

AMERICA'S SMALL BUSINESS TAX RELIEF ACT OF 2015

FEBRUARY 9, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RYAN of Wisconsin, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 636]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 636) to amend the Internal Revenue Code of 1986 to permanently extend increased expensing limitations, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
I. SUMMARY AND BACKGROUND	2
A. Purpose and Summary	2
B. Background and Need for Legislation	3
C. Legislative History	3
II. EXPLANATION OF THE BILL	4
A. Expensing Certain Depreciable Business Assets for Small Business (sec. 179 of the Code)	4
III. VOTES OF THE COMMITTEE	7
IV. BUDGET EFFECTS OF THE BILL	7
A. Committee Estimate of Budgetary Effects	7
B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority	9
C. Cost Estimate Prepared by the Congressional Budget Office	9
V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE	12
A. Committee Oversight Findings and Recommendations	12
B. Statement of General Performance Goals and Objectives	12

C. Information Relating to Unfunded Mandates	12
D. Applicability of House Rule XXI 5(b)	12
E. Tax Complexity Analysis	12
F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits	16
G. Duplication of Federal Programs	16
H. Disclosure of Directed Rule Makings	16
VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED	16
VII. DISSENTING VIEWS	23

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “America’s Small Business Tax Relief Act of 2015”.

SEC. 2. EXPENSING CERTAIN DEPRECIABLE BUSINESS ASSETS FOR SMALL BUSINESS.

(a) IN GENERAL.—

(1) DOLLAR LIMITATION.—Section 179(b)(1) of the Internal Revenue Code of 1986 is amended by striking “shall not exceed—” and all that follows and inserting “shall not exceed \$500,000.”

(2) REDUCTION IN LIMITATION.—Section 179(b)(2) of such Code is amended by striking “exceeds—” and all that follows and inserting “exceeds \$2,000,000.”

(b) COMPUTER SOFTWARE.—Section 179(d)(1)(A)(ii) of such Code is amended by striking “, to which section 167 applies, and which is placed in service in a taxable year beginning after 2002 and before 2015” and inserting “and to which section 167 applies”.

(c) ELECTION.—Section 179(c)(2) of such Code is amended—

(1) by striking “may not be revoked” and all that follows through “and before 2015”, and

(2) by striking “IRREVOCABLE” in the heading thereof.

(d) AIR CONDITIONING AND HEATING UNITS.—Section 179(d)(1) of such Code is amended by striking “and shall not include air conditioning or heating units”.

(e) QUALIFIED REAL PROPERTY.—Section 179(f) of such Code is amended—

(1) by striking “beginning after 2009 and before 2015” in paragraph (1), and

(2) by striking paragraphs (3) and (4).

(f) INFLATION ADJUSTMENT.—Section 179(b) of such Code is amended by adding at the end the following new paragraph:

“(6) INFLATION ADJUSTMENT.—

“(A) IN GENERAL.—In the case of any taxable year beginning after 2015, the dollar amounts in paragraphs (1) and (2) shall each be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2014’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(B) ROUNDING.—The amount of any increase under subparagraph (A) shall be rounded to the nearest multiple of \$10,000.”

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2014.

SEC. 3. BUDGETARY EFFECTS.

The budgetary effects of this Act shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H.R. 636, reported by the Committee on Ways and Means, provides that the maximum amount that a taxpayer may expense, for taxable years beginning after 2014, is \$500,000 of the cost of qualifying property placed in service for the taxable year, with such amount reduced by the amount by which the cost of such qualifying property exceeds \$2,000,000. An identical temporary provision applied for tax years 2010 through 2014, but it expired for tax years beginning after December 31, 2014, causing these amounts to re-

vert to \$25,000 and \$200,000, respectively. Under H.R. 636, both the \$500,000 and \$2,000,000 limits would be indexed for inflation beginning in taxable years after 2015. H.R. 636 also treats off-the-shelf computer software, qualified real property, and air conditioning and heating units placed in service in taxable years beginning after 2014 as eligible for expensing.

