

**TEXT OF AMENDMENT MADE IN ORDER**

2

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 9, AS REPORTED  
OFFERED BY M. P. Levin**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

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

16 “(2) taxable income (determined without regard  
17 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 cepts 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 cepts 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.”.

