

109TH CONGRESS
1ST SESSION

H. R. 3586

To amend the Internal Revenue Code of 1986 to provide for Small Business Protection Accounts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2005

Mr. PORTER introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to provide for Small Business Protection Accounts, and for other purposes.

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 Protec-

5 tion Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress hereby finds that—

1 (1) small businesses represent more than 99
2 percent of all employers,

3 (2) the majority of private sector employees
4 work for small businesses,

5 (3) more than half of all high-tech workers
6 work for small businesses,

7 (4) small businesses are responsible for the ma-
8 jority of net job creation in the United States,

9 (5) more than 12 million small businesses are
10 owned by women or minorities,

11 (6) small businesses face unique challenges in
12 accessing capital markets,

13 (7) small businesses are exposed to more mar-
14 ket volatility than larger employers,

15 (8) small businesses are hurt disproportionately
16 by costs imposed by government regulations, and

17 (9) small businesses are in need of reforms to
18 the tax code that reflect these unique challenges.

19 **SEC. 3. PURPOSES.**

20 The purposes of this Act are—

21 (1) to provide employees salaries and benefits,
22 and to help ensure solvency of small businesses dur-
23 ing times of recession,

24 (2) to encourage the formation, growth, and
25 survival of small businesses,

1 (3) to encourage opportunities for charitable
2 giving by small businesses, and

3 (4) to enable small businesses to stimulate the
4 national economy through increased employment and
5 capital generation.

6 **SEC. 4. SMALL BUSINESS PROTECTION ACCOUNTS.**

7 (a) IN GENERAL.—Subpart C of part II of sub-
8 chapter E of chapter 1 of the Internal Revenue Code of
9 1986 (relating to taxable year for which deductions taken)
10 is amended by inserting after section 468B the following:

11 **“SEC. 468C. SMALL BUSINESS PROTECTION ACCOUNTS.**

12 “(a) DEDUCTION ALLOWED.—In the case of an indi-
13 vidual engaged in an eligible small business, there shall
14 be allowed as a deduction for any taxable year the amount
15 paid in cash by the taxpayer during the taxable year to
16 a Small Business Protection Account.

17 “(b) LIMITATION.—

18 “(1) IN GENERAL.—The amount which a tax-
19 payer may pay into a Small Business Protection Ac-
20 count for any taxable year shall not exceed 50 per-
21 cent of so much of the net profit of the taxpayer
22 (determined without regard to this section) which is
23 attributable (determined in the manner applicable
24 under section 1301) to any trade or business.

1 “(2) CARRYOVER OF EXCESS LIMITATION.—If
2 the limitation under paragraph (1) for any taxable
3 year exceeds the amount paid by the taxpayer to the
4 taxpayer’s Small Business Protection Account for
5 such year, the limitation under paragraph (1) for
6 the following taxable year (determined without re-
7 gard to this paragraph) shall be increased by such
8 excess.

9 “(c) ELIGIBLE SMALL BUSINESS.—For purposes of
10 this section, the term ‘eligible small business’ means any
11 trade or business if—

12 “(1) such trade or business (or any predecessor
13 thereof) meets the gross receipts test of section
14 448(c) for all prior taxable years,

15 “(2) such trade or business is not a passive ac-
16 tivity (within the meaning of section 469(c)) of the
17 taxpayer,

18 “(3) such trade or business is not a farming
19 business (as defined in section 263A(e)(4)), and

20 “(4) such trade or business has never been de-
21 termined by the United States Equal Employment
22 Opportunity Commission to have engaged in job dis-
23 crimination.

24 “(d) SMALL BUSINESS PROTECTION ACCOUNT.—For
25 purposes of this section—

1 “(1) IN GENERAL.—The term ‘Small Business
2 Protection Account’ means a trust created or orga-
3 nized in the United States for the exclusive benefit
4 of the taxpayer, but only if the written governing in-
5 strument creating the trust meets the following re-
6 quirements:

7 “(A) No contribution will be accepted for
8 any taxable year in excess of the amount al-
9 lowed as a deduction under subsection (a) for
10 such year.

11 “(B) The trustee is a bank (as defined in
12 section 408(n)) or another person who dem-
13 onstrates to the satisfaction of the Secretary
14 that the manner in which such person will ad-
15 minister the trust will be consistent with the re-
16 quirements of this section.

17 “(C) The assets of the trust consist en-
18 tirely of cash or of obligations which have ade-
19 quate stated interest (as defined in section
20 1274(c)(2)) and which pay such interest not
21 less often than annually.

22 “(D) All income of the trust is distributed
23 currently to the grantor.

24 “(E) The assets of the trust will not be
25 commingled with other property except in a

1 common trust fund or common investment
2 fund.

3 “(2) ACCOUNT TAXED AS GRANTOR TRUST.—

4 The grantor of a Small Business Protection Account
5 shall be treated for purposes of this title as the
6 owner of such Account and shall be subject to tax
7 thereon in accordance with subpart E of part I of
8 subchapter J of this chapter (relating to grantors
9 and others treated as substantial owners).