B. BACKGROUND AND NEED FOR LEGISLATION

While the Committee continues actively to pursue comprehensive tax reform as a critical means of promoting economic growth and job creation, the Committee also believes that it is important to provide small businesses permanent, immediate tax relief to help encourage economic growth and job creation. By restoring and making permanent for small businesses and farms the ability to expense purchases of property and equipment up to \$500,000, with such expensing phased out for purchases exceeding \$2,000,000, H.R. 636 eliminates the significant reduction in the benefit of expensing that may result from the expiration of these temporary expensing levels after 2014. Making the 2014 levels permanent provides much-needed certainty for small businesses and farms, which have struggled through the economic challenges of the past seven years, enabling them to make investments critical to the growth and expansion of their businesses and to hire new employees. H.R. 636 also provides certainty by permanently treating investments in computer software, heating and air conditioning units, and certain investments in real property, as property eligible for expensing. To ensure that small businesses' ability to expense new investments in property and equipment will keep pace with the rising cost of such investments in future years, H.R. 636 indexes the expensing limits for inflation. Collectively, these changes will help small businesses and farms upgrade equipment and facilities, allowing them to reduce maintenance costs, take advantage of labor-saving advances, become more energy efficient, and adopt technology that is environmentally friendly.

C. LEGISLATIVE HISTORY

Background

H.R. 636 was introduced on February 2, 2015, and was referred to the Committee on Ways and Means.

Committee action

The Committee on Ways and Means marked up H.R. 636, the America's Small Business Tax Relief Act of 2015, on February 4, 2015, and ordered the bill, as amended, favorably reported (with a quorum being present).

Committee hearings

The need for permanent rules regarding small business expensing was discussed at no fewer than seven hearings during the 112th and 113th Congresses:

- Full Committee hearing on Fundamental Tax Reform (January 20, 2011);
- Select Revenue Measures Subcommittee Hearing on Small Businesses and Tax Reform (March 3, 2011);

- Full Committee hearing on the Interaction of Tax and Financial Accounting on Tax Reform (February 8, 2012);
- Full Committee hearing on the Treatment of Closely-Held Businesses in the Context of Tax Reform (March 7, 2012);
- Full Committee hearing on Tax Reform and the U.S. Manufacturing Sector (July 19, 2012);
- Full Committee hearing on the Small Business and Pass-Through Entity Tax Reform Discussion Draft (May 15, 2013); and
- Full Committee hearing on the Benefits of Permanent Tax Policy for America’s Job Creators (April 8, 2014).

II. EXPLANATION OF THE BILL

A. EXPENSING CERTAIN DEPRECIABLE BUSINESS ASSETS FOR SMALL BUSINESS (SEC. 179 OF THE CODE)

PRESENT LAW

A taxpayer may elect under section 179 to deduct (or “expense”) the cost of qualifying property, rather than to recover such costs through depreciation deductions, subject to limitation. For taxable years beginning in 2014, the maximum amount a taxpayer may expense is \$500,000 of the cost of qualifying property placed in service for the taxable year.¹ The \$500,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds \$2,000,000.² The \$500,000 and \$2,000,000 amounts are not indexed for inflation. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business.³ Qualifying property excludes investments in air conditioning and heating units.⁴ For taxable years beginning before 2015, qualifying property also includes off-the-shelf computer software and qualified real property (i.e., qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property).⁵ Of the \$500,000 expense amount available under section 179, the maximum amount available with respect to qualified real property is \$250,000 for each taxable year.⁶

For taxable years beginning in 2015 and thereafter, a taxpayer may elect to deduct up to \$25,000 of the cost of qualifying property placed in service for the taxable year, subject to limitation. The \$25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds \$200,000. The \$25,000 and \$200,000 amounts

¹For the years 2003 through 2006, the relevant dollar amount is \$100,000 (indexed for inflation); in 2007, the dollar limitation is \$125,000; for the 2008 and 2009 years, the relevant dollar amount is \$250,000; and for the years 2010 through 2013, the relevant dollar limitation is \$500,000. Sec. 179(b)(1).

²For the years 2003 through 2006, the relevant dollar amount is \$400,000 (indexed for inflation); in 2007, the dollar limitation is \$500,000; for the 2008 and 2009 years, the relevant dollar amount is \$800,000; and for the years 2010 through 2013, the relevant dollar limitation is \$2,000,000. Sec. 179(b)(2).

³Passenger automobiles subject to the section 280F limitation are eligible for section 179 expensing only to the extent of the dollar limitations in section 280F. For sport utility vehicles above the 6,000 pound weight rating, which are not subject to the limitation under section 280F, the maximum cost that may be expensed for any taxable year under section 179 is \$25,000. Sec. 179(b)(5).

⁴Sec. 179(d)(1) flush language.

⁵Sec. 179(d)(1)(A)(ii) and (f).

⁶Sec. 179(f)(3).

are not indexed for inflation. In general, qualifying property is defined as depreciable tangible personal property (not including off-the-shelf computer software, qualified real property, or air conditioning and heating units) that is purchased for use in the active conduct of a trade or business.

