

107TH CONGRESS
1ST SESSION

S. 1201

To amend the Internal Revenue Code of 1986 to provide for S corporation reform, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 19, 2001

Mr. HATCH (for himself, Mr. BREAUX, Mrs. LINCOLN, Mr. ALLARD, Mr. THOMPSON, and Mr. GRAMM) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide for S corporation reform, 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; AMENDMENT OF 1986 CODE;**

4 **TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Subchapter S Modernization Act of 2001”.

7 (b) AMENDMENT OF 1986 CODE.—Except as other-
8 wise expressly provided, whenever in this Act an amend-
9 ment or repeal is expressed in terms of an amendment
10 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
 2 sion of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—The table of contents is
 4 as follows:

Sec. 1. Short title; amendment of 1986 code; table of contents.

TITLE I—ELIGIBLE SHAREHOLDERS OF AN S CORPORATION

Sec. 101. Members of family treated as 1 shareholder.

Sec. 102. Nonresident aliens allowed to be shareholders.

Sec. 103. Expansion of bank S corporation eligible shareholders to include IRAs.

Sec. 104. Increase in number of eligible shareholders to 150.

TITLE II—QUALIFICATION AND ELIGIBILITY REQUIREMENTS OF S CORPORATIONS

Sec. 201. Issuance of preferred stock permitted.

Sec. 202. Safe harbor expanded to include convertible debt.

Sec. 203. Repeal of excessive passive investment income as a termination event.

Sec. 204. Modifications to passive income rules.

Sec. 205. Adjustment to basis of S corporation stock for certain charitable contributions.

TITLE III—TREATMENT OF S CORPORATION SHAREHOLDERS

Sec. 301. Treatment of losses to shareholders.

Sec. 302. Transfer of suspended losses incident to divorce.

Sec. 303. Use of passive activity loss and at-risk amounts by qualified subchapter S trust income beneficiaries.

Sec. 304. Deductibility of interest expense incurred by an electing small business trust to acquire S corporation stock.

Sec. 305. Disregard of unexercised powers of appointment in determining potential current beneficiaries of ESBT.

Sec. 306. Clarification of electing small business trust distribution rules.

Sec. 307. Allowance of charitable contributions deduction for electing small business trusts.

Sec. 308. Shareholder basis not increased by income derived from cancellation of S corporation's debt.

Sec. 309. Back to back loans as indebtedness.

TITLE IV—EXPANSION OF S CORPORATION ELIGIBILITY FOR BANKS.

Sec. 401. Exclusion of investment securities income from passive income test for bank S corporations.

Sec. 402. Treatment of qualifying director shares.

Sec. 403. Recapture of bad debt reserves.

TITLE V—QUALIFIED SUBCHAPTER S SUBSIDIARIES

Sec. 501. Relief from inadvertently invalid qualified subchapter S subsidiary elections and terminations.

Sec. 502. Information returns for qualified subchapter S subsidiaries.

Sec. 503. Treatment of the sale of interest in a qualified subchapter S subsidiary.

Sec. 504. Exception to application of step transaction doctrine for restructuring in connection with making qualified subchapter S subsidiary elections.

TITLE VI—ADDITIONAL PROVISIONS

Sec. 601. Elimination of all earnings and profits attributable to pre-1983 years.

Sec. 602. No gain or loss on deferred intercompany transactions because of conversion to S corporation or qualified S corporation subsidiary.

Sec. 603. Treatment of charitable contribution and foreign tax credit carryforwards.

Sec. 604. Distributions by an S corporation to an employee stock ownership plan.

Sec. 605. Special rules of application.

1 **TITLE I—ELIGIBLE SHARE-** 2 **HOLDERS OF AN S CORPORA-** 3 **TION**

4 **SEC. 101. MEMBERS OF FAMILY TREATED AS 1 SHARE-** 5 **HOLDER.**

6 (a) IN GENERAL.—Paragraph (1) of section 1361(c)
7 (relating to special rules for applying subsection (b)) is
8 amended to read as follows:

9 “(1) MEMBERS OF FAMILY TREATED AS 1
10 SHAREHOLDER.—

11 “(A) IN GENERAL.—For purpose of sub-
12 section (b)(1)(A)—

13 “(i) except as provided in clause (ii),
14 a husband and wife (and their estates)
15 shall be treated as 1 shareholder, and

16 “(ii) in the case of a family with re-
17 spect to which an election is in effect

1 under subparagraph (E), all members of
2 the family shall be treated as 1 share-
3 holder.

4 “(B) MEMBERS OF THE FAMILY.—For
5 purpose of subparagraph (A)(ii), the term
6 ‘members of the family’ means the common an-
7 cestor, lineal descendants of the common ances-
8 tor and the spouses (or former spouses) of such
9 lineal descendants or common ancestor.

10 “(C) COMMON ANCESTOR.—For purposes
11 of this paragraph, an individual shall not be
12 considered a common ancestor if, as of the later
13 of the effective date of this paragraph or the
14 time the election under section 1362(a) is
15 made, the individual is more than 6 generations
16 removed from the youngest generation of share-
17 holders.

18 “(D) EFFECT OF ADOPTION, ETC.—In de-
19 termining whether any relationship specified in
20 subparagraph (B) or (C) exists, the rules of
21 section 152(b)(2) shall apply.