10 “(e) INCLUSION OF AMOUNTS DISTRIBUTED.—

11 “(1) IN GENERAL.—Except as provided in para-
12 graph (2), there shall be includible in the gross in-
13 come of the taxpayer for any taxable year—

14 “(A) any amount distributed from a Small
15 Business Protection Account of the taxpayer
16 during such taxable year, and

17 “(B) any deemed distribution under—

18 “(i) subsection (f)(1) (relating to de-
19 posits not distributed within 5 years),

20 “(ii) subsection (f)(2) (relating to ces-
21 sation in eligible small business), and

22 “(iii) subparagraph (A) or (B) of sub-
23 section (f)(3) (relating to prohibited trans-
24 actions and pledging account as security).

1 “(2) EXCEPTIONS.—Paragraph (1)(A) shall not
2 apply to—

3 “(A) any distribution to the extent attrib-
4 utable to income of the Account, and

5 “(B) the distribution of any contribution
6 paid during a taxable year to a Small Business
7 Protection Account to the extent that such con-
8 tribution exceeds the limitation applicable under
9 subsection (b) if requirements similar to the re-
10 quirements of section 408(d)(4) are met.

11 For purposes of subparagraph (A), distributions
12 shall be treated as first attributable to income and
13 then to other amounts.

14 “(f) SPECIAL RULES.—

15 “(1) TAX ON DEPOSITS IN ACCOUNT WHICH
16 ARE NOT DISTRIBUTED WITHIN 5 YEARS.—

17 “(A) IN GENERAL.—If, at the close of any
18 taxable year, there is a nonqualified balance in
19 any Small Business Protection Account—

20 “(i) there shall be deemed distributed
21 from such Account during such taxable
22 year an amount equal to such balance, and

23 “(ii) the taxpayer’s tax imposed by
24 this chapter for such taxable year shall be

1 increased by 10 percent of such deemed
2 distribution.

3 The preceding sentence shall not apply if an
4 amount equal to such nonqualified balance is
5 distributed from such Account to the taxpayer
6 before the due date (including extensions) for
7 filing the return of tax imposed by this chapter
8 for such year (or, if earlier, the date the tax-
9 payer files such return for such year).

10 “(B) NONQUALIFIED BALANCE.—For pur-
11 poses of subparagraph (A), the term ‘non-
12 qualified balance’ means any balance in the Ac-
13 count on the last day of the taxable year which
14 is attributable to amounts deposited in such Ac-
15 count before the 4th preceding taxable year.

16 “(C) ORDERING RULE.—For purposes of
17 this paragraph, distributions from a Small
18 Business Protection Account (other than dis-
19 tributions of current income) shall be treated as
20 made from deposits in the order in which such
21 deposits were made, beginning with the earliest
22 deposits.

23 “(2) CESSATION IN ELIGIBLE BUSINESS.—At
24 the close of the first disqualification period after a
25 period for which the taxpayer was engaged in an eli-

1 gible small business, there shall be deemed distrib-
2 uted from the Small Business Protection Account of
3 the taxpayer an amount equal to the balance in such
4 Account (if any) at the close of such disqualification
5 period. For purposes of the preceding sentence, the
6 term ‘disqualification period’ means any period of 2
7 consecutive taxable years for which the taxpayer is
8 not engaged in an eligible small business.

9 “(3) CERTAIN RULES TO APPLY.—Rules similar
10 to the following rules shall apply for purposes of this
11 section:

12 “(A) Section 220(f)(8) (relating to treat-
13 ment on death).

14 “(B) Section 408(e)(2) (relating to loss of
15 exemption of account where individual engages
16 in prohibited transaction).

17 “(C) Section 408(e)(4) (relating to effect
18 of pledging account as security).

19 “(D) Section 408(g) (relating to commu-
20 nity property laws).

21 “(E) Section 408(h) (relating to custodial
22 accounts).

23 “(4) TIME WHEN PAYMENTS DEEMED MADE.—
24 For purposes of this section, a taxpayer shall be
25 deemed to have made a payment to a Small Busi-

1 ness Protection Account on the last day of a taxable
2 year if such payment is made on account of such
3 taxable year and is made on or before the due date
4 (without regard to extensions) for filing the return
5 of tax for such taxable year.

6 “(5) INDIVIDUAL.—For purposes of this sec-
7 tion, the term ‘individual’ shall not include an estate
8 or trust.

9 “(6) DEDUCTION NOT ALLOWED FOR SELF-EM-
10 PLOYMENT TAX.—The deduction allowable by reason
11 of subsection (a) shall not be taken into account in
12 determining an individual’s net earnings from self-
13 employment (within the meaning of section 1402(a))
14 for purposes of chapter 2.