The amount eligible to be expensed for a taxable year may not exceed the taxable income for such taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision).⁷ Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to limitations). However, amounts attributable to qualified real property that are disallowed under the trade or business income limitation may only be carried over to taxable years in which the definition of eligible section 179 property includes qualified real property.⁸ Thus, if a taxpayer's section 179 deduction for 2013 with respect to qualified real property is limited by the taxpayer's active trade or business income, such disallowed amount may be carried over to 2014. Any such carryover amounts that are not used in 2014 are treated as property placed in service in 2014 for purposes of computing depreciation. That is, the unused carryover amount from 2013 is considered placed in service on the first day of the 2014 taxable year.⁹

No general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179.¹⁰ If a corporation makes an election under section 179 to deduct expenditures, the full amount of the deduction does not reduce earnings and profits. Rather, the expenditures that are deducted reduce corporate earnings and profits ratably over a five-year period.¹¹

An expensing election is made under rules prescribed by the Secretary.¹² In general, any election or specification made with respect to any property may not be revoked except with the consent of the Commissioner. However, an election or specification under section 179 may be revoked by the taxpayer without consent of the Commissioner for taxable years beginning after 2002 and before 2015.¹³

REASONS FOR CHANGE

The Committee believes that section 179 expensing provides two important benefits for small businesses. First, it lowers the cost of capital for tangible property used in a trade or business. With a lower cost of capital, the Committee believes small businesses will

⁷ Sec. 179(b)(3).

⁸ Section 179(f)(4) details the special rules that apply to disallowed amounts with respect to qualified real property.

⁹ For example, assume that during 2013, a company's only asset purchases are section 179-eligible equipment costing \$100,000 and qualifying leasehold improvements costing \$200,000. Assume the company has no other asset purchases during 2013, and has a taxable income limitation of \$150,000. The maximum section 179 deduction the company can claim for 2013 is \$150,000, which is allocated pro rata between the properties, such that the carryover to 2014 is allocated \$100,000 to the qualified leasehold improvements and \$50,000 to the equipment.

Assume further that in 2014, the company had no asset purchases and had no taxable income. The \$100,000 carryover from 2013 attributable to qualified leasehold improvements is treated as placed in service as of the first day of the company's 2014 taxable year under section 179(f)(4)(C). The \$50,000 carryover allocated to equipment is carried over to 2014 under section 179(b)(3)(B).

¹⁰ Sec. 179(d)(9).

¹¹ Sec. 312(k)(3)(B).

¹² Sec. 179(c)(1).

¹³ Sec. 179(c)(2).

invest in more equipment and employ more workers. Second, it eliminates depreciation recordkeeping requirements with respect to expensed property. To increase the value of these benefits and to increase the number of taxpayers eligible, the provision increases the amount allowed to be expensed under section 179 and increases the amount of the phase-out threshold. In addition, to counteract the negative effect of inflation on the limit and phase-out threshold of this provision for small businesses, the provision indexes such amounts for inflation.

The Committee also believes that qualified real property (i.e., qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property) should continue to be included in the section 179 expensing provision to encourage small businesses to invest in these types of real property. Similarly, the Committee believes that investments in air conditioning and heating units used in the active conduct of a trade or business should be included within the definition of qualifying property to remove a disincentive for small businesses to invest in more efficient cooling and heating equipment. Further, the Committee believes that purchased computer software should continue to be included in the section 179 expensing provision so that it is not disadvantaged relative to developed software. In addition, the Committee believes that the process of making and revoking section 179 elections should continue to be simpler and more efficient for taxpayers by eliminating the requirement to obtain the consent of the Commissioner.

EXPLANATION OF PROVISION

The provision provides that the maximum amount a taxpayer may expense, for taxable years beginning after 2014, is \$500,000 of the cost of qualifying property placed in service for the taxable year. The \$500,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds \$2,000,000. The \$500,000 and \$2,000,000 amounts are indexed for inflation for taxable years beginning after 2015.

In addition, the provision makes permanent the treatment of off-the-shelf computer software as qualifying property. The provision also makes permanent the treatment of qualified real property as eligible section 179 property and removes the limitation related to the amount of section 179 property that may be attributable to qualified real property for taxable years beginning after 2014. Further, the provision strikes the flush language in section 179(d)(1) that excludes air conditioning and heating units from the definition of qualifying property.

The provision also makes permanent the permission granted to a taxpayer to revoke without the consent of the Commissioner any election, and any specification contained therein, made under section 179.

The provision exempts any budgetary effects from the PAYGO scorecards under the Statutory Pay-As-You-Go Act of 2010.

