



INDEPENDENT COMMUNITY
BANKERS *of* AMERICA

Testimony of

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On behalf of the

Independent Community Bankers of America

Before the

**Congress of the United States
House of Representatives
Committee on Small Business
Subcommittee on Finance and Tax**

Hearing on

**“S-Corps: Recommended Reforms That Promote
Parity, Growth and Development for Small Businesses”**

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Madam Chairwoman, Ranking Member Buchanan and members of the committee, I am Cynthia Blankenship, Vice-chairman and Chief Operating Officer of Bank of the West in Irving Texas. I am also Chairman of the Independent Community Bankers of America.¹ I am pleased to have this opportunity to present the views of the nation's community bankers on S corporation reforms and promoting the growth of small businesses. Community banks are small businesses, are independently owned and operated and are characterized by personal attention to customer service and lending to small business.

ICBA represents 5,000 community banks throughout the country. Bank of the West is part of a two-bank holding company with assets of \$250 million. We have eight locations in the Dallas/Fort Worth metroplex. The other institution in the holding company is the Bank of Vernon with assets of \$30 million located in Vernon, Texas which is an agricultural community. We serve the small business community with a strong focus on SBA lending and real estate.

Bank of the West itself is a Subchapter S entity. Many of our small business customers are Subchapter S businesses as well. Subchapter S businesses are found on Main Street, not Wall Street. Subchapter S status is an important part of the community banking landscape nationwide. There are more than 2,500 S corporation banks across the U.S. representing nearly one-third of the entire banking industry. My home state of Texas alone has 291 Subchapter S banks or 44% of all banks in Texas. Madam Chair, your home state of Illinois has 237 Subchapter S banks or 35% of all the banks in the State. Subchapter S continues to offer an important business structure option for small businesses and especially for community banks.

The FDIC's latest *Quarterly Banking Profile* reported that 82 banks converted to an S corporation in the first quarter of 2008 representing combined assets of \$13.1 billion.² And Subchapter S banks pay their fair share of taxes. Taxes on S corporation income must be paid by the shareholders on their individual income tax returns regardless of whether the bank's income is distributed to the shareholders or not. For every dollar of Subchapter S bank income, shareholders pay on average 26 cents in federal income tax, plus additional state-level taxes.

Summary of Testimony

Subchapter S status is a vitally important business form across the small business landscape in America. S corporations represent the most common corporate entity in the U.S. More than 3.6 million small businesses choose to be S corporations and pay taxes at the individual shareholder level. Community banks are small businesses too and often elect to be S corporations. In fact, since banks were first allowed to elect Subchapter S status in tax year 1997, more than 2,500 banks have become S corporations. This represents nearly one-third of all banks nationwide.

The Independent Community Bankers of America has worked very hard over the years to ensure Subchapter S status is an available and efficient business form for community banks and their small business customers. While some obstacles facing community banks' ability to elect Subchapter S have been addressed by Congress in recent years, many onerous obstructions still exist. Small business development and growth is more important to America's economy than ever before.

Therefore, we must ensure our tax code is simple and does not unnecessarily impair small business vitality and opportunities. ICBA urges additional Subchapter S reforms be enacted to keep pace with the growing small business sector in America.

ICBA Recommended Subchapter S Reforms Include:

- **Increasing the maximum number of allowable Subchapter S shareholders to 150 from 100;**
- **Allowing new Individual Retirement Account (IRA) shares to be invested in Subchapter S entities;**
- **Allowing Subchapter S businesses to issue preferred stock;**
- **Reducing and reforming the Built-in-Gains (BIG) tax;**
- **Preserving the current 35% top marginal income tax rate on Subchapter S income and keeping the S corporation and C corporation top income tax rate in parity;**
- **Allowing community banks that are national banks to organize as limited liability companies (LLC); and**
- **Preventing unwarranted new Subchapter S threats from regulation to expand “TEFRA” and payroll tax burdens.**

ICBA strongly supports several important bipartisan bills in the 110th Congress that would help small businesses by reforming onerous S corporation rules and restrictions. These include:

- **The “Communities First Act” (H.R. 1869 / S. 1405);**
- **The “S Corporation Modernization Act” (H.R. 4840 / S. 3063); and**
- **The “Small Business Growth and Opportunity Act” (H.R. 3874).**

ICBA greatly appreciates the opportunity to contribute recommendations for Subchapter S simplification and reform. Small businesses are more important to our U.S. economy than ever before. ICBA believes additional S corporation reforms will improve the viability of more small businesses and community-based banks.

