

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 9) TO AMEND THE  
INTERNAL REVENUE CODE OF 1986 TO PROVIDE A DEDUCTION FOR  
DOMESTIC BUSINESS INCOME OF QUALIFIED SMALL BUSINESSES

APRIL 17, 2012.—Referred to the House Calendar and ordered to be printed

Mr. SESSIONS, from the Committee on Rules,  
submitted the following

R E P O R T

[To accompany H. Res. 620]

The Committee on Rules, having had under consideration House Resolution 620, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 9, the Small Business Tax Cut Act, under a structured rule. The resolution provides one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Ways and Means. The resolution waives all points of order against consideration of the bill. The resolution provides that the amendment in the nature of a substitute recommended by the Committee on Ways and Means now printed in the bill shall be considered as adopted. The bill, as amended, shall be considered as read. The resolution waives all points of order against provisions in the bill, as amended. The resolution makes in order the amendment in the nature of a substitute printed in this report, if offered by Representative Levin of Michigan or his designee, which shall be considered as read, shall be debatable for 20 minutes equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment. The resolution waives all points of order against the amendment printed in this report. Finally, the resolution provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of the bill, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against provisions in the bill, as amended, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendment printed in this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

#### COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

##### *Rules Committee record vote No. 210*

Motion by Mr. McGovern to make in order and provide the appropriate waivers for amendment #1, offered by Rep. McDermott (WA), which would extend for one year 100 percent expensing for capital expenditures, and offset the cost by repealing the section 199 manufacturing deduction for major integrated oil companies. Defeated: 3–6.

Majority Members	Vote	Minority Members	Vote
Ms. Foxx .....	Nay	Mr. McGovern .....	Yea
Mr. Woodall .....	Nay	Mr. Hastings of Florida .....	Yea
Mr. Nugent .....	Nay	Mr. Polis .....	Yea
Mr. Scott of South Carolina .....	Nay		
Mr. Webster .....	Nay		
Mr. Dreier, Chairman .....	Nay		

#### SUMMARY OF THE AMENDMENT MADE IN ORDER

Levin, Sander (MI): Would replace the deduction in the underlying bill with a deduction for small businesses for the amounts they spend on capital investments in 2012. (20 minutes)

#### TEXT OF AMENDMENT MADE IN ORDER

Strike all after the enacting clause and insert the following:

##### **SECTION 1. SHORT TITLE.**

This Act may be cited as the “Small Business Tax Cut Act”.

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

(a) **IN GENERAL.**—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

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

“(a) **ALLOWANCE OF DEDUCTION.**—In the case of a qualified small business, there shall be allowed as a deduction an amount equal to 20 percent of the lesser of—

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

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

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

“(1) IN GENERAL.—The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed 50 percent of the greater of—

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

or

“(B) the sum of—

“(i) the W-2 wages of the taxpayer paid to individuals who are non-owner family members of direct owners, plus

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

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

“(A) NON-OWNER.—The term ‘non-owner’ means, with respect to any qualified small business, any person who does not own (and is not considered as owning within the meaning of subsection (c) or (e)(3) of section 267, as the case may be) any stock of such business (or, if such business is other than a corporation, any capital or profits interest of such business).

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

“(i) such individual is family (within the meaning of section 267(c)(4)) of a direct owner, and

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

“(C) DIRECT OWNER.—The term ‘direct owner’ means, with respect to any qualified small business, any person who owns (or is considered as owning under the applicable non-family attribution rules) any stock of such business (or, if such business is other than a corporation, any capital or profits interest of such business).

“(D) 10-PERCENT-OR-LESS DIRECT OWNERS.—The term ‘10-percent-or-less direct owner’ means, with respect to any qualified small business, any direct owner of such business who owns (or is considered as owning under the applicable non-family attribution rules)—

“(i) in the case of a qualified small business which is a corporation, not more than 10 percent of the outstanding stock of the corporation or stock possessing more than 10 percent of the total combined voting power of all stock of the corporation, or

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

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

“(3) W-2 WAGES.—For purposes of this section—

“(A) IN GENERAL.—The term ‘W-2 wages’ means, with respect to any person for any taxable year of such person, the sum of the amounts described in paragraphs (3) and

(8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year.

“(B) LIMITATION TO WAGES ATTRIBUTABLE TO QUALIFIED DOMESTIC BUSINESS INCOME.—Such term shall not include any amount which is not properly allocable to domestic business gross receipts for purposes of subsection (d)(1).

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

“(i) such term shall not include any amount which is not allowed as a deduction under section 162 for the taxable year, and

“(ii) such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.

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

“(A) IN GENERAL.—In the case of a qualified small business which is a partnership and elects the application of this paragraph for the taxable year—

“(i) the qualified domestic business taxable income of such partnership for such taxable year (determined after the application of clause (ii)) which is allocable under rules similar to the rules of section 199(d)(1)(A)(ii) to each qualified service-providing partner shall be treated for purposes of this section as W-2 wages paid during such taxable year to such partner as an employee, and

“(ii) the domestic business gross receipts of such partnership for such taxable year shall be reduced by the amount so treated.

