

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1661

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

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IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1995

Mr. SHAW introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To permit 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 (a) SHORT TITLE.—This Act may be cited as the  
5 “Small Business Tax Flexibility Act of 1995”.

6 **SEC. 2. ELECTION OF TAXABLE YEAR.**

7 Part I of subchapter E of chapter 1 of the Internal  
8 Revenue Code of 1986 (relating to accounting periods) is  
9 amended by redesignating section 444 as section 445 and  
10 by inserting after section 443 the following new section:

1 **“SEC. 444. PARTNERSHIPS AND S CORPORATIONS MAY**  
2 **ELECT ANY TAXABLE YEAR.**

3 “(a) GENERAL RULE.—Except as otherwise provided  
4 in this section, a partnership or S corporation may elect  
5 to have a taxable year other than the required taxable  
6 year.

7 “(b) EFFECT OF ELECTION.—If an entity makes an  
8 election under subsection (a), then—

9 “(1) the entity shall pay estimated tax at the  
10 applicable rate on behalf of the owners as provided  
11 in this section,

12 “(2) if there is any underpayment of estimated  
13 tax by the entity, the entity shall pay a penalty de-  
14 termined under section 6654A, and

15 “(3) in the manner provided in sections 35 and  
16 6654, the owners may credit against their respective  
17 liabilities for tax their allocable shares of the esti-  
18 mated tax payments made by the entity.

19 “(c) DEFINITIONS.—For purposes of this section,  
20 section 35, and section 6654A:

21 “(1) ENTITY.—The term ‘entity’ means a part-  
22 nership or S corporation, as the case may be.

23 “(2) OWNER.—The term ‘owner’ means a part-  
24 ner in a partnership or a shareholder in an S cor-  
25 poration, as the case may be.

1           “(3) REQUIRED TAXABLE YEAR.—The term ‘re-  
2           quired taxable year’ means the taxable year deter-  
3           mined under section 706(b) or 1378.

4           “(4) APPLICABLE RATE.—The term ‘applicable  
5           rate’ means—

6                   “(A) except as provided in subparagraph  
7                   (B), 34 percent, and

8                   “(B) in the case of a high average income  
9                   entity (as defined in subsection (l), 39.6 per-  
10                  cent.

11          “(d) REQUIRED QUARTERLY INSTALLMENTS.—

12                  “(1) REQUIREMENT.—An entity shall pay a re-  
13                  quired installment for each quarter of a taxable year  
14                  for which an election under subsection (a) is in ef-  
15                  fect.

16                  “(2) NO REQUIRED PAYMENTS WHERE ENTI-  
17                  TY’S LIABILITY IS LESS THAN \$5,000.—

18                          “(A) IN GENERAL.—An entity shall not be  
19                          required to make estimated payments under  
20                          this section for any taxable year for which (but  
21                          for this subparagraph) its aggregate liability  
22                          under this section would be less than \$5,000.

23                          “(B) ENTITIES UNDER COMMON CON-  
24                          TROL.—If 2 or more entities are under common

1 control, such entities shall be treated as one en-  
2 tity for purposes of applying subparagraph (A).

3 “(C) COMMON CONTROL DEFINED.—For  
4 purposes of subparagraph (B), two entities are  
5 under common control if the same person or  
6 persons own more than 50 percent of the cap-  
7 ital interest or profits interest in the partner-  
8 ship or more than 50 percent in value of the  
9 outstanding stock of the S corporation, as the  
10 case may be. For purposes of the preceding sen-  
11 tence, the constructive ownership rules of sec-  
12 tion 267(c) shall apply except that such rules  
13 shall be applied to interests in partnerships as  
14 well as to stock.

15 “(3) AMOUNT.—The amount of the required in-  
16 stallment for any quarter shall be determined under  
17 whichever of the following is the entity’s applicable  
18 method for that quarter.

19 “(A) The 110 percent method.

20 “(B) The 100 percent method.

21 “(C) The annualized income method.

22 “(4) APPLICABLE METHOD.—Unless the 100  
23 percent method or the annualized income method  
24 applies to a quarter by reason of subsection (e)(4)  
25 or a timely selection under subsection (f) or (g), the

1 applicable method for an entity for any quarter shall  
2 be the 110 percent method.