22 “(E) ELECTION.—An election under sub-
23 paragraph (A)(ii)—

24 “(i) must be made with the consent of
25 shareholders (including those that are fam-

1 ily members) holding in the aggregate
2 more than one-half of the shares of stock
3 in the corporation on the day the election
4 is made,

5 “(ii) in the case of—

6 “(I) an electing small business
7 trust, shall be made by the trustee of
8 the trust, and

9 “(II) a qualified subchapter S
10 trust, shall be made by the beneficiary
11 of the trust,

12 “(iii) under regulations, shall remain
13 in effect until terminated, and

14 “(iv) shall apply only with respect to
15 1 family in any corporation.”.

16 (b) RELIEF FROM INADVERTENT INVALID ELECTION
17 OR TERMINATION.—Section 1362(f) (relating to inad-
18 vertent invalid elections or terminations), as amended by
19 section 501, is amended—

20 (1) by inserting “or under section
21 1361(c)(1)(A)(ii)” after “section 1361(b)(3)(B)(ii)”
22 in paragraph (1), and

23 (2) by inserting “or under section
24 1361(c)(1)(E)(iii)” after “section 1361(b)(3)(C)” in
25 paragraph (1)(B).

1 (c) EFFECTIVE DATES.—

2 (1) SUBSECTION (a).—The amendment made
3 by subsection (a) shall apply to taxable years begin-
4 ning after December 31, 2001.

5 (2) SUBSECTION (b).—The amendments made
6 by subsection (b) shall apply to elections and termi-
7 nations made after December 31, 2001.

8 **SEC. 102. NONRESIDENT ALIENS ALLOWED TO BE SHARE-**
9 **HOLDERS.**

10 (a) NONRESIDENT ALIENS ALLOWED TO BE SHARE-
11 HOLDERS.—

12 (1) IN GENERAL.—Paragraph (1) of section
13 1361(b) (defining small business corporation) is
14 amended—

15 (A) by adding “and” at the end of sub-
16 paragraph (B),

17 (B) by striking subparagraph (C), and

18 (C) by redesignating subparagraph (D) as
19 subparagraph (C).

20 (2) CONFORMING AMENDMENTS.—Paragraph
21 (4) and (5)(A) of section 1361(c) (relating to special
22 rules for applying subsection (b)) are each amended
23 by striking “subsection (b)(1)(D)” and inserting
24 “subsection (b)(1)(C)”.

1 (b) NONRESIDENT ALIEN SHAREHOLDER TREATED
2 AS ENGAGED IN TRADE OR BUSINESS WITHIN UNITED
3 STATES.—

4 (1) IN GENERAL.—Section 875 is amended—

5 (A) by striking “and” at the end of para-
6 graph (1),

7 (B) by striking the period at the end of
8 paragraph (2) and inserting “, and”, and

9 (C) by adding at the end the following new
10 paragraph:

11 “(3) a nonresident alien individual shall be con-
12 sidered as being engaged in a trade or business
13 within the United States if the S corporation of
14 which such individual is a shareholder is so en-
15 gaged.”.

16 (2) APPLICATION OF WITHHOLDING TAX ON
17 NONRESIDENT ALIEN SHAREHOLDERS.—Section
18 1446 (relating to withholding tax on foreign part-
19 ners’ share of effectively connected income) is
20 amended by redesignating subsection (f) as sub-
21 section (g) and by inserting after subsection (e) the
22 following new subsection:

23 “(f) S CORPORATION TREATED AS PARTNERSHIP,
24 ETC.—For purposes of this section—

1 “(1) an S corporation shall be treated as a
2 partnership,

3 “(2) the shareholders of such corporation shall
4 be treated as partners of such partnership,

5 “(3) any reference to section 704 shall be treat-
6 ed as a reference to section 1366, and

7 “(4) no withholding tax under subsection (a)
8 shall be required in the case of any income realized
9 by such corporation and allocable to a shareholder
10 which is an electing small business trust (as defined
11 in section 1361(e)).”.

12 (3) CONFORMING AMENDMENTS.—

13 (A) The heading of section 875 is amended
14 to read as follows:

15 **“SEC. 875. PARTNERSHIPS; BENEFICIARIES OF ESTATES
16 AND TRUSTS; S CORPORATIONS.”.**

17 (B) The heading of section 1446 is amend-
18 ed to read as follows:

19 **“SEC. 1446. WITHHOLDING TAX ON FOREIGN PARTNERS’
20 AND S CORPORATION SHAREHOLDERS’
21 SHARE OF EFFECTIVELY CONNECTED IN-
22 COME.”.**

23 (4) CLERICAL AMENDMENTS.—

24 (A) The item relating to section 875 in the
25 table of sections for subpart A of part II of

1 subchapter N of chapter 1 is amended to read
2 as follows:

“Sec. 875. Partnerships; beneficiaries of estates and trusts; S corporations.”.

3 (B) The item relating to section 1446 in
4 the table of sections for subchapter A of chap-
5 ter 3 is amended to read as follows:

“Sec. 1446 Withholding tax on foreign partners’ and S corporation share-
holders’ share of effectively connected income.”.

6 (C) PERMANENT ESTABLISHMENT OF
7 PARTNERS AND S CORPORATION SHARE-
8 HOLDERS.—Section 894 (relating to income af-
9 fected by treaty) is amended by redesignating
10 subsection (c) as subsection (d) and by insert-
11 ing after subsection (b) the following new sub-
12 section:

13 “(c) PERMANENT ESTABLISHMENT OF PARTNERS
14 AND S CORPORATION SHAREHOLDERS.—If a partnership
15 or S corporation has a permanent establishment in the
16 United States (within the meaning of a treaty to which
17 the United States is a party) at any time during a taxable
18 year of such entity, a nonresident alien individual or for-
19 eign corporation which is a partner in such partnership,
20 or a nonresident alien individual who is a shareholder in
21 such S corporation, shall be treated as having a permanent
22 establishment in the United States for purposes of such
23 treaty.”.

