

118TH CONGRESS  
1ST SESSION

# H. R. 2767

To amend the Internal Revenue Code of 1986 to modify the exclusion for gain from qualified small business stock.

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IN THE HOUSE OF REPRESENTATIVES

APRIL 20, 2023

Mr. KUSTOFF (for himself and Mr. FITZPATRICK) 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 modify the exclusion for gain from qualified small business stock.

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 Invest-  
5 ment Act of 2023”.

6 **SEC. 2. PHASED INCREASE IN EXCLUSION FOR GAIN FROM**  
7 **QUALIFIED SMALL BUSINESS STOCK.**

8 (a) IN GENERAL.—Section 1202(a)(1) of the Internal  
9 Revenue Code of 1986 is amended—

1 (1) by striking “50 percent” and inserting “the  
2 applicable percentage”, and

3 (2) by striking “held for more than 5 years”  
4 and inserting “held for at least 3 years”.

5 (b) APPLICABLE PERCENTAGE.—Section 1202(a) of  
6 such Code is amended by adding at the end the following  
7 new paragraph:

8 “(5) APPLICABLE PERCENTAGE.—Except as  
9 provided in paragraphs (3) and (4), the applicable  
10 percentage under paragraph (1) shall be determined  
11 under the following table:

<b>“Years stock held:</b>	<b>Applicable percentage:</b>
3 years .....	50%
4 years .....	75%
5 years or more .....	100%”.

12 (c) CONTINUED TREATMENT AS NOT ITEM OF TAX  
13 PREFERENCE.—

14 (1) IN GENERAL.—Section 57(a)(7) of such  
15 Code is amended by striking “An amount” and in-  
16 serting “In the case of stock acquired on or before  
17 the date of the enactment of the Creating Small  
18 Business Jobs Act of 2010, an amount”.

19 (2) CONFORMING AMENDMENT.—Section  
20 1202(a)(4) of such Code is amended—

21 (A) by striking “, and” at the end of sub-  
22 paragraph (B) and inserting a period, and

1 (B) by striking subparagraph (C).

2 (d) OTHER CONFORMING AMENDMENTS.—

3 (1) Section 1202(a)(4) of such Code is amended  
4 by inserting “and before the date of the enactment  
5 of the Small Business Investment Act of 2023” after  
6 “Act of 2010”.

7 (2) Paragraphs (3) and (4) of section 1202(a)  
8 of such Code are each amended by inserting “held  
9 for more than 5 years and” after “In the case of  
10 qualified small business stock”.

11 (3) Section 1202(a)(3)(A) of such Code is  
12 amended to read as follows:

13 “(A) the applicable percentage under para-  
14 graph (1) shall be 75 percent, and”,

15 (4) Section 1202(a)(4)(A) of such Code is  
16 amended to read as follows:

17 “(A) the applicable percentage under para-  
18 graph (1) shall be 100 percent, and”.

19 (5) Section 1202(b)(2) of such Code is amend-  
20 ed by striking “more than 5 years” and inserting  
21 “at least 3 years”.

22 (6) Section 1202(g)(2)(A) of such Code is  
23 amended by striking “more than 5 years” and in-  
24 serting “at least 3 years”.

1           (7) Section 1202(j)(1)(A) of such Code is  
 2           amended by striking “more than 5 years” and in-  
 3           serting “at least 3 years”.

4           (e) EFFECTIVE DATE.—

5           (1) IN GENERAL.—Except as provided in para-  
 6           graph (2), the amendments made by this section  
 7           shall apply to stock acquired after the date of the  
 8           enactment of this Act.

9           (2) CONTINUED TREATMENT AS NOT ITEM OF  
 10          TAX PREFERENCE.—The amendment made by sub-  
 11          section (c) shall take effect as if included in the en-  
 12          actment of section 2011 of the Creating Small Busi-  
 13          ness Jobs Act of 2010.