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2014.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 636, the America's Small Business Tax Relief Act of 2014, on February 4, 2015.

The bill, H.R. 636, was ordered favorably reported as amended by a roll call vote of 24 yeas to 14 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Ryan	X	.....	.....	Mr. Levin .....	.....	X	.....
Mr. Johnson	X	.....	.....	Mr. Rangel .....	.....	X	.....
Mr. Brady	X	.....	.....	Mr. McDermott .....	.....	X	.....
Mr. Nunes	X	.....	.....	Mr. Lewis .....	.....	X	.....
Mr. Tiberi	X	.....	.....	Mr. Neal .....	.....	X	.....
Mr. Reichert	X	.....	.....	Mr. Becerra .....	.....	X	.....
Mr. Boustany	X	.....	.....	Mr. Doggett .....	.....	X	.....
Mr. Roskam	X	.....	.....	Mr. Thompson .....	.....	X	.....
Mr. Price	X	.....	.....	Mr. Larson .....	.....	X	.....
Mr. Buchanan	X	.....	.....	Mr. Blumenauer .....	.....	.....	.....
Mr. Smith (NE)	X	.....	.....	Mr. Kind .....	.....	X	.....
Mr. Schock	X	.....	.....	Mr. Pascrell .....	.....	X	.....
Ms. Jenkins	X	.....	.....	Mr. Crowley .....	.....	X	.....
Mr. Paulsen	X	.....	.....	Mr. Davis .....	.....	X	.....
Mr. Marchant	X	.....	.....	Ms. Sanchez .....	.....	X	.....
Mrs. Black	X	.....	.....		
Mr. Reed	X	.....	.....		
Mr. Young	X	.....	.....		
Mr. Kelly	X	.....	.....		
Mr. Renacci	X	.....	.....		
Mr. Meehan	X	.....	.....		
Mrs. Noem	X	.....	.....		
Mr. Holding	X	.....	.....		
Mr. Smith (MO)	X	.....	.....		

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 636, as reported.

The bill, as reported, is estimated to have the following effect on Federal budget receipts for fiscal years 2015–2025:

Fiscal Years
[Millions of Dollars]

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015-20	2015-25
	- 8,340	- 14,400	- 10,846	- 8,661	- 6,901	- 5,537	- 4,817	- 4,090	- 4,071	- 4,648	- 4,787	- 54,684	- 77,097

NOTE: Details do not add to totals due to rounding.

Pursuant to clause 8 of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not “major legislation” for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX
EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET
OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 5, 2015.

Hon. PAUL RYAN,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 636, the America’s Small Business Tax Relief Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Nate Frentz.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 636—America’s Small Business Tax Relief Act of 2015

H.R. 636 would amend section 179 of the Internal Revenue Code, which mostly affects small- to medium-sized businesses, to retroactively and permanently extend from January 1, 2015, increased limitations on the amount of investment that can be immediately deducted from taxable income. H.R. 636 also would index the limitations for inflation and expand the definition of property that qualifies for that immediate deduction.

Specifically, the legislation would permanently extend to \$500,000 (indexed for inflation) the annual cost of property eligible for expensing under section 179. That change would allow firms to deduct immediately from their taxable income larger amounts of investment instead of spreading those deductions out over time.

The benefit of the immediate expensing would phase out for total qualifying investment in excess of \$2 million, indexed for inflation.

The staff of the Joint Committee on Taxation (JCT) estimates that enacting H.R. 636 would reduce revenues, thus increasing federal deficits, by about \$77 billion over the 2015–2025 period. The estimated budgetary effects of H.R. 636 are shown in the following table.

	By fiscal year, in millions of dollars—												
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015–2020	2015–2025
Estimated Revenues	— 8,340	— 14,400	— 10,846	— 8,661	— 6,901	— 5,537	— 4,817	— 4,090	— 4,071	— 4,648	— 4,787	— 54,684	— 77,097
	CHANGES IN REVENUES												

Source: Staff of the Joint Committee on Taxation.

Note: Components may not sum to totals because of rounding.

Although enacting H.R. 636 would affect revenues, the provisions of the Statutory Pay-As-You-Go Act of 2010 do not apply to the legislation because it includes a provision that would direct the Office of Management and Budget to exclude the estimated changes in revenues from the scorecards used to enforce the pay-as-you-go rules.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Nathaniel Frentz. The estimate was approved by David Weiner, Assistant Director for Tax Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of H.R. 636 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. TAX COMPLEXITY ANALYSIS

The following statement is made pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives. Section 4022(b) of the Internal Revenue Service Restructuring and Reform

Act of 1998 (the “IRS Reform Act”) requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses. For each such provision identified by the staff of the Joint Committee on Taxation a summary description of the provision is provided along with an estimate of the number and type of affected taxpayers, and a discussion regarding the relevant complexity and administrative issues.