ICBA has conducted a comprehensive examination of needed simplifications measures and potential reforms in an ICBA/Grant Thornton LLP tax study that focused on restrictive S corporation rules.³ ICBA is pleased that many of these simplification measures have been adopted by Congress over the years, and we continue to advance additional reforms. ICBA applauds the Small Business Committee’s efforts to examining how reforms to restrictive Subchapter S corporation rules can allow more small businesses to benefit from a more user-friendly and pro-growth tax code.

Subchapter S Background

For decades, community banks were completely shut out of electing S corporation status. In 1996, Congress passed the Small Business Job Protection Act that allowed small banks to be eligible to elect S corporation status for the first time starting in tax year 1997.⁴ Unfortunately, many community banks have

been obstructed from converting to S corporations and benefiting from Congress's intended relief because of technical rules and community-bank specific regulations that could be addressed with tax simplification measures. This conclusion was further supported by a comprehensive General Accounting Office study in June, 2000.⁵

Notably, an additional 16 percent of all the small banks surveyed indicated that they were interested in making the S corporation election pending resolutions of the various Subchapter S glitches that prohibit using this tax status.⁶

Currently, before making the S corporation election community banks must first overcome some difficult obstacles not faced by other corporate tax structures such as Limited Liability Corporations (LLCs) while attempting to avoid disrupting their operations or disenfranchising many of their existing shareholders.⁶ The obstacles most often facing community banks include:

- Restrictions on the types of shareholders;
- Restrictions on the number of shareholders;
- Limitations on the options for raising capital (e.g., inability to issue preferred stock);
- Complex and restrictive treatment of IRA shareholders; and
- Burden of the Built-in-Gains tax.

Addressing obstacles in the current tax law would enhance the ability of community banks and many other small businesses to utilize S corporation status as intended by Congress.

ICBA Recommended Subchapter S Reforms

- **Increase the maximum number of S corporation shareholders to 150.**

For all small businesses, raising capital is critical to the start-up, survival, and growth of the business. Arbitrary and restrictive limits on the number of allowable Subchapter S shareholders can jeopardize the ability of S corporations to raise capital. Notably, other business forms such as LLCs and partnerships have no restrictions on the number of shareholders. When the S corporation rules were first enacted, the maximum number of shareholders was 10.⁷ Throughout the period 1976-1982 Congress increased the number to 35. The Small Business Job Protection Act increased the maximum number of eligible S corporation shareholders from 35 to 75 for tax years beginning after December 31, 1996.⁸ The American Jobs Creation Act of 2004 increased the number of eligible shareholders from 75 to 100.⁹ However, similar pass-through tax structures have no shareholder limits at all. Today, the rigid Subchapter S shareholder limits are still out of sync with the modern capital and operating needs of small businesses.

Reflecting their nature, many community banks were created by involving a large number of shareholders in a community to raise capital. This helps assure that the institutions are widely owned by members of the local communities they serve. The provision of the S corporation rules limiting the number of shareholders to no more than 100 often forces community banks that wish to become an S corporation to disenfranchise shareholders, severely limit ownership and its ability to raise capital in the future. Additionally, other corporate structures such as a LLP or LLC do not have any limitation on the number of shareholders.

Unfortunately, community banks with more than 100 shareholders that decide that making the S corporation election is beneficial often are forced to eliminate shareholders - even when they would prefer to be more broadly held. A community bank's effort to reduce the number of existing shareholders is generally a very thorny and expensive undertaking.

ICBA recommends increasing the maximum number of allowable S corporation shareholders to 150. ICBA believes that increasing the number of allowable shareholders will permit more community banks to make the S corporation election and, at the same time, continue to be widely owned by members of their communities. ICBA supports the bipartisan "Communities First Act" (H.R. 1869 / S. 1405), introduced by Small Business Committee Chairwoman Nydia Velazquez (D-NY) in the House and Senator Sam Brownback (R-KS) in the Senate.¹⁰ This pro-small business legislation advances an important increase in the Subchapter S shareholder limitation to 150 from 100. ICBA applauded the enactment of two important Subchapter S tax reforms from the "Communities First Act."¹¹ A summary of the tax titles of the Communities First Act are attached to this testimony.

