112th CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
112–447

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

REPORT

[To accompany H. Res. 620]

The Committee on Rules, having had under consideration House Resolution____, 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 an 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): SUBSTITUTE AMENDMENT 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

2

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 9, AS REPORTED

OFFERED BY MR. LEVIN

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.

1 "(b) DEDUCTION LIMITED BASED ON WAGES
2 PAID.—
3 "(1) IN GENERAL.—The amount of the deduc-
4 tion allowable under subsection (a) for any taxable
5 year shall not exceed 50 percent of the greater of—
6 "(A) the W–2 wages of the taxpayer paid
7 to non-owners, or
8 "(B) the sum of—
9 "(i) the W–2 wages of the taxpayer
10 paid to individuals who are non-owner fam-
11 ily members of direct owners, plus
12 "(ii) any W–2 wages of the taxpayer
13 paid to 10-percent-or-less direct owners.
14 "(2) DEFINITIONS RELATED TO OWNERSHIP.—
15 For purposes of this section—
16 "(A) NON-OWNER.—The term 'non-owner'
17 means, with respect to any qualified small busi-
18 ness, any person who does not own (and is not
19 considered as owning within the meaning of
20 subsection (c) or (e)(3) of section 267, as the
21 case may be) any stock of such business (or, if
22 such business is other than a corporation, any
23 capital or profits interest of such business).

1 "(B) NON-OWNER FAMILY MEMBERS.—An
2 individual is a non-owner family member of a
3 direct owner if—
4 "(i) such individual is family (within
5 the meaning of section 267(c)(4)) of a di-
6 rect owner, and
7 "(ii) such individual would be a non-
8 owner if subsections (c) and (e)(3) of sec-
9 tion 267 were applied without regard to
10 section 267(c)(2).
11 "(C) DIRECT OWNER.—The term 'direct
12 owner' means, with respect to any qualified
13 small business, any person who owns (or is con-
14 sidered as owning under the applicable non-
15 family attribution rules) any stock of such busi-
16 ness (or, if such business is other than a cor-
17 poration, any capital or profits interest of such
18 business).
19 "(D) 10-PERCENT-OR-LESS DIRECT OWN-
20 ERS.—The term '10-percent-or-less direct
21 owner' means, with respect to any qualified
22 small business, any direct owner of such busi-
23 ness who owns (or is considered as owning
24 under the applicable non-family attribution
25 rules)—

1 "(i) in the case of a qualified small
2 business which is a corporation, not more
3 than 10 percent of the outstanding stock
4 of the corporation or stock possessing more
5 than 10 percent of the total combined vot-
6 ing power of all stock of the corporation,
7 or
8 "(ii) in the case of a qualified small
9 business which is not a corporation, not
10 more than 10 percent of the capital or
11 profits interest of such business.
12 "(E) APPLICABLE NON-FAMILY ATTRIBU-
13 TION RULES.—The term 'applicable non-family
14 attribution rules' means the attribution rules of
15 subsection (c) or (c)(3) of section 267, as the
16 case may be, but in each case applied without
17 regard to section 267(c)(2).
18 "(3) W–2 WAGES.—For purposes of this sec-
19 tion—
20 "(A) IN GENERAL.—The term 'W–2
21 wages' means, with respect to any person for
22 any taxable year of such person, the sum of the
23 amounts described in paragraphs (3) and (8) of
24 section 6051(a) paid by such person with re-
25 spect to employment of employees by such per-

1 son during the calendar year ending during
2 such taxable year.
3 "(B) LIMITATION TO WAGES ATTRIB-
4 UTABLE TO QUALIFIED DOMESTIC BUSINESS IN-
5 COME.—Such term shall not include any
6 amount which is not properly allocable to do-
7 mestic business gross receipts for purposes of
8 subsection (d)(1).
9 "(C) OTHER REQUIREMENTS.—Except in
10 the case of amounts treated as W–2 wages
11 under paragraph (4)—
12 "(i) such term shall not include any
13 amount which is not allowed as a deduc-
14 tion under section 162 for the taxable
15 year, and
16 "(ii) such term shall not include any
17 amount which is not properly included in a
18 return filed with the Social Security Ad-
19 ministration on or before the 60th day
20 after the due date (including extensions)
21 for such return.
22 "(4) CERTAIN PARTNERSHIP DISTRIBUTIONS
23 TREATED AS W–2 WAGES.—
24 "(A) IN GENERAL.—In the case of a quali-
25 fied small business which is a partnership and

