

112TH CONGRESS
2D SESSION

H. R. 9

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

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
5 Cut Act”.

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

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

1 **“SEC. 200. DOMESTIC BUSINESS INCOME OF QUALIFIED**
2 **SMALL BUSINESSES.**

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

6 “(1) the qualified domestic business income of
7 the taxpayer for the taxable year, or

8 “(2) taxable income (determined without regard
9 to this section) for the taxable year.

10 “(b) DEDUCTION LIMITED BASED ON WAGES
11 PAID.—

12 “(1) IN GENERAL.—The amount of the deduc-
13 tion allowable under subsection (a) for any taxable
14 year shall not exceed 50 percent of the greater of—

15 “(A) the W-2 wages of the taxpayer paid
16 to non-owners, or

17 “(B) the sum of—

18 “(i) the W-2 wages of the taxpayer
19 paid to individuals who are non-owner fam-
20 ily members of direct owners, plus

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

23 “(2) DEFINITIONS RELATED TO OWNERSHIP.—
24 For purposes of this section—

25 “(A) NON-OWNER.—The term ‘non-owner’
26 means, with respect to any qualified small busi-

1 ness, any person who does not own (and is not
2 considered as owning within the meaning of
3 subsection (c) or (e)(3) of section 267, as the
4 case may be) any stock of such business (or, if
5 such business is other than a corporation, any
6 capital or profits interest of such business).

7 “(B) NON-OWNER FAMILY MEMBERS.—An
8 individual is a non-owner family member of a
9 direct owner if—

10 “(i) such individual is family (within
11 the meaning of section 267(c)(4)) of a di-
12 rect owner, and

13 “(ii) such individual would be a non-
14 owner if subsections (c) and (e)(3) of sec-
15 tion 267 were applied without regard to
16 section 267(c)(2).

17 “(C) DIRECT OWNER.—The term ‘direct
18 owner’ means, with respect to any qualified
19 small business, any person who owns (or is con-
20 sidered as owning under the applicable non-
21 family attribution rules) any stock of such busi-
22 ness (or, if such business is other than a cor-
23 poration, any capital or profits interest of such
24 business).

1 “(D) 10-PERCENT-OR-LESS DIRECT OWN-
2 ERS.—The term ‘10-percent-or-less direct
3 owner’ means, with respect to any qualified
4 small business, any direct owner of such busi-
5 ness who owns (or is considered as owning
6 under the applicable non-family attribution
7 rules)—

8 “(i) in the case of a qualified small
9 business which is a corporation, not more
10 than 10 percent of the outstanding stock
11 of the corporation or stock possessing more
12 than 10 percent of the total combined vot-
13 ing power of all stock of the corporation,
14 or

15 “(ii) in the case of a qualified small
16 business which is not a corporation, not
17 more than 10 percent of the capital or
18 profits interest of such business.

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

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

3 “(A) IN GENERAL.—The term ‘W-2
4 wages’ means, with respect to any person for
5 any taxable year of such person, the sum of the
6 amounts described in paragraphs (3) and (8) of
7 section 6051(a) paid by such person with re-
8 spect to employment of employees by such per-
9 son during the calendar year ending during
10 such taxable year.

11 “(B) LIMITATION TO WAGES ATTRIB-
12 UTABLE TO QUALIFIED DOMESTIC BUSINESS IN-
13 COME.—Such term shall not include any
14 amount which is not properly allocable to do-
15 mestic business gross receipts for purposes of
16 subsection (c)(1).

17 “(C) OTHER REQUIREMENTS.—Except in
18 the case of amounts treated as W-2 wages
19 under paragraph (4)—

20 “(i) such term shall not include any
21 amount which is not allowed as a deduc-
22 tion under section 162 for the taxable
23 year, and

24 “(ii) such term shall not include any
25 amount which is not properly included in a

1 return filed with the Social Security Ad-
2 ministration on or before the 60th day
3 after the due date (including extensions)
4 for such return.

