

106TH CONGRESS  
1ST SESSION

# H. R. 1994

To amend the Internal Revenue Code of 1986 to expand S corporation eligibility for banks, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 27, 1999

Mr. MCINNIS (for himself, Mr. MCCRERY, Mr. HAYWORTH, Mr. BACHUS, Mr. RILEY, Mr. HEFLEY, Mr. SCHAFER, Mr. TANCREDI, and Mr. GARY MILLER of California) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to expand S corporation eligibility for banks, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business and  
5 Financial Institutions Tax Relief Act of 1999”.

6 **SEC. 2. EXPANSION OF S CORPORATION ELIGIBLE SHARE-**  
7 **HOLDERS TO INCLUDE IRAS.**

8 (a) IN GENERAL.—Section 1361(c)(2)(A) of the In-  
9 ternal Revenue Code of 1986 (relating to certain trusts

1 permitted as shareholders) is amended by inserting after  
 2 clause (v) the following:

3 “(vi) A trust which constitutes an in-  
 4 dividual retirement account under section  
 5 408(a), including one designated as a Roth  
 6 IRA under section 408A.”

7 (b) TREATMENT AS SHAREHOLDER.—Section  
 8 1361(c)(2)(B) of the Internal Revenue Code of 1986 (re-  
 9 lating to treatment as shareholders) is amended by adding  
 10 at the end the following:

11 “(vi) In the case of a trust described  
 12 in clause (vi) of subparagraph (A), the in-  
 13 dividual for whose benefit the trust was  
 14 created shall be treated as a shareholder.”

15 (c) SALE OF STOCK IN IRA RELATING TO S COR-  
 16 PORATION ELECTION EXEMPT FROM PROHIBITED  
 17 TRANSACTION RULES.—Section 4975(d) of the Internal  
 18 Revenue Code of 1986 (relating to exemptions) is amend-  
 19 ed by striking “or” at the end of paragraph (14), by strik-  
 20 ing the period at the end of paragraph (15) and inserting  
 21 “; or”, and by adding at the end the following:

22 “(16) a sale of stock held by a trust which con-  
 23 stitutes an individual retirement account under sec-  
 24 tion 408(a) to the individual for whose benefit such

1 account is established if such sale is pursuant to an  
 2 election under section 1362(a).”

3 (d) EFFECTIVE DATE.—The amendments made by  
 4 this section shall apply to taxable years beginning after  
 5 December 31, 1999.

6 **SEC. 3. EXCLUSION OF INVESTMENT SECURITIES INCOME**  
 7 **FROM PASSIVE INCOME TEST FOR BANK S**  
 8 **CORPORATIONS.**

9 (a) IN GENERAL.—Section 1362(d)(3)(C) of the In-  
 10 ternal Revenue Code of 1986 (defining passive investment  
 11 income) is amended by adding at the end the following:

12 “(v) EXCEPTION FOR BANKS; ETC.—  
 13 In the case of a bank (as defined in section  
 14 581), a bank holding company (as defined  
 15 in section 246A(c)(3)(B)(ii)), or a qualified  
 16 subchapter S subsidiary bank, the term  
 17 ‘passive investment income’ shall not  
 18 include—

19 “(I) interest income earned by  
 20 such bank, bank holding company, or  
 21 qualified subchapter S subsidiary  
 22 bank, or

23 “(II) dividends on assets required  
 24 to be held by such bank, bank holding  
 25 company, or qualified subchapter S

1 subsidiary bank to conduct a banking  
 2 business, including stock in the Fed-  
 3 eral Reserve Bank, the Federal Home  
 4 Loan Bank, or the Federal Agricul-  
 5 tural Mortgage Bank or participation  
 6 certificates issued by a Federal Inter-  
 7 mediate Credit Bank.”

8 (b) EFFECTIVE DATE.—The amendment made by  
 9 this section shall apply to taxable years beginning after  
 10 December 31, 1996.

11 **SEC. 4. INCREASE IN NUMBER OF ELIGIBLE SHARE-**  
 12 **HOLDERS TO 150.**

13 (a) IN GENERAL.—Section 1361(b)(1)(A) of the In-  
 14 ternal Revenue Code of 1986 (defining small business cor-  
 15 poration) is amended by striking “75” and inserting  
 16 “150”.

17 (b) EFFECTIVE DATE.—The amendment made by  
 18 this section shall apply to taxable years beginning after  
 19 December 31, 1999.