Following the analysis of the staff of the Joint Committee on Taxation are the comments of the IRS and Treasury regarding each of the provisions included in the complexity analysis.

1. Expensing Certain Depreciable Business Assets for Small Businesses

Summary description of the provision

The bill provides that the maximum amount a taxpayer may expense, for taxable years beginning after 2014, is \$500,000 of the cost of qualifying property placed in service for the taxable year. The \$500,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds \$2,000,000. The \$500,000 and \$2,000,000 amounts are indexed for inflation for taxable years beginning after 2015.

In addition, the bill makes permanent the treatment of off-the-shelf computer software as qualifying property. The bill also makes permanent the treatment of qualified real property as eligible section 179 property and removes the limitation related to the amount of section 179 property that may be attributable to qualified real property for taxable years beginning after 2014. Further, the bill strikes the flush language in section 179(d)(1) that excludes air conditioning and heating units from the definition of qualifying property.

The bill makes permanent the permission granted to a taxpayer to revoke without the consent of the Commissioner any election, and any specification contained therein, made under section 179.

The bill exempts any budgetary effects from the PAYGO scorecards under the Statutory Pay-As-You-Go Act of 2010.

Number of affected taxpayers

It is estimated that the provision will affect over ten percent of small business tax returns.

Discussion

While taxpayers purchasing section 179 property will still be required to complete and file Form 4562, Depreciation and Amortization (Including Information on Listed Property), significantly less detail is required to be included on such form. Accordingly, the compliance burden of many taxpayers will be reduced.



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

February 6, 2015

Mr. Thomas A. Barthold
Chief of Staff
Joint Committee on Taxation
Washington, D.C. 20515

Dear Mr. Barthold:

I am responding to your letter dated February 4, 2015, in which you requested a complexity analysis related to America's Small Business Tax Relief Act of 2015.

Enclosed are the combined comments of the Internal Revenue Service and the Treasury Department for inclusion in the complexity analysis in the House Committee on Ways and Means report on America's Small Business Tax Relief Act of 2015. Our analysis covers one provision that you preliminarily identified in your letter: expensing certain depreciable business assets for small businesses. Please note that for purposes of this complexity analysis, IRS staff assumed timely enactment of this legislation. If legislation is not enacted before the end of the year, there would be additional complexity for IRS and for taxpayers that is not addressed in this response.

Our comments are based on the description of the provision provided in your letter. This analysis does not include administrative cost estimates for the changes that would be required. Due to the short turnaround time, our comments are provisional and subject to change upon a more complete and in-depth analysis of the provision.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Koskinen".

John A. Koskinen

Enclosure

**COMPLEXITY ANALYSIS OF THE COMMITTEE REPORT ON
AMERICA'S SMALL BUSINESS TAX RELIEF ACT OF 2015**

Expensing Certain Depreciable Business Assets for Small Businesses

Provision:

The bill provides that the maximum amount a taxpayer may expense, for taxable years beginning after 2014, is \$500,000 of the cost of qualifying property placed in service for the taxable year. The \$500,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds \$2,000,000. The \$500,000 and \$2,000,000 amounts are indexed for inflation for taxable years beginning after 2015.

In addition, the bill makes permanent the treatment of off-the-shelf computer software as qualifying property. The bill also makes permanent the treatment of qualified real property as eligible section 179 property and removes the limitation related to the amount of section 179 property that may be attributable to qualified real property for taxable years beginning after 2015. Further, the bill strikes the flush language in section 179(d)(1) that excludes air conditioning and heating units from the definition of qualifying property.

The bill makes permanent the permission granted to a taxpayer to revoke without the consent of the Commissioner any election, and any specification contained therein, made under section 179.

The bill exempts any budgetary effects from the PAYGO scorecards under the Statutory Pay-As-You-Go Act of 2010.

IRS/Treasury Comments:

- The maximum amount a taxpayer may expense for a taxable year; the treatment of off-the-shelf computer software; removing the limitation for amount of qualified real property; and the inclusion of air conditioning and heating units in the definition of qualified property would have no significant impact on Form 4562 or any other tax forms.
- The Instructions for Form 4562, Publication 946, and other instructions and publications would be revised to reflect these changes.
- No internal training would be required by this provision.
- Internal communications would be shared with all employees.
- No programming changes would be required by this provision.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND
LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. DUPLICATION OF FEDERAL PROGRAMS

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169).

