

103^D CONGRESS
2^D SESSION

S. 2030

To amend the Internal Revenue Code of 1986 to limit the tax rate for certain small businesses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 19 (legislative day, APRIL 11), 1994

Mr. ROTH (for himself, Mr. WALLOP, and Mr. PRESSLER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to limit the tax rate for certain small businesses, and for other purposes.

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 and Growth Act”.

6 **SEC. 2. MAXIMUM SMALL BUSINESS TAX RATE.**

7 (a) IN GENERAL.—Section 1 of the Internal Revenue
8 Code of 1986 (relating to tax imposed) is amended by add-
9 ing at the end the following new subsection:

10 “(i) MAXIMUM SMALL BUSINESS TAX RATE.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (4), if a taxpayer has taxable small business
3 income for any taxable year to which this subsection
4 applies, then the tax imposed by this section shall
5 not exceed the sum of—

6 “(A) a tax computed at the rates and in
7 the same manner as if this subsection had not
8 been enacted on the greater of—

9 “(i) taxable income reduced by the
10 amount of taxable small business income,
11 or

12 “(ii) the amount of taxable income
13 taxed at a rate below 31 percent, plus

14 “(B) a tax of 31 percent of the amount of
15 taxable income in excess of the amount deter-
16 mined under paragraph (1).

17 “(2) TAXABLE SMALL BUSINESS INCOME.—For
18 purposes of this subsection, the term ‘taxable small
19 business income’ means, with respect to any taxable
20 year, the least of—

21 “(A) the taxable income of the taxpayer
22 for such year attributable to the active conduct
23 of any trade or business of an eligible small
24 business in which the taxpayer materially par-

1 anticipates (within the meaning of section 469(h)
2 (other than paragraph (4))),

3 “(B) the net earnings from self-employ-
4 ment (within the meaning of section 1402(a),
5 applied without dollar limitation) of the tax-
6 payer for such year attributable to the active
7 conduct of such trade or business, or

8 “(C) the taxpayer’s share of additions for
9 such taxable year to the qualified retained earn-
10 ings account of such trade or business.

11 For purposes of determining net earnings from self-
12 employment under subparagraph (B), an S corpora-
13 tion shall be treated as if it were a partnership.

14 “(3) QUALIFIED RETAINED EARNINGS AC-
15 COUNT.—For purposes of this subsection:

16 “(A) IN GENERAL.—The term ‘qualified
17 retained earnings account’ means an account
18 established by a trade or business—

19 “(i) which is designated as a qualified
20 retained earnings account for purposes of
21 this subsection,

22 “(ii) additions to which may only be
23 made in cash,

24 “(iii) distributions from which may
25 only consist of qualified distributions, and

1 “(iv) any earnings on which are not
2 allocated to the account.

3 “(B) QUALIFIED DISTRIBUTIONS.—For
4 purposes of subparagraph (A), distributions
5 from a qualified retained earnings account shall
6 be treated as qualified distributions if used—

7 “(i) to pay ordinary and necessary ex-
8 penses paid or incurred in carrying on the
9 trade or business of the eligible small busi-
10 ness to which the account relates, or

11 “(ii) to pay the tax imposed under
12 this subtitle on amounts in the account.

13 “(4) ADDITIONAL TAX ON NONQUALIFIED DIS-
14 TRIBUTIONS.—

15 “(A) IN GENERAL.—If—

16 “(i) a distribution other than a quali-
17 fied distribution is made from a qualified
18 retained earnings account, and

19 “(ii) such distribution is made from
20 additions to the account for a taxable year
21 with respect to which paragraph (1) ap-
22 plied to the taxpayer by reason of such
23 additions,

24 then the tax imposed by this section for the tax-
25 able year of the taxpayer with or within which

1 the taxable year of the eligible small business in
2 which the distribution was made ends shall be
3 increased by the amount determined under sub-
4 paragraph (B).

5 “(B) AMOUNT OF ADDITIONAL TAX.—The
6 amount of tax determined under this subpara-
7 graph is an amount equal to the sum of—

8 “(i) the product of the taxpayer’s pro
9 rata share of the distribution described in
10 subparagraph (A)(i) and the number of
11 percentage points (and fractions thereof)
12 by which the highest rate of tax in effect
13 under this section for the taxpayer’s tax-
14 able year exceeds 31 percent, plus

15 “(ii) the product of—

16 “(I) the amount by which the
17 taxpayer’s pro rata share of such dis-
18 tribution, when added to the tax-
19 payer’s pro rata share of previous dis-
20 tributions from additions to the ac-
21 count for the same taxable year, ex-
22 ceeds \$135,000, and

23 “(II) the rate of tax imposed by
24 section 1401(b) for the taxpayer’s tax-
25 able year.

1 “(C) ORDER OF DISTRIBUTIONS.—For
2 purposes of this paragraph, distributions shall
3 be treated as having been made from the quali-
4 fied retained earnings account on a first-in,
5 first-out basis.

6 “(D) TREATMENT OF HEALTH INSURANCE
7 TAX.—For purposes of this title, the tax de-
8 scribed in subparagraph (B)(ii) shall be treated
9 as if it were a tax imposed by section 1401(b).

10 “(5) ELIGIBLE SMALL BUSINESS.—For pur-
11 poses of this subsection:

12 “(A) IN GENERAL.—The term ‘eligible
13 small business’ means, with respect to any tax-
14 able year, a sole proprietorship, partnership, or
15 S corporation which is a small business concern
16 (within the meaning of section 3(a) of the
17 Small Business Act) as of the beginning of the
18 taxable year.

19 “(B) ELECTION TO USE 3 PRECEDING
20 YEARS.—If the determination under subpara-
21 graph (A) is made on the basis of number of
22 employees or gross receipts, the taxpayer may
23 elect to have the determination made on the
24 basis of the average number of employees or the

1 average gross receipts of the taxpayer for the 3
2 taxable years preceding the taxable year.

3 “(6) YEARS TO WHICH SUBSECTION APPLIES.—

4 This subsection shall apply to any taxable year if the
5 highest rate of tax set forth in subsection (a), (b),
6 (c), (d), or (e) (whichever applies) for the taxable
7 year exceeds 31 percent.

8 “(7) REGULATIONS.—The Secretary shall pre-
9 scribe such regulations as may be necessary or ap-
10 propriate to carry out the purposes of this section,
11 including regulations preventing the characterization
12 of distributions for purposes of compensation or per-
13 sonal use as qualified distributions under paragraph
14 (3)(B)(i).”.

15 (b) CERTAIN TAXABLE SMALL BUSINESS INCOME
16 NOT SUBJECT TO HI TAX.—Section 3121(a) (defining
17 wages) is amended—

18 (i) by striking “or” at the end of
19 paragraph (20),

20 (ii) by striking the period at the end
21 of paragraph (21) and inserting “; or”,
22 and

23 (iii) by adding at the end the follow-
24 ing new paragraph:

1 “(22) the portion of any taxable small business
2 income (as defined in section 1(i)) properly allocable
3 to the calendar year which is in excess of
4 \$135,000.”.

5 (c) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall apply to taxable years beginning after
7 December 31, 1992.

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