

117TH CONGRESS
1ST SESSION

S. 2387

To amend the Internal Revenue Code of 1986 to improve the deduction
for qualified business income.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2021

Mr. WYDEN 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 improve
the deduction for qualified business income.

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 Tax
5 Fairness Act”.

6 **SEC. 2. MODIFICATIONS TO DEDUCTION FOR QUALIFIED**
7 **BUSINESS INCOME.**

8 (a) IN GENERAL.—

9 (1) ELIGIBILITY.—

1 (A) DEDUCTION LIMITED TO INDIVID-
 2 UALS.—

3 (i) IN GENERAL.—Section 199A(a) of
 4 the Internal Revenue Code of 1986 is
 5 amended by striking “In the case of a tax-
 6 payer other than a corporation” and in-
 7 serting “In the case of an individual”.

8 (ii) APPLICATION TO TRUSTS AND ES-
 9 TATES.—Section of such Code is amended
 10 by adding at the end the following new
 11 subsection:

12 “(j) DEDUCTION FOR QUALIFIED BUSINESS IN-
 13 COME.—No deduction shall be allowed under section 199A
 14 to an estate or trust.”.

15 (B) MARRIED TAXPAYERS MUST FILE
 16 JOINT RETURN.—Section 199A(f) of such Code
 17 is amended by redesignating paragraph (4) as
 18 paragraph (5) and by inserting after paragraph
 19 (3) the following new paragraph:

20 “(4) NO DEDUCTION FOR MARRIED INDIVID-
 21 UALS FILING SEPARATE RETURNS.—If the taxpayer
 22 is a married individual (within the meaning of sec-
 23 tion 7703), this section shall apply only if the tax-
 24 payer and the taxpayer’s spouse file a joint return
 25 for the taxable year.”.

1 (2) AMOUNT OF DEDUCTION.—

2 (A) DETERMINATION OF AMOUNT.—Sub-
 3 section (a) of section 199A of the Internal Rev-
 4 enue Code of 1986 is amended by striking “an
 5 amount equal to the lesser of” and all that fol-
 6 lows and inserting “an amount equal to 20 per-
 7 cent of the least of—

8 “(1) the qualified business income of the tax-
 9 payer,

10 “(2) the threshold amount, or

11 “(3) the taxable income of the taxpayer for the
 12 taxable year reduced by the net capital gain (as de-
 13 fined in section 1(h)) of the taxpayer for such tax-
 14 able year.”.

15 (B) MODIFICATION OF THRESHOLD
 16 AMOUNT.—

17 (i) IN GENERAL.—Section 199A(e)(2)
 18 of the Internal Revenue Code of 1986 is
 19 amended to read as follows:

20 “(2) THRESHOLD AMOUNT.—The term ‘thresh-
 21 old amount’ means \$400,000.”.

22 (C) LIMITATIONS.—Subsection (b) of sec-
 23 tion 199A of such Code is amended to read as
 24 follows:

25 “(b) LIMITATIONS.—

1 “(1) LIMITATION BASED ON TAXABLE IN-
 2 COME.—The amount of the deduction allowed under
 3 subsection (a) (determined without regard to this
 4 paragraph) shall be reduced (but not below zero) by
 5 an amount which bears the same ratio to such
 6 amount as—

7 “(A) the excess of the taxpayer’s taxable
 8 income over the threshold amount, bears to

9 “(B) \$100,000.

10 “(2) SPECIAL RULES WITH RESPECT TO IN-
 11 COME RECEIVED FROM COOPERATIVES.—In the case
 12 of any qualified trade or business of a patron of a
 13 specified agricultural or horticultural cooperative,
 14 the amount of qualified business income taken into
 15 account under subsection (a)(1) with respect to such
 16 trade or business shall be reduced by the lesser of—

17 “(A) 9 percent of so much of the qualified
 18 business income with respect to such trade or
 19 business as is properly allocable to qualified
 20 payments received from such cooperative, or

21 “(B) 50 percent of so much of the W-2
 22 wages (as defined in subsection (g)(1)) with re-
 23 spect to such trade or business as are so allo-
 24 cable.”.

1 (3) TREATMENT OF QUALIFIED REIT DIVI-
2 DENDS.—

3 (A) IN GENERAL.—Section 199A(c) of
4 such Code is amended—

5 (i) by striking the last sentence in
6 paragraph (1) and inserting “Such term
7 shall include qualified REIT dividends.”,
8 and

9 (ii) by inserting “(other than a quali-
10 fied REIT dividend)” after “Any dividend”
11 in paragraph (3)(B)(ii).

12 (B) TECHNICAL AMENDMENT.—Section
13 199A(e)(3) of such Code is amended by adding
14 at the end the following new flush sentence:

15 “Such term shall not include any dividend on any
16 share of stock with respect to which the holding pe-
17 riod requirements of section 246(c) are not met or
18 to the extent that the taxpayer is under an obliga-
19 tion (whether pursuant to a short sale or otherwise)
20 to make related payments with respect to positions
21 in substantially similar or related property.”.

22 (4) CONFORMING AMENDMENTS.—

23 (A) Section 199A(c)(1) of the Internal
24 Revenue Code of 1986 is amended by striking

1 “any qualified trade or business” and inserting
 2 “all qualified trades or businesses”.

3 (B) Section 199A(e) of such Code is
 4 amended by striking paragraph (4).

