DESCRIPTION OF H.R. 9, THE "SMALL BUSINESS TAX CUT ACT"

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on March 28, 2012

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

March 26, 2012
JCX-30-12

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INTRODUCTION

The House Committee on Ways and Means has scheduled a markup on March 28, 2012, of H.R. 9, the "Small Business Tax Cut Act." This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the provisions of the bill.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 9, the "Small Business Tax Cut Act"* (JCX-30-12), March 26, 2012. This document can be found on our website at www.jct.gov.

A. Twenty-Percent Deduction for Domestic Business Income of Qualified Small Business

Present Law

C corporations

A C corporation[2] is subject to Federal income tax as an entity separate from its shareholders. A C corporation's income generally is taxed when earned at the corporate level and is taxed again at the individual level when distributed as dividends[3] to its shareholders. Corporate deductions and credits reduce only corporate income (and corporate income taxes) and are not passed directly through to shareholders.

Tax rates for C corporations

C corporations are taxed at statutory rates ranging from 15 percent (for taxable income up to $50,000) to 35 percent (for taxable income over $10,000,000); the intermediate rates are 25 percent (for taxable income above $50,000 but not exceeding $75,000) and 34 percent (for taxable income above $75,000 but not exceeding $10,000,000).[4] The benefit of graduated rates below 34 percent is phased out for C corporations with taxable income between $100,000 and $335,000, and the benefit of the 34 percent rate is phased out for C corporations with taxable income in excess of $15,000,000. C corporation long-term capital gains are taxed at the same rates as C corporation ordinary income. Thus, the maximum tax rate for C corporation net long-term capital gains is 35 percent.

A corporation is subject to an alternative minimum tax that is payable, in addition to all other tax liabilities, to the extent that it exceeds the corporation's regular income tax liability. The tax is imposed at a flat rate of 20 percent on alternative minimum taxable income in excess of a $40,000 exemption amount.[5] Certain credits that are allowed to offset a corporation's regular tax liability generally are not allowed to offset its minimum tax liability. If a corporation pays the alternative minimum tax, the amount of the tax paid is allowed as a credit against the regular tax in future years to the extent the regular tax exceeds the tentative minimum tax. Small corporations meeting a gross receipts test are exempt from the corporate alternative minimum

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[2] A C corporation is so named because its Federal tax treatment is governed by subchapter C of the Internal Revenue Code of 1986, as amended (the "Code").

[3] Distributions with respect to stock that exceed corporate earnings and profits are not taxed as dividend income to shareholders but are treated as a tax-free return of capital that reduces the shareholder's basis in the stock. Distributions in excess of corporate earnings and profits that exceed a shareholder's basis in the stock are treated as amounts received in exchange for the stock which, in general, are taxed to the shareholder at capital gains rates. Sec. 301(c).

[4] Sec. 11.

[5] The exemption amount is phased out for corporations with income above certain thresholds, and is completely phased out for corporations with alternative minimum taxable income of $310,000 or more.

tax. Generally, a corporation meets the gross receipts test if its average annual gross receipts for the prior three taxable years does not exceed $7.5 million.

Passthrough entities

S corporations

An S corporation[6] generally is not subject to corporate tax on its income.[7] Instead, S corporation shareholders include in income their pro rata shares of the S corporation's items of income (including tax-exempt income), gain, loss, deduction, credit, and nonseparately computed income or loss, whether or not distributed.[8] To be eligible to elect S corporation status, a corporation may not have more than 100 shareholders and may not have more than one class of stock.[9] Only individuals (other than nonresident aliens), certain tax-exempt organizations, and certain trusts and estates are permitted shareholders. A corporation may elect S corporation status only with the consent of all its shareholders, and may terminate its election with the consent of shareholders holding more than 50 percent of the stock.[10]

Partnerships

Partnerships generally are treated for Federal income tax purposes as passthrough entities, not subject to tax at the entity level.[11] Items of income (including tax-exempt income), gain, loss, deduction, and credit of the partnership are taken into account in computing the tax of the partners (based on the partnership's method of accounting and regardless of whether the income is distributed to the partners).[12] A partner's deduction for partnership losses is limited to the amount of the partner's adjusted basis in his or her partnership interest.[13] To the extent a loss is not allowed due to a limitation, it generally is carried forward to the next year. A partner's basis in the partnership interest generally equals the sum of (1) such partner's capital

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[6] An S corporation is so named because its Federal tax treatment is governed by subchapter S of the Code.