3 “(e) 110-PERCENT METHOD.—

4 “(1) IN GENERAL.—The required quarterly in-  
5 stallment under the 110 percent method shall be  $\frac{1}{4}$   
6 of 110 percent of the product of—

7 “(A) the entity’s applicable income for its  
8 base year, and

9 “(B) the applicable rate.

10 “(2) C CORPORATION FOR BASE YEAR.—

11 “(A) IN GENERAL.—For purposes of this  
12 subsection, if an S corporation was a C cor-  
13 poration for its base year, its taxable income for  
14 its base year shall be substituted for its applica-  
15 ble income.

16 “(3) BASE YEAR DEFINED—For purposes of  
17 this subsection, the term ‘base year’ means the most  
18 recent prior taxable year containing 12 months.

19 “(4) 110-PERCENT METHOD NOT AVAILABLE  
20 WHERE LARGE INCREASE IN INCOME.—

21 “(A) IN GENERAL.—If an entity’s applica-  
22 ble income for the taxable year exceeds its ap-  
23 plicable income for the base year by more than  
24 \$750,000, the 110-percent method will not  
25 apply to the entity for the taxable year. Instead,

1 the 110-percent method shall apply unless the  
2 entity selects the annualized income method.

3 “(B) ENTITIES UNDER COMMON CON-  
4 TROL.—If 2 or more entities are under common  
5 control (as defined in subsection (d)(2)(C)),  
6 such entities shall be treated as one entity for  
7 purposes of applying subparagraph (A).

8 “(f) 100-PERCENT METHOD.—

9 “(1) IN GENERAL.—The required quarterly in-  
10 stallment under the 100-percent method shall be  $\frac{1}{4}$   
11 of 100 percent of the product of—

12 “(A) the entity’s applicable income for the  
13 current taxable year, and

14 “(B) the applicable rate.

15 “(2) 100-PERCENT METHOD MUST BE SE-  
16 LECTED BY DUE DATE FOR FIRST QUARTER.—Ex-  
17 cept as provided in subsection (e)(4), the 100-per-  
18 cent method shall apply to an entity’s taxable year  
19 only if the entity selects that method for that year  
20 on or before the due date for the first quarterly in-  
21 stallment for that year.

22 “(g) ANNUALIZED INCOME METHOD.—

23 “(1) IN GENERAL.—The required quarterly in-  
24 stallment under the annualized income method shall  
25 be  $\frac{1}{4}$  of the product of—

1           “(A) the entity’s annualized applicable in-  
2           come (determined under subsection (h)(6)), and

3           “(B) the applicable rate.

4           “(2) ADJUSTMENTS IN AMOUNT.—The required  
5           installment under this subsection for any quarter  
6           shall be increased or decreased by any amount by  
7           which the entity’s quarterly installments for prior  
8           quarters in the year were higher or lower than such  
9           installments would have been if computed under this  
10          subsection using the annualized applicable income  
11          for the current quarter.

12          “(3) TIME FOR SELECTING METHOD.—The  
13          annualized income method shall apply to an entity  
14          for a quarter only if the entity selects that method  
15          on or before the due date for such quarter.

16          “(4) CONSISTENCY FOR REMAINING QUAR-  
17          TERS.—If an entity selects the annualized income  
18          method for any quarter, that method shall also apply  
19          to the remaining quarters in the entity’s taxable  
20          year.

21          “(h) APPLICABLE INCOME.—

22          “(1) IN GENERAL.—For purposes of this sec-  
23          tion, the applicable income for any taxable year shall  
24          be the net amount (not less than zero) determined—

1           “(A) by taking into account the entity’s  
2 items in the manner and with the exceptions  
3 provided in section 703(a) or 1363(b), as the  
4 case may be, and

5           “(B) by making the further adjustments  
6 provided in paragraphs (2), (3), (4), and (5) of  
7 this subsection.

8           “(2) CERTAIN DEDUCTIONS ALLOWED.—In de-  
9 termining applicable income the following amounts  
10 shall be allowed as deductions:

11           “(A) Contributions to organizations de-  
12 scribed in section 170(c).

13           “(B) Taxes described in section 901(c)  
14 paid or accrued to foreign countries or posses-  
15 sions of the United States.

16           “(3) CERTAIN LIMITATIONS DISREGARDED.—  
17 For purposes of paragraphs (1) and (2), any limita-  
18 tion on the amount of any item which may be taken  
19 into account for purposes of computing the taxable  
20 income of a partner or shareholder shall be dis-  
21 regarded.

