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SENATE

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S. RES. 252

DECEMBER 20, 2016.—Ordered to be printed

Filed, under authority of the order of the Senate of December 10 (legislative day,
December 9), 2016

Mr. VITTER, from the Committee on Small Business and
Entrepreneurship, submitted the following

R E P O R T

[To accompany S. Res. 252]

The Committee on Small Business and Entrepreneurship, having considered an original resolution (S. Res. 252) expressing the sense of the Committee on Small Business and Entrepreneurship of the Senate relating to easing the burden of Federal tax compliance on small businesses, having considered the same, reports favorably thereon without amendment and with a preamble and recommends that the resolution do pass.

I. INTRODUCTION

An original resolution expressing the sense of the Committee on Small Business and Entrepreneurship of the Senate relating to easing the burden of federal tax compliance on small businesses, S. Res. 252 was introduced by Senator Vitter on September 15, 2015.

II. HISTORY (PURPOSE & NEED FOR LEGISLATION)

When the federal tax code was created, it contained only 400 pages, but since then has grown to about 74,000 pages. As the tax code has expanded, the compliance costs have increased with it. Most small businesses do not have an in-house accounting department and depend on costly outside accounting and legal services. As such, small businesses have a disproportionate compliance burden.

According to the National Federation of Independent Businesses (NFIB), for small businesses, the cost of compliance is 70 percent

higher than the cost of compliance for larger firms. According to a National Small Business Association (NSBA) small business survey, a small business' administrative burden for tax compliance is greater than its actual tax liability. NFIB reported that small businesses spend 1.7 billion hours on tax compliance every year, which amounts to approximately \$16 billion in compliance related costs. Nearly 40 percent of small businesses spend 80 hours or more per year on tax compliance, and 25 percent of small business spend more than 120 hours. By reducing these compliance burdens, small business owners can put more money back into their business, community, and the economy.

The policy changes included in the resolution have received broad support. Many organizations offered their letter of support, such as the NFIB, NSBA, Louisiana Association of Business and Industry, the Small Business and Entrepreneurship Council, the Small Business Investor Alliance, the Small Business Advocacy Council, and others. Other organizations have offered support publicly, such as the American Institute of CPAs, the National Association for the Self-Employed, and the chambers of commerce from several states.

III. HEARINGS & ROUNDTABLES

In the 114th Congress:

On April 2, 2015, the Committee held a field hearing, titled, "Reducing the Federal Tax Burden for America's Small Businesses" in Lafayette, Louisiana. The Committee heard testimony from local small business owners regarding their difficulty in keeping up with changes to the tax code.

On July 22, 2015, the Committee held a hearing, titled, "Targeted Tax Reform: Solutions to Relieve the Tax Compliance Burdens for America's Small Businesses." The hearing examined the significant tax compliance burden on small businesses. The Committee heard testimony from small business owners and industry advocates. Witnesses discussed the compliance burdens and how they can outweigh their actual tax liability. The witnesses suggested extending the cash accounting threshold, as well as updating tax exclusions and deductions to reflect the changes that result from inflation.

IV. DESCRIPTION OF BILL

This resolution endorses provisions amending the Internal Revenue Code relating to the taxation of small businesses. It recommends allowing small business entities with gross receipts not exceeding \$25 million to use the cash method of accounting. It also eliminates the restrictions on depreciating computers or peripheral equipment. The resolution also extends the tax deduction for the health insurance costs of self-employed individuals. The legislation requires inflation adjustments after 2015 to the dollar amounts of specified tax exclusions and deductions. It also modifies return due dates for partnerships, C corporations, S corporations, and other entities and reduces the required holding period from 5 to 3 years for qualified small business stock and extends the rollover period for such stock.

V. COMMITTEE VOTE

In compliance with rule XXVI (7)(b) of the Standing Rules of the Senate, the following vote was recorded on July 29, 2015. A motion to adopt the Promotion and Expansion of Private Employee Ownership Act of 2015, a resolution to recognize the need for tax compliance reform in order to ease the disproportionate burden on small businesses, was approved, unanimously by voice vote with the following Senators present: Senators Vitter, Scott, Fischer, Gardner, Ernst, Enzi, Shaheen, Cantwell, Heitkamp, Booker, Hirono, and Peters.

VI. EVALUATION OF REGULATORY IMPACT

In compliance with rule XXVI (11)(b) of the Standing Rules of the Senate, it is the opinion of the Committee that no significant additional regulatory impact will be incurred in carrying out the provisions of this legislation. There will be no additional impact on the personal privacy of companies or individuals who utilize the services provided.

VII. SECTION-BY-SECTION ANALYSIS

Section 101—Expansion of cash accounting threshold

This section explains why cash accounting, as opposed to accrual, is a much simpler accounting method and is often utilized by small businesses. Cash accounting allows for flexibility, especially for retail stores dealing with cash. The accrual accounting method is more complicated and considers accounts receivable rather than money a business may have on hand. This section recommends extending the cash accounting threshold from \$5 million to \$25 million in order reflect inflationary changes and give businesses more options.