- **Allow new IRAs as eligible S corporation shareholders.**

Current law restricts the types of individuals or entities that may own S corporation stock.¹² S corporation community banks seeking to raise capital may not allow new IRA shareholders. Traditional and Roth IRA stock are permitted only to the extent that that IRA stock was held on or before October 22, 2004. Again, Subchapter S community banks are put at a disadvantage relative to other less restrictive business forms in their ability to attract capital due to the rigid IRA shareholder restriction.

ICBA recommends that new IRA investments in a Subchapter S bank be allowed regardless of timing. ICBA supports the bipartisan "S Corporation Modernization Act of 2008," (H.R. 4840 / S. 3063) introduced by Rep. Kind (D-WI) in the House and Sens. Lincoln (D-AR), Hatch (R-UT) in the Senate. This legislation would liberalize the existing IRA shareholder investment restriction by allowing new IRA shareholders to participate in Subchapter S corporations. ICBA believes this reform will grant more community banks the needed flexibility in attracting IRA shareholder capital.

- **Allow community bank S corporations to issue certain preferred stock.**

Current law only allows S corporations to have one class of stock outstanding.¹³ C corporations that want to make the S corporation election must eliminate any second class of stock prior to the effective date of the S corporation election. Likewise, issuing a second stock class by an S corporation terminates its S corporation status. Community banks must maintain certain minimum capital ratios to be considered a well-capitalized institution for regulatory purposes. As a community bank grows in size, its earnings alone may not provide sufficient capital to fund its growth. Banks needing more capital can raise additional capital by issuing common stock, preferred stock, or, in some cases, trust-preferred securities.

Many community banks avoid issuing additional common stock to fund growth so that they can protect their status as an independent community bank and serve their local community lending needs. Instead, they frequently use preferred stock to fund growth and retain control. However, S corporation banks are not allowed to issue commonly used preferred stock because preferred stock is considered a second class of stock. This prevents small community banks from having access to an important source of capital vital to the economic health and stability of the bank and the community it serves.

ICBA recommends exempting convertible or "plain vanilla" preferred stock from the "second class of stock" definition used for S corporation purposes. This would help more community banks become eligible

to make the S corporation election as well as help those that currently are S corporations seeking to raise additional capital. Allowing community bank S corporations to issue preferred stock would allow them to reduce the burden of double taxation like other pass-through entities and, at the same time, fund future growth. To provide community banks one more important option in attracting capital to fund business operations and serve their communities, ICBA strongly recommends passage of the provision in the “Communities First Act,” which would allow the use of preferred stock by S corporation banks.¹⁴

- **Reform the punitive built-in-gains (BIG) tax.**

Eligible small businesses including community banks are often unwilling and unable to convert from a C corporation to an S corporation due to the punitive built-in-gains (BIG) tax that would be applied. If a C corporation converts to an S corporation, present law retains the C corporation tax on the “built-in” gain from certain sales of assets that were appreciated as of the conversion date.

For the first ten years after a corporation converts from a C to and S corporation, certain built-in capital gains of the corporation attributable to C corporation years are subject to the tax at the corporate level.¹⁵ The BIG tax does not apply to a corporation that has always been an S corporation. Banks were only allowed to elect Subchapter S status for the first time in tax year 1997. A corporation that elected S status while owning appreciated property must hold the asset for 10 years after election to avoid the punitive BIG tax upon sale or distribution to its shareholders. This punitive tax either deters businesses from converting to an S corporation or locks-up available assets and resources that may be put to greater use in the business.

ICBA recommends the built-in-gains tax burden be reduced, and at a minimum, the 10-year period after converting from a C corporation to an S corporation where the BIG tax would imposed be shortened. ICBA strongly supports the “S Corporation Modernization Act” (H.R. 4840 / S. 3063) that would allow the BIG tax application period to be shortened from ten years to seven.¹⁶ ICBA also strongly supports the “Small Business Growth and Opportunity Act” (H.R. 3874) that would also reduce the recognition period for the BIG tax from ten years to seven.¹⁷

Currently the BIG tax forces S corporations to be taxed twice on assets they sell within 10 years of converting to this tax status. This makes the sale and reinvestment of these assets prohibitively expensive and hinders growth and job creation. In some states, the double-tax burden can reach as high as 70 percent.

ICBA believes forcing S corporations to hold on to often unproductive and inefficient assets for 10 years limits cash flow and the use of available resources. Therefore, allowing S corporations to liquidate assets if they choose after seven years – a more realistic business cycle – would free up capital to be used to grow the small business and create new jobs.