22           “(4) GUARANTEED PAYMENTS TO PARTNERS  
23 NOT DEDUCTED.—In determining applicable income  
24 a guaranteed payment to a partner shall not be  
25 treated as an item of deduction.

1           “(5) DISPROPORTIONATE APPLICABLE PAY-  
2           MENTS DURING DEFERRAL PERIOD.—

3           “(A) DEDUCTION NOT ALLOWED.—In de-  
4           termining applicable income, no deduction shall  
5           be allowed for disproportionate deferral period  
6           applicable payments.

7           “(B) DISPROPORTIONATE DEFERRAL PE-  
8           RIOD APPLICABLE PAYMENTS.—For purposes of  
9           subparagraph (A), the term ‘disproportionate  
10          deferral period applicable payments’ means the  
11          excess (if any) of—

12           “(i) the product of the deferral ratio  
13           and the aggregate applicable payments  
14           made to owners during the entity’s entire  
15           taxable year, over

16           “(ii) the aggregate applicable pay-  
17           ments made to owners during the deferral  
18           period.

19           “(C) DEFINITIONS.—For purposes of this  
20          paragraph—

21           “(i) the term ‘applicable payments’  
22           has the meaning given to such term by sec-  
23           tion 7519(d)(3), except that in the case of  
24           an S corporation only payments to 2 per-

1 cent shareholders (as defined in section  
2 1372(b)) shall be taken into account,

3 “(ii) the term ‘deferral period’ means  
4 the months in the period beginning with  
5 the first day of the entity’s taxable year  
6 and ending on December 31, and

7 “(iii) the term ‘deferral ratio’ means  
8 the ratio which the number of months in  
9 the deferral period bears to the total num-  
10 ber of months in the taxable year.

11 “(6) ANNUALIZED APPLICABLE INCOME.—The  
12 applicable income taken into account for any quarter  
13 for purposes of the annualized income method of  
14 subsection (g) shall be the product of—

15 “(A) the applicable income determined in  
16 the manner provided in paragraphs (1) through  
17 (5) for the period consisting of the months in  
18 the entity’s taxable year ending before the due  
19 date for the installment for such quarter, and

20 “(B) a fraction—

21 “(i) the numerator of which is 12, and

22 “(ii) the denominator of which is the  
23 number of months in such period.

1       “(i) DUE DATES FOR INSTALLMENTS.—Quarterly in-  
2 stallments shall be due on the 15th day of the 3rd, 5th,  
3 8th, and 12th months of the taxable year.

4       “(j) ELECTION.—

5           “(1) IN GENERAL.—An election under sub-  
6 section (a) for a taxable year may be made at any  
7 time on or before the 15th day of the 3rd month of  
8 the first taxable year of 12 months under the elec-  
9 tion. An election, once in effect, shall continue in ef-  
10 fect until terminated under paragraph (3) or (4) or  
11 under subsection (k)(1)(B).

12           “(2) COORDINATION WITH SECTIONS 442 AND  
13 443.—A change in its annual accounting period  
14 made by an entity pursuant to an election under this  
15 section shall be treated for purposes of sections 442  
16 and 443 as a change approved by the Secretary.

17           “(3) TERMINATION BY REVOCATION.—An elec-  
18 tion under subsection (a) may be terminated by rev-  
19 ocation, but only if owners of more than one-half of  
20 the equity interests in the entity on the day on  
21 which the revocation is made consent to the revoca-  
22 tion.

23           “(4) ENTITY TERMINATES.—An election under  
24 subsection (a) terminates whenever there is—

1           “(A) a termination of the partnership  
2           under section 708(b)(1), or

3           “(B) the corporation ceases to be an S cor-  
4           poration.

5           Subparagraph (B) shall not apply to an inadvertent  
6           termination if the corporation is treated as a con-  
7           tinuing S corporation under section 1362(f).

8           “(5) WHEN TERMINATIONS TAKE EFFECT.—  
9           For purposes of this section and sections 35 and  
10          6654A, a termination under paragraph (3) or (4) or  
11          under subsection (k)(1)(B) shall take effect as pro-  
12          vided in regulations.

13          “(6) ELECTION AFTER TERMINATION.—

14          “(A) If an entity has made an election  
15          under subsection (a) and if such election has  
16          been terminated, such entity shall not be eligi-  
17          ble to make any election under subsection (a)  
18          for any taxable year before its 5th taxable year  
19          beginning after the 1st taxable year for which  
20          such termination is effective, unless the Sec-  
21          retary consents to such election.