20 **SEC. 5. TREATMENT OF QUALIFYING DIRECTOR SHARES.**

21 (a) IN GENERAL.—Section 1361 of the Internal Rev-  
 22 enue Code of 1986 is amended by adding at the end the  
 23 following:

24 “(f) TREATMENT OF QUALIFYING DIRECTOR  
 25 SHARES.—

1           “(1) IN GENERAL.—For purposes of this  
2 subchapter—

3           “(A) qualifying director shares shall not be  
4 treated as a second class of stock, and

5           “(B) no person shall be treated as a share-  
6 holder of the corporation by reason of holding  
7 qualifying director shares.

8           “(2) QUALIFYING DIRECTOR SHARES DE-  
9 FINED.—For purposes of this subsection, the term  
10 ‘qualifying director shares’ means any shares of  
11 stock in a bank (as defined in section 581) or in a  
12 bank holding company registered as such with the  
13 Federal Reserve System—

14           “(i) which are held by an individual  
15 solely by reason of status as a director of  
16 such bank or company or its controlled  
17 subsidiary; and

18           “(ii) which are subject to an agree-  
19 ment pursuant to which the holder is re-  
20 quired to dispose of the shares of stock  
21 upon termination of the holder’s status as  
22 a director at the same price as the indi-  
23 vidual acquired such shares of stock.

24           “(3) DISTRIBUTIONS.—A distribution (not in  
25 part or full payment in exchange for stock) made by

1 the corporation with respect to qualifying director  
 2 shares shall be includible as ordinary income of the  
 3 holder and deductible to the corporation as an ex-  
 4 pense in computing taxable income under section  
 5 1363(b) in the year such distribution is received.”

6 (b) CONFORMING AMENDMENTS.—

7 (1) Section 1361(b)(1) of the Internal Revenue  
 8 Code of 1986 is amended by inserting “, except as  
 9 provided in subsection (f),” before “which does not”.

10 (2) Section 1366(a) of such Code is amended  
 11 by adding at the end the following:

12 “(3) ALLOCATION WITH RESPECT TO QUALI-  
 13 FYING DIRECTOR SHARES.—The holders of quali-  
 14 fying director shares (as defined in section 1361(f))  
 15 shall not, with respect to such shares of stock, be al-  
 16 located any of the items described in paragraph  
 17 (1).”

18 (3) Section 1373(a) of such Code is amended  
 19 by striking “and” at the end of paragraph (1), by  
 20 striking the period at the end of paragraph (2) and  
 21 inserting “, and”, and adding at the end the fol-  
 22 lowing:

23 “(3) no amount of an expense deductible under  
 24 this subchapter by reason of section 1361(f)(3) shall  
 25 be apportioned or allocated to such income.”

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 1996.

4       **SEC. 6. BAD DEBT CHARGE OFFS IN YEARS AFTER ELEC-**  
5                               **TION YEAR TREATED AS ITEMS OF BUILT-IN**  
6                               **LOSS.**

7       The Secretary of the Treasury shall modify Regula-  
8 tion 1.1374–4(f) for S corporation elections made in tax-  
9 able years beginning after December 31, 1996, with re-  
10 spect to bad debt deductions under section 166 of the In-  
11 ternal Revenue Code of 1986 to treat such deductions as  
12 built-in losses under section 1374(d)(4) of such Code dur-  
13 ing the entire period during which the bank recognizes  
14 built-in gains from changing its accounting method for  
15 recognizing bad debts from the reserve method under sec-  
16 tion 585 of such Code to the charge-off method under sec-  
17 tion 166 of such Code.

18       **SEC. 7. INCLUSION OF BANKS IN 3-YEAR S CORPORATION**  
19                               **RULE FOR CORPORATE PREFERENCE ITEMS.**

20       (a) IN GENERAL.—Section 1363(b) of the Internal  
21 Revenue Code of 1986 (relating to computation of cor-  
22 poration’s taxable income) is amended by adding at the  
23 end the following new flush sentence:

1 “Paragraph (4) shall apply to any bank whether such  
 2 bank is an S corporation or a qualified subchapter S sub-  
 3 sidiary.”

4 (b) EFFECTIVE DATE.—The amendment made by  
 5 this section shall apply to taxable years beginning after  
 6 December 31, 1999.