1 (c) APPLICATION OF OTHER WITHHOLDING TAX
2 RULES ON NONRESIDENT ALIEN SHAREHOLDERS.—

3 (1) SECTION 1441.—Section 1441 (relating to
4 withholding of tax on nonresident aliens) is amended
5 by redesignating subsection (g) as subsection (h)
6 and by inserting after subsection (f) the following
7 new subsection:

8 “(g) S CORPORATION TREATED AS PARTNERSHIP,
9 ETC.—For purposes of this section—

10 “(1) an S corporation shall be treated as a
11 partnership,

12 “(2) the shareholders of such corporation shall
13 be treated as partners of such partnership, and

14 “(3) no deduction or withholding under sub-
15 section (a) shall be required in the case of any item
16 of income realized by such corporation and allocable
17 to a shareholder which is an electing small business
18 trust (as defined in section 1361(e)).”.

19 (2) SECTION 1445.—Section 1445(e) (relating to
20 special rules relating to distributions, etc., by cor-
21 porations, partnerships, trusts, or estates) is amend-
22 ed by redesignating paragraph (6) as paragraph (7)
23 and by inserting after paragraph (5) the following
24 new paragraph:

1 “(6) S CORPORATION TREATED AS PARTNER-
2 SHIP, ETC.—For purposes of this section—

3 “(A) an S corporation shall be treated as
4 a partnership, and

5 “(B) the shareholders of such corporation
6 shall be treated as partners of such partnership,
7 and

8 “(C) no deduction or withholding under
9 subsection (a) shall be required in the case of
10 any gain realized by such corporation and allo-
11 cable to a shareholder which is an electing small
12 business trust (as defined in section 1361(e)).”.

13 (d) CONFORMING AMENDMENT.—Section 1361(e)(2)
14 is amended by inserting “(including a nonresident alien)”
15 after “person” the first place it appears.

16 (e) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 December 31, 2001.

19 **SEC. 103. EXPANSION OF BANK S CORPORATION ELIGIBLE**
20 **SHAREHOLDERS TO INCLUDE IRAS.**

21 (a) IN GENERAL.—Section 1361(c)(2)(A) (relating to
22 certain trusts permitted as shareholders) is amended by
23 inserting after clause (v) the following new clause:

24 “(vi) In the case of a corporation
25 which is a bank (as defined in section

1 581), a trust which constitutes an indi-
2 vidual retirement account under section
3 408(a), including one designated as a Roth
4 IRA under section 408A, but only to the
5 extent of the stock held by such trust in
6 such bank as of the date of the enactment
7 of this clause.”.

8 (b) TREATMENT AS SHAREHOLDER.—Section
9 1361(c)(2)(B) (relating to treatment as shareholders) is
10 amended by adding at the end the following new clause:

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) (relating to ex-
18 emptions) is amended by striking “or” at the end of para-
19 graph (14), by striking the period at the end of paragraph
20 (15) and inserting “; or”, and by adding at the end the
21 following new paragraph:

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) CONFORMING AMENDMENT.—Section 512(e)(1)
4 is amended by inserting “1361(c)(2)(A)(vi) or” before
5 “1361(c)(6)”.

6 (e) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to trusts which constitute indi-
8 vidual retirement accounts on the date of the enactment
9 of this Act.

10 **SEC. 104. INCREASE IN NUMBER OF ELIGIBLE SHARE-**
11 **HOLDERS TO 150.**

12 (a) IN GENERAL.—Section 1361(b)(1)(A) (defining
13 small business corporation) is amended by striking “75”
14 and inserting “150”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to taxable years beginning after
17 December 31, 2001.

18 **TITLE II—QUALIFICATION AND**
19 **ELIGIBILITY REQUIREMENTS**
20 **OF S CORPORATIONS**

21 **SEC. 201. ISSUANCE OF PREFERRED STOCK PERMITTED.**

22 (a) IN GENERAL.—Section 1361 (defining S corpora-
23 tion) is amended by adding at the end the following new
24 subsection:

1 “(f) TREATMENT OF QUALIFIED PREFERRED
2 STOCK.—

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

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

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

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

17 “(3) DISTRIBUTIONS.—A distribution (not in
18 part or full payment in exchange for stock) made by
19 the corporation with respect to qualified preferred
20 stock shall be includible as ordinary income of the
21 holder and deductible to the corporation as an ex-
22 pense in computing taxable income under section
23 1363(b) in the year such distribution is received.”.

24 (b) CONFORMING AMENDMENTS.—

1 (1) Paragraph (1) of section 1361(b) is amend-
2 ed by inserting “, except as provided in subsection
3 (f),” before “which does not”.

4 (2) Subsection (a) of section 1366 is amended
5 by adding at the end the following new paragraph:

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

11 (3) So much of clause (ii) of section
12 354(a)(2)(C) as precedes subclause (II) is amended
13 to read as follows:

14 “(ii) RECAPITALIZATION OF FAMILY-
15 OWNED CORPORATIONS AND S CORPORA-
16 TIONS.—

17 “(I) IN GENERAL.—Clause (i)
18 shall not apply in the case of a recapi-
19 talization under section 368(a)(I)(E)
20 of a family-owned corporation or S
21 corporation.”.

