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(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. CAREY introduced the following bill; which was referred to the Committee
on _____

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; REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the “S
5 Corporation Modernization Act of 2026”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 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 **SEC. 2. TREATMENT OF S CORPORATION BUILT-IN GAIN**
4 **AMOUNT UPON DEATH OF SHAREHOLDER.**

5 (a) IN GENERAL.—Part II of subchapter S of chapter
6 1 is amended by adding at the end the following:

7 **“SEC. 1369. TREATMENT OF S CORPORATION BUILT-IN GAIN**
8 **AMOUNT UPON DEATH OF SHAREHOLDER.**

9 “(a) IN GENERAL.—A person holding stock in an
10 electing S corporation the basis of which is determined
11 under section 1014(a) (hereafter in this section referred
12 to as the ‘shareholder’) shall be allowed a deduction with
13 respect to the amortizable S corporation built-in gain
14 amount. Except as provided under subsection (b), the
15 amount of such deduction for any taxable year shall be
16 determined by amortizing the amortizable S corporation
17 built-in gain amount over the 15-year period beginning
18 with the month which includes the applicable valuation
19 date.

20 “(b) DEDUCTION IN CASE OF DISPOSITION OF S
21 CORPORATION PROPERTY.—

22 “(1) ACCELERATED DEDUCTION IN CASE OF
23 DISPOSITION OF AMORTIZABLE S CORPORATION
24 BUILT-IN GAIN PROPERTY.—

1 “(A) IN GENERAL.—If there is a disposi-
2 tion of any amortizable S corporation built-in
3 gain property, then the deduction allowed under
4 subsection (a) with respect to any stock (deter-
5 mined without regard to paragraph (2)) for the
6 taxable year of the shareholder in which or with
7 which the taxable year of the S corporation
8 which includes the date of such disposition
9 ends, shall (except as otherwise provided in this
10 section) not be less than the lesser of—

11 “(i) the pro rata share of the gain
12 recognized on such disposition, or

13 “(ii) the amount determined under
14 subsection (c)(1)(B) by only taking into
15 account such property.

16 “(B) OVERALL ALLOWANCE NOT IN-
17 CREASED.—Except as provided in paragraph
18 (2), no deduction shall be allowed under sub-
19 section (a) with respect to any stock for any
20 taxable year to the extent that such deduction
21 (when added to the deductions attributable to
22 amortizable S corporation built-in gain property
23 so allowed for all prior taxable years) exceeds
24 the amortizable S corporation built-in gain
25 amount with respect to such stock.

1 “(2) ADDITIONAL DEDUCTION IN CASE OF DIS-
2 POSITION OF NONAMORTIZABLE S CORPORATION
3 BUILT-IN GAIN PROPERTY.—

4 “(A) IN GENERAL.—If there is a disposi-
5 tion of any nonamortizable S corporation built-
6 in gain property, then the amount allowable as
7 deduction under subsection (a) with respect to
8 any stock for the taxable year of the share-
9 holder in which or with which the taxable year
10 of the S corporation which includes the date of
11 disposition ends, shall be increased by the lesser
12 of—

13 “(i) the pro-rata share of the gain rec-
14 ognized on such disposition, or

15 “(ii) the amount determined under
16 subsection (c)(1)(B) by only taking into
17 account such property.

18 “(B) LIMITATION.—Subparagraph (A)
19 shall not apply with respect to any stock for
20 any taxable year to the extent that such in-
21 crease (when added to the increased deductions
22 so allowed under subparagraph (A) for all prior
23 taxable years) exceeds the non-amortizable S
24 corporation built-in gain amount with respect to
25 such stock.

