ONE HUNDRED THIRD LEGISLATURE - FIRST SESSION - 2013
COMMITTEE STATEMENT
LB573

Hearing Date: Friday February 08, 2013
Committee On: Revenue
Introducer: Harr
One Liner: Change provisions relating to an adjustment to income for certain capital gains and extraordinary dividends

Roll Call Vote - Final Committee Action:
Advanced to General File

Vote Results:

Aye:	8	Senators Hadley, Hansen, Harr, Janssen, McCoy, Pirsch, Schumacher, Sullivan
Nay:		
Absent:		
Present Not Voting:		

Proponents:	**Representing:**
Sen. Burke Harr	Introducer
Mike Weaver	Lieben, Witted et al Law Firm
Chad Hartnett	HDR, Inc.
Kevin O'Malley	Travel and Transport
David Knutson	Farmers National Co.
Joseph Young	NE Chamber of Commerce/ Greater Omaha Chamber of Commerce
Walt Radcliffe	Radcliffe and Associates

Opponents:	**Representing:**

Neutral:	**Representing:**

Summary of purpose and/or changes:
The bill would clarify that for purposes of the special capital gains election, an employee stock ownership plan (ESOP) defined under I.R.C. Statute 401(a) qualifies as a "corporation" or what is commonly called a "qualified corporation" under the election provisions. It is important to note that ESOP's qualified under I.R.C. Statute 401(a) are retirement plans (26 USC Statute 401 - Qualified pension, profit-sharing, and stock bonus plans.)

The special capital gains election was originally passed in 1987. The statute has been amended twice since that time. The statute established an exclusion from state income tax for:
"extraordinary dividends paid on and the capital gain from the sale or exchange of capital stock of a corporation acquired by the individual (a) on account of employment by such corporation or (b) while employed by such corporation."

The provision allows an individual stockholder in a "qualified corporation" to exclude from taxable income all such dividends or capital gains. The "qualified corporation" language is complex, and is found on page 2, lines 18 to 23 of the bill:

(c) All corporations issuing capital stock for which an election under section 77-2715.09 is made shall, at the time of the first sale or exchange for which the election is made, have (i) at least five shareholders and (ii) at least two shareholders or groups of shareholders who are not related to each other and each of which owns at least ten percent of the capital stock.

The bill would clarify that purposes of this definition, an ESOP is not treated as a single shareholder, but that each participant in the ESOP constitutes a separate shareholder. As a results, any participant in the ESOP who must redeem their stock when they retire could claim the exclusion from taxable income for all distributions received from the ESOP.

Galen Hadley, Chairperson