

Union Calendar No. 292

112TH CONGRESS
2^D SESSION

H. R. 9

[Report No. 112-425]

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 2012

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

APRIL 10, 2012

Additional sponsors: Mr. SCHILLING, Mrs. BIGGERT, Mr. FRANKS of Arizona, Mrs. MILLER of Michigan, Mr. REED, Mr. CAMP, Mr. McCAUL, Mr. GUINTA, Mr. LATTA, Mr. GRAVES of Missouri, Mr. SCHOCK, Mrs. MYRICK, Mr. AKIN, Ms. GRANGER, Mr. RIVERA, Mr. GALLEGLY, Mr. KINZINGER of Illinois, Mr. KLINE, Mr. MICA, Mrs. NOEM, Mr. AUSTRIA, Mr. CANSECO, Mr. WALDEN, Mr. HARPER, Mr. ROSS of Florida, Mrs. BLACK, Mr. SMITH of Texas, Mr. HASTINGS of Washington, Mr. CRAVAACK, Mr. WITTMAN, Mr. BACHUS, Mr. POE of Texas, Mr. SCALISE, Mr. SCOTT of South Carolina, Mr. DANIEL E. LUNGREN of California, Mrs. CAPITO, Mr. COFFMAN of Colorado, Mr. CHABOT, Mr. WESTMORELAND, Mr. MCCARTHY of California, Mr. LONG, and Mr. OLSON

APRIL 10, 2012

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on March 21, 2012]

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 Cut*
5 *Act”.*

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

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

11 **“SEC. 200. DOMESTIC BUSINESS INCOME OF QUALIFIED**
12 **SMALL BUSINESSES.**

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

16 *“(1) the qualified domestic business income of the*
17 *taxpayer for the taxable year, or*

18 *“(2) taxable income (determined without regard*
19 *to this section) for the taxable year.*

20 **“(b) DEDUCTION LIMITED BASED ON WAGES PAID.—**

21 *“(1) IN GENERAL.—The amount of the deduction*
22 *allowable under subsection (a) for any taxable year*
23 *shall not exceed 50 percent of the greater of—*

24 *“(A) the W-2 wages of the taxpayer paid to*
25 *non-owners, or*

1 “(B) the sum of—

2 “(i) the W-2 wages of the taxpayer
3 paid to individuals who are non-owner
4 family members of direct owners, plus

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

7 “(2) DEFINITIONS RELATED TO OWNERSHIP.—

8 *For purposes of this section—*

9 “(A) NON-OWNER.—*The term ‘non-owner’*
10 *means, with respect to any qualified small busi-*
11 *ness, any person who does not own (and is not*
12 *considered as owning within the meaning of sub-*
13 *section (c) or (e)(3) of section 267, as the case*
14 *may be) any stock of such business (or, if such*
15 *business is other than a corporation, any capital*
16 *or profits interest of such business).*

17 “(B) NON-OWNER FAMILY MEMBERS.—*An*
18 *individual is a non-owner family member of a*
19 *direct owner if—*

20 “(i) *such individual is family (within*
21 *the meaning of section 267(c)(4)) of a direct*
22 *owner, and*

23 “(ii) *such individual would be a non-*
24 *owner if subsections (c) and (e)(3) of section*

1 267 were applied without regard to section
2 267(c)(2).

3 “(C) *DIRECT OWNER.*—The term ‘direct
4 owner’ means, with respect to any qualified
5 small business, any person who owns (or is con-
6 sidered as owning under the applicable non-fam-
7 ily attribution rules) any stock of such business
8 (or, if such business is other than a corporation,
9 any capital or profits interest of such business).

10 “(D) *10-PERCENT-OR-LESS DIRECT OWN-*
11 *ERS.*—The term ‘10-percent-or-less direct owner’
12 means, with respect to any qualified small busi-
13 ness, any direct owner of such business who owns
14 (or is considered as owning under the applicable
15 non-family attribution rules)—

16 “(i) in the case of a qualified small
17 business which is a corporation, not more
18 than 10 percent of the outstanding stock of
19 the corporation or stock possessing more
20 than 10 percent of the total combined voting
21 power of all stock of the corporation, or

22 “(ii) in the case of a qualified small
23 business which is not a corporation, not
24 more than 10 percent of the capital or prof-
25 its interest of such business.

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

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

9 “(A) *IN GENERAL.*—*The term ‘W-2 wages’*
10 *means, with respect to any person for any tax-*
11 *able year of such person, the sum of the amounts*
12 *described in paragraphs (3) and (8) of section*
13 *6051(a) paid by such person with respect to em-*
14 *ployment of employees by such person during the*
15 *calendar year ending during such taxable year.*

16 “(B) *LIMITATION TO WAGES ATTRIBUTABLE*
17 *TO QUALIFIED DOMESTIC BUSINESS INCOME.*—
18 *Such term shall not include any amount which*
19 *is not properly allocable to domestic business*
20 *gross receipts for purposes of subsection (c)(1).*

21 “(C) *OTHER REQUIREMENTS.*—*Except in*
22 *the case of amounts treated as W-2 wages under*
23 *paragraph (4)—*

1 “(i) such term shall not include any
2 amount which is not allowed as a deduction
3 under section 162 for the taxable year, and

4 “(ii) such term shall not include any
5 amount which is not properly included in a
6 return filed with the Social Security Ad-
7 ministration on or before the 60th day after
8 the due date (including extensions) for such
9 return.