22          “(B) The Secretary shall prescribe regula-  
23          tions applying subparagraph (A) to any succes-  
24          sor entity more than one-half of the equity in-  
25          terests in which are owned by the person or

1 persons who owned the predecessor entity at  
2 the time the election was terminated.

3 “(7) EQUITY INTERESTS DEFINED.—For pur-  
4 poses of paragraphs (3) and (6) and subsection  
5 (n)(2), the term ‘equity interests’ means—

6 “(A) in the case of a partnership, the cap-  
7 ital interests, and

8 “(B) in the case of an S corporation, the  
9 shares of stock of the corporation (whether vot-  
10 ing or nonvoting.)

11 “(k) TIERED STRUCTURES.—

12 “(1) IN GENERAL.—Except as provided in para-  
13 graph (2)—

14 “(A) no election may be made under sub-  
15 section (a) with respect to any entity which is  
16 part of a tiered structure, and

17 “(B) an election under subsection (a) with  
18 respect to an entity shall be terminated if such  
19 entity becomes part of a tiered structure.

20 “(2) ENTITIES ELECTING SAME TAXABLE  
21 YEAR.—Paragraph (1) shall not apply to any tiered  
22 structure which consists only of partnerships or S  
23 corporations (or both) all of which have elected the  
24 same taxable year.

1           “(3) REGULATIONS.—The Secretary shall pre-  
2       scribe regulations describing the conditions and  
3       manner for the application of paragraph (2) and de-  
4       scribing the rules for avoiding duplicate inclusions of  
5       income and payments of estimated tax with the  
6       tiered structure.

7           “(l) HIGH AVERAGE INCOME ENTITY DEFINED.—

8           “(1) IN GENERAL.—For purposes of subsection  
9       (c)(4)(B) (providing an applicable rate of 39.6 per-  
10      cent for certain entities), the term ‘high average in-  
11      come entity’ means an entity where the average ap-  
12      plicable income of the 2 percent owners for the base  
13      year is \$250,000 or more. The term also includes  
14      any partnership, the applicable income of which for  
15      the base year is \$10,000,000 or more.

16          “(2) 2 PERCENT OWNERS.—For purposes of  
17      this subsection, the term ‘2 percent owner’ means—

18           “(A) in the case of a partnership, any per-  
19      son who owns (or is considered as owning with-  
20      in the meaning of section 318) on any day dur-  
21      ing the base year more than 2 percent of the  
22      capital interests of the partnership, and

23           “(B) in the case of an S corporation, a 2  
24      percent shareholder (as defined in section  
25      1372(b)).

1           “(3) BASE YEAR.—For purposes of this sub-  
2 section—

3           “(A) IN GENERAL.—The base year shall be  
4 the most recent prior taxable year containing  
5 12 months.

6           “(B) NO BASE YEAR.—In the case of an  
7 entity having no base year, this subsection shall  
8 not apply, and the applicable rate for the tax-  
9 able year shall be 34 percent.

10          “(m) ESTIMATED TAX PAYMENT WITH ELECTION.—

11           “(1) PAYMENT REQUIRED.—If, by reason of an  
12 election under this section, an entity has a short  
13 year, the entity shall make an additional payment of  
14 estimated tax on or before the due date for such  
15 election.

16           “(2) AMOUNT OF PAYMENT.—The amount of  
17 the payment required by paragraph (1) shall be the  
18 product of—

19           “(A) the lesser of—

20                   “(i) the entity’s applicable income for  
21 the short year, or

22                   “(ii) 110 percent of the entity’s appli-  
23 cable income for the base period, and

24           “(B) the applicable rate.

1           “(3) ALLOWANCE OF CREDIT.—For purposes of  
2 section 35, each owner shall be allowed a credit (for  
3 the owner’s first taxable year ending with or after  
4 the close of the entity’s short year) equal to the own-  
5 er’s allocable share of the payment required by para-  
6 graph (1).

7           “(4) PENALTY FOR UNDERPAYMENT.—

8           “(A) TREATMENT AS REQUIRED INSTALL-  
9 MENT.—For purposes of section 6654A, the  
10 payment required by paragraph (1) shall be  
11 treated as a required installment the due date  
12 for which was the last day for making the elec-  
13 tion under this section for the taxable year.