22 (4) Subsection (a) of section 1373 is amended
23 by striking “and” at the end of paragraph (1), by
24 striking the period at the end of paragraph (2) and

1 inserting “, and”, and by adding at the end the fol-
2 lowing new paragraph:

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

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to taxable years beginning after
8 December 31, 2001.

9 **SEC. 202. SAFE HARBOR EXPANDED TO INCLUDE CONVERT-**
10 **IBLE DEBT.**

11 (a) IN GENERAL.—Subparagraph (B) of section
12 1361(c)(5) (defining straight debt) is amended by striking
13 clauses (ii) and (iii) and inserting the following new
14 clauses:

15 “(ii) in any case in which the terms of
16 such promise include a provision under
17 which the obligation to pay may be con-
18 verted (directly or indirectly) into stock of
19 the corporation, such terms, taken as a
20 whole, are substantially the same as the
21 terms which could have been obtained on
22 the effective date of the promise from a
23 person which is not a related person (with-
24 in the meaning of section 465(b)(3)(C)) to
25 the S corporation or its shareholders, and

1 “(iii) the creditor is—
2 “(I) an individual,
3 “(II) an estate,
4 “(III) a trust described in para-
5 graph (2),
6 “(IV) an exempt organization de-
7 scribed in paragraph (6), or
8 “(V) a person which is actively
9 and regularly engaged in the business
10 of lending money.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to taxable years beginning after
13 December 31, 2001.

14 **SEC. 203. REPEAL OF EXCESSIVE PASSIVE INVESTMENT IN-**
15 **COME AS A TERMINATION EVENT.**

16 (a) IN GENERAL.—Section 1362(d) (relating to ter-
17 mination) is amended by striking paragraph (3).

18 (b) CONFORMING AMENDMENTS.—

19 (1) Section 1362(f)(1) is amended by striking
20 “or (3)”.

21 (2) Clause (i) of section 1042(c)(4)(A) is
22 amended by striking “section 1362(d)(3)(C)” and
23 inserting “section 1375(b)(4)”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2001.

4 **SEC. 204. MODIFICATIONS TO PASSIVE INCOME RULES.**

5 (a) INCREASED LIMIT.—

6 (1) IN GENERAL.—Subsection (a)(2) of section
7 1375 (relating to tax imposed when passive invest-
8 ment income of corporation having accumulated
9 earnings and profits exceeds 25 percent of gross re-
10 cepts) is amended by striking “25 percent” and in-
11 serting “60 percent”.

12 (2) CONFORMING AMENDMENTS.—

13 (A) Subparagraph (J) of section 26(b)(2)
14 is amended by striking “25 percent” and insert-
15 ing “60 percent”.

16 (B) Clause (i) of section 1375(b)(1)(A) is
17 amended by striking “25 percent” and inserting
18 “60 percent”.

19 (C) The heading for section 1375 is
20 amended by striking “**25 PERCENT**” and in-
21 serting “**60 PERCENT**”.

22 (D) The table of sections for part III of
23 subchapter S of chapter 1 is amended by strik-
24 ing “25 percent” in the item relating to section
25 1375 and inserting “60 percent”.

1 (b) REPEAL OF PASSIVE INCOME CAPITAL GAIN
2 CATEGORY.—

3 (1) IN GENERAL.—Subsection (b) of section
4 1375 (relating to tax imposed when passive invest-
5 ment income of corporation having accumulated
6 earnings and profits exceeds 60 percent of gross re-
7 ceipts), as amended by subsection (a), is amended by
8 striking paragraphs (3) and (4) and inserting the
9 following new paragraph:

10 “(3) PASSIVE INVESTMENT INCOME DE-
11 FINED.—

12 “(A) IN GENERAL.—Except as otherwise
13 provided in this paragraph, the term ‘passive
14 investment income’ means gross receipts de-
15 rived from royalties, rents, dividends, interest,
16 and annuities.

17 “(B) EXCEPTION FOR INTEREST ON
18 NOTES FROM SALES OF INVENTORY.—The term
19 ‘passive investment income’ shall not include in-
20 terest on any obligation acquired in the ordi-
21 nary course of the corporation’s trade or busi-
22 ness from its sale of property described in sec-
23 tion 1221(a)(1).

24 “(C) TREATMENT OF CERTAIN LENDING
25 OR FINANCE COMPANIES.—If the S corporation

1 meets the requirements of section 542(c)(6) for
2 the taxable year, the term ‘passive investment
3 income’ shall not include gross receipts for the
4 taxable year which are derived directly from the
5 active and regular conduct of a lending or fi-
6 nance business (as defined in section
7 542(d)(1)).

8 “(D) TREATMENT OF CERTAIN DIVI-
9 DENDS.—If an S corporation holds stock in a
10 C corporation meeting the requirements of sec-
11 tion 1504(a)(2), the term ‘passive investment
12 income’ shall not include dividends from such C
13 corporation to the extent such dividends are at-
14 tributable to the earnings and profits of such C
15 corporation derived from the active conduct of
16 a trade or business.

17 “(E) COORDINATION WITH SECTION
18 1374.—The amount of passive investment in-
19 come shall be determined by not taking into ac-
20 count any recognized built-in gain or loss of the
21 S corporation for any taxable year in the rec-
22 ognition period. Terms used in the preceding
23 sentence shall have the same respective mean-
24 ing as when used in section 1374.”.

