

109TH CONGRESS
1ST SESSION

H. R. 3629

To amend the Internal Revenue Code of 1986 to allow the subchapter S election to be made on a return filed before the due date with extensions, to reduce the payroll deposit penalties for failures to make deposits in the prescribed manner, and to allow a married couple who operates a unincorporated business as co-owners to file separate self-employment tax returns.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2005

Mr. DOGGETT (for himself, Ms. VELÁZQUEZ, Mr. LEWIS of Georgia, Mr. BECERRA, Mr. EMANUEL, Mr. BACA, Mr. BROWN of Ohio, Mr. CARDOZA, Mr. CASE, Mr. CHANDLER, Mr. FILNER, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Ms. HERSETH, Mr. MCGOVERN, Ms. MILLENDER-MCDONALD, Mrs. NAPOLITANO, Mr. SHERMAN, Mr. MOORE of Kansas, Mr. HOLT, Mr. THOMPSON of California, and Mr. DAVIS of Illinois) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to allow the subchapter S election to be made on a return filed before the due date with extensions, to reduce the payroll deposit penalties for failures to make deposits in the prescribed manner, and to allow a married couple who operates a unincorporated business as co-owners to file separate self-employment tax returns.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Taking Care of Small
3 Business Tax Simplification Act of 2005”.

4 **SEC. 2. SUBCHAPTER S ELECTION PERMITTED ON RETURN**
5 **FILED BEFORE DUE DATE WITH EXTENSIONS.**

6 (a) IN GENERAL.—Subsection (b) of section 1362 of
7 the Internal Revenue Code of 1986 (relating to when sub-
8 chapter S election made) is amended to read as follows:

9 “(b) WHEN MADE.—

10 “(1) IN GENERAL.—An election under sub-
11 section (a) may be made by a small business cor-
12 poration for any taxable year at any time during the
13 period—

14 “(A) beginning on the first day of the pre-
15 ceding taxable year, and

16 “(B) ending on the due date (with exten-
17 sions) for filing the return for the taxable year.

18 “(2) CERTAIN ELECTIONS TREATED AS MADE
19 FOR NEXT TAXABLE YEAR.—If—

20 “(A) an election under subsection (a) is
21 made for any taxable year within the period de-
22 scribed in paragraph (1), but

23 “(B) either—

24 “(i) on 1 or more days in such taxable
25 year before the day on which the election
26 was made the corporation did not meet the

1 requirements of subsection (b) of section
2 1361, or

3 “(ii) 1 or more of the persons who
4 held stock in the corporation during such
5 taxable year and before the election was
6 made did not consent to the election,

7 then such election shall be treated as made for
8 the following taxable year.

9 “(3) ELECTION MADE AFTER DUE DATE
10 TREATED AS MADE FOR FOLLOWING TAXABLE
11 YEAR.—If—

12 “(A) a small business corporation makes
13 an election under subsection (a) for any taxable
14 year, and

15 “(B) such election is made after the due
16 date (with extensions) for filing the return for
17 such year,

18 then such election shall be treated as made for the
19 following taxable year.

20 “(4) AUTHORITY TO TREAT LATE ELECTIONS,
21 ETC., AS TIMELY.—If—

22 “(A) an election under subsection (a) is
23 made for any taxable year (determined without
24 regard to paragraph (3)) after the date pre-
25 scribed by this subsection for making such elec-

1 tion for such taxable year or no such election is
2 made for any taxable year, and

3 “(B) the Secretary determines that there
4 was reasonable cause for the failure to timely
5 make such election,

6 the Secretary may treat such an election as timely
7 made for such taxable year (and paragraph (3) shall
8 not apply)”.

9 (b) REVOCATIONS.—Subparagraph (C) of section
10 1362(d)(1) of such Code is amended to read as follows:

11 “(C) WHEN EFFECTIVE.—Except as pro-
12 vided in subparagraph (D)—

13 “(i) a revocation made on or before
14 the due date (with extensions) for filing
15 the return for a taxable year shall be effec-
16 tive on the 1st day of such taxable year
17 unless the revocation specifies that it is to
18 take effect on the 1st day of the taxable
19 year in which made, and

20 “(ii) a revocation made during a tax-
21 able year but after the due date (with ex-
22 tensions) for filing the return for the pre-
23 ceding taxable year shall be effective on
24 the 1st day of the taxable year.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to elections for taxable years begin-
3 ning after the date of the enactment of this Act.