5 “(4) CERTAIN PARTNERSHIP DISTRIBUTIONS
6 TREATED AS W-2 WAGES.—

7 “(A) IN GENERAL.—In the case of a quali-
8 fied small business which is a partnership and
9 elects the application of this paragraph for the
10 taxable year—

11 “(i) the qualified domestic business
12 taxable income of such partnership for
13 such taxable year (determined after the ap-
14 plication of subparagraph (B)) which is al-
15 locable under rules similar to the rules of
16 section 199(d)(1)(A)(ii) to each qualified
17 service-providing partner shall be treated
18 for purposes of this section as W-2 wages
19 paid during such taxable year to such part-
20 ner as an employee, and

21 “(ii) the domestic business gross re-
22 ceipts of such partnership for such taxable
23 year shall be reduced by the amount so
24 treated.

1 “(B) QUALIFIED SERVICE-PROVIDING
2 PARTNER.—For purposes of this paragraph, the
3 term ‘qualified service-providing partner’ means
4 any partner who is a 10-percent-or-less direct
5 owner and who provides services to the partner-
6 ship.

7 “(5) ACQUISITIONS AND DISPOSITIONS.—The
8 Secretary shall provide for the application of this
9 subsection in cases where the taxpayer acquires, or
10 disposes of, the major portion of a trade or business
11 or the major portion of a separate unit of a trade
12 or business during the taxable year.

13 “(c) QUALIFIED DOMESTIC BUSINESS INCOME.—For
14 purposes of this section—

15 “(1) IN GENERAL.—The term ‘qualified domes-
16 tic business income’ for any taxable year means an
17 amount equal to the excess (if any) of—

18 “(A) the taxpayer’s domestic business
19 gross receipts for such taxable year, over

20 “(B) the sum of—

21 “(i) the cost of goods sold that are al-
22 locable to such receipts, and

23 “(ii) other expenses, losses, or deduc-
24 tions (other than the deduction allowed

1 under this section), which are properly al-
2 locable to such receipts.

3 “(2) DOMESTIC BUSINESS GROSS RECEIPTS.—

4 “(A) IN GENERAL.—The term ‘domestic
5 business gross receipts’ means the gross re-
6 ceipts of the taxpayer which are effectively con-
7 nected with the conduct of a trade or business
8 within the United States within the meaning of
9 section 864(c) but determined—

10 “(i) without regard to paragraphs (3),
11 (4), and (5) thereof, and

12 “(ii) by substituting ‘qualified small
13 business (within the meaning of section
14 200)’ for ‘nonresident alien individual or a
15 foreign corporation’ each place it appears
16 therein.

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

20 “(i) Gross receipts derived from the
21 sale or exchange of—

22 “(I) a capital asset, or

23 “(II) property used in the trade
24 or business (as defined in section
25 1231(b)).

1 “(ii) Royalties, rents, dividends, inter-
2 est, or annuities.

3 “(iii) Any amount which constitutes
4 wages (as defined in section 3401).

5 “(3) APPLICATION OF CERTAIN RULES.—Rules
6 similar to the rules of paragraphs (2) and (3) of sec-
7 tion 199(c) shall apply for purposes of this section
8 (applied with respect to qualified domestic business
9 income in lieu of qualified production activities in-
10 come and with respect to domestic business gross re-
11 ceipts in lieu of domestic production gross receipts).

12 “(d) QUALIFIED SMALL BUSINESS.—For purposes of
13 this section—

14 “(1) IN GENERAL.—The term ‘qualified small
15 business’ means any employer engaged in a trade or
16 business if such employer had fewer than 500 full-
17 time equivalent employees for either calendar year
18 2010 or 2011.

19 “(2) FULL-TIME EQUIVALENT EMPLOYEES.—
20 The term ‘full-time equivalent employees’ has the
21 meaning given such term by subsection (d)(2) of sec-
22 tion 45R applied—

23 “(A) without regard to subsection (d)(5) of
24 such section,

1 “(B) with regard to subsection (e)(1) of
2 such section, and

3 “(C) by substituting ‘calendar year’ for
4 ‘taxable year’ each place it appears therein.

5 “(3) EMPLOYERS NOT IN EXISTENCE PRIOR TO
6 2012.—In the case of an employer which was not in
7 existence on January 1, 2012, the determination
8 under paragraph (1) shall be made with respect to
9 calendar year 2012.

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

19 “(A) the number of days in such calendar
20 year, by

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

23 “(5) SPECIAL RULES.—

24 “(A) AGGREGATION RULE.—For purposes
25 of paragraph (1), any person treated as a single

1 employer under subsection (a) or (b) of section
2 52 (applied without regard to section 1563(b))
3 or subsection (m) or (o) of section 414 shall be
4 treated as a single employer for purposes of this
5 subsection.

