

112TH CONGRESS  
2D SESSION

# H. R. 9

To amend the Internal Revenue Code of 1986 to provide a deduction for domestic business income of qualified small businesses.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 2012

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

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## A BILL

To amend the Internal Revenue Code of 1986 to provide a deduction for domestic business income of qualified small businesses.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Tax  
5 Cut Act”.

6 **SEC. 2. DEDUCTION FOR DOMESTIC BUSINESS INCOME OF**  
7 **QUALIFIED SMALL BUSINESSES.**

8 (a) IN GENERAL.—Part VI of subchapter B of chap-  
9 ter 1 of the Internal Revenue Code of 1986 is amended  
10 by adding at the end the following new section:

1 **“SEC. 200. DOMESTIC BUSINESS INCOME OF QUALIFIED**  
2 **SMALL BUSINESSES.**

3 “(a) ALLOWANCE OF DEDUCTION.—In the case of a  
4 qualified small business, there shall be allowed as a deduc-  
5 tion an amount equal to 20 percent of the lesser of—

6 “(1) the qualified domestic business income of  
7 the taxpayer for the taxable year, or

8 “(2) taxable income (determined without regard  
9 to this section) for the taxable year.

10 “(b) DEDUCTION LIMITED BASED ON WAGES  
11 PAID.—

12 “(1) IN GENERAL.—The amount of the deduc-  
13 tion allowable under subsection (a) for any taxable  
14 year shall not exceed 50 percent of the greater of—

15 “(A) the W-2 wages of the taxpayer paid  
16 to non-owners, or

17 “(B) the sum of—

18 “(i) the W-2 wages of the taxpayer  
19 paid to individuals who are non-owner fam-  
20 ily members of direct owners, plus

21 “(ii) any W-2 wages of the taxpayer  
22 paid to 10-percent-or-less direct owners.

23 “(2) DEFINITIONS RELATED TO OWNERSHIP.—  
24 For purposes of this section—

25 “(A) NON-OWNER.—The term ‘non-owner’  
26 means, with respect to any qualified small busi-

1           ness, any person who does not own (and is not  
2           considered as owning within the meaning of  
3           subsection (c) or (e)(3) of section 267, as the  
4           case may be) any stock of such business (or, if  
5           such business is other than a corporation, any  
6           capital or profits interest of such business).

7           “(B) NON-OWNER FAMILY MEMBERS.—An  
8           individual is a non-owner family member of a  
9           direct owner if—

10                   “(i) such individual is family (within  
11                   the meaning of section 267(c)(4)) of a di-  
12                   rect owner, and

13                   “(ii) such individual would be a non-  
14                   owner if subsections (c) and (e)(3) of sec-  
15                   tion 267 were applied without regard to  
16                   section 267(c)(2).

17           “(C) DIRECT OWNER.—The term ‘direct  
18           owner’ means, with respect to any qualified  
19           small business, any person who owns (or is con-  
20           sidered as owning under the applicable non-  
21           family attribution rules) any stock of such busi-  
22           ness (or, if such business is other than a cor-  
23           poration, any capital or profits interest of such  
24           business).

1           “(D) 10-PERCENT-OR-LESS DIRECT OWN-  
2           ERS.—The term ‘10-percent-or-less direct  
3           owner’ means, with respect to any qualified  
4           small business, any direct owner of such busi-  
5           ness who owns (or is considered as owning  
6           under the applicable non-family attribution  
7           rules)—

8                   “(i) in the case of a qualified small  
9                   business which is a corporation, not more  
10                  than 10 percent of the outstanding stock  
11                  of the corporation or stock possessing more  
12                  than 10 percent of the total combined vot-  
13                  ing power of all stock of the corporation,  
14                  or

15                  “(ii) in the case of a qualified small  
16                  business which is not a corporation, not  
17                  more than 10 percent of the capital or  
18                  profits interest of such business.