4 **SEC. 3. RELIEF FROM PENALTIES FOR DEPOSITS OF TAXES**
5 **MADE ON A TIMELY BASIS BUT NOT IN THE**
6 **PRESCRIBED MANNER.**

7 (a) IN GENERAL.—Section 6656 of the Internal Rev-
8 enue Code of 1986 (relating to failure to make deposits
9 of taxes) is amended by redesignating subsection (e) as
10 subsection (f) and by inserting after subsection (d) the fol-
11 lowing new subsection:

12 “(e) RELIEF FROM PENALTIES FOR DEPOSITS OF
13 TAXES MADE ON A TIMELY BASIS BUT NOT IN THE PRE-
14 SCRIBED MANNER.—The Secretary may abate all or any
15 portion of the penalty imposed by subsection (a) on the
16 failure to make a deposit in the manner prescribed by the
17 Secretary if—

18 “(1) the deposit was made not later than the
19 date prescribed therefor, and

20 “(2) such failure was due to reasonable cause
21 and not willful neglect.

22 The applicable percentage under subsection (b) shall not
23 exceed 2 percent in the case of any failure with respect
24 to which the requirements of paragraphs (1) and (2) are
25 met.”.

1 (b) CONFORMING AMENDMENT.—Subparagraph (A)
2 of section 6656(b)(1) of such Code is amended by striking
3 “subparagraph (B)” and inserting “subparagraph (B) and
4 subsection (e)”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to deposits required to be made
7 after the date of the enactment of this Act.

8 **SEC. 4. UNINCORPORATED BUSINESSES OPERATED BY**
9 **HUSBAND AND WIFE AS CO-OWNERS.**

10 (a) IN GENERAL.—Section 761 of the Internal Rev-
11 enue Code of 1986 (defining terms for purposes of part-
12 nerships) is amended by redesignating subsection (f) as
13 subsection (g) and by inserting after subsection (e) the
14 following new subsection:

15 “(f) QUALIFIED JOINT VENTURE.—

16 “(1) IN GENERAL.—In the case of a qualified
17 joint venture conducted by a husband and wife who
18 file a joint return for the taxable year, for purposes
19 of this title—

20 “(A) such joint venture shall not be treat-
21 ed as a partnership,

22 “(B) all items of income, gain, loss, deduc-
23 tion, and credit shall be divided between the
24 spouses in accordance with their respective in-
25 terests in the venture, and

1 “(C) each spouse shall take into account
2 such spouse’s respective share of such items as
3 if they were attributable to a trade or business
4 conducted by such spouse as a sole proprietor.

5 “(2) QUALIFIED JOINT VENTURE.—For pur-
6 poses of paragraph (1), the term ‘qualified joint ven-
7 ture’ means any joint venture involving the conduct
8 of a trade or business if—

9 “(A) the only members of such joint ven-
10 ture are a husband and wife,

11 “(B) both spouses materially participate
12 (within the meaning of section 469(h) without
13 regard to paragraph (5) thereof) in such trade
14 or business, and

15 “(C) both spouses elect the application of
16 this subsection.”.

17 (b) NET EARNINGS FROM SELF-EMPLOYMENT.—

18 (1) Subsection (a) of section 1402 of such Code
19 (defining net earnings from self-employment) is
20 amended by striking “and” at the end of paragraph
21 (15), by striking the period at the end of paragraph
22 (16) and inserting “; and”, and by inserting after
23 paragraph (16) the following new paragraph:

24 “(17) notwithstanding the preceding provisions
25 of this subsection, each spouse’s share of income or

1 loss from a qualified joint venture shall be taken
2 into account as provided in section 761(f) in deter-
3 mining net earnings from self-employment of such
4 spouse.”.

5 (2) Subsection (a) of section 211 of the Social
6 Security Act (defining net earnings from self-em-
7 ployment) is amended by striking “and” at the end
8 of paragraph (15), by striking the period at the end
9 of paragraph (16) and inserting “; and”, and by in-
10 sserting after paragraph (16) the following new para-
11 graph:

12 “(17) Notwithstanding the preceding provisions
13 of this subsection, each spouse’s share of income or
14 loss from a qualified joint venture shall be taken
15 into account as provided in section 761(f) of the In-
16 ternal Revenue Code of 1986 in determining net
17 earnings from self-employment of such spouse.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 the date of the enactment of this Act .

○