1 (2) CONFORMING AMENDMENTS.—Section
2 1375(d) is amended by striking “subchapter C” both
3 places it appears and inserting “accumulated”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years beginning after
6 December 31, 2001.

7 **SEC. 205. ADJUSTMENT TO BASIS OF S CORPORATION**
8 **STOCK FOR CERTAIN CHARITABLE CON-**
9 **TRIBUTIONS.**

10 (a) IN GENERAL.—Paragraph (1) of section 1367(a)
11 (relating to adjustments to basis of stock of shareholders,
12 etc.) is amended by striking “and” at the end of subpara-
13 graph (B), by striking the period at the end of subpara-
14 graph (C) and inserting “, and”, and by adding at the
15 end the following new subparagraph:

16 “(D) the excess of the amount of the
17 shareholder’s proportionate share of any chari-
18 table contribution made by the S corporation
19 over the shareholder’s proportionate share of
20 the adjusted basis of the property contrib-
21 uted.”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning after
24 December 31, 2001.

1 **TITLE III—TREATMENT OF S**
2 **CORPORATION SHAREHOLDERS**

3 **SEC. 301. TREATMENT OF LOSSES TO SHAREHOLDERS.**

4 (a) LIQUIDATIONS.—Section 331 (relating to gain or
5 loss to shareholders in corporate liquidations) is amended
6 by redesignating subsection (c) as subsection (d) and by
7 inserting after subsection (b) the following new subsection:

8 “(c) LOSS ON LIQUIDATIONS OF S CORPORATION.—

9 “(1) IN GENERAL.—The portion of any net loss
10 recognized by a shareholder of an S corporation (as
11 defined in section 1361(a)(1))—

12 “(A) on amounts received by such share-
13 holder in a distribution in complete liquidation
14 of such S corporation, or

15 “(B) on an installment obligation received
16 by such shareholder with respect to a sale or
17 exchange by the corporation during the 12-
18 month period beginning on the date a plan of
19 complete liquidation is adopted if the liquida-
20 tion is completed during such 12-month period,
21 which does not exceed the ordinary income basis of
22 stock of such S corporation in the hands of such
23 shareholder shall not be treated as a loss from the
24 sale or exchange of a capital asset but shall be treat-
25 ed as an ordinary loss.

1 “(2) ORDINARY INCOME BASIS.—For purposes
2 of this subsection, the ordinary income basis of stock
3 of an S corporation in the hands of a shareholder of
4 such S corporation shall be an amount equal to the
5 portion of such shareholder’s basis in such stock
6 which is equal to the aggregate increases in such
7 basis under section 1367(a)(1) resulting from such
8 shareholder’s pro rata share of ordinary income of
9 such S corporation attributable to the complete liq-
10 uidation.”.

11 (b) SUSPENDED PASSIVE ACTIVITY LOSSES.—Para-
12 graph (3) of section 1371(b) is amended to read as fol-
13 lows:

14 “(3) TREATMENT OF S YEAR AS ELAPSED
15 YEAR; PASSIVE LOSSES.—Nothing in paragraphs (1)
16 and (2) shall prevent treating a taxable year for
17 which a corporation is an S corporation as a taxable
18 year for purposes of determining the number of tax-
19 able years to which an item may be carried back or
20 carried forward nor prevent the allowance of a pas-
21 sive activity loss deduction to the extent provided by
22 section 469(g).”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 December 31, 2001.

1 **SEC. 302. TRANSFER OF SUSPENDED LOSSES INCIDENT TO**
 2 **DIVORCE.**

3 (a) IN GENERAL.—Section 1366(d) (relating to spe-
 4 cial rules for losses and deductions) is amended by adding
 5 at the end the following new paragraph:

6 “(4) TRANSFER OF SUSPENDED LOSSES AND
 7 DEDUCTIONS WHEN STOCK IS TRANSFERRED INCI-
 8 DENT TO DIVORCE.—For purposes of paragraph (2),
 9 the transfer of any shareholder’s stock in an S cor-
 10 poration incident to a decree of divorce shall include
 11 any loss or deduction described in such paragraph
 12 attributable to such stock.”.

13 (b) EFFECTIVE DATE.—The amendment made by
 14 this section shall apply to transfers made after the date
 15 of the enactment of this Act.

16 **SEC. 303. USE OF PASSIVE ACTIVITY LOSS AND AT-RISK**
 17 **AMOUNTS BY QUALIFIED SUBCHAPTER S**
 18 **TRUST INCOME BENEFICIARIES.**

19 (a) IN GENERAL.—Section 1361(d)(1) (relating to
 20 special rule for qualified subchapter S trust) is amended—

21 (1) by striking “and” at the end of subpara-
 22 graph (A),

23 (2) by striking the period at the end of sub-
 24 paragraph (B) and inserting “, and”, and

25 (3) by adding at the end the following new sub-
 26 paragraph:

1 “(C) for purposes of applying sections 465
2 and 469(g) to the beneficiary of the trust, the
3 disposition of the S corporation stock by the
4 trust shall be treated as a disposition by such
5 beneficiary.”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to transfers made after the date
8 of the enactment of this Act.

9 **SEC. 304. DEDUCTIBILITY OF INTEREST EXPENSE IN-**
10 **CURRED BY AN ELECTING SMALL BUSINESS**
11 **TRUST TO ACQUIRE S CORPORATION STOCK.**

12 (a) IN GENERAL.—Subparagraph (C) of section
13 641(c)(2) (relating to modifications) is amended by insert-
14 ing after clause (iii) the following new clause:

15 “(iv) Any interest expense incurred to
16 acquire stock in an S corporation.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to taxable years beginning after
19 December 31, 2001.