[7] Sec. 1363.

[8] Sec. 1366.

[9] Sec. 1361. For this purpose, a husband and wife and all members of a family are treated as one shareholder. Sec. 1361(c)(1).

[10] Sec. 1362.

[11] Sec. 701.

[12] Sec. 702(a). The recognition of income under this rule does not necessarily correspond with distributions from the partnership to cover the tax liabilities of individual partners.

[13] Sec. 704(d). In addition, passive loss and at-risk limitations limit the extent to which certain types of income can be offset by partnership deductions (sections 469 and 465). These limitations do not apply to corporate partners (except certain closely held corporations) and may not be important to individual partners who have partner level passive income from other investments.

contribution to the partnership, (2) the partner's distributive share of partnership income, and (3) the partner's share of partnership liabilities, less (1) such partner's distributive share of losses allowed as a deduction and nondeductible expenditures not properly chargeable to capital account, and (2) any partnership distributions.[14]

Tax rates for individuals

U.S. individuals (citizens and residents) are taxed at graduated statutory rates ranging from 10 percent (for taxable income of up to $8,700 for single filers and up to $17,400 for married taxpayers filing joint returns or surviving spouses) to 35 percent (for taxable income over $388,350) for taxable year 2012; the intermediate rates are 15 percent, 25 percent, 28 percent, and 33 percent.[15] The maximum tax rate on net long-term capital gains generally is 15 percent.[16] Dividends received by an individual from domestic corporations and qualified foreign corporations are taxed at the same rates that apply to capital gains.[17] For 2013, the statutory rates range from 15 percent to 39.6 percent, and the maximum tax rate on net long-term capital gains generally is 20 percent.

An alternative minimum tax is imposed on an individual in an amount by which the tentative minimum tax exceeds the regular income tax for the taxable year. The tentative minimum tax is the sum of (1) 26 percent of so much of the taxable excess as does not exceed $175,000 ($87,500 in the case of a married individual filing a separate return) and (2) 28 percent of the remaining taxable excess. The taxable excess is so much of the alternative minimum taxable income ("AMTI") as exceeds the exemption amount. The maximum tax rates on net capital gain and dividends used in computing the regular tax are used in computing the tentative minimum tax. AMTI is the taxpayer's taxable income increased by the taxpayer's tax preferences and adjusted by determining the tax treatment of certain items in a manner that negates the deferral of income resulting from the regular tax treatment of those items.

The exemption amounts are: (1) $45,000 in the case of married individuals filing a joint return and surviving spouses; (2) $33,750 in the case of other unmarried individuals; and (3) $22,500 in the case of married individuals filing separate returns. The exemption amounts are phased out by an amount equal to 25 percent of the amount by which the individual's AMTI exceeds (1) $150,000 in the case of married individuals filing a joint return and surviving

[14] Sec. 705.

[15] Secs. 1(a), (c) and (i).

[16] Sec. 1(h). Net gain from the sale of collectibles is taxed at a maximum 28 percent rate, while certain gain from the sale or exchange of depreciable real estate ("unrecaptured section 1250 property") is taxed at a maximum 25 percent rate. Under present law, for taxable years beginning after 2012, the maximum tax rate applicable to net long-term capital gains (other than collectibles or unrecaptured section 1250 property) increases from 15 percent to 20 percent.