1 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
2 poses of this section—

3 “(1) S CORPORATION BUILT-IN GAIN
4 AMOUNT.—The term ‘S corporation built-in gain
5 amount’ means the lesser of—

6 “(A) the excess (if any) of—

7 “(i) the basis of the stock referred to
8 in subsection (a) as determined under sec-
9 tion 1014(a), over

10 “(ii) the adjusted basis of such stock
11 immediately before the death of the dece-
12 dent, or

13 “(B) the pro rata share (determined as of
14 the applicable valuation date) of—

15 “(i) the aggregate fair market value
16 of all property held by the S corporation
17 which is amortizable S corporation built-in
18 gain property or nonamortizable S corpora-
19 tion built-in gain property, over

20 “(ii) the aggregate adjusted basis of
21 all such property held by the S corporation
22 as of such date.

23 “(2) AMORTIZABLE S CORPORATION BUILT-IN
24 GAIN PROPERTY.—The term ‘amortizable S corpora-
25 tion built-in gain property’ means, as of the applica-

1 ble valuation date, the S corporation property that
2 is of a character subject to depreciation or amortiza-
3 tion.

4 “(3) AMORTIZABLE S CORPORATION BUILT-IN
5 GAIN AMOUNT.—The term ‘amortizable S corpora-
6 tion built-in gain amount’ means the pro rata share
7 of the portion of the S corporation built-in gain
8 amount that is attributable to amortizable S cor-
9 poration built-in gain property.

10 “(4) NON-AMORTIZABLE S CORPORATION
11 BUILT-IN GAIN PROPERTY.—The term ‘non-amortiz-
12 able S corporation built-in gain property’ means, as
13 of the applicable valuation date, the S corporation
14 property that is not of a character subject to depre-
15 ciation or amortization (other than an equity inter-
16 est in an electing S corporation partnership).

17 “(5) NON-AMORTIZABLE S CORPORATION
18 BUILT-IN GAIN AMOUNT.—The term ‘non-amortiz-
19 able S corporation built-in gain amount’ means the
20 pro rata share of the portion of the S corporation
21 built-in gain amount that is attributable to non-am-
22 ortizable S corporation built-in gain property.

23 “(6) SPECIAL RULE FOR PARTNERSHIP INTER-
24 ESTS.—If an electing S corporation owns, directly or
25 indirectly, an equity interest in an electing S cor-

1 poration partnership, including a lower-tier electing
2 S corporation partnership, the amortizable S cor-
3 poration built-in gain property and the non-amortiz-
4 able S corporation built-in gain property shall in-
5 clude the electing S corporation's distributive share
6 of such property held by the partnership. Rules simi-
7 lar to the rules under paragraphs (1), (2), (3), (4),
8 and (5) of this subsection shall apply to determine
9 the electing S corporation's distributive share of the
10 amortizable S corporation built-in gain property and
11 the non-amortizable S corporation built-in gain prop-
12 erty held by such partnership for purposes of this
13 section. For purposes of subsection (b), a disposition
14 of an interest in an electing S corporation partner-
15 ship shall be treated as a disposition of the electing
16 S corporation's distributive share of the property
17 held by such partnership.

18 “(7) ELECTING S CORPORATION.—The term
19 ‘electing S corporation’ means, with respect to any
20 shareholder, any S corporation which elects the ap-
21 plication of this section with respect to such share-
22 holder at such time and in such form and manner
23 as the Secretary may prescribe.

24 “(8) ELECTING S CORPORATION PARTNER-
25 SHIP.—The term ‘electing S corporation partnership’

1 means, with respect to any shareholder, any equity
2 interest in a partnership owned directly or indirectly
3 by the electing S corporation, including a lower-tier
4 partnership, for which the S corporation elects the
5 application of this section with respect to such
6 shareholder at such time and in such form and man-
7 ner as the Secretary may prescribe.

8 “(9) APPLICABLE VALUATION DATE.—The term
9 ‘applicable valuation date’ means—

10 “(A) in the case of a decedent with respect
11 to which the executor of the decedent’s estate
12 elects the application of section 2032, the date
13 months after the decedent’s death, and

14 “(B) in the case of any other decedent, the
15 date of the decedent’s death.