- **Allow a national bank limited liability company (LLC) charter.**

Community banks are small businesses yet are often unable to use preferred business forms available to other small businesses such as a limited liability corporation (LLC). Additionally, even as some S corporation rules and restrictions have been addressed in recent years to enable greater use of this structure, current restrictions still make Subchapter S unworkable for many community banks. ICBA recommends the limited liability company charter available to small businesses be available to community banks nationwide.

ICBA strongly supports the “Communities First Act” (H.R. 1869 / S. 1405) provision that would allow a bank, or savings association to convert to an LLC charter in a tax-free transaction.¹⁸ The U.S. banking regulators ruled favorably that State banks chartered as LLCs would be eligible for federal deposit

insurance.¹⁹ ICBA believes allowing a community banks the flexibility to use the LLC structure available to other small businesses would help overcome the many obstacles preventing a similar Subchapter S election.

Unlike Subchapter S, LLC status does not have the stifling limits on the number of shareholders, types of shareholders, or class of stock restrictions that unfairly prevent community banks from electing a pass-through tax structure. LLC-chartered banks could continue to be widely owned and not be forced to restrict or limit ownership as in an S corporation. An LLC-chartered bank would also find it easier to preserve independence and pass on ownership to subsequent generations without fear of the adverse consequences related to too many owners. To preserve their ongoing viability and to serve their local areas, community banks must have options for generating new sources of capital without setting themselves up to become takeover targets. Allowing banks to form as LLCs would go a long way in supporting the viability of community banks and the communities they serve.

- **Preserve 35% top marginal tax rate on Subchapter S income.**

Small businesses are facing difficult economic times. A troubled credit market combined with a slowdown in U.S. economic growth, high energy prices, and sharp inflationary costs across-the-board for inputs are crimping small business profits and viability. Maintaining cash flow is vital to the ongoing survival of any small business and taxes are typically the second highest expense for a business after labor costs. As pass-through tax entities, Subchapter S taxes are paid at the individual income tax level. Marginal income tax rates do play a critical role in a small business' viability, entrepreneurial activity, and choice of business form. Today more than half of all business income earned in the United States is earned by pass-through entities such as S corporations and limited liability corporations.

The top corporate income tax rate and individual income tax rate are currently set at 35%. Much discussion has been given to addressing the corporate tax rate for international competitiveness concerns and raising the individual income tax rate. ICBA believes significant shifts in the existing marginal tax rates and parity between corporate and individual tax rate can trigger unwanted and costly shifts in business forms. ICBA believes it is important to consider maintaining parity between the top corporate and individual income tax rates in the Code. Additionally, during this difficult economic period, at a minimum, the current top tax rate of 35% should be preserved on both small business Subchapter S income and C corporation income, not increased.

- **Prevent new threats to Subchapter S status from the “TEFRA” disallowance and encroaching payroll taxes.**

ICBA also wants to highlight to the Committee two additional S corporation issues that greatly threaten the ability of small businesses to effectively use Subchapter S status.

First, a new proposed IRS rule would reverse long-standing tax treatment and precedent on the use of bank qualified bonds.²⁰ These bank qualified tax-exempt bonds were allowed in order to help cities and towns served by community banks finance needed local projects such as schools, water treatment plants, firehouses and hospitals in an affordable way.

Unfortunately, the IRS proposed a new regulation that would contradict an existing statute. The community banking industry has in good faith relied on this statute and informal IRS guidance in applying the so-called “TEFRA disallowance” for Subchapter S banks for the past seven tax years or more. The existing practice by S corporation banks, that the 20% TEFRA disallowance terminates three years after the S election, is

soundly based on existing law. The IRS should not have the authority to override a statute with a regulation.²¹ The ICBA believes this proposed regulation is unwarranted, and if further advanced, would be tremendously damaging to Subchapter S banks, their taxpaying shareholders and the communities they serve. The ICBA strongly opposes the proposed regulation and has respectfully urged the IRS to promptly withdraw it.