[17] Sec. 1(h)(11). Under present law, for taxable years beginning after 2012, dividends received by an individual are taxed at ordinary income rates.

spouses, (2) $112,500 in the case of other unmarried individuals, and (3) $75,000 in the case of married individuals filing separate returns. These amounts are not indexed for inflation.

Section 199 deduction

In general

Certain domestic production activities are effectively taxed at lower rates by virtue of a deduction equal to a percentage of the income from such activities.[18] The deduction is equal to nine percent of the lesser of income from manufacturing, construction, and certain other activities specified in the statute (collectively, qualified production activities income), or taxable income.[19] Thus, generally the maximum tax rate for a C corporation on its domestic production activities income is effectively 31.85 percent.[20]

However, a taxpayer's deduction under section 199 for a taxable year may not exceed 50 percent of the wages properly allocable to domestic production gross receipts paid by the taxpayer during the calendar year that ends in such taxable year.[21]

Qualified production activities income

In general, qualified production activities income is equal to domestic production gross receipts, reduced by the sum of: (1) the costs of goods sold that are allocable to such receipts;[22]

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[18] Sec. 199.

[19] However, for taxpayers that have qualified income related to the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof (collectively, "oil related production activities income"), the deduction is limited to six percent of its oil related production activities income. Sec. 199(d)(9).

[20] In the case of corporate taxpayers that are members of certain affiliated groups, the deduction is determined by treating all members of such groups as a single taxpayer and the deduction is allocated among such members in proportion to each member's respective amount (if any) of qualified production activities income. Members of an expanded affiliated group for purposes of the provision generally include those corporations which would be members of an affiliated group if such membership were determined based on an ownership threshold of "more than 50 percent" rather than "at least 80 percent."

[21] For purposes of the provision, wages include the sum of the amounts of wages as defined in section 3401(a) (*i.e.*, wages subject to income tax withholding) and elective deferrals that the taxpayer properly reports to the Social Security Administration with respect to the employment of employees of the taxpayer during the calendar year ending during the taxpayer's taxable year. Elective deferrals include elective deferrals as defined in section 402(g)(3), amounts deferred under section 457, and, for taxable years beginning after December 31, 2005, designated Roth contributions (as defined in section 402A).

[22] For purposes of determining such costs, any item or service that is imported into the United States without an arm's length transfer price is treated as acquired by purchase, and its cost shall be treated as not less than its value when it entered the United States. A similar rule applies in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts. With regard to property previously exported by the taxpayer for further manufacture, the increase in cost or adjusted basis may not exceed the difference between the value of the property when exported and the value of the property when re-imported into

(2) other deductions, expenses, or losses that are directly allocable to such receipts; and (3) a proper share of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.[23]

Domestic production gross receipts

Domestic production gross receipts generally are gross receipts of a taxpayer that are derived from: (1) any sale, exchange, or other disposition, or any lease, rental, or license, of qualifying production property that was manufactured, produced, grown, or extracted by the taxpayer in whole or in significant part within the United States;[24] (2) any sale, exchange or other disposition, or any lease, rental, or license, of qualified film produced by the taxpayer; (3) any sale, exchange, or other disposition of electricity, natural gas, or potable water produced by the taxpayer in the United States; (4) in the case of a taxpayer engaged in the active conduct of a construction trade or business, construction activities performed in the United States;[25] or (5) in the case of a taxpayer engaged in the active conduct of an engineering or architectural services trade or business, engineering or architectural services performed in the United States for construction projects located in the United States.[26]

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the United States after further manufacture. Except as provided by the Secretary, the value of property for this purpose is its customs value (as defined in section 1059A(b)(1)).

[23] See Treas. Reg. section 1.199-1 through 1.199-9 prescribing rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining qualified production activities income. Where appropriate, such rules are similar to and consistent with relevant present-law rules (*e.g.*, sec. 263A, in determining the cost of goods sold, and sec. 861, in determining the source of such items). Other deductions, expenses or losses that are directly allocable to such receipts include, for example, selling and marketing expenses. A proper share of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income include, for example, general and administrative expenses allocable to selling and marketing expenses. In computing qualified production activities income, the domestic production activities deduction itself is not an allocable deduction.