16 “(d) RECHARACTERIZATION OF GAINS AS ORDINARY
17 INCOME TO EXTENT OF DEDUCTION.—If—

18 “(1) stock of an S corporation with respect to
19 which a deduction was allowed under this section,

20 “(2) amortizable S corporation built-in gain
21 property with respect to which a deduction was al-
22 lowed under subsection (b)(1), or

23 “(3) nonamortizable S corporation built-in gain
24 property with respect to which a deduction was al-
25 lowed under subsection (b)(2),

1 is disposed of at a gain (determined without regard to
2 whether or not such gain is recognized and reduced by
3 any amount of gain which is treated as ordinary income
4 under any other provision of this subtitle), the amount of
5 such gain (or the shareholder's pro rata share of such gain
6 in the case of property described in paragraph (2) or (3))
7 shall be treated as gain which is ordinary income (and
8 shall be recognized notwithstanding any other provision of
9 this subtitle) to the extent of the excess of the aggregate
10 deductions allowable under this section with respect to
11 such stock for the taxable year of such disposition and
12 all prior taxable years over the amounts taken into ac-
13 count under this subsection for all prior taxable years.

14 “(e) TERMINATION OF DEDUCTION.—No deduction
15 shall be allowed under subsection (a) with respect to any
16 stock in an electing S corporation with respect to any pe-
17 riod beginning after the earlier of—

18 “(1) the date on which the corporation's elec-
19 tion under section 1362 terminates, or

20 “(2) the date on which the shareholder trans-
21 fers such stock to any other person.

22 “(f) TREATMENT OF CERTAIN TRANSFERS.—

23 “(1) DISTRIBUTIONS FROM ESTATES OR
24 TRUSTS.—Notwithstanding any other provision of
25 this section, in the case of a distribution of stock

1 from an estate or trust to a beneficiary, the bene-
2 ficiary (and not the estate or trust) shall be treated
3 as the shareholder to which this section applies with
4 respect to periods after such distribution.

5 “(2) CERTAIN TRANSFERS INVOLVING
6 SPOUSES.—Notwithstanding any other provision of
7 this section, in the case of a transfer described in
8 section, the transferee (and not the transferor) shall
9 be treated as the shareholder to which this section
10 applies with respect to periods after such transfer.

11 “(3) GIFTS.—Notwithstanding any other provi-
12 sion of this section, in the case of a gift, the donee
13 (and not the donor) shall be treated as the share-
14 holder to which this section applies with respect to
15 periods after such gift.

16 “(4) TRANSFERS TO TRUSTS.—Notwithstanding
17 any other provision of this section, in the case of a
18 transfer to a trust, the trust (and not the trans-
19 feror) shall be treated as the shareholder to which
20 this section applies with respect to periods after such
21 transfer.

22 “(g) TREATMENT OF INCOME IN RESPECT OF THE
23 DECEDENT.—

24 “(1) ADJUSTMENT TO BUILT-IN GAIN OF PROP-
25 erty HELD BY S CORPORATION.—For purposes of

1 subsection (c)(1)(B), the fair market value of any
2 property taken into account under subparagraph
3 (B)(i) thereof shall be decreased by any amount of
4 income in respect of the decedent with respect to
5 such property to which section 691 applies. For pur-
6 poses of subsections (b)(1)(A) and (b)(2)(A), the
7 gain recognized on the disposition of such property
8 shall be reduced by such amount.

9 “(2) ADJUSTMENT TO BASIS OF S CORPORA-
10 TION STOCK.—For adjustment to basis of S corpora-
11 tion stock, see section 1367(b)(4)(B).

12 “(h) REPORTING.—Except as otherwise provided by
13 the Secretary, for purposes of section 6037, the amounts
14 determined under subsections (b)(1), (b)(2), (c)(1)(B),
15 (c)(3), (c)(5), (c)(6), (d)(2), and (d)(3) shall be treated
16 as items of the corporation and the pro rata share deter-
17 mined under such subsection shall be furnished to the
18 shareholder under section 6037(b).”.