Second, new pressure is building to apply payroll taxes to capital income generated by S corporations rather than levied only on salaries and wages. The Joint Committee on Taxation (JCT) advanced a proposal to broadly extend payroll taxes on the net income of all Subchapter S corporations.²² ICBA wants to ensure application of payroll taxes are applied fairly on *wage* income but not inappropriately on Subchapter S corporate income from *capital* investments and capital returns. S corporation shareholders that work in the business already are legally obligated to receive reasonable compensation and pay all applicable payroll taxes on that compensation. In fact, the IRS already has the power to apply a “reasonable compensation” standard to S corporation shareholders and require shareholders to pay themselves the market rate for their service to the business. ICBA believes subjecting an increased share of non-wage earnings of S corporations to the payroll tax, regardless of whether they are distributed to the owners of the firm or represent a return on their personal labor, would violate the long-standing principle that payroll taxes be applied to wage compensation only.

ICBA believes these recommendations would go a long way in helping more small businesses and community banks stay strong and competitive. They would allow small businesses to more fairly and efficiently choose the corporate structure that would best suit the need of their businesses, customers and communities they serve.

Conclusion

Small businesses are critical to the U.S. economy and are facing difficult economic times. Reforms to outdated and onerous Subchapter S laws would provide a needed boost to many small businesses at a critical time. Community banks are small businesses and should be allowed the flexibility and choice afforded other small businesses to select a business form that best suits the need of the business and community. Additional tax code reform and simplification in the S corporation area would go a long way in allowing community-based banks to convert to S corporation status as Congress intended in 1996. Many community banks and small businesses find that current technical barriers to making the conversion from a C corporation to an S corporation are too great to overcome. Current restrictions and complicated rules for S corporation status make the conversion from a C corporation unattainable for many community banks, thwarting Congress’s intended relief from punitive double taxation of small businesses. ICBA believes reforming and simplifying onerous Subchapter S corporation rules will create a tax code that is small-business friendly and improve community banks’ ability to meet the lending needs in their local communities.

If enacted, the ICBA-recommended Subchapter S corporation rule changes would greatly simplify the ability for community banks to elect Subchapter S status as Congress intended. These include, increasing the allowable number of S corporation shareholders to 150, allowing new IRA shareholders, permitting the issuance of preferred stock, reforming the built-in-gains tax, and preserving the top 35% marginal income tax rate. Additionally providing the flexibility of a limited liability corporation (LLC) bank charter would grant greater flexibility in business form choice available to other small businesses.

The ICBA is delighted to see the House Small Business Committee's Subcommittee on Tax and Finance examining Subchapter S reform options. Many solid reform ideas have already advanced in bipartisan legislation including the "Communities First Act" (H.R. 1869 / S. 1405) and the S Corporation Modernization Act (H.R. 4840 / S 3063) in the 110th Congress. ICBA enthusiastically support these bipartisan Subchapter S reform bills.

Thank you Madam Chairwoman for the opportunity to appear before the Committee today. ICBA looks forward to working with you and the Committee to ensure the enactment of beneficial S corporation reforms.

Summary of Tax Titles in the Communities First Act (H.R. 1869 / S. 1405)

Title III

Tax Relief for Bank Depositors, Rural Banks, Municipalities, Banks Organized and Limited Liability Companies, Individual Savers, and Small Businesses

Section 301. Long-Term CDs: Reduces tax rate and defers income on long-term certificates of deposit. Defers tax recognition of individual interest income on long-term CDs (term of 12 months or more) until maturity and reduces the tax rate to long-term capital gains tax rate.

Section 302. Enhanced Rural Lending: Excludes from taxable income of a bank or savings association, income earned on agricultural real estate loans and mortgage loans in communities of 2,500 or less population. This mirrors exclusion available to the Farm Credit System.

Section 303. Update Tax-Exempt Bond Limits: Increases to \$30 million the current \$10 million annual issuance limitation for tax-exempt obligations. Cap would be indexed.

Section 304. LLCs: Allows bank, bank holding company, savings association or savings association holding company to be treated for tax purposes as a limited liability company and allows privately-held financial institutions to convert their state or federal charters to an LLC charter in a tax-free transaction.

Section 305. Individual AMT Repeal: Repeals the punitive individual alternative minimum tax.

Section 306. Young Savers Accounts: Permits a Roth IRA account for children under age 25 to encourage early savings.

Section 307. Permanent Section 179 Small Business Expensing: Makes permanent increased limits on small business expensing for equipment.

