild	No	In the case of grandparents and grandchildren, lineal descent goes up but not down.
Siblings	No	Bobby Joe is not considered to own shares owned by Betty Sue and vice versa.
Spouses of lineal descendants	No	Future spouses of Bobby Joe and Betty Sue are not considered to own stock owned by John and Jane.

Q Our 401(k) plan allows employees to participate after 3 months of service. Is it our responsibility to monitor a participant's maximum deferral amount for the calendar year, in the event he made deferrals to his previous employer's plan and ours?

A No. It is the participant's responsibility to be sure his deferrals do not exceed the maximum. The maximum (\$16,500 or \$22,000) is a 2011 calendar year limit for an individual, and your employee is the only one who knows if he deferred into more than one plan during the year.

Q We have rehired an employee who had previously met the plan's eligibility requirements. When can he come back into the plan?

A All plans include specific rules as to when a rehired employee is eligible to enter the plan. Generally, he is eligible on his rehire date.

Q If a participant loan is inadvertently issued for more than the maximum of \$50,000, what can we do?

A The IRS permits a correction to be made that prevents the amount over \$50,000 from being treated as a taxable distribution. The Voluntary Compliance Program allows you to fix this prohibited transaction by filing a specific report with the IRS, having the participant repay the excess loan amount, and providing a revised amortization schedule.

Q Is there a 10% early distribution penalty if a QDRO benefit is paid to a spouse who is not yet age 59½?

A No, this particular distribution is exempt from the early distribution penalty.

Reporting Terminated Participants

Remember Form SSA? It was used to report terminated participants with account balances to the Social Security Administration and was filed with the Form 5500. Because the Form 5500 is now available to the public on the EFAST web site, and the SSA form contained Social Security numbers, a new reporting method was needed. Therefore, in 2009 the SSA form became obsolete.

The IRS has issued Form 8955-SSA, "Annual Registration Statement Identifying Separated Participants." Generally, the filing date for Form 8955-SSA is the same as that for Form 5500 – the last day of the seventh month after the plan year end, or ten and a half months if an extension is filed.

Because of the delay in issuing the 2009 Form 8955-SSA, there is a special filing date of January 12, 2012. The IRS is also allowing data for both 2009 and 2010 to be reported on the 2009 form.

The completed form can be mailed, in which case it has to be signed by the Plan Administrator, or filed electronically, which does not require a signature. If we prepare your Form 5500, we will also prepare the 8955-SSA Form. In fact, you may have already been notified that we have filed the form for you and sent you a copy for your files.

For the plan years beginning January 1, 2012, the regular filing dates will apply, but an extension can be requested for an additional 2½ months.

Please call your Client Manager if you have any questions on this new procedure. ■

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3. Establish an office within the Treasury Department to provide technical assistance to S Corporations with ESOPs; and
4. Provide that a small business currently eligible for Small Business Administration programs, remain eligible if the company becomes owned 50% or more by an ESOP, and if the workforce remains about the same as before the establishment of the ESOP.

On September 6, 2011, the Senate counterpart to H.R. 1244 was introduced by Senators Benjamin Cardin (D-MD), Pat Roberts (R-KS), and Olympia J. Snowe (R-ME). Senators Bernard Sanders (I-VT) and Jerry Morgan (R-KS) have joined their colleagues in co-sponsoring this bill (S. 1512).

"S Corp ESOPs have proven resilient even in tough times – hiring new workers as other firms were shrinking – while also providing an effective means of retirement savings for their workers," said Senator Ben Cardin. "We need to preserve and expand this structure to enable more businesses to grow and to allow their employees to accrue these valuable benefits. Americans deserve the opportunity to build secure retirement savings; far too many hard-working individuals are left with serious questions about their future economic security."

Senator Roberts added, "This legis-

lation supports a simple but powerful premise: when employees own the company, they operate with a vested interest in its success, and that in turn generates tremendous returns for the company, the community, and the economy. Furthermore, with fewer than half of Americans claiming any form of employer-sponsored retirement savings plan, private, employee-owned firms play an important role in ensuring retirement security for workers across America."

Senator Olympia J. Snowe said, "These types of positive incentives are an incredible motivator of employees, and in the face of looming tax reform, it is important for Congress to change these provisions now so they are not forgotten in larger tax reform or, worse, changed in some other, less favorable way. Implementing these reforms now will also afford small businesses and their employees a degree of certainty regarding their financial futures in what has been an extremely tumultuous economic environment."

The Promotion and Expansion of Private Employee Ownership Act of 2011 acknowledges the importance of preserving the S Corporation ESOP in the Internal Revenue Code. Swerdlin & Company supports this legislation and encourages you to contact your state senators and ask for their support of this legislation. ■

2012 IRS Dollar Limits

IRS Dollar Limits	Code Section	2010	2011	2012
DB plan annual benefit limit	415(b)(1)(A)	\$195,000	\$195,000	200,000
DC plan annual addition limit	415(c)(1)(A)	49,000	49,000	50,000
Max 401(k) deferral	402(g)(1)	16,500	16,500	17,000
Max 401(k) catch-up deferral	414(v)(2)(B)(i)	5,500	5,500	5,500
Max SIMPLE deferral	408(p)(2)(E)	11,500	11,500	11,500
Max 457 deferral	457(e)(15)&(c)(1)	16,500	16,500	17,000
Def of HCE (highly compensated employee)	414(q)(1)(B)	110,000	110,000	115,000
Annual Compensation Limit	401(a)(17) & 404(l)	245,000	245,000	250,000
SEP Coverage	408(k)(2)(C)	550	550	550
SS Taxable Wage Base		106,800	106,800	110,000

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such that you can never go back. A good example of transformation is the caterpillar changing into a butterfly. The butterfly cannot go back to being a caterpillar. He probably would not like to change back anyway, but that's a conversation for another day.

I have an even better example of transformation: My daughter-in-law, Ellen, transformed a single cell into my new granddaughter. She came early on November 5, 2011, weighing in at just under 5 pounds. Her name is Avery Carter Swerdlin. Everyone is healthy and happy.

Our job for 2012 is to expect significant changes and do what we can to expand our own consciousness. I believe the only way to change the world is to change yourself. How do you do this? I would like to share some ideas on how we can transform ourselves and expand our consciousness to accomplish this:

1. Be conscious of what you think and say.
2. Meditate.
3. Feel your feelings.
4. Make conscious choices. A conscious choice is one where the consequences of the choice are examined and the welfare of all affected people are considered. A "good" choice usually brings a comfortable feeling and a "bad" choice can bring discomfort. This is one good reason to listen to and be aware of your feelings.
5. Believe you have the power to change yourself and that changing yourself is the way to change the world.

I will continue to discuss this topic in more detail during 2012.

Have a Safe and Happy Holiday Season. ■

Fee Disclosures

Deadlines for these disclosure requirements are quickly approaching. If your plan is subject to these disclosures, your Client Manager will be getting in touch with you soon. In the meantime, if you have any questions, feel free to give us a call.

Type of Disclosure	Due Date	Consequence
Covered Service Provider Agreements 408(b)(2)	April 1, 2012	Prohibited Transaction for Service Provider
Annual fee disclosure to participants	By May 31, 2012	Breach of Fiduciary Duty
Quarterly fee disclosure to participants	August 14, 2012	Breach of Fiduciary Duty

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