[24] Domestic production gross receipts include gross receipts of a taxpayer derived from any sale, exchange, or other disposition of agricultural products with respect to which the taxpayer performs storage, handling, or other processing activities (other than transportation activities) within the United States, provided such products are consumed in connection with, or incorporated into, the manufacturing, production, growth, or extraction of qualifying production property (whether or not by the taxpayer).

[25] For this purpose, construction activities include activities that are directly related to the erection or substantial renovation of residential and commercial buildings and infrastructure. Substantial renovation would include structural improvements, but not mere cosmetic changes, such as painting that is not performed in connection with activities that otherwise constitute substantial renovation.

[26] With regard to the definition of "domestic production gross receipts" as it relates to construction performed in the United States and engineering or architectural services performed in the United States for construction projects in the United States, the term refers only to gross receipts derived from the construction of real property by a taxpayer engaged in the active conduct of a construction trade or business, or from engineering or architectural services performed with respect to real property by a taxpayer engaged in the active conduct of an engineering or architectural services trade or business.

However, domestic production gross receipts do not include any gross receipts of the taxpayer derived from property that is leased, licensed, or rented by the taxpayer for use by any related person.[27] Further, domestic production gross receipts do not include any gross receipts of the taxpayer that are derived from the sale of food or beverages prepared by the taxpayer at a retail establishment, that are derived from the transmission or distribution of electricity, gas, and potable water, or that are derived from the lease, rental, license, sale, exchange, or other disposition of land.[28]

Qualifying production property

Qualifying production property generally includes any tangible personal property, computer software, or sound recordings. Qualified film includes any motion picture film or videotape[29] (including live or delayed television programming, but not including certain sexually explicit productions) if 50 percent or more of the total compensation relating to the production of such film (including compensation in the form of residuals and participations)[30] constitutes compensation for services performed in the United States by actors, production personnel, directors, and producers.[31] A qualified film also includes any copyrights, trademarks, or other intangibles with respect to such film. The wage limitation for qualified films includes any compensation for services performed in the United States by actors, production personnel, directors, and producers and is not restricted to W-2 wages.[32]

Other rules

Partnerships and S corporations.—With respect to the domestic production activities of a partnership or S corporation, the deduction under section 199 is applied at the partner or shareholder level.[33] In performing the calculation, each partner or shareholder generally takes

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[27] Sec. 199(c)(7). In general, principles similar to those under the extraterritorial income regime apply for this purpose. See Temp. Treas. Reg. sec. 1.927(a)-1T(f)(2)(i). For example, this exclusion generally does not apply to property leased by the taxpayer to a related person if the property is held for sublease, or is subleased, by the related person to an unrelated person for the ultimate use of such unrelated person. Similarly, the license of computer software to a related person for reproduction and sale, exchange, lease, rental or sublicense to an unrelated person for the ultimate use of such unrelated person is not treated as excluded property by reason of the license to the related person.

[28] Sec. 199(c)(4)(B).

[29] See Treas. Reg. sec. 1.199-3(k).

[30] To the extent that a taxpayer has included an estimate of participations and/or residuals in its income forecast calculation under section 167(g), the taxpayer must use the same estimate of participations and/or residuals for purposes of determining total compensation.

[31] Treas. Reg. sec. 1.199-2.

[32] Sec. 199(b)(2)(D). Effective for tax years beginning after December 31, 2007.