19 (b) ADJUSTMENT TO BASIS OF STOCK.—

20 (1) IN GENERAL.—Section 1367(a)(2) is
21 amended by striking “and” at the end of subpara-
22 graph (D), by striking the period at the end of sub-
23 paragraph (E) and inserting “, and”, and by insert-
24 ing after subparagraph (E) the following new sub-
25 paragraph:

1 “(F) the amount of the shareholder’s de-
2 duction under section 1369.”.

3 (2) ADJUSTMENT NOT TAKEN INTO ACCOUNT
4 IN DETERMINING TREATMENT OF DISTRIBUTIONS.—
5 Section 1368 is amended—

6 (A) in subsection (d)(1), by inserting
7 “(other than subsection (a)(2)(F) thereof)”
8 after “section 1367”, and

9 (B) in subsection (e)(1)(A)—

10 (i) by striking “this title and the
11 phrase” and inserting “this title, the
12 phrase”, and

13 (ii) by inserting “, and no adjustment
14 shall be made under section
15 1367(a)(2)(F)” after “section 1367(a)(2)”.

16 (c) CLERICAL AMENDMENT.—The table of sections
17 for part II of subchapter S of chapter 1 is amended by
18 adding at the end the following new item:

“Sec. 1369. Treatment of S corporation built-in gain amount upon death of
shareholder.”.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall apply with respect to decedents dying
21 after the date of the enactment of this Act, in taxable
22 years ending after such date.

1 **SEC. 3. MODIFICATIONS TO S CORPORATION PASSIVE IN-**
2 **VESTMENT INCOME RULES.**

3 (a) INCREASED PERCENTAGE LIMIT.—Section
4 1375(a)(2) is amended by striking “25 percent” and in-
5 serting “60 percent”.

6 (b) REPEAL OF EXCESSIVE PASSIVE INCOME AS A
7 TERMINATION EVENT.—Section 1362(d) is amended by
8 striking paragraph (3).

9 (c) CONFORMING AMENDMENTS.—

10 (1) Section 1375(b) is amended by striking
11 paragraphs (3) and (4) and inserting the following
12 new paragraph:

13 “(3) PASSIVE INVESTMENT INCOME DE-
14 FINED.—

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

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

1 “(C) TREATMENT OF CERTAIN LENDING
2 OR FINANCE COMPANIES.—If the S corporation
3 meets the requirements of section 542(c)(6) for
4 the taxable year, the term ‘passive investment
5 income’ shall not include gross receipts for the
6 taxable year which are derived directly from the
7 active and regular conduct of a lending or fi-
8 nance business (as defined in section
9 542(d)(1)).

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

19 “(E) EXCEPTION FOR BANKS, ETC.—In
20 the case of a bank (as defined in section 581)
21 or a depository institution holding company (as
22 defined in section 3(w)(1) of the Federal De-
23 posit Insurance Act (12 U.S.C. 1813(w)(1))),
24 the term ‘passive investment income’ shall not
25 include—

1 “(i) interest income earned by such
2 bank or company, or

3 “(ii) dividends on assets required to
4 be held by such bank or company, includ-
5 ing 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 “(F) GROSS RECEIPTS FROM THE SALES
11 OF CERTAIN ASSETS.—For purposes of this
12 paragraph—

13 “(i) CAPITAL ASSETS OTHER THAN
14 STOCK AND SECURITIES.—In the case of
15 dispositions of capital assets (other than
16 stock and securities), gross receipts from
17 such dispositions shall be taken into ac-
18 count only to the extent of capital gain net
19 income therefrom.

20 “(ii) STOCK AND SECURITIES.—In the
21 case of sales or exchanges of stock or secu-
22 rities, gross receipts shall be taken into ac-
23 count only to the extent of the gain there-
24 from.