1 elects the application of this paragraph for the
2 taxable year—
3 "(i) the qualified domestic business
4 taxable income of such partnership for
5 such taxable year (determined after the ap-
6 plication of clause (ii)) which is allocable
7 under rules similar to the rules of section
8 199(d)(1)(A)(ii) to each qualified service-
9 providing partner shall be treated for pur-
10 poses of this section as W–2 wages paid
11 during such taxable year to such partner
12 as an employee, and
13 "(ii) the domestic business gross re-
14 ceipts of such partnership for such taxable
15 year shall be reduced by the amount so
16 treated.
17 "(B) QUALIFIED SERVICE-PROVIDING
18 PARTNER.—For purposes of this paragraph, the
19 term 'qualified service-providing partner'
20 means, with respect to any qualified domestic
21 business taxable income, any partner who is a
22 10-percent-or-less direct owner and who materi-
23 ally participates in the trade or business to
24 which such income relates.

1 "(5) ACQUISITIONS AND DISPOSITIONS.—The
2 Secretary shall provide for the application of this
3 subsection in cases where the taxpayer acquires, or
4 disposes of, the major portion of a trade or business
5 or the major portion of a separate unit of a trade
6 or business during the taxable year.
7 "(c) LIMITATION BASED ON INVESTMENT IN QUALI-
8 FIED PROPERTY.—
9 "(1) IN GENERAL.—The amount of the deduc-
10 tion allowable under subsection (a) for any taxable
11 year shall not exceed the allowance which would be
12 determined under section 168(k)(1)(A) with respect
13 to the taxpayer for the taxable year if such section
14 were applied—
15 "(A) by substituting '100 percent' for '50
16 percent', and
17 "(B) without regard to paragraph (2).
18 "(2) ADJUSTMENT OF BASIS.—No deduction
19 shall be allowed to the taxpayer under subsection (a)
20 for any taxable year unless the adjusted basis of
21 property taken into account under paragraph (1) is
22 reduced by the amount of the deduction allowed
23 under subsection (a) before computing the amount
24 otherwise allowable as a depreciation deduction
25 under this chapter (including any allowance other-

1 wise determined under section 168(k)) for such tax-
2 able year and any subsequent taxable year.
3 "(d) QUALIFIED DOMESTIC BUSINESS INCOME.—
4 For purposes of this section—
5 "(1) IN GENERAL.—The term 'qualified domes-
6 tic business income' for any taxable year means an
7 amount equal to the excess (if any) of—
8 "(A) the taxpayer's domestic business
9 gross receipts for such taxable year, over
10 "(B) the sum of—
11 "(i) the cost of goods sold that are al-
12 locable to such receipts, and
13 "(ii) other expenses, losses, or deduc-
14 tions (other than the deduction allowed
15 under this section), which are properly al-
16 locable to such receipts.
17 "(2) DOMESTIC BUSINESS GROSS RECEIPTS.—
18 "(A) IN GENERAL.—The term 'domestic
19 business gross receipts' means the gross re-
20 ceipts of the taxpayer which are effectively con-
21 nected with the conduct of a trade or business
22 within the United States within the meaning of
23 section 864(c) but determined—
24 "(i) without regard to paragraphs (3),
25 (4), and (5) thereof, and

1 "(ii) by substituting 'qualified small
2 business (within the meaning of section
3 200)' for 'nonresident alien individual or a
4 foreign corporation' each place it appears
5 therein.
6 "(B) EXCEPTIONS.—For purposes of para-
7 graph (1), domestic business gross receipts
8 shall not include any of the following:
9 "(i) Gross receipts derived from the
10 sale or exchange of—
11 "(I) a capital asset, or
12 "(II) property used in the trade
13 or business (as defined in section
14 1231(b)).
15 "(ii) Royalties, rents, dividends, inter-
16 est, or annuities.
17 "(iii) Any amount which constitutes
18 wages (as defined in section 3401).
19 "(3) APPLICATION OF CERTAIN RULES.—Rules
20 similar to the rules of paragraphs (2) and (3) of sec-
21 tion 199(c) shall apply for purposes of this section
22 (applied with respect to qualified domestic business
23 income in lieu of qualified production activities in-
24 come and with respect to domestic business gross re-
25 ceipts in lieu of domestic production gross receipts).