[33] Sec. 199(d)(1)(A)(i).

into account such person's allocable share of the components of the calculation (including domestic production gross receipts; the cost of goods sold allocable to such receipts; and other expenses, losses, or deductions allocable to such receipts) from the partnership or S corporation[34] as well as any items relating to the partner's or shareholder's own qualified production activities, if any. Each partner or shareholder is treated as having W-2 wages for the taxable year in an amount equal to such person's allocable share of the W-2 wages of the partnership or S corporation for the taxable year.[35]

Trusts and estates.—In the case of a trust or estate, the components of the calculation are apportioned between (and among) the beneficiaries and the fiduciary under regulations prescribed by the Secretary.[36]

Agricultural and horticultural cooperatives.—With regard to member-owned agricultural and horticultural cooperatives formed under Subchapter T of the Code, section 199 provides the same treatment of qualified production activities income derived from agricultural or horticultural products that are manufactured, produced, grown, or extracted by cooperatives,[37] or that are marketed through cooperatives, as it provides for qualified production activities income of other taxpayers, that is, the cooperative may claim a deduction from qualified production activities income.

Alternatively, section 199 provides that the amount of any patronage dividends or per-unit retain allocations paid to a member of an agricultural or horticultural cooperative (to which Part I of Subchapter T applies), which is allocable to the portion of qualified production activities income of the cooperative that is deductible under the provision, is deductible from the gross income of the member. To qualify, such amount must be designated by the organization as allocable to the deductible portion of qualified production activities income in a written notice mailed to its patrons not later than the payment period described in section 1382(d). The cooperative cannot reduce its income under section 1382 (*e.g.*, cannot claim a dividends-paid deduction) for such amounts.

Alternative minimum tax.—The deduction for domestic production activities is allowed for purposes of computing alternative minimum taxable income (including adjusted current earnings). The deduction in computing alternative minimum taxable income is determined by reference to the lesser of the qualified production activities income (as determined for the regular tax) or the alternative minimum taxable income (in the case of an individual, adjusted gross income as determined for the regular tax) without regard to this deduction.

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[34] Sec. 199(d)(1)(A)(ii).

[35] Sec. 199(d)(1)(A)(iii).

[36] See Treas. Reg. secs. 1.199-5(d) and (e).

[37] For this purpose, agricultural or horticultural products also include fertilizer, diesel fuel and other supplies used in agricultural or horticultural production that are manufactured, produced, grown, or extracted by the cooperative.

Description of Proposal

In general

In the case of a qualified small business, the provision allows a deduction for 20 percent of qualified domestic business income of the taxpayer for the taxable year, or taxable income for the taxable year, whichever is less. However, a taxpayer's deduction for any taxable year may not exceed 50 percent of certain W-2 wages of the qualified small business.

W-2 wages

Limitation on deduction

The deduction is limited to 50 percent of the greater of (1) W-2 wages paid by the taxpayer to non-owner employees, or (2) the sum of W-2 wages paid by the taxpayer to (a) employees who are non-owner family members of direct owners and (b) employees who are 10-percent-or-less direct owners.

W-2 wages

For purposes of the provision, W-2 wages include the sum of the amounts of wages as defined in section 3401(a) (*i.e.*, wages subject to income tax withholding) and elective deferrals that the taxpayer properly reports to the Social Security Administration with respect to the employment of employees of the taxpayer during the calendar year ending during the taxpayer's taxable year. Elective deferrals include elective deferrals as defined in section 402(g)(3), amounts deferred under section 457, and designated Roth contributions (as defined in section 402A).

W-2 wages do not, however, include any amount not properly allocable to domestic business gross receipts under the provision, nor does the term include any amount not allowed as a deduction under section 162 (relating to ordinary and necessary business expenses).[38]

Certain partners' distributive shares of partnership items may be treated as W-2 wages solely for purposes of the provision. In the case of a qualified small business that is a partnership and that so elects, the portion of the qualified domestic business taxable income of the partnership for the taxable year that is allocable to each qualified service-providing partner is treated as W-2 wages paid during that taxable year to an employee who is a 10-percent-or-less direct owner. The domestic business gross receipts of the partnership for the taxable year must be reduced by any amount treated as W-2 wages under this rule.