14           “(B) ENDING DATE FOR UNDERPAYMENT  
15 PERIOD.—The alternative ending date for the  
16 underpayment period provided by subparagraph  
17 (B) of section 6654A(d)(1) shall be the first  
18 April 15 more than 3 months after the close of  
19 the short year.

20           “(5) DEFINITIONS.—For purposes of this sub-  
21 section.—

22           “(A) SHORT YEAR.—The term ‘short year’  
23 means a taxable year of less than 12 months.

24           “(B) APPLICABLE INCOME FOR SHORT  
25 YEAR.—The applicable income for the short

1 year shall be determined in the manner pro-  
2 vided by subsection (h).

3 “(C) APPLICABLE INCOME FOR BASE PE-  
4 RIOD.—The applicable income for the base pe-  
5 riod shall be—

6 “(i) the amount of the applicable in-  
7 come (determined in the manner provided  
8 by subsection (h)) for the entity’s most re-  
9 cent taxable year of 12 months preceding  
10 the short year, multiplied by

11 “(ii) a fraction the numerator of  
12 which is the number of months in the  
13 short year and the denominator of which is  
14 12.

15 “(D) ALLOCABLE SHARE.—An owner’s al-  
16 locable share of the payment required by para-  
17 graph (1) shall be determined in the manner  
18 provided by section 35(b).

19 “(n) LOSSES IN SHORT TAXABLE YEARS.—

20 “(1) IN GENERAL.—If, by reason of an election  
21 under this section, an entity has a short taxable  
22 year, any net operating loss arising in such short  
23 taxable year shall be treated for purposes of this  
24 title as arising one-third in such year and one-third  
25 in each of the two succeeding taxable years.

1           “(2) SPREADING OF LOSS NOT REQUIRED FOR  
2 NEW ENTITIES.—

3           “(A) IN GENERAL.—Paragraph (1) shall  
4 not apply to a new entity (other than a succes-  
5 sor entity).

6           “(B) SUCCESSOR ENTITY.—For purposes  
7 of subparagraph (A), an entity is a successor  
8 entity if more than one-half of the equity inter-  
9 ests are owned by the person or persons who  
10 owned another entity carrying on the same  
11 business.

12          “(o) INFORMATION REQUIRED ON ENTITY RE-  
13 TURNS.—For authority to prescribe by regulations the in-  
14 formation required on returns made by the entity, see sec-  
15 tion 6031(a) (for partnerships) and 6037(a) (for S cor-  
16 porations).

17          “(p) ALTERNATIVE TAXABLE YEARS.—Nothing in  
18 this section shall be construed to affect the right to have  
19 an alternative taxable year if the entity—

20           “(1) establishes a business purpose therefor as  
21 provided in section 706 (b)(1)(C) or 1378(b)(2), or

22           “(2) meets the requirements set forth in Reve-  
23 nue Procedure 87-32.”.

1 **SEC. 3. FAILURE BY ENTITY TO PAY ESTIMATED TAX.**

2 Part I of subchapter A of chapter 68 of the Internal  
3 Revenue Code of 1986 (relating to additions to the tax  
4 and additional amounts) is amended by inserting after sec-  
5 tion 6654 the following new section:

6 **“SEC. 6654A. FAILURE BY ELECTING PARTNERSHIP OR S**  
7 **CORPORATION TO PAY ESTIMATED TAX.**

8 “(a) PENALTY.—

9 “(1) IN GENERAL.—If any entity to which an  
10 election under section 444(a) applies has an  
11 underpayment of any quarterly installment required  
12 under section 444, such entity shall pay a penalty  
13 determined as provided in subsection (b).

14 “(2) CROSS REFERENCES.—

15 “(A) For assessment, collection, and pay-  
16 ment of penalty as tax, see section 6665(a).

17 “(B) For nonapplication of deficiency pro-  
18 cedures to penalty except when no return is  
19 filed, see section 6665(b).

20 “(b) DETERMINATION OF PENALTY.—The amount of  
21 any penalty described in subsection (a) for any quarter  
22 shall be determined by applying—

23 “(1) the underpayment rate established under  
24 section 6621,

25 “(2) to the amount of the underpayment, and

26 “(3) for the period of the underpayment.