15 “(g) REPORTS.—The trustee of a Small Business
16 Protection Account shall make such reports regarding
17 such Account to the Secretary and to the person for whose
18 benefit the Account is maintained with respect to contribu-
19 tions, distributions, and such other matters as the Sec-
20 retary may require under regulations. The reports re-
21 quired by this subsection shall be filed at such time and
22 in such manner and furnished to such persons at such
23 time and in such manner as may be required by such regu-
24 lations.”.

25 (b) TAX ON EXCESS CONTRIBUTIONS.—

1 (1) Subsection (a) of section 4973 of such Code
2 (relating to tax on excess contributions to certain
3 tax-favored accounts and annuities) is amended by
4 redesignating paragraphs (4) and (5) as paragraphs
5 (5) and (6), respectively, and by inserting after
6 paragraph (3) the following:

7 “(4) a Small Business Protection Account
8 (within the meaning of section 468C(d)),”.

9 (2) Section 4973 of such Code is amended by
10 adding at the end the following:

11 “(h) EXCESS CONTRIBUTIONS TO SMALL BUSINESS
12 PROTECTION ACCOUNT.—For purposes of this section, in
13 the case of a Small Business Protection Account (within
14 the meaning of section 468C(d)), the term ‘excess con-
15 tributions’ means the amount by which the amount con-
16 tributed for the taxable year to the Account exceeds the
17 amount which may be contributed to the Account under
18 section 468C(b) for such taxable year. For purposes of
19 this subsection, any contribution which is distributed out
20 of the Small Business Protection Account in a distribution
21 to which section 468C(e)(2)(B) applies shall be treated as
22 an amount not contributed.”.

23 (3) The section heading for section 4973 of
24 such Code is amended to read as follows:

1 **“SEC. 4973. EXCESS CONTRIBUTIONS TO CERTAIN AC-**
2 **COUNTS, ANNUITIES, ETC.”.**

3 (4) The table of sections for chapter 43 of such
4 Code is amended by striking the item relating to sec-
5 tion 4973 and inserting the following:

“Sec. 4973. Excess contributions to certain accounts, annuities, etc.”.

6 (c) **TAX ON PROHIBITED TRANSACTIONS.—**

7 (1) Subsection (c) of section 4975 of such Code
8 (relating to tax on prohibited transactions) is
9 amended by adding at the end the following:

10 “(7) **SPECIAL RULE FOR SMALL BUSINESS PRO-**
11 **TECTION ACCOUNT.—**A person for whose benefit a
12 Small Business Protection Account (within the
13 meaning of section 468C(d)) is established shall be
14 exempt from the tax imposed by this section with re-
15 spect to any transaction concerning such account
16 (which would otherwise be taxable under this sec-
17 tion) if, with respect to such transaction, the ac-
18 count ceases to be a Small Business Protection Ac-
19 count by reason of the application of section
20 468C(f)(3)(A) to such account.”.

21 (2) Paragraph (1) of section 4975(e) of such
22 Code is amended by redesignating subparagraphs
23 (F) and (G) as subparagraphs (G) and (H), respec-
24 tively, and by inserting after subparagraph (E) the
25 following:

1 “(F) a Small Business Protection Account
2 described in section 468C(d),”.

3 (d) FAILURE TO PROVIDE REPORTS ON SMALL BUSI-
4 NESS PROTECTION ACCOUNTS.—Paragraph (2) of section
5 6693(a) of such Code (relating to failure to provide re-
6 ports on certain tax-favored accounts or annuities) is
7 amended by redesignating subparagraphs (D) and (E) as
8 subparagraphs (E) and (F), respectively, and by inserting
9 after subparagraph (C) the following:

10 “(D) section 468C(g) (relating to Small
11 Business Protection Accounts),”.

12 (e) CLERICAL AMENDMENT.—The table of sections
13 for subpart C of part II of subchapter E of chapter 1 of
14 such Code is amended by inserting after the item relating
15 to section 468B the following:

 “Sec. 468C. Small Business Protection Accounts.”.

16 (f) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 the date of the enactment of this Act.

19 (g) REPORT.—Not later than 1 year after the date
20 of the enactment of this Act, the Administrator of the
21 Small Business Administration shall submit a report on
22 the implementation and effectiveness of section 468C of
23 the Internal Revenue Code of 1986 (as added by this sec-
24 tion), with emphasis on the impact of Small Business Pro-
25 tection Accounts in enterprise and similar zones, to the

1 Committee on Small Business of the House of Representa-
2 tives and the Committee on Small Business and Entrepre-
3 neurship of the Senate.

4 **SEC. 5. ADMINISTRATIVE AUTHORITY.**

5 The Administrator of the Small Business Administra-
6 tion shall designate the Small Business Development Cen-
7 ter Program as the lead agency for assisting small busi-
8 nesses in establishing and operating Small Business Pro-
9 tection Accounts. The Internal Revenue Service shall pro-
10 vide such assistance to the Small Business Administration
11 as necessary for the purposes of this section.

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