[38] For example, any amount paid to a household employee unrelated to the employer's trade or business is not allowed as a deduction under section 162 since the amount is not an ordinary and necessary business expense. However, amounts paid to employees engaged in the trade or business (regardless of whether such amounts are capitalized into the inventory or under any other provision requiring capitalization) would be qualifying wages for this provision, to the extent such wages are allocable to domestic business gross receipts.

Non-owner employee

For purposes of the provision, a non-owner employee of a qualified small business means a person who does not own (and is not considered as owning within the meaning of sections 267(c) or (e)(3), as applicable) any stock of the business or, if the business is not a corporation, any capital or profits interest of the business.

Non-owner family member employee

For purposes of this provision, an individual is a non-owner family member of a direct owner if the individual is family (within the meaning of section 267(c)(4)[39]) of a direct owner and would be considered a non-owner if sections 267(c) and (e)(3) were applied without regard to section 267(c)(2).[40] For example, if the son of a direct owner of a corporation is not, himself, a direct owner of the stock of the corporation, is employed by the corporation, and receives W-2 wages from the corporation, the son is considered a non-owner family member of a direct owner.

Direct owner

For purposes of this provision, a direct owner of a qualified small business is a person who owns (or is considered as owning under sections 267(c) or (e)(3) applied without regard to section 267(c)(2)) any stock of such business or, if the business is not a corporation, any capital or profits interest of the qualified small business. Thus, for example, in the case of tiered partnerships, for this purpose, a person who owns an interest in an upper-tier partnership is considered to own an interest in a lower tier partnership that is a qualified small business.

10-percent-or-less direct owner

For purposes of the provision, in the case of a qualified small business that is a corporation, a 10-percent-or-less direct owner means a direct owner who owns not more than 10 percent of the outstanding stock of the corporation or stock possessing not more than 10 percent of the total combined voting power of all stock of the corporation. In the case of a qualified small business that is not a corporation, a 10-percent-or-less direct owner means a person who owns, directly or indirectly, not more than 10 percent of the capital or profits interest in the qualified small business.

Qualified service-providing partner

For purposes of this provision, a qualified service-providing partner is any partner who is a 10-percent-or-less direct owner and who provides services to the partnership.

[39] For this purpose, family includes only brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendents.

[40] Sections 267(c) and (e)(3) provide constructive ownership rules for stock and passthrough entities. Section 267(c)(2) treats an individual as owning interests owned by the individual's family.

Qualified domestic business income

In general

Qualified domestic business income, for any taxable year, means the excess (if any) of (1) the taxpayer's domestic business gross receipts for the taxable year, over the sum of (2) cost of goods sold allocable to such receipts, and the other expenses, losses, or deductions (other than the deduction allowed under this provision) that are properly allocable to such receipts.

Domestic business gross receipts

Domestic business gross receipts means the gross receipts of the taxpayer that is a qualified small business which are effectively connected with the conduct of a trade or business within the United States within the meaning of section 864(c) determined without regard to paragraphs (3), (4), and (5) thereof and substituting "qualified small business (within the meaning of section 200 as added by the provision)" for "nonresident alien individual or a foreign corporation" each place it appears therein. Domestic business gross receipts do not include (1) gross receipts derived from the sale or exchange of a capital asset or property used in the trade or business (as defined in section 1231(b)), (2) royalties, rents, dividends, interest, or annuities, and (3) any amount which constitutes wages (as defined in section 3401).

Qualified small business

For purposes of the provision, a qualified small business means an employer engaged in a trade or business if the employer had fewer than 500 full-time equivalent employees ("FTEs")[41] for either calendar year 2010 or 2011. For example, a C corporation, S corporation, partnership, or sole proprietorship with fewer than 500 FTEs in either calendar year 2010 or 2011 may be a qualified small business. In the case of an employer not in existence on January 1, 2012, the determination is made with respect to calendar year 2012 rather than 2010 or 2011.