6 “(B) PREDECESSORS.—Any reference in
7 this subsection to an employer shall include a
8 reference to any predecessor of such employer.

9 “(e) SPECIAL RULES.—

10 “(1) ELECTIVE APPLICATION OF DEDUCTION.—
11 Except as otherwise provided by the Secretary, the
12 taxpayer may elect not to take any item of income
13 into account as domestic business gross receipts for
14 purposes of this section.

15 “(2) COORDINATION WITH SECTION 199.—If a
16 deduction is allowed under this section with respect
17 to any taxpayer for any taxable year—

18 “(A) any gross receipts of the taxpayer
19 which are taken into account under this section
20 for such taxable year shall not be taken into ac-
21 count under section 199 for such taxable year,
22 and

23 “(B) the W-2 wages of the taxpayer which
24 are taken into account under this section shall

1 not be taken into account under section 199 for
2 such taxable year.

3 “(3) APPLICATION OF CERTAIN RULES.—Rules
4 similar to the rules of paragraphs (1), (2), (3), (4),
5 (6), and (7) of section 199(d) shall apply for pur-
6 poses of this section (applied with respect to quali-
7 fied domestic business income in lieu of qualified
8 production activities income).

9 “(f) REGULATIONS.—The Secretary shall prescribe
10 such regulations as are necessary to carry out the pur-
11 poses of this section, including regulations which prevent
12 a taxpayer which reorganizes from being treated as a
13 qualified small business if such taxpayer would not have
14 been treated as a qualified small business prior to such
15 reorganization.

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

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 56(d)(1)(A) of such Code is amend-
21 ed by striking “deduction under section 199” both
22 places it appears and inserting “deductions under
23 sections 199 and 200”.

24 (2) Section 56(g)(4)(C) of such Code is amend-
25 ed by adding at the end the following new clause:

1 “(vii) DEDUCTION FOR DOMESTIC
2 BUSINESS INCOME OF QUALIFIED SMALL
3 BUSINESSES.—Clause (i) shall not apply to
4 any amount allowable as a deduction under
5 section 200.”.

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

8 (A) Section 86(b)(2)(A).

9 (B) Section 135(c)(4)(A).

10 (C) Section 137(b)(3)(A).

11 (D) Section 219(g)(3)(A)(ii).

12 (E) Section 221(b)(2)(C)(i).

13 (F) Section 222 (b)(2)(C)(i).

14 (G) Section 246(b)(1).

15 (H) Section 469(i)(3)(F)(iii).

16 (4) Section 163(j)(6)(A)(i) of such Code is
17 amended by striking “and” at the end of subclause
18 (III) and by inserting after subclause (IV) the fol-
19 lowing new subclause:

20 “(V) any deduction allowable
21 under section 200, and”.

22 (5) Section 170(b)(2)(C) of such Code is
23 amended by striking “and” at the end of clause (iv),
24 by striking the period at the end of clause (v) and

1 inserting “, and”, and by inserting after clause (v)
2 the following new clause:

3 “(vi) section 200.”.

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

6 “(8) DOMESTIC BUSINESS INCOME OF QUALI-
7 FIED SMALL BUSINESSES.—The deduction under
8 section 200 shall not be allowed.”.

9 (7) Section 613(a) of such Code is amended by
10 striking “deduction under section 199” and insert-
11 ing “deductions under sections 199 and 200”.

12 (8) Section 613A(d)(1) of such Code is amend-
13 ed by redesignating subparagraphs (C), (D), and
14 (E) as subparagraphs (D), (E), and (F), respec-
15 tively, and by inserting after subparagraph (B) the
16 following new subparagraph:

17 “(C) any deduction allowable under section
18 200,”.

19 (9) Section 1402(a) of such Code is amended
20 by striking “and” at the end of paragraph (16), by
21 redesignating paragraph (17) as paragraph (18),
22 and by inserting after paragraph (16) the following
23 new paragraph:

24 “(17) the deduction provided by section 200
25 shall not be allowed; and”.

1 (c) CLERICAL AMENDMENT.—The table of sections
2 for part VI of subchapter B of chapter 1 of such Code
3 is amended by adding at the end the following new item:

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

