

111TH CONGRESS  
2D SESSION

# H. R. 5978

To amend the Internal Revenue Code of 1986 to allow loans from certain retirement plans for the payment of certain small business expenses.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2010

Ms. TSONGAS (for herself, Ms. CLARKE, Ms. RICHARDSON, Mr. SIMPSON, Mr. KAGEN, Mr. CONNOLLY of Virginia, Mr. LANCE, Mr. COURTNEY, Mr. KILDEE, and Mr. COFFMAN of Colorado) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to allow loans from certain retirement plans for the payment of certain small business expenses.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Small Business Tax  
5       Relief and Retirement Restoration Act of 2010”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

8               (1) Small businesses are critical to the eco-  
9       nomic recovery of the United States.

1           (2) As a consequence of the recession that  
2       began in December 2007, even fundamentally  
3       healthy small businesses have been unable to access  
4       the credit they need.

5           (3) Data released by the Federal Deposit Insur-  
6       ance Corporation indicate that lending to small busi-  
7       nesses fell in 2009 by “the largest percentage de-  
8       cline since 1942”.

9           (4) Limited access to credit has forced many  
10      small business owners to use their personal assets,  
11      including retirement savings, to ensure that their en-  
12      terprises survive.

13          (5) Such actions have helped to mitigate fur-  
14      ther job losses.

15          (6) While it is appropriate for Congress to re-  
16      sist calls to allow individual retirement account hold-  
17      ers to withdraw loans during normal economic times,  
18      the current recession represents an extraordinary  
19      situation during which extraordinary measures must  
20      be taken.

21          (7) A targeted and temporary suspension of  
22      penalties for loans made from retirement accounts  
23      will help small businesses recover and provide a di-  
24      rect infusion of funds into the economy.

1 **SEC. 3. LOANS FROM INDIVIDUAL RETIREMENT PLANS FOR**  
 2 **CERTAIN SMALL BUSINESS EXPENSES.**

3 (a) IN GENERAL.—Subsection (e) of section 408 of  
 4 the Internal Revenue Code of 1986 (relating to tax treat-  
 5 ment of accounts and annuities) is amended by adding at  
 6 the end the following new paragraph:

7 “(7) TEMPORARY EXCEPTION FOR LOANS FROM  
 8 INDIVIDUAL RETIREMENT PLANS FOR CERTAIN  
 9 SMALL BUSINESS EXPENSES.—

10 “(A) IN GENERAL.—On election of the tax-  
 11 payer, paragraphs (2) and (3) of this subsection  
 12 and section 4975 shall not apply with respect to  
 13 any qualified small business loan from an indi-  
 14 vidual retirement plan to the individual for  
 15 whose benefit the plan is maintained.

16 “(B) QUALIFIED SMALL BUSINESS  
 17 LOAN.—For purposes of this paragraph—

18 “(i) IN GENERAL.—The term ‘quali-  
 19 fied small business loan’ means, with re-  
 20 spect to any taxable year, a loan the prin-  
 21 cipal amount of which does not exceed the  
 22 amounts paid or incurred by the taxpayer,  
 23 with respect to a trade or business carried  
 24 on by the taxpayer—

25 “(I) for the purchase of property  
 26 which is placed in service during the

1 taxable year which is used in the  
2 trade or business of the taxpayer and  
3 which is subject to the allowance for  
4 depreciation provided in section 167  
5 or is real property used in such trade  
6 or business, or—

7 “(II) for salaries or wages (other  
8 than for bonuses) of unrelated em-  
9 ployees in such trade or business for  
10 the taxable year.

11 “(ii) AGGREGATION OF LOANS.—All  
12 loans with respect to which the taxpayer  
13 elects the application of this paragraph for  
14 the taxable year shall be aggregated for  
15 purposes of determining whether a loan is  
16 a qualified small business loan under  
17 clause (i).

18 “(C) REQUIREMENTS RELATED TO LOAN  
19 REPAYMENTS.—

20 “(i) REQUIREMENT THAT LOAN BE  
21 REPAYED WITHIN 5 YEARS.—Paragraph (1)  
22 shall not apply to any loan unless such  
23 loan is required, by its terms, to be repaid  
24 within 5 years.

