

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.

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## 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

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## 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 filling 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-

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)—

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      serting 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 .

