

with farmers in some states, like North Carolina, disadvantaged by their states commendable aggressive actions to curb pollution from factory farms.

This legislation will restore confidence that we can swim and fish in our streams and rivers without getting sick. It will do much to address our number one remaining water pollution problem—polluted runoff. I hope the House will join me in the effort to clean up factory farm pollution.

SUBCHAPTER S REVISION ACT OF
1999

HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 10, 1999

Mr. SHAW. Mr. Speaker, today over 2 million businesses pay taxes as S Corporations and the vast majority of these are small businesses. The S Corporation Revision Act of 1999 is targeted to these small businesses by improving their access to capital, preserving family-owned business, and lifting obsolete and burdensome restrictions that unnecessarily impede their growth. It will permit them to grow and compete in the next century.

Even after the relief provided in 1996, S corporations face substantial obstacles and limitations not imposed on other forms of entities. The rules governing S corporations need to be modernized to bring them more on par with partnerships and C corporations. For instance, S corporations are unable to attract the senior equity capital needed for their survival and growth. This bill would remove this obsolete prohibition and also provide that S corporations can attract needed financing through convertible debt.

Additionally, the bill helps preserve family-owned businesses by counting all family members as one shareholder for purposes of S corporation eligibility. Under current law, multi-generational family businesses are threatened by the 75 shareholder limit which counts each family member as one shareholder. Also, non-resident aliens would be permitted to be shareholders under rules like those now applicable to partnerships. The bill would eradicate other outmoded provisions, many of which were enacted in 1958.

The following is a detailed discussion of the bill's provisions.

TITLE I—SUBCHAPTER S EXPANSION

Subtitle A—Eligible Shareholders of an S Corporation

SEC. 101. Members of family treated as one shareholder—All family members within seven generations who own stock could elect to be treated as one shareholder. The election would be made available to only one family per corporation, must be made with the consent of all shareholders of the corporation and would remain in effect until terminated. This provision is intended to keep S corporations within families that might span several generations.

SEC. 102. Nonresident aliens—This section would provide the opportunity for aliens to invest in domestic S corporations and S corporations to operate abroad with a foreign shareholder by allowing nonresident aliens

(individuals only) to own S corporation stock. Any effectively-connected U.S. income allocable to the nonresident alien would be subject to the withholding rules that currently apply to foreign partners in a partnership.

Subtitle B—Qualification and Eligibility Requirements of S Corporations

SEC. 111. Issuance of preferred stock permitted—An S corporation would be allowed to issue either convertible or plain vanilla preferred stock. Holders of preferred stock would not be treated as shareholders; thus, ineligible shareholders like corporations or partnerships could own preferred stock interests in S corporations. A payment to owners of the preferred stock would be deemed an expense rather than a dividend by the S corporation and would be taxed as ordinary income to the shareholder. Subchapter S corporations would receive the same recapitalization treatment as family-owned C corporations. This provision would afford S corporations and their shareholders badly needed access to senior equity.

SEC. 112. Safe harbor expanded to include convertible debt—An S corporation is not considered to have more than one class of stock if outstanding debt obligations to shareholders meet the 'straight debt' safe harbor. Currently, the safe harbor provides that straight debt cannot be convertible into stock. The legislation would permit a convertibility provision so long as that provision is substantially the same as one that could have been obtained by a person not related to the S corporation or S corporation shareholders.

SEC. 113. Repeal of excessive passive investment income as a termination event: This provision would repeal the current rule that terminates S corporation status for certain corporations that have both subchapter C earnings and profits and that derive more than 25 percent of their gross receipts from passive sources for three consecutive years.

SEC. 114. Repeal passive income capital gain category—The legislation would retain the rule that imposes a tax on those corporations possessing excess net passive investment income, but, to conform to the general treatment of capital gains, it would exclude capital gains from classification as passive income. Thus, such capital gains would be subject to a maximum 20 percent rate at the shareholder level in keeping with the 1997 tax law change. Excluding capital gains also parallels their treatment under the PHC rules.

SEC. 115. Allowance of charitable contributions of inventory and scientific property—This provision would allow the same deduction for charitable contributions of inventory and scientific property used to care for the ill, needy or infants for subchapter S as for subchapter C corporations. In addition, S corporations would no longer be disqualified from making 'qualified research contributions' (charitable contributions of inventory property to educational institutions or scientific research organizations) for use in research or experimentation. The S corporation's shareholders would also be permitted to increase the basis of their stock by the excess of deductions for charitable contributions over the basis of the property contributed by the S corporation.

SEC. 116. C corporation rules to apply for fringe benefit purposes—The current rule that limits the ability of "more-than-two-percent" S corporation shareholder-employees to exclude certain fringe benefits from wages would be repealed for benefits other than health insurance. Under this bill, fringe

benefits such as group-term life insurance would become excludable from wages for these shareholders. However, health care benefits would remain taxable to the extent provided for partners.

Subtitle C—Taxation of S Corporation Shareholders

SEC. 120. Treatment of losses to shareholders—A loss recognized by a shareholder in complete liquidation of an S corporation would be treated as an ordinary loss to the extent the shareholder's adjusted basis in the S corporation stock is attributable to ordinary income that was recognized as a result of the liquidation. Suspended passive activity losses from C corporation years would be allowed as deductions when and to the extent they would be allowed to C corporations.

Subtitle D—Effective Date

SEC. 130. Effective date—Except as otherwise provided, the amendments made by this Act shall apply to taxable years beginning after December 31, 1999.

Mr. Speaker, I urge my fellow members to review and support the S Corporation Revision Act, which will help families pass their businesses from one generation to the next and create a level playing field for small business. I look forward to working with my colleagues on the Ways and Means Committee to enact this bill.

IN MEMORY OF REVEREND DAVID
LEE BRENT

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 10, 1999

Mr. SKELTON. Mr. Speaker, it is with deep sadness that I inform the House of the death of Reverend David Lee Brent of Jefferson City, Missouri.

Reverend Brent was born on June 27, 1929, in Forest City, Arkansas, the son of Will B. and Annie Mae Foreman Brent. A 1946 graduate of Benton Harbor High School, he graduated from Moody Bible Institute of Chicago, in 1957. He received his master's degree and a doctor of theology degree from Southern Baptist Theological Seminary in Georgia.

Reverend Brent served on the St. Louis Council on Human Rights, served several churches in Missouri, was co-paster of Second Christian Church, Jefferson City, MO, and was a licensed insurance agent. He was the chief human relations officer for the Missouri Department of Mental Health of 28 years.

Reverend Brent was a leader in the community, in his church, and in the local National Association for the Advancement of Colored People (NAACP). Two years ago, he became the president of the NAACP in Jefferson City. Shortly after taking the helm, he was instrumental in the formation of a city task force to study racial tensions in the public schools. Reverend Brent was the co-founder of Christians United for Racial Equality and the Black Ministerial Alliance. Reverend Brent was also a member of Tony Jenkins American Legion Post 231.

I know the House will join me in extending heartfelt condolences to his family: his wife, Estella; his two sons, five daughters, one brother, three sisters, six grandchildren, and three great-grandchildren.