H. DISCLOSURE OF DIRECTED RULE MAKINGS

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

**VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS
REPORTED**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * *

Subtitle A—Income Taxes

* * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * *

Subchapter B—Computation of Taxable Income

* * * * *

**PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS
AND CORPORATIONS**

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SEC. 179. ELECTION TO EXPENSE CERTAIN DEPRECIABLE BUSINESS ASSETS.

(a) **TREATMENT AS EXPENSES.**—A taxpayer may elect to treat the cost of any section 179 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the section 179 property is placed in service.

(b) **LIMITATIONS.**—

(1) **DOLLAR LIMITATION.**—The aggregate cost which may be taken into account under subsection (a) for any taxable year **[shall not exceed—] shall not exceed \$500,000.**

[(A) \$250,000 in the case of taxable years beginning after 2007 and before 2010,

[(B) \$500,000 in the case of taxable years beginning after 2009 and before 2015, and

[(C) \$25,000 in the case of taxable years beginning after 2014.]

(2) **REDUCTION IN LIMITATION.**—The limitation under paragraph (1) for any taxable year shall be reduced (but not below zero) by the amount by which the cost of section 179 property placed in service during such taxable year **[exceeds—] exceeds \$2,000,000.**

[(A) \$800,000 in the case of taxable years beginning after 2007 and before 2010,

[(B) \$2,000,000 in the case of taxable years beginning after 2009 and before 2015, and

[(C) \$200,000 in the case of taxable years beginning after 2014.]

(3) **LIMITATION BASED ON INCOME FROM TRADE OR BUSINESS.**—

(A) **IN GENERAL.**—The amount allowed as a deduction under subsection (a) for any taxable year (determined after the application of paragraphs (1) and (2)) shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

(B) **CARRYOVER OF DISALLOWED DEDUCTION.**—The amount allowable as a deduction under subsection (a) for any taxable year shall be increased by the lesser of—

(i) the aggregate amount disallowed under subparagraph (A) for all prior taxable years (to the extent not previously allowed as a deduction by reason of this subparagraph), or

(ii) the excess (if any) of—

(I) the limitation of paragraphs (1) and (2) (or if lesser, the aggregate amount of taxable income referred to in subparagraph (A)), over

(II) the amount allowable as a deduction under subsection (a) for such taxable year without regard to this subparagraph.

(C) **COMPUTATION OF TAXABLE INCOME.**—For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the deduction allowable under this section.

(4) MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of a husband and wife filing separate returns for the taxable year—

(A) such individuals shall be treated as 1 taxpayer for purposes of paragraphs (1) and (2), and

(B) unless such individuals elect otherwise, 50 percent of the cost which may be taken into account under subsection (a) for such taxable year (before application of paragraph (3)) shall be allocated to each such individual.

(5) LIMITATION ON COST TAKEN INTO ACCOUNT FOR CERTAIN PASSENGER VEHICLES.—

(A) IN GENERAL.—The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed \$25,000.

(B) SPORT UTILITY VEHICLE.—For purposes of subparagraph (A)—

(i) IN GENERAL.—The term “sport utility vehicle” means any 4-wheeled vehicle—

(I) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails),

(II) which is not subject to section 280F, and

(III) which is rated at not more than 14,000 pounds gross vehicle weight.

(ii) CERTAIN VEHICLES EXCLUDED.—Such term does not include any vehicle which—

(I) is designed to have a seating capacity of more than 9 persons behind the driver’s seat,

(II) is equipped with a cargo area of at least 6 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or

(III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver’s seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

(6) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—*In the case of any taxable year beginning after 2015, the dollar amounts in paragraphs (1) and (2) shall each be increased by an amount equal to—*

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting “calendar year 2014” for “calendar year 1992” in subparagraph (B) thereof.

(B) ROUNDING.—*The amount of any increase under subparagraph (A) shall be rounded to the nearest multiple of \$10,000.*

(c) ELECTION.—

(1) IN GENERAL.—An election under this section for any taxable year shall—

(A) specify the items of section 179 property to which the election applies and the portion of the cost of each of such items which is to be taken into account under subsection (a), and

(B) be made on the taxpayer's return of the tax imposed by this chapter for the taxable year.

Such election shall be made in such manner as the Secretary may by regulations prescribe.

(2) ELECTION **IRREVOCABLE**.—Any election made under this section, and any specification contained in any such election, **may not be revoked except with the consent of the Secretary. Any such election or specification with respect to any taxable year beginning after 2002 and before 2015** may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.