20 **SEC. 305. DISREGARD OF UNEXERCISED POWERS OF AP-**
21 **POINTMENT IN DETERMINING POTENTIAL**
22 **CURRENT BENEFICIARIES OF ESBT.**

23 (a) IN GENERAL.—Section 1361(e)(2) (defining po-
24 tential current beneficiary) is amended—

1 (1) by inserting “(determined without regard to
2 any unexercised (in whole or in part) power of ap-
3 pointment during such period)” after “of the trust”
4 in the first sentence, and

5 (2) by striking “60-day” in the second sentence
6 and inserting “1-year”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 December 31, 2001.

10 **SEC. 306. CLARIFICATION OF ELECTING SMALL BUSINESS**

11 **TRUST DISTRIBUTION RULES.**

12 (a) IN GENERAL.—Section 641(c)(1) (relating to spe-
13 cial rules for taxation of electing small business trusts)
14 is amended—

15 (1) by striking “and” at the end of subpara-
16 graph (A),

17 (2) by redesignating subparagraph (B) as sub-
18 paragraph (C), and

19 (3) by inserting after subparagraph (A) the fol-
20 lowing new subparagraph:

21 “(B) any distribution attributable to the
22 portion treated as a separate trust shall be
23 treated separately from any distribution attrib-
24 utable to the portion not so treated, and”.

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

4 **SEC. 307. ALLOWANCE OF CHARITABLE CONTRIBUTIONS**
5 **DEDUCTION FOR ELECTING SMALL BUSINESS**
6 **TRUSTS.**

7 (a) IN GENERAL.—Section 641(c)(2)(C) (relating to
8 modifications), as amended by section 304(a), is amended
9 by inserting after clause (iv) the following new clause:—

10 “(v) Deductions described in section
11 642(c)(1).”.

12 (b) CONFORMING AMENDMENT.—Section 512(e) (re-
13 lating to special rules applicable to S corporations) is
14 amended by redesignating subparagraph (3) as subpara-
15 graph (4) and by inserting after subparagraph (2) the fol-
16 lowing new subparagraph:

17 “(3) AMOUNTS RECEIVED FROM AN ELECTING
18 SMALL BUSINESS TRUST.—Notwithstanding any
19 other provision of this part, amounts received by an
20 organization described in section 511(a)(2) from an
21 electing small business trust (as defined in section
22 1361(e)) shall be taken into account in computing
23 the unrelated business taxable income of such orga-
24 nization to the extent such amount is deducted by
25 such trust under section 641(c)(2)(C)(v).”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years beginning after
 3 December 31, 2001.

4 **SEC. 308. SHAREHOLDER BASIS NOT INCREASED BY IN-**
 5 **COME DERIVED FROM CANCELLATION OF S**
 6 **CORPORATION'S DEBT.**

7 (a) IN GENERAL.—Section 1366(a)(1) (relating to
 8 determination of shareholder's tax liability) is amended by
 9 inserting “but not including income excludable from gross
 10 income under section 108” after “tax-exempt income”.

11 (b) EFFECTIVE DATE.—The amendment made by
 12 this section shall apply to discharges of indebtedness oc-
 13 ccurring after December 31, 2000.

14 **SEC. 309. BACK TO BACK LOANS AS INDEBTEDNESS.**

15 (a) IN GENERAL.—Section 1366(d) (relating to spe-
 16 cial rules for losses and deductions) is amended by adding
 17 at the end the following new paragraph:

18 “(4) LOANS INCLUDED IN INDEBTEDNESS
 19 OF AN S CORPORATION.—For purposes of sub-
 20 section (d), the indebtedness of an S corpora-
 21 tion to the shareholder shall include any loans
 22 made or acquired (by purchase, gift, or dis-
 23 tribution from another person) by a shareholder
 24 to the S corporation, regardless of whether the
 25 funds loaned by the shareholder to the S cor-

1 poration were obtained by the shareholder by
 2 means of a recourse loan from another person
 3 (whether related or unrelated to the share-
 4 holder).”.

5 (b) EFFECTIVE DATE.—The amendment made by
 6 this section shall apply to taxable years beginning after
 7 December 31, 2001.

8 **TITLE IV—EXPANSION OF S COR-**
 9 **PORATION ELIGIBILITY FOR**
 10 **BANKS.**

11 **SEC. 401. EXCLUSION OF INVESTMENT SECURITIES INCOME**
 12 **FROM PASSIVE INCOME TEST FOR BANK S**
 13 **CORPORATIONS.**

14 (a) IN GENERAL.—Section 1374(b)(3) (defining pas-
 15 sive investment income) is amended by adding at the end
 16 the following new subparagraph:

17 “(E) EXCEPTION FOR BANKS; ETC.—In
 18 the case of a bank (as defined in section 581),
 19 a bank holding company (as defined in section
 20 246A(c)(3)(B)(ii)), or a qualified subchapter S
 21 subsidiary which is a bank, the term ‘passive
 22 investment income’ shall not include—

23 “(i) interest income earned by such
 24 bank, bank holding company, or qualified
 25 subchapter S subsidiary, or

1 “(ii) dividends on assets required to
2 be held by such bank, bank holding com-
3 pany, or qualified subchapter S subsidiary
4 to conduct a banking business, including
5 stock in the Federal Reserve Bank, the
6 Federal Home Loan Bank, or the Federal
7 Agricultural Mortgage Bank or participa-
8 tion certificates issued by a Federal Inter-
9 mediate Credit Bank.”.