1 "(e) QUALIFIED SMALL BUSINESS.—For purposes of
2 this section—
3 "(1) IN GENERAL.—The term 'qualified small
4 business' means any employer engaged in a trade or
5 business if such employer had fewer than 500 full-
6 time equivalent employees for either calendar year
7 2010 or 2011.
8 "(2) FULL-TIME EQUIVALENT EMPLOYEES.—
9 The term 'full-time equivalent employees' has the
10 meaning given such term by subsection (d)(2) of sec-
11 tion 45R applied—
12 "(A) without regard to subsection (d)(5) of
13 such section,
14 "(B) with regard to subsection (e)(1) of
15 such section, and
16 "(C) by substituting 'calendar year' for
17 'taxable year' each place it appears therein.
18 "(3) EMPLOYERS NOT IN EXISTENCE PRIOR TO
19 2012.—In the case of an employer which was not in
20 existence on January 1, 2012, the determination
21 under paragraph (1) shall be made with respect to
22 calendar year 2012.
23 "(4) APPLICATION TO CALENDAR YEARS IN
24 WHICH EMPLOYER IN EXISTENCE FOR PORTION OF
25 CALENDAR YEAR.—In the case of any calendar year

1 during which the employer comes into existence, the
2 number of full-time equivalent employees determined
3 under paragraph (2) with respect to such calendar
4 year shall be increased by multiplying the number so
5 determined (without regard to this paragraph) by
6 the quotient obtained by dividing—
7 "(A) the number of days in such calendar
8 year, by
9 "(B) the number of days during such cal-
10 endar year which such employer is in existence.
11 "(5) SPECIAL RULES.—
12 "(A) AGGREGATION RULE.—For purposes
13 of paragraph (1), any person treated as a single
14 employer under subsection (a) or (b) of section
15 52 (applied without regard to section 1563(b))
16 or subsection (m) or (o) of section 414 shall be
17 treated as a single employer for purposes of this
18 subsection.
19 "(B) PREDECESSORS.—Any reference in
20 this subsection to an employer shall include a
21 reference to any predecessor of such employer.
22 "(f) SPECIAL RULES.—
23 "(1) ELECTIVE APPLICATION OF DEDUCTION.—
24 Except as otherwise provided by the Secretary, the
25 taxpayer may elect not to take any item of income

1 into account as domestic business gross receipts for
2 purposes of this section.
3 "(2) COORDINATION WITH SECTION 199.—If a
4 deduction is allowed under this section with respect
5 to any taxpayer for any taxable year—
6 "(A) any gross receipts of the taxpayer
7 which are taken into account under this section
8 for such taxable year shall not be taken into ac-
9 count under section 199 for such taxable year,
10 and
11 "(B) the W–2 wages of the taxpayer which
12 are taken into account under this section shall
13 not be taken into account under section 199 for
14 such taxable year.
15 "(3) APPLICATION OF CERTAIN RULES.—Rules
16 similar to the rules of paragraphs (1), (2), (3), (4),
17 (6), and (7) of section 199(d) shall apply for pur-
18 poses of this section (applied with respect to quali-
19 fied domestic business income in lieu of qualified
20 production activities income).
21 "(g) REGULATIONS.—The Secretary shall prescribe
22 such regulations as are necessary to carry out the pur-
23 poses of this section, including regulations which prevent
24 a taxpayer which reorganizes from being treated as a
25 qualified small business if such taxpayer would not have