Section 102—Modification of safe harbor for expensing of acquisition or production costs of tangible property

This section states that a taxpayer electing to apply for de minimis safe harbor, is permitted to deduct certain amounts paid to acquire, produce, or improve tangible property for tax purposes provided certain requirements are met. The de minimis safe harbor election provides two threshold amounts: \$500 for taxpayers without an AFS and \$5,000 for taxpayers with an AFS. An AFS is a certified financial statement from a CPA that costs thousands of dollars and is traditionally something a smaller business does not have. Therefore, they are bound by the \$500 limit which is arbitrarily low, compared with the significantly higher \$5,000 limit available to those companies who can afford an AFS. In increasing the limit to \$2,500, small businesses can take advantage of de minimis safe harbor and they will not have to pay thousands of dollars for an AFS. In small businesses this more accurately reflects the costs associated with “acquiring, producing, or improving tangible property.”

Section 103—Removal of computer equipment from listed property

This section eliminates burdensome record keeping requirements on business computer and communication equipment usage. The

Small Business Jobs Act of 2010 eliminated the requirements for documenting business cell phone usage, but the law did not address burdensome requirements on similar business communication devices and portable computers. With the merging of cell phones, computers, and cameras into single inexpensive devices, the remaining “listed property” reporting requirements and deduction limitations for business computers should be eliminated.

Section 104—Deduction for health insurance costs in computing self-employment taxes

This section allows for the full deductibility for health insurance purchased by the self-employed. Self-employed individuals, unlike other businesses, cannot fully deduct the cost of their health insurance as a business expense. The issue arises when self-employed individuals have to pay the 15.3% tax on their employer-provided health insurance costs to which nobody else is subjected. Because individuals cannot deduct this as an ordinary business expense, the 15.3% payroll tax self-employed individuals pay on their premiums amounts to \$1,940.04 in extra taxes that only the self-employed pay. The Small Business Jobs and Credit Act of 2010 allowed self-employed individuals to fully deduct the cost of their health insurance from their self-employment taxes but for one year only.

Section 105—Modification of rules relating to the termination of partnerships and S Corporations

This section modifies the rules on the termination of partnerships and S Corps. Terminated partnerships for tax purposes are treated as a newly formed entity. In many case companies don't always realize they have to file a “final” tax return after the partnership termination, leading to companies misunderstanding the rules and having to pay penalties if they miss the deadline. This often serves as more of a trap for small businesses rather than a process to help prevent tax abuse.

Section 201—Inflation adjustments for certain provisions

This section adopts a new inflationary standard that is an adjustment to the provision to numerous fixed limitation amounts in different provisions. Many of the IRS' business provisions and limits were established decades ago and have not grown to keep pace with inflation. This includes the gift tax limit of \$25, which was passed in 1962, and if adjusted for inflation would now be \$172 and the Employee Achievement Awards that have a \$400 and \$1,600 limit which have been the same since 1986. Other specific provisions include the ceiling of group-term limit insurance, exclusion for education assistance from an employer, and a deduction for contributing property or a vehicle. The inflation adjustments that are present throughout IRS statutes can have the opportunity to be standardized.

Section 202—Report on improvements to customer section

This section directs the IRS to produce a report to the Small Business Committee no later than June 30, 2016 on specific ways and ideas to improve its customer service to small businesses and shorten its turnaround time for small entities. This idea report stems from the method of the IRS to catch small business centers

in an act. Though it is very hard to attempt a change to an agency with this mentality, the first step is to signal to the public that the Congress is aware of the relationship between the IRS and small business community and is working to address it.

Section 203—Return due date modifications

This section resets dates of certain business filings. For many small businesses, a delayed tax statement from an entity can result in a late tax filing thus incurring a penalty, requesting an extension, or attempting to rush the tax prep leading to mistakes which may lead to more penalties.

Section 301—Reduction in holding period for qualified small business stock

This section shortens the holding period under Section 1202 to three years. The holding period to qualify for the reduced capital gains tax rate, which is a special incentive designed to help startups, under Section 1202 is five years. However, this tax incentive is supposed to encourage investments in startup company and five years' defeats that purpose. The regular long-term capital gains holding period is 1 year. Therefore, a more appropriate holding period for the tax incentive to invest in startups under Section 1202 would be 3 years.

Section 302—Extend of Rollover Period for Qualified Small Business Stock

This section extends the Rollover Period on Qualified Small Business Stock from 60 days to 1 year. Section 1045 was designed to encourage investments in qualified small businesses. In Section 1045, a taxpayer is allowed to roll over their investment in a qualified small business stock into other qualified small business stock tax free. Section 1045 has a very short window in which to make the rollover investment: 60 days. In many cases investors need time to transition investments from one place to another. Your typical angel investment takes months to find and is especially true for investors outside of large metropolitan areas.

Section 402—Findings

This section shows findings that the Employee Retirement Income Security Act of 1974 (ESOP) has been successful in providing meaningful retirement savings for S Corp owners.

Section 403—Deferral of tax for certain sales of employer stock to employee stock ownership plan sponsored by S Corporation

This enables owners of S Corporations in addition to existing C Corporations to sell their stock to an ESOP.

Section 404—Department of Treasury Technical Assistance Office

This directs the Department of Treasury to conduct outreach to inform companies and individuals about the possibilities and benefits of employee ownership of S Corps, while providing technical assistance to S Corps in sponsoring ESOPs.

Section 405—Small business and employee stock ownership

This defines the terms “ESOP” and “ESOP business concern.”