19           “(E) APPLICABLE NON-FAMILY ATTRIBU-  
20           TION RULES.—The term ‘applicable non-family  
21           attribution rules’ means the attribution rules of  
22           subsection (c) or (e)(3) of section 267, as the  
23           case may be, but in each case applied without  
24           regard to section 267(c)(2).

1           “(3) W-2 WAGES.—For purposes of this sec-  
2           tion—

3                   “(A) IN GENERAL.—The term ‘W-2  
4                   wages’ means, with respect to any person for  
5                   any taxable year of such person, the sum of the  
6                   amounts described in paragraphs (3) and (8) of  
7                   section 6051(a) paid by such person with re-  
8                   spect to employment of employees by such per-  
9                   son during the calendar year ending during  
10                  such taxable year.

11                  “(B) LIMITATION TO WAGES ATTRIB-  
12                  UTABLE TO QUALIFIED DOMESTIC BUSINESS IN-  
13                  COME.—Such term shall not include any  
14                  amount which is not properly allocable to do-  
15                  mestic business gross receipts for purposes of  
16                  subsection (c)(1).

17                  “(C) OTHER REQUIREMENTS.—Except in  
18                  the case of amounts treated as W-2 wages  
19                  under paragraph (4)—

20                          “(i) such term shall not include any  
21                          amount which is not allowed as a deduc-  
22                          tion under section 162 for the taxable  
23                          year, and

24                          “(ii) such term shall not include any  
25                          amount which is not properly included in a

1 return filed with the Social Security Ad-  
2 ministration on or before the 60th day  
3 after the due date (including extensions)  
4 for such return.

5 “(4) CERTAIN PARTNERSHIP DISTRIBUTIONS  
6 TREATED AS W-2 WAGES.—

7 “(A) IN GENERAL.—In the case of a quali-  
8 fied small business which is a partnership and  
9 elects the application of this paragraph for the  
10 taxable year—

11 “(i) the qualified domestic business  
12 taxable income of such partnership for  
13 such taxable year (determined after the ap-  
14 plication of subparagraph (B)) which is al-  
15 locable under rules similar to the rules of  
16 section 199(d)(1)(A)(ii) to each qualified  
17 service-providing partner shall be treated  
18 for purposes of this section as W-2 wages  
19 paid during such taxable year to such part-  
20 ner as an employee, and

21 “(ii) the domestic business gross re-  
22 ceipts of such partnership for such taxable  
23 year shall be reduced by the amount so  
24 treated.

1           “(B) QUALIFIED SERVICE-PROVIDING  
2 PARTNER.—For purposes of this paragraph, the  
3 term ‘qualified service-providing partner’ means  
4 any partner who is a 10-percent-or-less direct  
5 owner and who provides services to the partner-  
6 ship.

7           “(5) ACQUISITIONS AND DISPOSITIONS.—The  
8 Secretary shall provide for the application of this  
9 subsection in cases where the taxpayer acquires, or  
10 disposes of, the major portion of a trade or business  
11 or the major portion of a separate unit of a trade  
12 or business during the taxable year.

13           “(c) QUALIFIED DOMESTIC BUSINESS INCOME.—For  
14 purposes of this section—

15           “(1) IN GENERAL.—The term ‘qualified domes-  
16 tic business income’ for any taxable year means an  
17 amount equal to the excess (if any) of—

18           “(A) the taxpayer’s domestic business  
19 gross receipts for such taxable year, over

20           “(B) the sum of—

21           “(i) the cost of goods sold that are al-  
22 locable to such receipts, and

23           “(ii) other expenses, losses, or deduc-  
24 tions (other than the deduction allowed

1           under this section), which are properly al-  
2           locable to such receipts.

3           “(2) DOMESTIC BUSINESS GROSS RECEIPTS.—

4           “(A) IN GENERAL.—The term ‘domestic  
5           business gross receipts’ means the gross re-  
6           ceipts of the taxpayer which are effectively con-  
7           nected with the conduct of a trade or business  
8           within the United States within the meaning of  
9           section 864(c) but determined—

10                   “(i) without regard to paragraphs (3),  
11                   (4), and (5) thereof, and

12                   “(ii) by substituting ‘qualified small  
13                   business (within the meaning of section  
14                   200)’ for ‘nonresident alien individual or a  
15                   foreign corporation’ each place it appears  
16                   therein.