(d) DEFINITIONS AND SPECIAL RULES.—

(1) SECTION 179 PROPERTY.—For purposes of this section, the term “section 179 property” means property—

(A) which is—

(i) tangible property (to which section 168 applies), or

(ii) computer software (as defined in section 197(e)(3)(B)) which is described in section 197(e)(3)(A)(i) **to which section 167 applies, and which is placed in service in a taxable year beginning after 2002 and before 2015** and to which section 167 applies,

(B) which is section 1245 property (as defined in section 1245(a)(3)), and

(C) which is acquired by purchase for use in the active conduct of a trade or business.

Such term shall not include any property described in section 50(b) **and shall not include air conditioning or heating units**.

(2) PURCHASE DEFINED.—For purposes of paragraph (1), the term “purchase” means any acquisition of property, but only if—

(A) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants),

(B) the property is not acquired by one component member of a controlled group from another component member of the same controlled group, and

(C) the basis of the property in the hands of the person acquiring it is not determined—

(i) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(ii) under section 1014(a) (relating to property acquired from a decedent).

(3) COST.—For purposes of this section, the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

(4) SECTION NOT TO APPLY TO ESTATES AND TRUSTS.—This section shall not apply to estates and trusts.

(5) SECTION NOT TO APPLY TO CERTAIN NONCORPORATE LESSORS.—This section shall not apply to any section 179 property which is purchased by a person who is not a corporation and with respect to which such person is the lessor unless—

(A) the property subject to the lease has been manufactured or produced by the lessor, or

(B) the term of the lease (taking into account options to renew) is less than 50 percent of the class life of the property (as defined in section 168(i)(1)), and for the period consisting of the first 12 months after the date on which the property is transferred to the lessee the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) exceeds 15 percent of the rental income produced by such property.

(6) DOLLAR LIMITATION OF CONTROLLED GROUP.—For purposes of subsection (b) of this section—

(A) all component members of a controlled group shall be treated as one taxpayer, and

(B) the Secretary shall apportion the dollar limitation contained in subsection (b)(1) among the component members of such controlled group in such manner as he shall by regulations prescribe.

(7) CONTROLLED GROUP DEFINED.—For purposes of paragraphs (2) and (6), the term “controlled group” has the meaning assigned to it by section 1563(a), except that, for such purposes, the phrase “more than 50 percent” shall be substituted for the phrase “at least 80 percent” each place it appears in section 1563(a)(1).

(8) TREATMENT OF PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership, the limitations of subsection (b) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(9) COORDINATION WITH SECTION 38.—No credit shall be allowed under section 38 with respect to any amount for which a deduction is allowed under subsection (a).

(10) RECAPTURE IN CERTAIN CASES.—The Secretary shall, by regulations, provide for recapturing the benefit under any deduction allowable under subsection (a) with respect to any property which is not used predominantly in a trade or business at any time.

(e) SPECIAL RULES FOR QUALIFIED DISASTER ASSISTANCE PROPERTY.—

(1) IN GENERAL.—For purposes of this section—

(A) the dollar amount in effect under subsection (b)(1) for the taxable year shall be increased by the lesser of—

(i) \$100,000, or

(ii) the cost of qualified section 179 disaster assistance property placed in service during the taxable year, and

(B) the dollar amount in effect under subsection (b)(2) for the taxable year shall be increased by the lesser of—

(i) \$600,000, or

(ii) the cost of qualified section 179 disaster assistance property placed in service during the taxable year.

(2) QUALIFIED SECTION 179 DISASTER ASSISTANCE PROPERTY.—For purposes of this subsection, the term “qualified section 179 disaster assistance property” means section 179 property (as defined in subsection (d)) which is qualified disaster assistance property (as defined in section 168(n)(2)).

(3) COORDINATION WITH EMPOWERMENT ZONES AND RENEWAL COMMUNITIES.—For purposes of sections 1397A and 1400J, qualified section 179 disaster assistance property shall not be treated as qualified zone property or qualified renewal property, unless the taxpayer elects not to take such qualified section 179 disaster assistance property into account for purposes of this subsection.

(4) RECAPTURE.—For purposes of this subsection, rules similar to the rules under subsection (d)(10) shall apply with respect to any qualified section 179 disaster assistance property which ceases to be qualified section 179 disaster assistance property.

(f) SPECIAL RULES FOR QUALIFIED REAL PROPERTY.—

(1) IN GENERAL.—If a taxpayer elects the application of this subsection for any taxable year **beginning after 2009 and before 2015**, the term “section 179 property” shall include any qualified real property which is—

(A) of a character subject to an allowance for depreciation,

(B) acquired by purchase for use in the active conduct of a trade or business, and

(C) not described in the last sentence of subsection (d)(1).

