108TH CONGRESS
1ST SESSION
H. R. 1558

To amend the Internal Revenue Code of 1986 to allow a married couple
conducting an unincorporated trade or business to elect out of partner-
ship status.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2003

Mr. DOGGETT (for himself, Ms. DELAURO, Mr. LEWIS of Georgia, Mr. NEAL
of Massachusetts, Mr. SANDERS, Mr. SANDLIN, and Mr. STARK) intro-
duced 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 a
married couple conducting an unincorporated trade or
business to elect out of partnership status.

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. ELECTION OUT OF PARTNERSHIP STATUS BY**

4 **MARRIED COUPLE CONDUCTING AN UNIN-**

5 **CORPORATED TRADE OR BUSINESS.**

6 (a) IN GENERAL.—Section 761 of the Internal Rev-

7 enue Code of 1986 (defining terms for purposes of part-

8 nerships) is amended by redesignating subsection (f) as

1 subsection (g) and by inserting after subsection (e) the

2 following new subsection:

3 "(f) ELECTION OUT OF PARTNERSHIP STATUS BY

4 MARRIED COUPLE CONDUCTING AN UNINCORPORATED

5 TRADE OR BUSINESS.—

6 "(1) IN GENERAL.—In the case of a trade or

7 business conducted by a husband and wife who file

8 a joint return for the taxable year and who own all

9 of the capital and profits interests of such trade or

10 business, such husband and wife may elect for pur-

11 poses of this title that such trade or business shall

12 not be treated as a partnership.

13 "(2) TREATMENT OF ITEMS.—

14 "(A) IN GENERAL.—All items of income,

15 gain, loss, deduction, and credit relating to a

16 trade or business with respect to which an elec-

17 tion is made for the taxable year shall, except

18 as provided in subparagraph (B), be divided

19 equally between the spouses, and each spouse

20 shall take into account such spouse's respective

21 share of such items as if they were attributable

22 to a trade or business conducted by such spouse

23 as a sole proprietor.

24 "(B) ALLOCATION OF SHARE BASED ON

25 DIVISION OF LABOR.—Under regulations, the

1 husband and wife may provide, in lieu of the

2 equal allocation of their respective shares under

3 subparagraph (A), for an allocation of such

4 shares based on their proportionate share of the

5 work performed by such spouses in the trade or

6 business.

7 "(3) EXCEPTION.—Paragraph (1) shall not

8 apply to a trade or business which is a corpora-

9 tion.".

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

11 (1) Subsection (a) of section 1402 of such Code

12 (defining net earnings from self-employment) is

13 amended by striking "and" at the end of paragraph

14 (14), by striking the period at the end of paragraph

15 (15) and inserting "; and", and by inserting after

16 paragraph (15) the following new paragraph:

17 "(16) notwithstanding the preceding provisions

18 of this subsection, each spouse's share of income or

19 loss from a trade or business with respect to which

20 an election is in effect under section 761(f) shall be

21 taken into account as provided in section 761(f)(2)

22 in determining net earnings from self-employment of

23 such spouse.".

24 (2) Subsection (a) of section 211 of the Social

25 Security Act (defining net earnings from self-em-

1 ployment) is amended by striking "and" at the end

2 of paragraph (14), by striking the period at the end

3 of paragraph (15) and inserting "; and", and by in-

4 serting after paragraph (15) the following new para-

5 graph:

6 "(16) Notwithstanding the preceding provisions

7 of this subsection, each spouse's share of income or

8 loss from a trade or business with respect to which

9 an election is in effect under section 761(f) shall be

10 taken into account as provided in section 761(f)(2)

11 of the Internal Revenue Code of 1986 in deter-

12 mining net earnings from self-employment of such

13 spouse.".

14 (c) EFFECTIVE DATE.—The amendments made by

15 this section shall apply to taxable years beginning after

16 December 31, 2002.

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