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

13 **SEC. 402. TREATMENT OF QUALIFYING DIRECTOR SHARES.**

14 (a) IN GENERAL.—Section 1361 (defining S corpora-
15 tion), as amended by section 201(a), is amended by adding
16 at the end the following new subsection:

17 “(g) TREATMENT OF QUALIFYING DIRECTOR
18 SHARES.—

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

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

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

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

7 “(i) which are held by an individual
8 solely by reason of status as a director of
9 such bank or company or its controlled
10 subsidiary; and

11 “(ii) which are subject to an agree-
12 ment pursuant to which the holder is re-
13 quired to dispose of the shares of stock
14 upon termination of the holder’s status as
15 a director at the same price as the indi-
16 vidual acquired such shares of stock.

17 “(3) DISTRIBUTIONS.—A distribution (not in
18 part or full payment in exchange for stock) made by
19 the corporation with respect to qualifying director
20 shares shall be includible as ordinary income of the
21 holder and deductible to the corporation as an ex-
22 pense in computing taxable income under section
23 1363(b) in the year such distribution is received.”.

24 (b) CONFORMING AMENDMENTS.—

1 (1) Section 1361(b)(1) is amended by inserting
2 “, except as provided in subsection (f),” before
3 “which does not”.

4 (2) Section 1366(a) is amended by adding at
5 the end the following new paragraph:

6 “(3) ALLOCATION WITH RESPECT TO QUALI-
7 FYING DIRECTOR SHARES.—The holders of quali-
8 fying director shares (as defined in section 1361(f))
9 shall not, with respect to such shares of stock, be al-
10 located any of the items described in paragraph
11 (1).”.

12 (3) Section 1373(a) is amended by striking
13 “and” at the end of paragraph (1), by striking the
14 period at the end of paragraph (2) and inserting “,
15 and”, and adding at the end the following new para-
16 graph:

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

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

23 **SEC. 403. RECAPTURE OF BAD DEBT RESERVES.**

24 Notwithstanding section 481 of the Internal Revenue
25 Code of 1986, with respect to any S corporation election

1 made by any bank in taxable years beginning after Decem-
 2 ber 31, 1996, such bank may recognize built-in gains from
 3 changing its accounting method for recognizing bad debts
 4 from the reserve method under section 585 or 593 of such
 5 Code to the charge-off method under section 166 of such
 6 Code either in the taxable year ending with or beginning
 7 with such an election.

8 **TITLE V—QUALIFIED**
 9 **SUBCHAPTER S SUBSIDIARIES**

10 **SEC. 501. RELIEF FROM INADVERTENTLY INVALID QUALI-**
 11 **FIED SUBCHAPTER S SUBSIDIARY ELECTIONS**
 12 **AND TERMINATIONS.**

13 (a) IN GENERAL.—Section 1362(f) (relating to inad-
 14 vertent invalid elections or terminations) is amended—

15 (1) by inserting “or under section
 16 1361(b)(3)(B)(ii)” after “subsection (a)” in para-
 17 graph (1),

18 (2) by inserting “or under section
 19 1361(b)(3)(C)” after “subsection (d)” in paragraph
 20 (1)(B),

21 (3) by inserting “or a qualified subchapter S
 22 subsidiary, as the case may be” after “small busi-
 23 ness corporation” in paragraph (3)(A),

1 (4) by inserting “or a qualified subchapter S
2 subsidiary, as the case may be” after “S corpora-
3 tion” in paragraph (4), and

4 (5) by inserting “or a qualified subchapter S
5 subsidiary, as the case may be” after “S corpora-
6 tion” in the matter following paragraph (4).

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

10 **SEC. 502. INFORMATION RETURNS FOR QUALIFIED SUB-**
11 **CHAPTER S SUBSIDIARIES.**

12 (a) IN GENERAL.—Section 1361(b)(3)(A) (relating
13 to treatment of certain wholly owned subsidiaries) is
14 amended by inserting “and in the case of information re-
15 turns required under part III of subchapter A of chapter
16 61” after “Secretary”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to taxable years beginning after
19 December 31, 2001.

20 **SEC. 503. TREATMENT OF THE SALE OF INTEREST IN A**
21 **QUALIFIED SUBCHAPTER S SUBSIDIARY.**

22 (a) IN GENERAL.—Section 1361(b)(3) (relating to
23 treatment of certain wholly owned subsidiaries) is amend-
24 ed by adding at the end the following new subparagraph:

1 “(E) SPECIAL RULE ON TERMINATION.—
 2 The tax treatment of the disposition of the
 3 stock of the qualified subchapter S subsidiary
 4 shall be determined as if such disposition
 5 were—

6 “(i) a sale of the undivided interest in
 7 the subsidiary’s assets based on the per-
 8 centage of the stock transferred, and

9 “(ii) followed by a deemed contribu-
 10 tion by the S corporation and the trans-
 11 feree in a section 351 transaction.”.