1       “(c) AMOUNT OF UNDERPAYMENT.—For purposes of  
2 subsection (a), the amount of the underpayment for any  
3 installment shall be the excess of—

4               “(1) the required installment (determined under  
5 section 444(d)), over

6               “(2) the amount of the installment paid by the  
7 entity on or before the due date for the installment.

8       “(d) PERIOD OF UNDERPAYMENT.—

9               “(1) IN GENERAL.—The period for any portion  
10 of an underpayment shall run from the date for the  
11 installment to the earlier of—

12                       “(A) the date the entity pays the portion,

13                       or

14                       “(B) the first April 15 more than 3  
15 months after the close of the entity’s taxable  
16 year.

17       “(2) ORDER OF CREDITING PAYMENTS.—For  
18 purposes of paragraph (1), payments shall be cred-  
19 ited against unpaid required installments in the  
20 order in which such installments are required to be  
21 paid.

22       “(e) DEPOSITS OF ESTIMATED TAX ARE TOO SMALL  
23 OR TOO LARGE.—

24               “(1) SHORTFALLS.—If, as of the first April 15  
25 more than 3 months after the close of the entity’s

1 taxable year, the aggregate deposits made by the en-  
2 tity under section 444 for such year are less than  
3 the aggregate amount of allocable shares of esti-  
4 mated tax payments shown on the entity's return for  
5 such year, such shortfall shall be treated for all pur-  
6 poses of this Code as tax under subtitle A owed by  
7 the entity which became due on such April 15.

8 “(2) EXCESS DEPOSITS.—If, instead of the  
9 shortfall described in paragraph (1), there are excess  
10 deposits as of such April 15, such excess shall be  
11 treated for all purposes of the Code as an overpay-  
12 ment of tax under subtitle A made by the entity on  
13 such April 15.

14 “(f) COORDINATION WITH PAYMENTS BY OWN-  
15 ERS.—

16 “(1) RELIEF FROM DOUBLE PAYMENT.—If the  
17 entity fails to pay estimated tax under section 444  
18 and thereafter the owner pays the income tax  
19 against which such estimated tax was creditable, any  
20 shortfall of deposits attributable to such failure to  
21 pay estimated tax shall not be collected from the en-  
22 tity.

23 “(2) COORDINATION WITH PENALTY.—Para-  
24 graph (1) shall not grant relief from the penalty pro-

1 vided by subsection (a) for any period before the  
2 owner pays the related income tax.

3 “(g) WAIVER IN CERTAIN CASES.—No addition to  
4 tax shall be imposed under subsection (a) with respect to  
5 any underpayment to the extent the Secretary determines  
6 that the entity meets the exception under section  
7 6654(e)(3)(A).”

8 **SEC. 4. CREDIT.**

9 Subchapter C of part IV of subchapter A of chapter  
10 1 of the Internal Revenue Code of 1986 (relating to re-  
11 fundable credits), is amended by redesignating section 35  
12 as section 36 and by inserting after section 34 the follow-  
13 ing new section:

14 **“SEC. 35. CREDIT FOR ESTIMATED TAX PAID BY PARTNER-**  
15 **SHIPS AND S CORPORATIONS.**

16 “(a) ALLOWANCE OF CREDIT.—

17 “(1) IN GENERAL.—An owner’s allocable share  
18 of estimated payments made by an entity shall be al-  
19 lowed to the owner as a credit against the tax im-  
20 posed by this subtitle.

21 “(2) YEAR OF CREDIT.—The owner’s allocable  
22 share for any entity’s taxable year shall be allowed  
23 as a credit for the owner’s first taxable year ending  
24 with or after the close of the entity’s taxable year.

1       “(b) OWNER’S SHARE OF TAX PAYMENTS PROPOR-  
2 TIONAL TO OWNER’S SHARE OF APPLICABLE INCOME.—

3           “(1) IN GENERAL.—For purposes of this sec-  
4 tion, an owner’s allocable share of the entity’s esti-  
5 mated tax payments for the entity’s taxable year  
6 shall be an amount which bears the same ratio to  
7 such payments as the owner’s applicable income for  
8 such year bears to the sum of all applicable incomes  
9 of owners for such year. For this purpose the appli-  
10 cable income of each owner shall be separately deter-  
11 mined in the manner provided by section 444(h).

12           “(2) QUARTERLY APPLICATION FOR  
13 ANNUALIZED INCOME METHOD.—If the entity selects  
14 the annualized income method for any quarter, para-  
15 graph (1) shall be applied on a quarter-by-quarter  
16 basis.

