

112TH CONGRESS  
2D SESSION

# S. 2271

To amend the Internal Revenue Code of 1986 to extend the time for making S corporation elections, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 29, 2012

Mr. FRANKEN (for himself, Ms. SNOWE, and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to extend the time for making S corporation elections, 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 Elec-  
5 tion Simplification Act”.

6 **SEC. 2. EXTENSION OF TIME FOR MAKING S CORPORATION**  
7 **ELECTIONS.**

8 (a) IN GENERAL.—Subsection (b) of section 1362 of  
9 the Internal Revenue Code of 1986 is amended to read  
10 as follows:

1 “(b) WHEN MADE.—

2 “(1) RULES FOR NEW CORPORATIONS.—Except  
3 as provided in paragraph (2)—

4 “(A) IN GENERAL.—An election under  
5 subsection (a) may be made by a small business  
6 corporation for any taxable year at any time  
7 during the period—

8 “(i) beginning on the first day of the  
9 taxable year for which made, and

10 “(ii) ending on the due date (with ex-  
11 tensions) for filing the return for the tax-  
12 able year.

13 “(B) CERTAIN ELECTIONS TREATED AS  
14 MADE FOR NEXT TAXABLE YEAR.—If—

15 “(i) an election under subsection (a)  
16 is made for any taxable year within the pe-  
17 riod described in subparagraph (A), but

18 “(ii) either—

19 “(I) on 1 or more days in such  
20 taxable year and before the day on  
21 which the election was made the cor-  
22 poration did not meet the require-  
23 ments of subsection (b) of section  
24 1361, or

1                   “(II) 1 or more of the persons  
 2                   who held stock in the corporation dur-  
 3                   ing such taxable year and before the  
 4                   election was made did not consent to  
 5                   the election,

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

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

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

14                  “(ii) such election is made after the  
 15                  due date (with extensions) for filing the re-  
 16                  turn for such year and on or before the  
 17                  due date (with extensions) for filing the re-  
 18                  turn for the following taxable year,

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

21                  “(2) RULES FOR EXISTING C CORPORATIONS.—

22                  In the case of any small business corporation which  
 23                  was a C corporation for the taxable year prior to the  
 24                  taxable year for which the election is made under

subsection (a), the rules under this paragraph shall  
 apply in lieu of the rules under paragraph (1):

“(A) IN GENERAL.—An election under  
 subsection (a) may be made by a small business  
 corporation for any taxable year—

“(i) at any time during the preceding  
 taxable year, or

“(ii) at any time during the taxable  
 year and on or before the 15th day of the  
 3d month of the taxable year.

“(B) CERTAIN ELECTIONS MADE DURING  
 1ST 2½ MONTHS TREATED AS MADE FOR NEXT  
 TAXABLE YEAR.—If—

“(i) an election under subsection (a)  
 is made for any taxable year during such  
 year and on or before the 15th day of the  
 3d month of such year, but

“(ii) either—

“(I) on 1 or more days in such  
 taxable year and before the day on  
 which the election was made the cor-  
 poration did not meet the require-  
 ments of subsection (b) of section  
 1361, or

1                   “(II) 1 or more of the persons  
2                   who held stock in the corporation dur-  
3                   ing such taxable year and before the  
4                   election was made did not consent to  
5                   the election,

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

8                   “(C) ELECTION MADE AFTER 1ST 2½  
9                   MONTHS TREATED AS MADE FOR FOLLOWING  
10                  TAXABLE YEAR.—If—

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

14                  “(ii) such election is made after the  
15                  15th day of the 3d month of the taxable  
16                  year and on or before the 15th day of the  
17                  3rd month of the following taxable year,

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

20                  “(D) TAXABLE YEARS OF 2½ MONTHS OR  
21                  LESS.—For purposes of this paragraph, an elec-  
22                  tion for a taxable year made not later than 2  
23                  months and 15 days after the first day of the  
24                  taxable year shall be treated as timely made  
25                  during such year.

1           “(3) AUTHORITY TO TREAT LATE ELECTIONS,  
2       ETC., AS TIMELY.—If—

3           “(A) an election under subsection (a) is  
4       made for any taxable year after the date pre-  
5       scribed by this subsection for making such elec-  
6       tion for such taxable year or no such election is  
7       made for any taxable year, and

8           “(B) the Secretary determines that there  
9       was reasonable cause for the failure to timely  
10      make such election,  
11      the Secretary may treat such an election as timely  
12      made for such taxable year.

13          “(4) MANNER OF ELECTION.—Elections may be  
14      made at any time as provided in this subsection by  
15      filing a form prescribed by the Secretary. For pur-  
16      poses of any election described under paragraph (1),  
17      the Secretary shall provide that the election may be  
18      made on any timely filed small business corporation  
19      return for such taxable year, with the consents of all  
20      persons who held stock in the corporation during  
21      such taxable year included therewith.

22          “(5) SECRETARIAL AUTHORITY.—The Secretary  
23      may prescribe such regulations, rules, or other guid-  
24      ance as may be necessary or appropriate for pur-  
25      poses of applying this subsection.”.

1 (b) REVOCATIONS.—Paragraph (1) of section  
 2 1362(d) of the Internal Revenue Code of 1986 is amend-  
 3 ed—

4 (1) by striking “subparagraph (D)” in subpara-  
 5 graph (C) and inserting “subparagraphs (D) and  
 6 (E)”, and

7 (2) by adding at the end the following new sub-  
 8 paragraph:

9 “(E) AUTHORITY TO TREAT LATE REVOCATIONS AS  
 10 TIMELY.—If—

11 “(i) a revocation under subparagraph  
 12 (A) is made for any taxable year after the  
 13 date prescribed by this paragraph for mak-  
 14 ing such revocation for such taxable year  
 15 or no such revocation is made for any tax-  
 16 able year, and

17 “(ii) the Secretary determines that  
 18 there was reasonable cause for the failure  
 19 to timely make such revocation,  
 20 the Secretary may treat such a revocation as  
 21 timely made for such taxable year.”.

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

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