1 “(G) COORDINATION WITH SECTION
2 1374.—The amount of passive investment in-
3 come shall be determined by not taking into ac-
4 count any recognized built-in gain or loss of the
5 S corporation for any taxable year in the rec-
6 ognition period. Terms used in the preceding
7 sentence shall have the same respective mean-
8 ings as when used in section 1374.”.

9 (2)(A) Section 26(b)(2)(J) is amended by strik-
10 ing “25 percent” and inserting “60 percent”.

11 (B) Section 1375(b)(1)(A)(i) is amended by
12 striking “25 percent” and inserting “60 percent”.

13 (C) The heading for section 1375 is amended
14 by striking “**25 PERCENT**” and inserting “**60 PER-**
15 **CENT**”.

16 (D) The item relating to section 1375 in the
17 table of sections for part III of subchapter S of
18 chapter 1 is amended by striking “25 percent” and
19 inserting “60 percent”.

20 (3) Section 1042(c)(4)(A)(i) is amended by
21 striking “section 1362(d)(3)(C)” and inserting “sec-
22 tion 1375(b)(3)”.

23 (4) Section 1362(f)(1)(B) is amended by strik-
24 ing “paragraph (2) or (3) of subsection (d)” and in-
25 serting “subsection (d)(2)”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2025.

4 **SEC. 4. NONRESIDENT ALIEN INDIVIDUALS PERMITTED AS**
5 **S CORPORATION SHAREHOLDERS.**

6 (a) IN GENERAL.—Section 1361(b)(1) is amended by
7 adding “and” at the end of subparagraph (B), by striking
8 subparagraph (C), and by redesignating subparagraph (D)
9 as subparagraph (C).

10 (b) GAIN OR LOSS OF NONRESIDENT ALIENS FROM
11 SALE OR EXCHANGE OF S CORPORATION STOCK.—Sec-
12 tion 864(c) is amended by adding at the end the following
13 new paragraph:

14 “(9) GAIN OR LOSS OF NONRESIDENT ALIENS
15 FROM SALE OR EXCHANGE OF S CORPORATION
16 STOCK.—

17 “(A) IN GENERAL.—Notwithstanding any
18 other provision of this subtitle, if a nonresident
19 alien individual owns, directly or indirectly,
20 stock of an S corporation which is engaged in
21 any trade or business within the United States,
22 gain or loss on the sale or exchange of all (or
23 any portion of) such stock shall be treated as
24 effectively connected with the conduct of such
25 trade or business to the extent such gain or loss

1 does not exceed the amount determined under
2 subparagraph (B).

3 “(B) AMOUNT TREATED AS EFFECTIVELY
4 CONNECTED.—The amount determined under
5 this subparagraph with respect to any S cor-
6 poration stock sold or exchanged—

7 “(i) in the case of any gain on the
8 sale or exchange of the S corporation
9 stock, is—

10 “(I) the portion of the share-
11 holder’s pro rata share of the amount
12 of gain which would have been effec-
13 tively connected with the conduct of a
14 trade or business within the United
15 States if the S corporation had sold
16 all of its assets at their fair market
17 value as of the date of the sale or ex-
18 change of such stock, or

19 “(II) zero if no gain on such
20 deemed sale would have been so effec-
21 tively connected, and

22 “(ii) in the case of any loss on the
23 sale or exchange of the S corporation
24 stock, is—

1 “(I) the portion of the share-
2 holder’s pro rata share of the amount
3 of loss on the deemed sale described
4 in clause (i)(I) which would have been
5 so effectively connected, or

6 “(II) zero if no loss on such
7 deemed sale would have been so effec-
8 tively connected.

9 “(C) APPLICATION OF CERTAIN OTHER
10 RULES.—Except as otherwise provided by the
11 Secretary, rules similar to the rules of subpara-
12 graphs (C), (D), and (E) of paragraph (8) shall
13 apply for purposes of this paragraph.”.