17           “(3) INTERIM CLOSING OF BOOKS.—Where dur-  
18 ing any taxable year there is an interim closing of  
19 the books of an entity under section 706(d)(1),  
20 1377(a)(2), or any other provision, this subsection  
21 shall be applied separately to the segment of the tax-  
22 able year before the closing and the segment after  
23 the closing.”.

1 **SEC. 5. COORDINATION WITH INDIVIDUAL'S LIABILITY TO**  
2 **PAY ESTIMATED TAX.**

3 (a) DEFINITION OF TAX FOR PURPOSES OF INDIVID-  
4 UAL'S LIABILITY.—Paragraph (3) of section 6654(f) of  
5 the Internal Revenue Code of 1986 (relating to computa-  
6 tion of tax after application of credits) is amended to read  
7 as follows:

8 “(3) the credits against tax provided by part IV  
9 of subchapter A of chapter 1 (relating to the tax  
10 withheld on wages), other than the credits against  
11 tax provided by—

12 “(A) section 31 (relating to taxes withheld  
13 on wages), and

14 “(B) section 35 (relating to estimated tax  
15 paid by partnerships and S corporations.”.

16 (b) ESTIMATED TAX PAID FOR INDIVIDUAL BY  
17 PARTNERSHIP OR S CORPORATION.—Section 6654 of  
18 such Code (relating to failure by individual to pay esti-  
19 mated income tax) is amended by redesignating subsection  
20 (m) as subsection (n) and by inserting after subsection  
21 (l) the following new subsection:

22 “(m) ESTIMATED TAX PAID BY PARTNERSHIP OR S  
23 CORPORATION.—

24 “(1) IN GENERAL.—For purposes of this sec-  
25 tion, an individual entitled to a credit under section  
26 35 for his or her taxable year shall be treated as

1 having paid on the due date for the estimated tax  
2 installment for each quarter of such year—

3 “(A) except as provided in subparagraph  
4 (B), an amount equal to one-fourth of such  
5 credit, or

6 “(B) if the annualized income method de-  
7 scribed in section 444(g) applies to any quarter  
8 in the entity’s taxable year, an amount equal to  
9 the portion of such credit attributable to the in-  
10 dividual’s allocable share of the entity’s alloca-  
11 ble income for the corresponding quarter.

12 “(2) SPECIAL RULES.—

13 “(A) CREDIT EQUALS AMOUNT SHOWN ON  
14 ENTITY’S RETURN.—For purposes of this sec-  
15 tion, an individual’s section 35 credit is the  
16 amount shown for such individual on the enti-  
17 ty’s return for its taxable year under section  
18 6031 or 6037, as the case may be.

19 “(B) CORRESPONDING QUARTERS.—For  
20 purposes of paragraph (1)(B), the individual’s  
21 first quarter shall correspond to the entity’s  
22 first quarter, the second to the second, etc.”.

23 **SEC. 6. COORDINATION OF OLD AND NEW SECTION 444.**

24 (a) NO NEW ELECTIONS UNDER OLD SECTION 444  
25 FOR PARTNERSHIPS AND S CORPORATIONS.—Subsection

1 (b) of section 445 of such Code (as redesignated by section  
2 1 of this Act) is amended by adding at the end thereof  
3 the following new paragraph:

4           “(5) NO NEW ELECTIONS FOR PARTNERSHIPS  
5           AND S CORPORATIONS.—No election under sub-  
6           section (a) may be made by a partnership or S cor-  
7           poration if the entity’s first taxable year of 12  
8           months under such election would begin after the  
9           date of the enactment of new section 444.”.

10           (b) PARTNERSHIPS AND S CORPORATIONS MAY  
11           ELECT UNDER NEW SECTION 444.—Such section 445 is  
12           amended by redesignating subsection (g) as subsection (h)  
13           and by inserting after subsection (f) the following new  
14           subsection:

15           “(g) PARTNERSHIPS AND S CORPORATIONS MAY  
16           ELECT UNDER NEW SECTION 444.—

17           “(1) IN GENERAL.—A partnership or S cor-  
18           poration to which an election under this section ap-  
19           plies may make an election under section 444 at the  
20           time and in the manner provided by section 444(j).