1           “(ii) REQUIREMENT OF LEVEL AMOR-  
2           TIZATION.—Rules similar to the rules of  
3           section 72(p)(2)(C) shall apply for pur-  
4           poses of this subsection.

5           “(iii) FAILURE TO REPAY TREATED AS  
6           DISTRIBUTION.—A qualified small business  
7           loan shall not be treated as a distribution  
8           from the individual retirement plan except  
9           that any repayment of a qualified small  
10          business loan which is not made on the  
11          date that such payment is due shall be  
12          treated as a distribution from the indi-  
13          vidual retirement plan on such date.

14          “(D) RELATED PERSONS.—For purposes  
15          of this paragraph, a person shall be treated as  
16          related to another person if the relationship be-  
17          tween such persons would result in the disallow-  
18          ance of losses under section 267 or 707(b).

19          “(E) TERMINATION.—Subparagraph (A)  
20          shall not apply to any loan made after Decem-  
21          ber 31, 2010.”.

22          (b) EFFECTIVE DATE.—

23                (1) IN GENERAL.—The amendments made by  
24          this section shall apply to loans made after Decem-  
25          ber 31, 2007.

1           (2) DISTRIBUTIONS PRIOR TO DATE OF ENACT-  
2           MENT.—In the case of any distribution made after  
3           December 31, 2007, and before the date of the en-  
4           actment of this Act, if the taxpayer so elects (at  
5           such time and in such form and manner as the Sec-  
6           retary of the Treasury shall prescribe), such dis-  
7           tribution shall be treated as a loan for purposes of  
8           section 408(e)(7) of the Internal Revenue Code of  
9           1986, but only to the extent such distribution does  
10          not exceed the amount described in subparagraph  
11          (B) thereof (in the taxable year of distribution), and  
12          only if beginning on a date not later than 1 year  
13          after the date of the enactment of this Act such dis-  
14          tribution meets the requirements of section  
15          408(e)(7) of such Code.

16 **SEC. 4. QUALIFIED SMALL BUSINESS LOANS FROM QUALI-**  
17 **FIED EMPLOYER PLAN.**

18          (a) IN GENERAL.—Subsection (p) of section 72 of the  
19 Internal Revenue Code of 1986 is amended by adding at  
20 the end the following new paragraph:

21               “(6) SPECIAL RULE FOR QUALIFIED SMALL  
22 BUSINESS LOANS.—

23               “(A) IN GENERAL.—On the election of the  
24 taxpayer, paragraph (1) shall not apply to any  
25 loan to the extent that such loan is a qualified

1 small business loan that meets the requirements  
2 of subparagraphs (B)(i) and (C) of paragraph  
3 (2).

4 “(B) APPLICATION OF LIMITATION AND  
5 COORDINATION WITH PRE-EFFECTIVE DATE  
6 LOANS.—Any qualified small business loan shall  
7 be taken into account under paragraph (2) only  
8 with respect to amounts received as a loan  
9 (other than qualified small business loans) after  
10 the date of the enactment of this paragraph.

11 “(C) QUALIFIED SMALL BUSINESS  
12 LOAN.—For purposes of this paragraph, the  
13 term ‘qualified small business loan’ shall have  
14 the meaning given such term in section  
15 408(e)(7)(B).

16 “(D) TERMINATION.—This paragraph  
17 shall not apply to any amount received as a  
18 loan after December 31, 2010.”.

19 (b) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to loans made after December 31,  
21 2007.

22 (c) DISTRIBUTIONS PRIOR TO DATE OF ENACT-  
23 MENT.—In the case of any distribution made after Decem-  
24 ber 31, 2007, and before the date of the enactment of  
25 this Act, if the taxpayer so elects (at such time and in

1 such form and manner as the Secretary of the Treasury  
2 shall prescribe), such distribution shall be treated as a  
3 loan to which section 72(p)(1) of the Internal Revenue  
4 Code of 1986 does not apply, but only to the extent such  
5 distribution does not exceed the amount described in sec-  
6 tion 408(e)(7)(B) of such Code (in the taxable year of dis-  
7 tribution), and only if beginning on a date not later than  
8 1 year after the date of the enactment of this Act such  
9 distribution is structured as a loan which meets the re-  
10 quirements of subparagraphs (B)(i) and (C) of section  
11 72(p)(2) of such Code.

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