14 (c) WITHHOLDING TAX.—Subchapter A of chapter 3
15 is amended by adding at the end the following new section:

16 **“SEC. 1447. WITHHOLDING TAX ON NONRESIDENT ALIEN S**
17 **CORPORATION SHAREHOLDER’S PRO RATA**
18 **SHARE OF EFFECTIVELY CONNECTED IN-**
19 **COME.**

20 “(a) IN GENERAL.—If—

21 “(1) an S corporation has effectively connected
22 taxable income for any taxable year, and

23 “(2) any shareholder of such S corporation is a
24 nonresident alien,

1 such S corporation shall pay a withholding tax under this
2 section at such time and in such manner as the Secretary
3 may provide.

4 “(b) AMOUNT OF WITHHOLDING TAX.—The amount
5 of the withholding tax payable by any S corporation under
6 subsection (a) shall be equal to the product of—

7 “(1) the highest rate of tax specified in section
8 1, multiplied by

9 “(2) the aggregate pro rata shares of the effec-
10 tively connected taxable income of such S corpora-
11 tion with respect to shareholders who are non-
12 resident aliens.

13 “(c) EFFECTIVELY CONNECTED TAXABLE IN-
14 COME.—For purposes of this section, the term ‘effectively
15 connected taxable income’ means the taxable income of the
16 S corporation which is effectively connected (or treated as
17 effectively connected) with the conduct to a trade or busi-
18 ness in the United States. For purposes of the preceding
19 sentence, the S corporation shall be allowed a deduction
20 for depletion with respect to oil and gas wells but the
21 amount of such deduction shall be determined without re-
22 gard to sections 613 and 613A.

23 “(d) TREATMENT OF NONRESIDENT ALIEN SHARE-
24 HOLDERS.—

1 “(1) ALLOWANCE OF CREDIT.—Each non-
2 resident alien who is a shareholder of an S corpora-
3 tion shall be allowed a credit under section 33 for
4 such shareholder’s share of the withholding tax paid
5 by the S corporation under this section. Such credit
6 shall be allowed for the shareholder’s taxable year in
7 which (or with which) the S corporation taxable year
8 (for which such tax was paid) ends.

9 “(2) CREDIT TREATED AS DISTRIBUTED TO
10 SHAREHOLDER.—Except as provided in regulations,
11 a nonresident alien shareholder’s share of any with-
12 holding tax paid by the S corporation under this sec-
13 tion shall be treated as distributed to such share-
14 holder by such S corporation on the earlier of—

15 “(A) the day on which such tax was paid
16 by the S corporation, or

17 “(B) the last day of the S corporation’s
18 taxable year for which such tax was paid.

19 “(e) SPECIAL RULES FOR WITHHOLDING ON DIS-
20 POSITIONS OF S CORPORATION STOCK.—

21 “(1) IN GENERAL.—Except as provided in this
22 subsection, if any portion of the gain (if any) on any
23 disposition of stock in an S corporation would be
24 treated under section 864(c)(9) as effectively con-
25 nected with the conduct of a trade or business with-

1 in the United States, the transferee shall be required
2 to deduct and withhold a tax equal to 10 percent of
3 the amount realized on the disposition.

4 “(2) EXCEPTION IF NONFOREIGN AFFIDAVIT
5 FURNISHED; OTHER SPECIAL RULES.—Except as
6 otherwise provided by the Secretary, rules similar to
7 the rules of paragraphs (2) through (6) of section
8 1446(f) shall apply for purposes of this subsection.

9 “(f) REGULATIONS.—The Secretary shall prescribed
10 such regulations or other guidance as may be necessary
11 or appropriate to carry out the purposes of this section,
12 including regulations or other guidance providing—

13 “(1) that for purposes of section 6655, the
14 withholding tax imposed under this section shall be
15 treated as a tax imposed by section 11 and any S
16 corporation required to pay such tax shall be treated
17 as a corporation to which such section applies, and

18 “(2) appropriate adjustments in applying sec-
19 tion 6655 with respect to such withholding tax.”.