10 “(4) CERTAIN PARTNERSHIP DISTRIBUTIONS
11 TREATED AS W-2 WAGES.—

12 “(A) IN GENERAL.—In the case of a quali-
13 fied small business which is a partnership and
14 elects the application of this paragraph for the
15 taxable year—

16 “(i) the qualified domestic business
17 taxable income of such partnership for such
18 taxable year (determined after the applica-
19 tion of clause (ii)) which is allocable under
20 rules similar to the rules of section
21 199(d)(1)(A)(ii) to each qualified service-
22 providing partner shall be treated for pur-
23 poses of this section as W-2 wages paid
24 during such taxable year to such partner as
25 an employee, and

1 “(ii) *the domestic business gross re-*
2 *ceipts of such partnership for such taxable*
3 *year shall be reduced by the amount so*
4 *treated.*

5 “(B) *QUALIFIED SERVICE-PROVIDING PART-*
6 *NER.—For purposes of this paragraph, the term*
7 *‘qualified service-providing partner’ means, with*
8 *respect to any qualified domestic business tax-*
9 *able income, any partner who is a 10-percent-or-*
10 *less direct owner and who materially partici-*
11 *pates in the trade or business to which such in-*
12 *come relates.*

13 “(5) *ACQUISITIONS AND DISPOSITIONS.—The*
14 *Secretary shall provide for the application of this sub-*
15 *section in cases where the taxpayer acquires, or dis-*
16 *poses of, the major portion of a trade or business or*
17 *the major portion of a separate unit of a trade or*
18 *business during the taxable year.*

19 “(c) *QUALIFIED DOMESTIC BUSINESS INCOME.—For*
20 *purposes of this section—*

21 “(1) *IN GENERAL.—The term ‘qualified domestic*
22 *business income’ for any taxable year means an*
23 *amount equal to the excess (if any) of—*

24 “(A) *the taxpayer’s domestic business gross*
25 *receipts for such taxable year, over*

1 “(B) the sum of—

2 “(i) the cost of goods sold that are allo-
3 cable to such receipts, and

4 “(ii) other expenses, losses, or deduc-
5 tions (other than the deduction allowed
6 under this section), which are properly allo-
7 cable to such receipts.

8 “(2) DOMESTIC BUSINESS GROSS RECEIPTS.—

9 “(A) IN GENERAL.—The term ‘domestic
10 business gross receipts’ means the gross receipts
11 of the taxpayer which are effectively connected
12 with the conduct of a trade or business within
13 the United States within the meaning of section
14 864(c) but determined—

15 “(i) without regard to paragraphs (3),
16 (4), and (5) thereof, and

17 “(ii) by substituting ‘qualified small
18 business (within the meaning of section
19 200)’ for ‘nonresident alien individual or a
20 foreign corporation’ each place it appears
21 therein.

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

1 “(i) *Gross receipts derived from the*
2 *sale or exchange of—*

3 “(I) *a capital asset, or*

4 “(II) *property used in the trade*
5 *or business (as defined in section*
6 *1231(b)).*

7 “(ii) *Royalties, rents, dividends, inter-*
8 *est, or annuities.*

9 “(iii) *Any amount which constitutes*
10 *wages (as defined in section 3401).*

11 “(3) *APPLICATION OF CERTAIN RULES.—Rules*
12 *similar to the rules of paragraphs (2) and (3) of sec-*
13 *tion 199(c) shall apply for purposes of this section*
14 *(applied with respect to qualified domestic business*
15 *income in lieu of qualified production activities in-*
16 *come and with respect to domestic business gross re-*
17 *ceipts in lieu of domestic production gross receipts).*

18 “(d) *QUALIFIED SMALL BUSINESS.—For purposes of*
19 *this section—*

20 “(1) *IN GENERAL.—The term ‘qualified small*
21 *business’ means any employer engaged in a trade or*
22 *business if such employer had fewer than 500 full-*
23 *time equivalent employees for either calendar year*
24 *2010 or 2011.*

1 “(2) *FULL-TIME EQUIVALENT EMPLOYEES.*—*The*
2 *term ‘full-time equivalent employees’ has the meaning*
3 *given such term by subsection (d)(2) of section 45R*
4 *applied—*

5 “(A) *without regard to subsection (d)(5) of*
6 *such section,*

7 “(B) *with regard to subsection (e)(1) of such*
8 *section, and*

9 “(C) *by substituting ‘calendar year’ for*
10 *‘taxable year’ each place it appears therein.*

11 “(3) *EMPLOYERS NOT IN EXISTENCE PRIOR TO*
12 *2012.*—*In the case of an employer which was not in*
13 *existence on January 1, 2012, the determination*
14 *under paragraph (1) shall be made with respect to*
15 *calendar year 2012.*

