

115TH CONGRESS
1ST SESSION

H. R. 4166

To amend the Internal Revenue Code of 1986 to allow all employees of a firm to be counted as a single shareholder toward the shareholder limit of an S corporation.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 27, 2017

Mr. SMITH of Nebraska introduced 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 all employees of a firm to be counted as a single shareholder toward the shareholder limit of an S corporation.

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. EMPLOYEES OF A FIRM COUNTED AS A SINGLE**
4 **SHAREHOLDER TOWARD SHAREHOLDER**
5 **LIMIT OF S CORPORATION.**

6 (a) IN GENERAL.—Subsection (c) of section 1361 of
7 the Internal Revenue Code of 1986 is amended by adding
8 at the end the following:

1 “(7) EMPLOYEES TREATED AS ONE SHARE-
2 HOLDER.—

3 “(A) IN GENERAL.—For purposes of sub-
4 section (b)(1)(A), in the case of a corporation
5 which has only employee shareholders, there
6 shall be treated as one shareholder all employ-
7 ees (and their estates) of a corporation and any
8 wholly owned business entities (as determined
9 by the Secretary) of such corporation.

10 “(B) EMPLOYEE DEFINED.—For purposes
11 of this paragraph—

12 “(i) IN GENERAL.—The term “em-
13 ployee” means any individual (whether a
14 resident alien, nonresident alien, or citizen)
15 that would be an employee described under
16 section 3121(d) (1) or (2).

17 “(ii) CERTAIN DETERMINATIONS WITH
18 RESPECT TO SPOUSE DISREGARDED.—In
19 making the determination whether a cor-
20 poration has only employee shareholders,
21 any current ownership in stock by a spouse
22 of an employee by reason of a State com-
23 munity property law or other similar Fed-
24 eral, State, or foreign country law, shall be
25 disregarded.”.

1 (b) EXCEPTION TO NONRESIDENT SHAREHOLDER
2 PROHIBITION.—Subparagraph (C) of section 1361(b)(1)
3 of such Code is amended to read as follows:

4 “(C) have a nonresident alien as a share-
5 holder (except for a nonresident alien that is a
6 shareholder by reason of subsection (c)(7) or a
7 nonresident alien spouse of an employee which
8 is a shareholder in a corporation described in
9 subsection (c)(7)), and”.

10 (c) WITHHOLDING WITH RESPECT TO NONRESIDENT
11 ALIENS.—Section 1373 of such Code is amended by add-
12 ing at the end the following:

13 “(c) WITHHOLDING WITH RESPECT TO NON-
14 RESIDENT ALIENS.—The principles of sections 1441 and
15 1446 shall apply to income allocable to, and distributions
16 to, a nonresident alien shareholder of an S corporation (al-
17 lowed by reason of section 1361(b)(1)(C)). The Secretary
18 may prescribe regulations to carry out the purposes of this
19 subsection.”.

20 (d) DEFINING ITEMS OF INCOME FOR PURPOSES OF
21 WITHHOLDING TAX ON NONRESIDENT ALIENS.—Sub-
22 section (b) of section 1441 of such Code is amended by
23 inserting before the period at the end of the first sentence
24 the following: “, and any items of income described in sec-
25 tion 1366(a) allocable to a nonresident alien that is an

1 S Corporation shareholder by reason of section
2 1361(c)(7)’’.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 the date of the enactment of this Act.

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