In general, an employer's FTEs are calculated by dividing the total hours of service for which wages were paid by the employer to employees during the taxable year by 2,080 hours.[42] This number is rounded down to the nearest whole number if not otherwise a whole number. Employers in existence for a partial calendar year annualize the number of FTEs calculated based on the number of calendar days the taxpayer was in existence during 2012.

Any employer that is treated as a single employer for purposes of section 52(a) or (b) (without regard to section 1563(b)), relating to employees of entities under common control, or

[41] The term full-time equivalent employees for this purpose has the meaning given under section 45R(d)(2), without regard to section 45R(d)(5) and (e)(1) and by applying that subsection on a calendar year rather than a taxable year basis. Thus, for this purpose, seasonal employees and self-employed individuals, including partners and sole proprietors, two percent shareholders of an S Corporation and five percent owners of the employer are included in the calculation of an employer's FTEs.

[42] For employees who work in excess of 2,080 hours during any taxable year, the excess is not taken into account. See sec. 45R(d)(2)(B).

section 414(m) or (o), relating to employees of an affiliated service group, is treated as a single employer for purposes of determining whether an employer is a qualified small business.

Other rules

Application to passthrough entities and individuals

For purposes of this provision, rules similar to the rules under section 199 (described above) apply with respect to partnerships, S corporations, trusts or estates, or agricultural and horticultural cooperatives.[43] Rules similar to the rules under section 199 also apply with respect to individuals.[44]

Special rule for affiliated groups

All members of an expanded affiliated group are treated as a single corporation for purposes of the provision.[45] Rules similar to the rules under section 199 apply to allocate the deduction among the members of the expanded affiliated group.[46]

Alternative minimum tax

The deduction for qualified domestic business income is allowed for purposes of computing alternative minimum taxable income (including adjusted current earnings). The deduction in computing alternative minimum taxable income is determined by reference to the lesser of the qualified domestic business income (as determined for the regular tax) or the alternative minimum taxable income (in the case of an individual, adjusted gross income as determined for the regular tax) without regard to this deduction.

Coordination with section 199

If a taxpayer is allowed a deduction under this provision for a taxable year, gross receipts of the taxpayer taken into account under this provision cannot be taken into account under section 199 for the taxable year. Similarly, W-2 wages taken into account under this provision cannot be taken into account under section 199 (which also has a limitation related to W-2 wages) for the taxable year. As a result, the taxpayer may not benefit under this provision and under section 199 with respect to the same gross receipts or W-2 wages.

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[43] See sec. 199(d)(1) and (3).

[44] See sec. 199(d)(2).

[45] Members of an expanded affiliated group for purposes of this provision generally include those corporations which would be members of an affiliated group if such membership were determined based on an ownership threshold of "more than 50 percent" rather than "at least 80 percent."

[46] See sec. 199(d)(4).

A taxpayer may elect not to take into account under this provision any item of domestic business gross receipts. Under this election, for example, the taxpayer may treat an item of domestic business gross receipts as not taken into account under the provision so that the item may be taken into account for purposes of section 199.

Regulations

The Treasury Department is directed to prescribe guidance necessary to carry out the purposes of the provision. This guidance is to include rules preventing a taxpayer that reorganizes or changes its structure from being treated as a qualified small business if it would not have been so treated prior to the reorganization or structural change. The guidance is also to provide rules preventing taxpayers from obtaining a deduction under both section 199 and this provision based on the same gross receipts or W-2 wages.

Effective Date

The provision applies only with respect to the first taxable year of the taxpayer beginning after December 31, 2011.

B. Revenue Effect of the Provision

The following presents the estimated Federal fiscal year budget effect of the provision.

Fiscal Years
[Millions of Dollars]

Item	2012	2013	2014	2015	2016	2017	2012-17	2012-22
20-Percent Business Deduction....	-12,526	-32,714	-709	---	---	---	-45,950	-45,950