20 (d) CONFORMING AMENDMENTS.—

21 (1) Section 1361(c)(2)(B)(v) is amended by
22 striking the last sentence.

23 (2) Section 6401(b)(2) is amended by inserting
24 “or 1447” after “section 1446”.

1 (3) The table of sections for subchapter A of
2 chapter 3 is amended by adding at the end the fol-
3 lowing new item:

“Sec. 1447. Withholding tax on nonresident alien S corporation shareholder’s
pro rata share of effectively connected income.”.

4 (e) **EFFECTIVE DATES.**—

5 (1) **IN GENERAL.**—Except as otherwise pro-
6 vided in this subsection, the amendments made by
7 this section shall apply to taxable years beginning
8 after December 31, 2025.

9 (2) **GAIN OR LOSS; WITHHOLDING.**—The
10 amendments made by subsections (b), (c), (d)(2),
11 and (d)(3) shall apply to sales, exchanges, and dis-
12 positions after December 31, 2025.

13 **SEC. 5. EMPLOYEES OF A FIRM COUNTED AS A SINGLE**
14 **SHAREHOLDER TOWARD SHAREHOLDER**
15 **LIMIT OF S CORPORATION.**

16 (a) **IN GENERAL.**—Subsection (c) of section 1361 is
17 amended by adding at the end the following:

18 “(7) **EMPLOYEES TREATED AS ONE SHARE-**
19 **HOLDER.**—

20 “(A) **IN GENERAL.**—For purposes of sub-
21 section (b)(1)(A), there shall be treated as one
22 shareholder all employees (and their estates) of
23 a corporation and any wholly owned business

1 entities (as determined by the Secretary) of
2 such corporation.

3 “(B) EMPLOYEE DEFINED.—For purposes
4 of this paragraph, the term ‘employee’ means
5 any individual that would be an employee de-
6 scribed under paragraph (1) or (2) of section
7 3121(d).”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to taxable years beginning after
10 December 31, 2025.

11 **SEC. 6. EXPANSION OF S CORPORATION ELIGIBLE SHARE-**
12 **HOLDERS TO INCLUDE IRAS.**

13 (a) IN GENERAL.—Section 1361(c)(2)(A)(vi) is
14 amended to read as follows:

15 “(vi) A trust which constitutes an in-
16 dividual retirement account under section
17 408(a), including one designated as a Roth
18 IRA under section 408A.”.

19 (b) SALE OF STOCK IN IRA RELATING TO S COR-
20 PORATION ELECTION EXEMPT FROM PROHIBITED
21 TRANSACTION RULES.—Section 4975(d)(16) is amend-
22 ed—

23 (1) by striking subparagraphs (A) and (B) and
24 by redesignating subparagraphs (C), (D), (E), and

1 (F) as subparagraphs (A), (B), (C), and (D), respec-
2 tively, and

3 (2) by striking “such bank or company” in sub-
4 paragraph (A) (as so redesignated) and inserting
5 “the issuer of such stock”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect on January 1, 2027.

8 **SEC. 7. TRANSFER OF SUSPENDED LOSSES INCIDENT TO**
9 **DEATH.**

10 (a) IN GENERAL.—Section 1366(d)(2)(B) is amend-
11 ed by inserting “, or any transfer incident to the death
12 of the transferor,” after “any transfer described in section
13 1041(a)”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to transfers incident to deaths oc-
16 ccurring after the date of the enactment of this Act.

17 **SEC. 8. REPEAL OF INCLUSION IN GROSS INCOME OF DE-**
18 **FERRED COMPENSATION UNDER NON-**
19 **QUALIFIED DEFERRED COMPENSATION**
20 **PLANS.**

21 (a) IN GENERAL.—Subpart A of part I of subchapter
22 D of chapter 1 is amended by striking section 409A (and
23 by striking the item relating to such section from the table
24 of sections for such subpart).