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

15 **SEC. 504. EXCEPTION TO APPLICATION OF STEP TRANS-**
 16 **ACTION DOCTRINE FOR RESTRUCTURING IN**
 17 **CONNECTION WITH MAKING QUALIFIED SUB-**
 18 **CHAPTER S SUBSIDIARY ELECTIONS.**

19 (a) IN GENERAL.—Section 1361(b)(3) (relating to
 20 treatment of certain wholly owned subsidiaries), as amend-
 21 ed by section 503, is amended by redesignating subpara-
 22 graphs (C), (D), and (E), as subparagraphs (D), (E), and
 23 (F), respectively, and by inserting after subparagraph (B)
 24 the following new subparagraph:

1 “(C) TREATMENT OF ELECTION.—The
 2 election under subparagraph (B)(ii) shall be
 3 treated as a liquidation of the qualified sub-
 4 chapter S subsidiary to which section 332 ap-
 5 plies.”.

6 (b) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply to elections effective after Decem-
 8 ber 31, 2001.

9 **TITLE VI—ADDITIONAL**
 10 **PROVISIONS**

11 **SEC. 601. ELIMINATION OF ALL EARNINGS AND PROFITS**
 12 **ATTRIBUTABLE TO PRE-1983 YEARS.**

13 (a) IN GENERAL.—Subsection (a) of section 1311 of
 14 the Small Business Job Protection Act of 1996 is amend-
 15 ed to read as follows:

16 “(a) IN GENERAL.—If a corporation was an electing
 17 small business corporation under subchapter S of chapter
 18 1 of the Internal Revenue Code of 1986 for any taxable
 19 year beginning before January 1, 1983, the amount of
 20 such corporation’s accumulated earnings and profits (as
 21 of the beginning of any taxable year beginning after De-
 22 cember 31, 1982) shall be reduced by an amount equal
 23 to the portion (if any) of such accumulated earnings and
 24 profits which were accumulated in any taxable year begin-
 25 ning before January 1, 1983, for which such corporation

1 was an electing small business corporation under such
2 subchapter S.”.

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

6 **SEC. 602. NO GAIN OR LOSS ON DEFERRED INTERCOMPANY**
7 **TRANSACTIONS BECAUSE OF CONVERSION**
8 **TO S CORPORATION OR QUALIFIED S COR-**
9 **PORATION SUBSIDIARY.**

10 With respect to taxable years beginning before, on,
11 or after July 12, 1995, the regulations under section 1502
12 of the Internal Revenue Code of 1986 shall not cause gain
13 or loss to be recognized by reason of an election under
14 section 1361(b)(3)(B) or 1362(a) of such Code.

15 **SEC. 603. TREATMENT OF CHARITABLE CONTRIBUTION**
16 **AND FOREIGN TAX CREDIT**
17 **CARRYFORWARDS.**

18 (a) CHARITABLE CONTRIBUTION
19 CARRYFORWARDS.—The last sentence of section
20 1374(b)(2) (relating to net operating loss carryforwards
21 from C years allowed) is amended by inserting “or a chari-
22 table contribution carryforward under section 170(d)(2)”
23 after “capital loss carryforward”.

24 (b) FOREIGN TAX CREDIT CARRYFORWARDS.—The
25 last sentence of section 1374(b)(3)(B) (relating to busi-

1 ness credit carryforwards from C years allowed) is amend-
2 ed by inserting “and the foreign tax credit carryforward
3 under section 904” after “section 53”.

4 (c) TREATMENT OF ADDITIONAL
5 CARRYFORWARDS.—Section 1374(b) (relating to amount
6 of tax) is amended by adding at the end the following new
7 paragraph:

8 “(5) TREATMENT OF ADDITIONAL
9 CARRYFORWARDS.—The Secretary under regulations
10 shall provide treatment similar to the preceding
11 paragraphs of this subsection for other
12 carryforwards attributable to taxable years for which
13 an S corporation was a C corporation.”.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 December 31, 2001.

17 **SEC. 604. DISTRIBUTIONS BY AN S CORPORATION TO AN**
18 **EMPLOYEE STOCK OWNERSHIP PLAN.**

19 (a) IN GENERAL.—Section 1368(f) (relating to dis-
20 tributions) is amended by adding at the end the following
21 new subsection:

22 “(f) DISTRIBUTIONS BY AN S CORPORATION TO AN
23 EMPLOYEE STOCK OWNERSHIP PLAN.—Any distribution
24 described in subsection (a) to an employee stock ownership

1 plan (as defined in section 4975(e)(7)) shall be treated
2 as a dividend under section 404(k)(2)(A).”.

3 (b) TECHNICAL AMENDMENT.—Section 404(a)(9)(C)
4 (relating to S corporations) is amended to read as follows:

5 “(C) S CORPORATIONS.—The deduction
6 provided in this paragraph shall not apply to an
7 S corporation.”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to distributions received after the
10 date of the enactment of this Act.

11 **SEC. 605. SPECIAL RULES OF APPLICATION.**

12 (a) WAIVER OF LIMITATIONS.—If refund or credit of
13 any overpayment of tax resulting from the application of
14 any amendment made by this Act is prevented at any time
15 before the close of the 1-year period beginning on the date
16 of the enactment of this Act by the operation of any law
17 or rule of law (including res judicata), such refund or cred-
18 it may nevertheless be made or allowed if claimed therefor
19 is filed before the close of such period.

20 (b) TREATMENT OF CERTAIN ELECTIONS UNDER
21 PRIOR LAW.—For purposes of section 1362(g) of the In-
22 ternal Revenue Code of 1986 (relating to election after
23 termination), any termination or revocation under section

1 1362(d) of such Code (as in effect on the day before enact-
2 ment of this Act) shall not be taken into account.

○