7 **SEC. 8. EXPANSION OF S CORPORATION ELIGIBLE SHARE-**  
 8 **HOLDERS TO INCLUDE FAMILY LIMITED**  
 9 **PARTNERSHIPS.**

10 (a) IN GENERAL.—Section 1361(b)(1)(B) of the In-  
 11 ternal Revenue Code of 1986 (defining small business cor-  
 12 poration) is amended—

13 (1) by striking “or an organization” and insert-  
 14 ing “an organization”, and

15 (2) by inserting “, or a family partnership de-  
 16 scribed in subsection (c)(8)” after “subsection  
 17 (c)(6)”.

18 (b) FAMILY PARTNERSHIP.—Section 1361(c) of the  
 19 Internal Revenue Code of 1986 (relating to special rules  
 20 for applying subsection (b)), as amended by section 5, is  
 21 amended by adding at the end the following:

22 “(8) FAMILY PARTNERSHIPS.—

23 “(A) IN GENERAL.—For purposes of sub-  
 24 section (b)(1)(B), any partnership or limited li-

1 ability company may be a shareholder in an S  
2 corporation if—

3 “(i) all partners or members are mem-  
4 bers of 1 family as determined under sec-  
5 tion 704(e)(3), and

6 “(ii) all of the partners or members  
7 would otherwise be eligible shareholders of  
8 an S corporation.

9 “(B) TREATMENT AS SHAREHOLDERS.—  
10 For purposes of subsection (b)(1)(A), in the  
11 case of a partnership or limited liability com-  
12 pany described in subparagraph (A), each part-  
13 ner or member shall be treated as a share-  
14 holder.”

15 (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to taxable years beginning after  
17 December 31, 1999.

18 **SEC. 9. ISSUANCE OF PREFERRED STOCK PERMITTED.**

19 (a) IN GENERAL.—Section 1361 of the Internal Rev-  
20 enue Code of 1986, as amended by section 5(a), is amend-  
21 ed by adding at the end the following:

22 “(g) TREATMENT OF QUALIFIED PREFERRED  
23 STOCK.—

24 “(1) IN GENERAL.—For purposes of this  
25 subchapter—

1           “(A) qualified preferred stock shall not be  
2           treated as a second class of stock, and

3           “(B) no person shall be treated as a share-  
4           holder of the corporation by reason of holding  
5           qualified preferred stock.

6           “(2) QUALIFIED PREFERRED STOCK DE-  
7           FINED.—For purposes of this subsection, the term  
8           ‘qualified preferred stock’ means stock which meets  
9           the requirements of subparagraphs (A), (B), and (C)  
10          of section 1504(a)(4). Stock shall not fail to be  
11          treated as qualified preferred stock solely because it  
12          is convertible into other stock.

13          “(3) DISTRIBUTIONS.—A distribution (not in  
14          part or full payment in exchange for stock) made by  
15          the corporation with respect to qualified preferred  
16          stock shall be includible as ordinary income of the  
17          holder and deductible to the corporation as an ex-  
18          pense in computing taxable income under section  
19          1363(b) in the year such distribution is received.”

20          (b) CONFORMING AMENDMENTS.—

21                 (1) Section 1361(b)(1) of the Internal Revenue  
22          Code of 1986, as amended by section 5(b)(1), is  
23          amended by striking “subsection (f)” and inserting  
24          “subsections (f) and (g)”.

1           (2) Section 1366(a) of such Code, as amended  
2           by section 5(b)(2), is amended by adding at the end  
3           the following:

4           “(4) ALLOCATION WITH RESPECT TO QUALI-  
5           FIED PREFERRED STOCK.—The holders of qualified  
6           preferred stock (as defined in section 1361(g)) shall  
7           not, with respect to such stock, be allocated any of  
8           the items described in paragraph (1).”

9           (3) Section 1373(a)(3) of such Code, as added  
10          by section 5(b)(3), is amended by inserting “or  
11          1361(g)(3)” after “section 1361(f)(3)”.

12          (c) EFFECTIVE DATE.—The amendments made by  
13          this section shall apply to taxable years beginning after  
14          December 31, 1999.

15   **SEC. 10. CONSENT TO ELECTIONS.**

16          (a) 90 PERCENT OF SHARES REQUIRED FOR CON-  
17          SENT TO ELECTION.—Section 1362(a)(2) of the Internal  
18          Revenue Code of 1986 (relating to all shareholders must  
19          consent to election) is amended—

20               (1) by striking “all persons who are share-  
21               holders in” and inserting “shareholders holding at  
22               least 90 percent of the shares of”, and

23               (2) by striking “ALL SHAREHOLDERS” in the  
24               heading and inserting “AT LEAST 90 PERCENT OF  
25               SHARES”.