17           “(B) EXCEPTIONS.—For purposes of para-  
18           graph (1), domestic business gross receipts  
19           shall not include any of the following:

20                   “(i) Gross receipts derived from the  
21                   sale or exchange of—

22                           “(I) a capital asset, or

23                           “(II) property used in the trade  
24                           or business (as defined in section  
25                           1231(b)).



1                   “(ii) Royalties, rents, dividends, inter-  
2                   est, or annuities.

3                   “(iii) Any amount which constitutes  
4                   wages (as defined in section 3401).

5                   “(3) APPLICATION OF CERTAIN RULES.—Rules  
6                   similar to the rules of paragraphs (2) and (3) of sec-  
7                   tion 199(c) shall apply for purposes of this section  
8                   (applied with respect to qualified domestic business  
9                   income in lieu of qualified production activities in-  
10                  come and with respect to domestic business gross re-  
11                  ceipts in lieu of domestic production gross receipts).

12                  “(d) QUALIFIED SMALL BUSINESS.—For purposes of  
13 this section—

14                  “(1) IN GENERAL.—The term ‘qualified small  
15                  business’ means any employer engaged in a trade or  
16                  business if such employer had fewer than 500 full-  
17                  time equivalent employees for either calendar year  
18                  2010 or 2011.

19                  “(2) FULL-TIME EQUIVALENT EMPLOYEES.—  
20                  The term ‘full-time equivalent employees’ has the  
21                  meaning given such term by subsection (d)(2) of sec-  
22                  tion 45R applied—

23                          “(A) without regard to subsection (d)(5) of  
24                          such section,

1           “(B) with regard to subsection (e)(1) of  
2           such section, and

3           “(C) by substituting ‘calendar year’ for  
4           ‘taxable year’ each place it appears therein.

5           “(3) EMPLOYERS NOT IN EXISTENCE PRIOR TO  
6           2012.—In the case of an employer which was not in  
7           existence on January 1, 2012, the determination  
8           under paragraph (1) shall be made with respect to  
9           calendar year 2012.

10          “(4) APPLICATION TO CALENDAR YEARS IN  
11          WHICH EMPLOYER IN EXISTENCE FOR PORTION OF  
12          CALENDAR YEAR.—In the case of any calendar year  
13          during which the employer comes into existence, the  
14          number of full-time equivalent employees determined  
15          under paragraph (2) with respect to such calendar  
16          year shall be increased by multiplying the number so  
17          determined (without regard to this paragraph) by  
18          the quotient obtained by dividing—

19                 “(A) the number of days in such calendar  
20                 year, by

21                 “(B) the number of days during such cal-  
22                 endar year which such employer is in existence.

23          “(5) SPECIAL RULES.—

24                 “(A) AGGREGATION RULE.—For purposes  
25                 of paragraph (1), any person treated as a single

1 employer under subsection (a) or (b) of section  
2 52 (applied without regard to section 1563(b))  
3 or subsection (m) or (o) of section 414 shall be  
4 treated as a single employer for purposes of this  
5 subsection.

6 “(B) PREDECESSORS.—Any reference in  
7 this subsection to an employer shall include a  
8 reference to any predecessor of such employer.

9 “(e) SPECIAL RULES.—

10 “(1) ELECTIVE APPLICATION OF DEDUCTION.—  
11 Except as otherwise provided by the Secretary, the  
12 taxpayer may elect not to take any item of income  
13 into account as domestic business gross receipts for  
14 purposes of this section.

15 “(2) COORDINATION WITH SECTION 199.—If a  
16 deduction is allowed under this section with respect  
17 to any taxpayer for any taxable year—

18 “(A) any gross receipts of the taxpayer  
19 which are taken into account under this section  
20 for such taxable year shall not be taken into ac-  
21 count under section 199 for such taxable year,  
22 and

23 “(B) the W-2 wages of the taxpayer which  
24 are taken into account under this section shall

1 not be taken into account under section 199 for  
2 such taxable year.