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 26(b)(2) is amended by striking
2 subparagraph (V) and by redesignating subpara-
3 graphs (W) through (Z) as subparagraphs (V)
4 through (Y), respectively.

5 (2) Section 430(c)(7)(D)(iv)(I) is amended by
6 inserting “as in effect before its repeal” after “sec-
7 tion 409A”.

8 (3)(A) Section 457A is amended by redesignig-
9 nating subsections (d) and (e) as subsections (e) and
10 (f) and by inserting after subsection (c) the fol-
11 lowing new subsection:

12 “(d) NONQUALIFIED DEFERRED COMPENSATION
13 PLAN.—For purposes of this section—

14 “(1) IN GENERAL.—The term ‘nonqualified de-
15 ferred compensation’ plan means—

16 “(A) any plan that provides for the defer-
17 ral of compensation, other than—

18 “(i) a qualified employer plan, and

19 “(ii) any bona fide vacation leave, sick
20 leave, compensatory time, disability pay, or
21 death benefit plan, and

22 “(B) any plan that provides a right to
23 compensation based on the appreciation in
24 value of a specified number of equity units of
25 the service recipient.

1 “(2) QUALIFIED EMPLOYER PLAN.—The term
2 ‘qualified employer plan’ means—

3 “(A) any plan, contract, pension, account,
4 or trust described in subparagraph (A) or (B)
5 of section 219(g)(5) (without regard to sub-
6 paragraph (A)(iii)),

7 “(B) any eligible deferred compensation
8 plan (within the meaning of section 457(b)),
9 and

10 “(C) any plan described in section 415(m).

11 “(3) PLAN INCLUDES ARRANGEMENTS, ETC.—
12 The term ‘plan’ includes any agreement or arrange-
13 ment, including an agreement or arrangement that
14 includes one person.

15 “(4) TREATMENT OF EARNINGS.—References to
16 deferred compensation shall be treated as including
17 references to income (whether actual or notional) at-
18 tributable to such compensation or such income.

19 “(5) AGGREGATION RULES.—Except as pro-
20 vided by the Secretary, rules similar to the rules of
21 subsections (b) and (c) of section 414 shall apply.

22 “(6) TREATMENT OF QUALIFIED STOCK.—An
23 arrangement under which an employee may receive
24 qualified stock (as defined in section 83(i)(2)) shall
25 not be treated as a nonqualified deferred compensa-

1 tion plan with respect to such employee solely be-
2 cause of such employee’s election, or ability to make
3 an election, to defer recognition of income under sec-
4 tion 83(i).”.

5 (B) Section 457A(e)(3), as redesignated by sub-
6 paragraph (A), is amended to read as follows:

7 “(3) 12-MONTH EXCEPTION.—Compensation
8 shall not be treated as deferred for purposes of this
9 section if the service provider receives payment of
10 such compensation not later than 12 months after
11 the end of the taxable year of the service recipient
12 during which the right to the payment of such com-
13 pensation is no longer subject to a substantial risk
14 of forfeiture.”.

15 (C) Section 457A(e), as redesignated by sub-
16 paragraph (A), is amended by striking paragraph
17 (5).

18 (4) Section 877A(g)(6) is amended by striking
19 “409A(a)(1)(B),”.

20 (5) Section 3401(a) is amended by striking the
21 last sentence.

22 (6) Section 6041 is amended by striking sub-
23 section (g).

24 (7) Section 6051(a) is amended—

1 (A) by striking paragraph (13) and
2 redesignating paragraphs (14) through (17) as
3 paragraphs (13) through (16), respectively, and

4 (B) by striking the last sentence.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to taxable years beginning after
7 December 31, 2026.

8 **SEC. 9. INCREASE IN NUMBER OF SHAREHOLDERS TO**
9 **QUALIFY AS AN S CORPORATION.**

10 (a) IN GENERAL.—Section 1361(b)(1)(A) is amend-
11 ed by striking “100” and inserting “250”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to taxable years beginning after
14 December 31, 2026.