1 (b) RULES FOR CONSENT.—Section 1362(a) of the  
2 Internal Revenue Code of 1986 (relating to election) is  
3 amended by adding at the end the following:

4 “(3) RULES FOR CONSENT.—For purposes of  
5 making any consent required under paragraph (2) or  
6 subsection (d)(1)(B)—

7 “(A) each joint owner of shares shall con-  
8 sent with respect to such shares,

9 “(B) the personal representative or other  
10 fiduciary authorized to act on behalf of the es-  
11 tate of a deceased individual shall consent for  
12 the estate,

13 “(C) one parent, the custodian, the guard-  
14 ian, or the conservator shall consent with re-  
15 spect to shares owned by a minor or subject to  
16 a custodianship, guardianship, conservatorship,  
17 or similar arrangement,

18 “(D) the trustee of a trust shall consent  
19 with respect to shares owned in trust,

20 “(E) the trustee of the estate of a bank-  
21 rupt individual shall consent for shares owned  
22 by a bankruptcy estate,

23 “(F) an authorized officer or the trustee of  
24 an organization described in subsection (c)(6)

1           shall consent for the shares owned by such or-  
2           ganization, and

3           “(G) in the case of a partnership or lim-  
4           ited liability company described in subsection  
5           (c)(8)—

6           “(i) all general partners shall consent  
7           with respect to shares owned by such part-  
8           nership,

9           “(ii) all managers shall consent with  
10          respect to shares owned by such company  
11          if management of such company is vested  
12          in 1 or more managers, and

13          “(iii) all members shall consent with  
14          respect to shares owned by such company  
15          if management of such company is vested  
16          in the members.”

17          (c) TREATMENT OF NONCONSENTING SHAREHOLDER  
18          STOCK.—

19               (1) IN GENERAL.—Section 1361 of the Internal  
20          Revenue Code of 1986, as amended by section 9(a),  
21          is amended by adding at the end the following:

22          “(h) TREATMENT OF NONCONSENTING SHARE-  
23          HOLDER STOCK.—

24               “(1) IN GENERAL.—For purposes of this  
25          subchapter—

1           “(A) nonconsenting shareholder stock shall  
2           not be treated as a second class of stock,

3           “(B) such stock shall be treated as C cor-  
4           poration stock, and

5           “(C) the shareholder’s pro rata share  
6           under section 1366(a)(1) with respect to such  
7           stock shall be subject to tax paid by the S cor-  
8           poration at the highest rate of tax specified in  
9           section 11(b).

10          “(2) NONCONSENTING SHAREHOLDER STOCK  
11          DEFINED.—For purposes of this subsection, the  
12          term ‘nonconsenting shareholder stock’ means stock  
13          of an S corporation which is held by a shareholder  
14          who did not consent to an election under section  
15          1362(a) with respect to such S corporation.

16          “(3) DISTRIBUTIONS.—A distribution (not in  
17          part or full payment in exchange for stock) made by  
18          the corporation with respect to nonconsenting share-  
19          holder stock shall be includible as ordinary income  
20          of the holder and deductible to the corporation as an  
21          expense in computing taxable income under section  
22          1363(b) in the year such distribution is received.”

23          (2) CONFORMING AMENDMENT.—Section  
24          1361(b)(1) of the Internal Revenue Code of 1986, as  
25          amended by section 9(b)(1), is amended by striking

1 “subsections (f) and (g)” and inserting “subsections  
2 (f), (g), and (h)”.

3 (d) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to elections made in taxable years  
5 beginning after December 31, 1999.

6 **SEC. 11. INFORMATION RETURNS FOR QUALIFIED SUB-**  
7 **CHAPTER S SUBSIDIARIES.**

8 (a) IN GENERAL.—Section 1361(b)(3)(A) of the In-  
9 ternal Revenue Code of 1986 (relating to treatment of cer-  
10 tain wholly owned subsidiaries) is amended by inserting  
11 “and in the case of information returns required under  
12 part III of subchapter A of chapter 61” after “Secretary”.

13 (b) EFFECTIVE DATE.—The amendment made by  
14 this section shall apply to taxable years beginning after  
15 December 31, 1999.

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