(2) QUALIFIED REAL PROPERTY.—For purposes of this subsection, the term “qualified real property” means—

(A) qualified leasehold improvement property described in section 168(e)(6),

(B) qualified restaurant property described in section 168(e)(7), and

(C) qualified retail improvement property described in section 168(e)(8).

(3) LIMITATION.—For purposes of applying the limitation under subsection (b)(1)(B), not more than \$250,000 of the aggregate cost which is taken into account under subsection (a) for any taxable year may be attributable to qualified real property.

(4) CARRYOVER LIMITATION.—

(A) IN GENERAL.—Notwithstanding subsection (b)(3)(B), no amount attributable to qualified real property may be carried over to a taxable year beginning after 2014.

【(B) TREATMENT OF DISALLOWED AMOUNTS.—Except as provided in subparagraph (C), to the extent that any amount is not allowed to be carried over to a taxable year beginning after 2014 by reason of subparagraph (A), this title shall be applied as if no election under this section had been made with respect to such amount.

【(C) AMOUNTS CARRIED OVER FROM 2010, 2011, 2012, AND 2013.—If subparagraph (B) applies to any amount (or portion of an amount) which is carried over from a taxable year other than the taxpayer's last taxable year beginning in 2014, such amount (or portion of an amount) shall be treated for purposes of this title as attributable to property placed in service on the first day of the taxpayer's last taxable year beginning in 2014. For the last taxable year beginning in 2014, the amount determined under subsection (b)(3)(A) for such taxable year shall be determined without regard to this paragraph.

【(D) ALLOCATION OF AMOUNTS.—For purposes of applying this paragraph and subsection (b)(3)(B) to any taxable year, the amount which is disallowed under subsection (b)(3)(A) for such taxable year which is attributed to qualified real property shall be the amount which bears the same ratio to the total amount so disallowed as—

【(i) the aggregate amount attributable to qualified real property placed in service during such taxable year, increased by the portion of any amount carried over to such taxable year from a prior taxable year which is attributable to such property, bears to

【(ii) the total amount of section 179 property placed in service during such taxable year, increased by the aggregate amount carried over to such taxable year from any prior taxable year.

For purposes of the preceding sentence, only section 179 property with respect to which an election was made under subsection (c)(1) (determined without regard to subparagraph (B) of this paragraph) shall be taken into account.】

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VII. DISSENTING VIEWS

The seven bills approved by the Republicans at the markup would add more than \$93 billion to the deficit—and if history is our guide, this is merely the start of the approach the Republicans embraced last Congress. In the 113th Congress, Ways and Means Committee Republicans approved \$825 billion worth of deficit-financed, permanent tax cuts. The bills marked up by the Committee set us down a partisan path, when we should be embracing bipartisanship and working in a responsible, bipartisan manner on tax reform.

Even though some of these bills were introduced individually with some bipartisan support, the opposition to these bills was based on the position that these tax provisions should not be made permanent by adding to the deficit without any revenue offset. Our nation's small businesses play a vital role in the economy. They are the backbone of our communities, creating jobs, economic growth, and harnessing the American entrepreneurial spirit—this is undeniable. But the approach that the Committee Republicans are taking with respect to this and other important legislation undermines the bipartisan support that the provisions enjoy. The American people expect a tax code that maintains and supports our shared priorities, and each time the Committee considers these bills in a piecemeal approach, it is taking a step in the wrong direction.

We all support the small businesses in our communities and across the nation. The markup was not to debate the economic growth driven by small businesses, or the merits of H.R. 636, which would make permanent provisions that allow small businesses to immediately recover the costs of capital investments.

Finally, we also oppose the manner in which Republicans were proceeding—selecting seven provisions to make permanent at a cost of nearly \$100 billion without any offset from the approximately 60 tax provisions that expired at the end of last year. This approach is both fiscally irresponsible and contrary to the goals of bipartisan, comprehensive tax reform.

Expired provisions must be dealt with in a comprehensive manner. The Republicans did not take up other tax extenders that also are important to Democratic Committee Members. Left to an uncertain fate are provisions like the Work Opportunity Tax Credit, the New Markets Tax Credit, and the renewable energy tax credits, as well as the long-term status of the Earned Income Tax Credit, the Child Tax Credit, and the American Opportunity Tax Credit.

Sincerely,

SANDER M. LEVIN,
Ranking Member.

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