21           “(2) EFFECT OF ELECTION.—An election de-  
22           scribed in paragraph (1) shall terminate the election  
23           of the entity under this section and entitle it to a  
24           credit or refund with respect to the required pay-  
25           ment under section 7519. The entity shall make the

1 selection between the credit and the refund at the  
2 time it makes its election under section 444.

3 “(3) CREDIT.—If the entity selects a credit, it  
4 shall be treated as having paid under section 444,  
5 for its first taxable year of 12 months under the sec-  
6 tion 444 election, an amount of estimated tax equal  
7 to its net required payment balance (within the  
8 meaning of section 7519(e)(4)).

9 “(4) REFUND.—If the entity selects a refund, it  
10 shall be entitled to a refund of such net required  
11 payment balance at the time provided in section  
12 7519(c)(3).”.

13 **SEC. 7. TECHNICAL AMENDMENTS.**

14 (a) RULES FOR ASSESSING THE PENALTY UNDER  
15 SECTION 6654A.—Section 6665(b) of such Code (relating  
16 to procedures for assessing certain additions to tax) is  
17 amended—

18 (1) by striking “6654,” and inserting “6654,  
19 6654A,”, and

20 (2) by striking “6654 or” and inserting “6654,  
21 6654A, or”.

22 (b) REASONABLE CAUSE EXCEPTION ALLOWED FOR  
23 PENALTY UNDER SECTION 7519.—Effective with respect  
24 to taxable years beginning after December 31, 1986, the  
25 first sentence of section 7519(f)(4)(A) of such Code (relat-

1 ing to failure to make required payments) is amended by  
2 inserting “unless it is shown that such failure is due to  
3 reasonable cause and not to willful neglect,” after “any  
4 amount required by this section”.

5 (c) INTEREST ON LATE REFUNDS UNDER SECTION  
6 7519.—Effective with respect to refunds under section  
7 7519 of such Code paid after the date of the enactment  
8 of this Act, section 7519(f)(3) of such Code is amended  
9 by striking “no interest shall be allowed with respect to  
10 any refund of a payment under this section” and inserting  
11 “interest shall be allowed with respect to any refund of  
12 a payment under this section for any period before the  
13 payable date for such refund determined under subsection  
14 (c)(3)”.

15 (d) SPECIAL BASIS ORDERING RULES FOR S COR-  
16 PORATIONS.—Subsection (e) of section 1368 of such Code  
17 (relating to definitions and special rules for distribution  
18 of S corporations) is amended by adding at the end thereof  
19 the following new paragraph:

20 “(4) CREDITS UNDER SECTION 35.—In the case  
21 of any deemed distribution attributable to a credit  
22 under section 35, under regulations prescribed by  
23 the Secretary—

1           “(A) the adjusted basis of the stock shall  
2           be determined with regard to the adjustments  
3           in section 1367(a)(1), and

4           “(B) the amount in the accumulated ad-  
5           justments account shall be determined without  
6           regard to any net operating loss for the taxable  
7           year.”.

8   **SEC. 8 CLERICAL AMENDMENTS.**

9           (a) SECTION 35.—The table of sections for subpart  
10          C of part IV of subchapter A of chapter 1 of the Internal  
11          Revenue Code of 1986 is amended by striking the item  
12          relating to section 35 and inserting:

          “Sec. 35. Credit for estimated tax paid by partnerships and S corporations.  
          “Sec. 36. Overpayments of tax.”.

13          (b) SECTION 444.—The table of sections for part I  
14          of subchapter E of chapter 1 of such Code is amended  
15          by striking the item relating to section 444 and inserting:

          “Sec. 444. Partnerships and S corporations may elect any taxable year.  
          “Sec. 445. Election of taxable year other than required taxable year.”.

16          (c) REFERENCES TO OLD SECTION 444.—Sections  
17          7519 and 280H of such Code are amended by striking  
18          “444” each place it appears and inserting “445”.

19          (d) SECTION 6654A.—The table of sections for part  
20          I of subchapter A of chapter 68 of such Code is amended  
21          by inserting after the item relating to section 6654 the  
22          following new item:

          “Sec. 6654A. Failure by electing partnership or S corporation to pay estimated  
          tax.”.

1 **SEC. 9 EFFECTIVE DATE.**

2       Except as provided in subsections (b) and (c) or sec-  
3 tion 6, the amendments made by this Act shall apply to  
4 taxable years beginning after December 31, 1995.

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