

109TH CONGRESS
1ST SESSION

H. R. 4006

To permit startup partnerships and S corporations to elect taxable years other than required years.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 2005

Mr. SHAW (for himself and Mr. TANNER) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To permit startup partnerships and S corporations to elect taxable years other than required years.

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 Tax
5 Flexibility Act of 2005”.

6 **SEC. 2. QUALIFIED SMALL BUSINESSES ELECTION OF TAX-**
7 **ABLE YEAR ENDING IN A MONTH FROM**
8 **APRIL TO NOVEMBER.**

9 (a) IN GENERAL.—Part I of subchapter E of chapter
10 1 of the Internal Revenue Code of 1986 (relating to ac-

1 counting periods) is amended by inserting after section
2 444 the following new section:

3 **“SEC. 444A. QUALIFIED SMALL BUSINESSES ELECTION OF**
4 **TAXABLE YEAR ENDING IN A MONTH FROM**
5 **APRIL TO NOVEMBER.**

6 “(a) GENERAL RULE.—A qualified small business
7 may elect to have a taxable year, other than the required
8 taxable year, which ends on the last day of any of the
9 months of April through November (or at the end of an
10 equivalent annual period (varying from 52 to 53 weeks)).

11 “(b) YEARS FOR WHICH ELECTION EFFECTIVE.—An
12 election under subsection (a)—

13 “(1) shall be made not later than the due date
14 (including extensions thereof) for filing the return of
15 tax for the first taxable year of the qualified small
16 business, and

17 “(2) shall be effective for such first taxable year
18 or period and for all succeeding taxable years of
19 such qualified small business until such election is
20 terminated under subsection (c).

21 “(c) TERMINATION.—

22 “(1) IN GENERAL.—An election under sub-
23 section (a) shall be terminated on the earliest of—

1 “(A) the first day of the taxable year fol-
2 lowing the taxable year for which the entity
3 fails to meet the gross receipts test,

4 “(B) the date on which the entity fails to
5 qualify as an S corporation, or

6 “(C) the date on which the entity termi-
7 nates.

8 “(2) GROSS RECEIPTS TEST.—For purposes of
9 paragraph (1), an entity fails to meet the gross re-
10 ceipts test if the entity fails to meet the gross re-
11 ceipts test of section 448(c).

12 “(3) EFFECT OF TERMINATION.—An entity
13 with respect to which an election is terminated
14 under this subsection shall determine its taxable
15 year for subsequent taxable years under any other
16 method that would be permitted under subtitle A.

17 “(4) INCOME INCLUSION AND DEDUCTION
18 RULES FOR PERIOD AFTER TERMINATION.—If the
19 termination of an election under paragraph (1)(A)
20 results in a short taxable year—

21 “(A) items relating to net profits for the
22 period beginning on the day after its last fiscal
23 year-end and ending on the day before the be-
24 ginning of the taxable year determined under
25 paragraph (4) shall be includible in income rat-

1 ably over the succeeding 4 taxable years, or (if
2 fewer) the number of taxable years equal to the
3 fiscal years for which the election under this
4 section was in effect, and

5 “(B) items relating to net losses for such
6 period shall be deductible in the first taxable
7 year after the taxable year with respect to
8 which the election terminated.

9 “(d) DEFINITIONS.—For purposes of this section—

10 “(1) QUALIFIED SMALL BUSINESS.—The term
11 ‘qualified small business’ means an entity—

12 “(A)(i) for which an election under section
13 1362(a) is in effect for the first taxable year or
14 period of such entity and for all subsequent
15 years, or

16 “(ii) which is treated as a partnership for
17 the first taxable year or period of such entity
18 for Federal income tax purposes,

19 “(B) which conducts an active trade or
20 business or which would qualify for an election
21 to amortize start-up expenditures under section
22 195, and

23 “(C) which is a start-up business.

24 “(2) START-UP BUSINESS.—For purposes of
25 paragraph (1)(C), an entity shall be treated as a

1 start-up business so long as not more than 75 per-
2 cent of the entity is owned by any person who pre-
3 viously conducted a similar trade or business at any
4 time within the 1-year period ending on the date on
5 which such entity is formed. For purposes of the
6 preceding sentence, a person and any other person
7 bearing a relationship to such person specified in
8 section 267(b) or 707(b)(1) shall be treated as one
9 person, and sections 267(b) and 707(b)(1) shall be
10 applied as if section 267(c)(4) provided that the
11 family of an individual consists of the individual's
12 spouse and the individual's children under the age of
13 21.

14 “(3) REQUIRED TAXABLE YEAR.—The term ‘re-
15 quired taxable year’ has the meaning given to such
16 term by section 444(e).

17 “(e) TIERED STRUCTURES.—The Secretary shall
18 prescribe rules similar to the rules of section 444(d)(3)
19 to eliminate abuse of this section through the use of tiered
20 structures.”.

21 (b) CONFORMING AMENDMENT.—Section 444(a)(1)
22 of such Code is amended by striking “section,” and insert-
23 ing “section and section 444A”.

24 (c) CLERICAL AMENDMENT.—The table of sections
25 for part I of subchapter E of chapter 1 of such Code is

1 amended by inserting after the item relating to section
2 444 the following new item:

“Sec. 444A. Qualified small businesses election of taxable year ending in a
month from April to November.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2005.

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