3 “(3) APPLICATION OF CERTAIN RULES.—Rules  
4 similar to the rules of paragraphs (1), (2), (3), (4),  
5 (6), and (7) of section 199(d) shall apply for pur-  
6 poses of this section (applied with respect to quali-  
7 fied domestic business income in lieu of qualified  
8 production activities income).

9 “(f) REGULATIONS.—The Secretary shall prescribe  
10 such regulations as are necessary to carry out the pur-  
11 poses of this section, including regulations which prevent  
12 a taxpayer which reorganizes from being treated as a  
13 qualified small business if such taxpayer would not have  
14 been treated as a qualified small business prior to such  
15 reorganization.

16 “(g) APPLICATION.—Subsection (a) shall apply only  
17 with respect to the first taxable year of the taxpayer begin-  
18 ning after December 31, 2011.”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 56(d)(1)(A) of such Code is amend-  
21 ed by striking “deduction under section 199” both  
22 places it appears and inserting “deductions under  
23 sections 199 and 200”.

24 (2) Section 56(g)(4)(C) of such Code is amend-  
25 ed by adding at the end the following new clause:

1                   “(vii) DEDUCTION FOR DOMESTIC  
2                   BUSINESS INCOME OF QUALIFIED SMALL  
3                   BUSINESSES.—Clause (i) shall not apply to  
4                   any amount allowable as a deduction under  
5                   section 200.”.

6                   (3) The following provisions of such Code are  
7                   each amended by inserting “200,” after “199,”.

8                   (A) Section 86(b)(2)(A).

9                   (B) Section 135(c)(4)(A).

10                  (C) Section 137(b)(3)(A).

11                  (D) Section 219(g)(3)(A)(ii).

12                  (E) Section 221(b)(2)(C)(i).

13                  (F) Section 222 (b)(2)(C)(i).

14                  (G) Section 246(b)(1).

15                  (H) Section 469(i)(3)(F)(iii).

16                  (4) Section 163(j)(6)(A)(i) of such Code is  
17                  amended by striking “and” at the end of subclause  
18                  (III) and by inserting after subclause (IV) the fol-  
19                  lowing new subclause:

20                                 “(V) any deduction allowable  
21                                 under section 200, and”.

22                  (5) Section 170(b)(2)(C) of such Code is  
23                  amended by striking “and” at the end of clause (iv),  
24                  by striking the period at the end of clause (v) and

1 inserting “, and”, and by inserting after clause (v)  
2 the following new clause:

3 “(vi) section 200.”.

4 (6) Section 172(d) of such Code is amended by  
5 adding at the end the following new paragraph:

6 “(8) DOMESTIC BUSINESS INCOME OF QUALI-  
7 FIED SMALL BUSINESSES.—The deduction under  
8 section 200 shall not be allowed.”.

9 (7) Section 613(a) of such Code is amended by  
10 striking “deduction under section 199” and insert-  
11 ing “deductions under sections 199 and 200”.

12 (8) Section 613A(d)(1) of such Code is amend-  
13 ed by redesignating subparagraphs (C), (D), and  
14 (E) as subparagraphs (D), (E), and (F), respec-  
15 tively, and by inserting after subparagraph (B) the  
16 following new subparagraph:

17 “(C) any deduction allowable under section  
18 200,”.

19 (9) Section 1402(a) of such Code is amended  
20 by striking “and” at the end of paragraph (16), by  
21 redesignating paragraph (17) as paragraph (18),  
22 and by inserting after paragraph (16) the following  
23 new paragraph:

24 “(17) the deduction provided by section 200  
25 shall not be allowed; and”.

1           (c) CLERICAL AMENDMENT.—The table of sections  
2 for part VI of subchapter B of chapter 1 of such Code  
3 is amended by adding at the end the following new item:

“Sec. 200. Domestic business income of qualified small businesses.”.