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

1 “(A) *the number of days in such calendar*
2 *year, by*

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

5 “(5) *SPECIAL RULES.—*

6 “(A) *AGGREGATION RULE.—For purposes of*
7 *paragraph (1), any person treated as a single*
8 *employer under subsection (a) or (b) of section*
9 *52 (applied without regard to section 1563(b)) or*
10 *subsection (m) or (o) of section 414 shall be*
11 *treated as a single employer for purposes of this*
12 *subsection.*

13 “(B) *PREDECESSORS.—Any reference in*
14 *this subsection to an employer shall include a*
15 *reference to any predecessor of such employer.*

16 “(e) *SPECIAL RULES.—*

17 “(1) *ELECTIVE APPLICATION OF DEDUCTION.—*
18 *Except as otherwise provided by the Secretary, the*
19 *taxpayer may elect not to take any item of income*
20 *into account as domestic business gross receipts for*
21 *purposes of this section.*

22 “(2) *COORDINATION WITH SECTION 199.—If a*
23 *deduction is allowed under this section with respect to*
24 *any taxpayer for any taxable year—*

1 “(A) any gross receipts of the taxpayer
2 which are taken into account under this section
3 for such taxable year shall not be taken into ac-
4 count under section 199 for such taxable year,
5 and

6 “(B) the W-2 wages of the taxpayer which
7 are taken into account under this section shall
8 not be taken into account under section 199 for
9 such taxable year.

10 “(3) APPLICATION OF CERTAIN RULES.—Rules
11 similar to the rules of paragraphs (1), (2), (3), (4),
12 (6), and (7) of section 199(d) shall apply for purposes
13 of this section (applied with respect to qualified do-
14 mestic business income in lieu of qualified production
15 activities income).

16 “(f) REGULATIONS.—The Secretary shall prescribe
17 such regulations as are necessary to carry out the purposes
18 of this section, including regulations which prevent a tax-
19 payer which reorganizes from being treated as a qualified
20 small business if such taxpayer would not have been treated
21 as a qualified small business prior to such reorganization.

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

25 (b) CONFORMING AMENDMENTS.—

1 (1) *Section 56(d)(1)(A) of such Code is amended*
2 *by striking “deduction under section 199” both places*
3 *it appears and inserting “deductions under sections*
4 *199 and 200”.*

5 (2) *Section 56(g)(4)(C) of such Code is amended*
6 *by adding at the end the following new clause:*

7 “*(vii) DEDUCTION FOR DOMESTIC*
8 *BUSINESS INCOME OF QUALIFIED SMALL*
9 *BUSINESSES.—Clause (i) shall not apply to*
10 *any amount allowable as a deduction under*
11 *section 200.”.*

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

14 (A) *Section 86(b)(2)(A).*

15 (B) *Section 135(c)(4)(A).*

16 (C) *Section 137(b)(3)(A).*

17 (D) *Section 219(g)(3)(A)(ii).*

18 (E) *Section 221(b)(2)(C)(i).*

19 (F) *Section 222(b)(2)(C)(i).*

20 (G) *Section 246(b)(1).*

21 (H) *Section 469(i)(3)(F)(iii).*

22 (4) *Section 163(j)(6)(A)(i) of such Code is*
23 *amended by striking “and” at the end of subclause*
24 *(III) and by inserting after subclause (IV) the fol-*
25 *lowing new subclause:*

1 “(V) any deduction allowable
2 under section 200, and”.

3 (5) Section 170(b)(2)(C) of such Code is amend-
4 ed by striking “and” at the end of clause (iv), by
5 striking the period at the end of clause (v) and insert-
6 ing “, and”, and by inserting after clause (v) the fol-
7 lowing new clause:

8 “(vi) section 200.”.

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

11 “(8) *DOMESTIC BUSINESS INCOME OF QUALIFIED*
12 *SMALL BUSINESSES.*—The deduction under section
13 200 shall not be allowed.”.

14 (7) Section 613(a) of such Code is amended by
15 striking “deduction under section 199” and inserting
16 “deductions under sections 199 and 200”.

17 (8) Section 613A(d)(1) of such Code is amended
18 by redesignating subparagraphs (C), (D), and (E) as
19 subparagraphs (D), (E), and (F), respectively, and by
20 inserting after subparagraph (B) the following new
21 subparagraph:

22 “(C) any deduction allowable under section
23 200,”.

24 (9) Section 1402(a) of such Code is amended by
25 striking “and” at the end of paragraph (16), by re-

1 *designating paragraph (17) as paragraph (18), and*
2 *by inserting after paragraph (16) the following new*
3 *paragraph:*

4 *“(17) the deduction provided by section 200 shall*
5 *not be allowed; and”.*

6 *(c) CLERICAL AMENDMENT.—The table of sections for*
7 *part VI of subchapter B of chapter 1 of such Code is amend-*
8 *ed by adding at the end the following new item:*

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

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