Title IV

Targeted Tax Relief for Community Banks and Holding Companies

Section 401. Limited Community Bank Credit: Allows banks, bank holding companies, savings associations and savings association holding companies with up to \$5 billion in assets that are taxed

as C corporations to take a 20% credit against their taxable income up to a cap of \$250,000. Shareholders of financial institutions that are S corporations would be able to exclude 20% of the distributable income from the financial institution up to an aggregate cap of \$1,250,000. Also creates a 50% tax credit for financial institutions with up to \$5 billion in assets that are operating in distressed communities and/or designated enterprise or empowerment zones, or qualifying New Market Tax Credit Census tracts not to exceed \$500,000. Financial institutions that are operating in these areas and that are S corporations would be able to exclude 50% of distributable income not to exceed \$2.5 million of income.

Section 402. Community Bank AMT Relief: Repeals the alternative minimum tax for banks, bank holding companies, savings associations and savings association holding companies with assets of \$5 billion or less.

Title V

Small Business Subchapter S Reforms

Section 501. Shareholder Limit: Increase shareholder limit for S corporations to 150 from 100.

Section 502. Qualifying Directors Shares: A banks' qualifying directors' shares not included in the shares counted toward the S corporation shareholder limit. (Note: Enacted 5/25/2007)

Section 503. Bad Debt Reserve: Provides option to recapture bad debt reserves in first S corporation year or in last C corporation year. (Note: Enacted 5/25/2007)

Section 504. Preferred Stock: Allows the use of preferred stock for S corporation bank.

¹ The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 268,000 Americans, ICBA members hold more than \$908 billion in assets, \$726 billion in deposits, and more than \$619 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

² Federal Deposit Insurance Corporation, "Quarterly Banking Profile," March 31, 2008.

³ "Community Bank Tax Relief and Simplification Options," A study prepared for the Independent Community Bankers of America by Grant Thornton LLP, 2003.

⁴ Public Law 104-188.

⁵ U. S. General Accounting Office, "Banking Taxation, Implications of Proposed Revisions Governing S-Corporations on Community Banks," June 2000. (GAO/GGD-00-159).

⁶ Grant Thornton LLP, Ninth Annual Survey of Community Bank Executives.

⁷ Former Internal Revenue Code §1371(a)(1), as in effect for taxable years starting before January 1, 1977.

⁸ Internal Revenue Code §136(b)(1)(A).

⁹ Public Law 108-357, 10-22-04.

¹⁰ "Community Banks Serving Their Communities First Act," H.R. 1869 and S. 1405, 110th Congress.

¹¹ Public Law 110-28. President Bush signed on May 25, 2007 the "Small Business and Work Opportunity Tax Act of 2007," which was part of the larger "U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability

Appropriations Act of 2007,” (H.R. 2206) and contained S-Corp. items from “Communities First Act” Title IV (H.R. 1869 / S. 1405).

¹² Internal Revenue Code §1361(b)(1).

¹³ Internal Revenue Code §1361(b)(1)(D).

¹⁴ Title V “Small Business Subchapter S Reforms.” “Community Banks Serving Their Communities First Act,” H.R. 1869 and S. 1405, 110th Congress.

¹⁵ Internal Revenue Code §1374.

¹⁶ The “S corporation Modernization Act,” H.R 4840 and S. 3063, 110th Congress.

¹⁷ The “Small Business Growth and Opportunity Act,” HR 4840, 110th Congress.

¹⁸ Title III “Targeted Tax Relief for Bank Depositors, Rural Banks, Municipalities, Banks Organized as LLCs, Individual Savers, and Small Businesses.” “Community Banks Serving Their Communities First Act,” H.R. 1869 and S. 1405, 110th Congress.

¹⁹ FDIC Adopts Final Rule on Federal Deposit Insurance Eligibility for State Banks Chartered as Limited Liability Companies (Part 303 of FDIC's Rules and Regulations). Federal Register Vol. 68, No. 30, Thursday, Feb. 13, 2003. A new amendment to Part 303 of the FDIC's Rules and Regulations clarifies that a state bank that is chartered as a limited liability company could be considered "incorporated" for the purposes of being eligible for federal deposit insurance.

²⁰ IRS Proposed Regulation §1.1363-1(b) (IRS-REG-158677-05).

²¹ Manhattan Gen. Equip. Co. v. Comm’r, 297 U.S. 129 (1936).

²² Joint Committee on Taxation, “Options to Improve Tax Compliance and Reform Tax Expenditures, JCS-02-05, January 27, 2005, p.95, and updated Aug. 3, 2006.