14   **SEC. 3. TACKLING HOLDING PERIOD OF CONVERTIBLE DEBT**  
 15                           **INSTRUMENTS.**

16          (a) IN GENERAL.—Section 1202(f) of the Internal  
 17          Revenue Code of 1986 is amended—

18               (1) by redesignating paragraphs (1) and (2) as  
 19               subparagraphs (A) and (B) and moving such sub-  
 20               paragraphs (as so redesignated) 2 ems to the right,

21               (2) by striking “CONVERSION OF OTHER  
 22               STOCK.—If any stock” and inserting the following:  
 23               “CONVERSION.—

24               “(1) OTHER STOCK.—If any stock”, and

1           (3) by adding at the end the following new  
2 paragraph:

3           “(2) CONVERTIBLE DEBT INSTRUMENTS.—

4                 “(A) IN GENERAL.—If any stock in a cor-  
5 poration is acquired by the taxpayer, without  
6 recognition of gain, solely through the conver-  
7 sion of a qualified convertible debt instru-  
8 ment—

9                     “(i) the stock so acquired shall be  
10                    treated as qualified small business stock in  
11                    the hands of the taxpayer, and

12                   “(ii) the stock so acquired shall be  
13                    treated as having been held during the pe-  
14                    riod during which the qualified convertible  
15                    debt instrument was held.

16                 “(B) QUALIFIED CONVERTIBLE DEBT IN-  
17                 STRUMENT.—For purposes of this paragraph,  
18                 the term ‘qualified convertible debt instrument’  
19                 means any bond or other evidence of indebted-  
20                 ness—

21                     “(i) which is originally issued by the  
22                    corporation to the taxpayer,

23                   “(ii) the issuer of which—

24                         “(I) from issuance until conver-  
25                         sion, is a qualified small business, and

1 “(II) during substantially all of  
 2 the taxpayer’s holding period of such  
 3 bond or evidence of indebtedness, the  
 4 corporation meets the active business  
 5 requirements of subsection (e), and  
 6 “(iii) which is convertible into stock in  
 7 the corporation.”.

8 (b) EFFECTIVE DATE.—The amendments made by  
 9 this section shall apply to debt instruments originally  
 10 issued after the date of the enactment of this Act.

11 **SEC. 4. GAIN EXCLUSION ALLOWED WITH RESPECT TO**  
 12 **QUALIFIED SMALL BUSINESS STOCK IN COR-**  
 13 **PORATION.**

14 (a) IN GENERAL.—Section 1202(c) of the Internal  
 15 Revenue Code of 1986 is amended—

16 (1) by striking “C corporation” in paragraphs

17 (1) and inserting “corporation”, and

18 (2) by striking “and such corporation is a C  
 19 corporation” in paragraph (2)(A).

20 (b) QUALIFIED SMALL BUSINESS DEFINITION.—Sec-  
 21 tion 1202(d)(1) of such Code is amended by striking  
 22 “which is a C corporation”.

23 (c) CLARIFICATION OF AGGREGATION RULES APPLI-  
 24 CABLE TO S CORPORATIONS.—Section 1202(d)(3) of such

1 Code is amended by adding at the end the following new  
2 subparagraph:

3 “(C) CLARIFICATION WITH RESPECT TO S  
4 CORPORATIONS.—Any determination of the  
5 members of a controlled group of corporations  
6 under this paragraph shall include taking into  
7 account any stock ownership in an S corpora-  
8 tion.”.

9 (d) TREATMENT OF PASSIVE LOSSES.—Section  
10 469(g)(1) of such Code is amended by adding at the end  
11 the following new subparagraph:

12 “(D) CERTAIN DISPOSITIONS OF SMALL  
13 BUSINESS STOCK.—In the case a disposition  
14 any gain from which is excluded from gross in-  
15 come under section 1202, subparagraph (A)  
16 shall not apply.”.

17 (e) SPECIAL RULES RELATING TO S CORPORA-  
18 TIONS.—Section 1202(e) of such Code is amended by add-  
19 ing at the end the following new paragraph:

20 “(9) APPLIED AT S CORPORATION LEVEL.—In  
21 the case of an S corporation, the requirements of  
22 this subsection shall be applied at the corporate  
23 level.”.

1       (f) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to stock acquired after the date  
3 of the enactment of this Act.

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