1 been treated as a qualified small business prior to such
2 reorganization.
3 "(h) APPLICATION.—Subsection (a) shall apply only
4 with respect to the first taxable year of the taxpayer begin-
5 ning after December 31, 2011.".
6 (b) CONFORMING AMENDMENTS.—
7 (1) Section 56(d)(1)(A) of such Code is amend-
8 ed by striking "deduction under section 199" both
9 places it appears and inserting "deductions under
10 sections 199 and 200".
11 (2) Section 56(g)(4)(C) of such Code is amend-
12 ed by adding at the end the following new clause:
13 "(vii) DEDUCTION FOR DOMESTIC
14 BUSINESS INCOME OF QUALIFIED SMALL
15 BUSINESSES.—Clause (i) shall not apply to
16 any amount allowable as a deduction under
17 section 200.".
18 (3) The following provisions of such Code are
19 each amended by inserting "200," after "199,".
20 (A) Section 86(b)(2)(A).
21 (B) Section 135(c)(4)(A).
22 (C) Section 137(b)(3)(A).
23 (D) Section 219(g)(3)(A)(ii).
24 (E) Section 221(b)(2)(C)(i).
25 (F) Section 222(b)(2)(C)(i).

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

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

3 (4) Section 163(j)(6)(A)(i) of such Code is
4 amended by striking "and" at the end of subclause
5 (III) and by inserting after subclause (IV) the fol-
6 lowing new subclause:

7 "(V) any deduction allowable
8 under section 200, and".

9 (5) Section 170(b)(2)(C) of such Code is
10 amended by striking "and" at the end of clause (iv),
11 by striking the period at the end of clause (v) and
12 inserting ", and", and by inserting after clause (v)
13 the following new clause:

14 "(vi) section 200.".

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

17 "(8) DOMESTIC BUSINESS INCOME OF QUALI-
18 FIED SMALL BUSINESSES.—The deduction under
19 section 200 shall not be allowed.".

20 (7) Section 613(a) of such Code is amended by
21 striking "deduction under section 199" and insert-
22 ing "deductions under sections 199 and 200".

23 (8) Section 613A(d)(1) of such Code is amend-
24 ed by redesignating subparagraphs (C), (D), and
25 (E) as subparagraphs (D), (E), and (F), respec-

1 tively, and by inserting after subparagraph (B) the
2 following new subparagraph:
3 "(C) any deduction allowable under section
4 200,".
5 (9) Section 1402(a) of such Code is amended
6 by striking "and" at the end of paragraph (16), by
7 redesignating paragraph (17) as paragraph (18),
8 and by inserting after paragraph (16) the following
9 new paragraph:
10 "(17) the deduction provided by section 200
11 shall not be allowed; and".
12 (c) CLERICAL AMENDMENT.—The table of sections
13 for part VI of subchapter B of chapter 1 of such Code
14 is amended by adding at the end the following new item:

"Sec. 200. Domestic business income of qualified small businesses.".

House Calendar No. _____

112TH CONGRESS
2D SESSION

H. RES. _____

Report No. 112–_____

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.

IN THE HOUSE OF REPRESENTATIVES

APRIL 17, 2012

Mr. SESSIONS, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

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RESOLUTION

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.

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House 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. All points of order against consideration of the bill are waived. The amendment in the nature of

1 a substitute recommended by the Committee on Ways and
2 Means now printed in the bill shall be considered as adopt-
3 ed. The bill, as amended, shall be considered as read. All
4 points of order against provisions in the bill, as amended,
5 are waived. The previous question shall be considered as
6 ordered on the bill, as amended, and on any further
7 amendment thereto, to final passage without intervening
8 motion except: (1) one hour of debate equally divided and
9 controlled by the chair and ranking minority member of
10 the Committee on Ways and Means; (2) the further
11 amendment in the nature of a substitute printed in the
12 report of the Committee on Rules accompanying this reso-
13 lution, if offered by Representative Levin of Michigan or
14 his designee, which shall be in order without intervention
15 of any point of order, shall be considered as read, and
16 shall be separately debatable for 20 minutes equally di-
17 vided and controlled by the proponent and an opponent;
18 and (3) one motion to recommit with or without instruc-
19 tions.