“(B) QUALIFIED SERVICE-PROVIDING PARTNER.—For purposes of this paragraph, the term ‘qualified service-providing partner’ means, with respect to any qualified domestic business taxable income, any partner who is a 10-percent-or-less direct owner and who materially participates in the trade or business to which such income relates.

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

“(c) LIMITATION BASED ON INVESTMENT IN QUALIFIED PROPERTY.—

“(1) IN GENERAL.—The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed the allowance which would be determined under section 168(k)(1)(A) with respect to the taxpayer for the taxable year if such section were applied—

“(A) by substituting ‘100 percent’ for ‘50 percent’, and

“(B) without regard to paragraph (2).

“(2) ADJUSTMENT OF BASIS.—No deduction shall be allowed to the taxpayer under subsection (a) for any taxable year unless the adjusted basis of property taken into account under paragraph (1) is reduced by the amount of the deduction allowed under subsection (a) before computing the amount otherwise allowable as a depreciation deduction under this chapter (including any allowance otherwise determined under section 168(k)) for such taxable year and any subsequent taxable year.

“(d) QUALIFIED DOMESTIC BUSINESS INCOME.—For purposes of this section—

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

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

“(B) the sum of—

“(i) the cost of goods sold that are allocable to such receipts, and

“(ii) other expenses, losses, or deductions (other than the deduction allowed under this section), which are properly allocable to such receipts.

“(2) DOMESTIC BUSINESS GROSS RECEIPTS.—

“(A) IN GENERAL.—The term ‘domestic business gross receipts’ means the gross receipts of the taxpayer which are effectively connected with the conduct of a trade or business within the United States within the meaning of section 864(c) but determined—

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

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

“(B) EXCEPTIONS.—For purposes of paragraph (1), domestic business gross receipts shall not include any of the following:

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

“(I) a capital asset, or

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

“(ii) Royalties, rents, dividends, interest, or annuities.

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

“(3) APPLICATION OF CERTAIN RULES.—Rules similar to the rules of paragraphs (2) and (3) of section 199(c) shall apply for purposes of this section (applied with respect to qualified domestic business income in lieu of qualified production activities income and with respect to domestic business gross receipts in lieu of domestic production gross receipts).

“(e) QUALIFIED SMALL BUSINESS.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified small business’ means any employer engaged in a trade or business if such employer

had fewer than 500 full-time equivalent employees for either calendar year 2010 or 2011.

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

- “(A) without regard to subsection (d)(5) of such section,
- “(B) with regard to subsection (e)(1) of such section, and
- “(C) by substituting ‘calendar year’ for ‘taxable year’ each place it appears therein.

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

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

- “(A) the number of days in such calendar year, by
- “(B) the number of days during such calendar year which such employer is in existence.

“(5) SPECIAL RULES.—

“(A) AGGREGATION RULE.—For purposes of paragraph (1), any person treated as a single employer under subsection (a) or (b) of section 52 (applied without regard to section 1563(b)) or subsection (m) or (o) of section 414 shall be treated as a single employer for purposes of this subsection.

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

“(f) SPECIAL RULES.—

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

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

“(A) any gross receipts of the taxpayer which are taken into account under this section for such taxable year shall not be taken into account under section 199 for such taxable year, and

“(B) the W-2 wages of the taxpayer which are taken into account under this section shall not be taken into account under section 199 for such taxable year.

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

“(g) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section, including regulations which prevent a taxpayer which reorganizes from being treated as a qualified small business if such taxpayer would not have been treated as a qualified small business prior to such reorganization.

“(h) APPLICATION.—Subsection (a) shall apply only with respect to the first taxable year of the taxpayer beginning after December 31, 2011.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 56(d)(1)(A) of such Code is amended by striking “deduction under section 199” both places it appears and inserting “deductions under sections 199 and 200”.

(2) Section 56(g)(4)(C) of such Code is amended by adding at the end the following new clause:

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

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

- (A) Section 86(b)(2)(A).
- (B) Section 135(c)(4)(A).
- (C) Section 137(b)(3)(A).
- (D) Section 219(g)(3)(A)(ii).
- (E) Section 221(b)(2)(C)(i).
- (F) Section 222(b)(2)(C)(i).
- (G) Section 246(b)(1).
- (H) Section 469(i)(3)(F)(iii).

(4) Section 163(j)(6)(A)(i) of such Code is amended by striking “and” at the end of subclause (III) and by inserting after subclause (IV) the following new subclause:

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

(5) Section 170(b)(2)(C) of such Code is amended by striking “and” at the end of clause (iv), by striking the period at the end of clause (v) and inserting “, and”, and by inserting after clause (v) the following new clause:

“(vi) section 200.”.

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

“(8) DOMESTIC BUSINESS INCOME OF QUALIFIED SMALL BUSINESSES.—The deduction under section 200 shall not be allowed.”.

(7) Section 613(a) of such Code is amended by striking “deduction under section 199” and inserting “deductions under sections 199 and 200”.

(8) Section 613A(d)(1) of such Code is amended by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively, and by inserting after subparagraph (B) the following new subparagraph:

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

(9) Section 1402(a) of such Code is amended by striking “and” at the end of paragraph (16), by redesignating paragraph

(17) as paragraph (18), and by inserting after paragraph (16) the following new paragraph:

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

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

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