5 (C) Section 199A(f) of such Code, as
 6 amended by paragraph (1), is amended—

7 (i) by redesignating paragraphs (2)
 8 through (5) as paragraphs (3) through (6),
 9 respectively, and

10 (ii) by striking paragraph (1) and in-
 11 serting the following:

12 “(1) APPLICATION TO PARTNERSHIPS AND S
 13 CORPORATIONS.—In the case of a partnership or S
 14 corporation—

15 “(A) this section shall be applied at the
 16 partner or shareholder level, and

17 “(B) each partner or shareholder shall
 18 take into account such person’s allocable share
 19 of each qualified item of income, gain, deduc-
 20 tion, and loss.

21 For purposes of this paragraph, in the case of an S
 22 corporation, an allocable share shall be the share-
 23 holder’s pro rata share of an item.

24 “(2) TREATMENT OF TRADES OR BUSINESSES
 25 IN PUERTO RICO.—In the case of any taxpayer with

1 qualified business income from sources within the
 2 commonwealth of Puerto Rico, if all such income is
 3 taxable under section 1 for such taxable year, then
 4 for purposes of determining the qualified business
 5 income of such taxpayer for such taxable year, the
 6 term ‘United States’ shall include the Common-
 7 wealth of Puerto Rico.”.

8 (D) Section 199A(f)(6)(A) of such Code,
 9 as redesignated by paragraph (1) and subpara-
 10 graph (C), is amended by striking “and wages”.

11 (E) Section 199A(g)(1)(B)(ii) of such
 12 Code is amended to read as follows:

13 “(ii) W-2 WAGES.—For purposes of
 14 this subparagraph—

15 “(I) IN GENERAL.—The term
 16 ‘W-2 wages’ means, with respect to
 17 any person for any taxable year of
 18 such person, the amounts described in
 19 paragraphs (3) and (8) of section
 20 6051(a) paid by such person with re-
 21 spect to employment of employees by
 22 such person during the calendar year
 23 ending during such taxable year. Such
 24 amounts shall be determined after ap-
 25 plication of subsection (b).

1 “(II) RETURN REQUIREMENT.—

2 Such term shall not include any
3 amount which is not properly included
4 in a return filed with the Social Secu-
5 rity Administration on or before the
6 60th day after the due date (including
7 extensions) for such return.

8 “(III) WAGES MUST BE ALLO-
9 CABLE TO DOMESTIC PRODUCTION
10 GROSS RECEIPTS.—Such term shall
11 not include any amount which is not
12 properly allocable to domestic produc-
13 tion gross receipts for purposes of
14 paragraph (3)(A).”.

15 (F) Section 199A(g)(5)(B) of such Code is
16 amended by inserting “and the determination of
17 W-2 wages with respect to any qualified trade
18 or business conducted in Puerto Rico shall be
19 made without regard to any exclusion under
20 section 3401(a)(8) for remuneration paid for
21 services in Puerto Rico” after “this sub-
22 section”.

23 (G) Section 199A of such Code is amended
24 by striking subsection (h) and by redesignating
25 subsection (i) as subsection (h).

1 (b) MODIFICATION OF DEFINITION OF QUALIFIED
 2 TRADE OR BUSINESS.—Section 199A(d) of the Internal
 3 Revenue Code of 1986 is amended to read as follows:

4 “(d) QUALIFIED TRADE OR BUSINESS.—For pur-
 5 poses of this section, the term ‘qualified trade or business’
 6 means any trade or business other than the trade or busi-
 7 ness of performing services as an employee.”.

8 (c) EXCLUSION OF MARK TO MARKET GAIN OR LOSS
 9 OF TRADERS IN SECURITIES AND COMMODITIES FROM
 10 QUALIFIED BUSINESS INCOME.—Section 199A(c)(3)(B)
 11 of the Internal Revenue Code of 1986 is amended by re-
 12 designating clause (vii) as clause (viii) and by inserting
 13 after clause (vi) the following new clause:

14 “(vii) Any gain or loss taken into ac-
 15 count under section 475(f).”.

16 (d) TREATMENT OF QUALIFIED BUSINESS INCOME
 17 DISTRIBUTED BY RICs.—

18 (1) IN GENERAL.—Section 852(b) of the Inter-
 19 nal Revenue Code of 1986 is amended by adding at
 20 the end the following new paragraph:

21 “(10) TREATMENT BY SHAREHOLDERS OF
 22 QUALIFIED BUSINESS INCOME.—

23 “(A) IN GENERAL.—In any case in
 24 which—

1 “(i) a dividend is received from a reg-
 2 ulated investment company, and

3 “(ii) such company meets the require-
 4 ments of subsection (a) for the taxable
 5 year during which it paid such dividend,
 6 then every shareholder of such company shall
 7 treat as qualified business income under section
 8 199A(c) that portion of such dividend reported
 9 by such company as eligible for such treatment
 10 in written statements furnished to its share-
 11 holders.

12 “(B) LIMITATION.—For purposes of sub-
 13 paragraph (A), the aggregate amount which
 14 may be reported as dividends eligible to be
 15 treated as qualified business income under sec-
 16 tion 199A(c) shall not exceed the sum of—

17 “(i) the qualified REIT dividends (as
 18 defined in section 199A(e)) received by the
 19 company for the taxable year, plus

20 “(ii) the net amount of the company’s
 21 allocable share for the taxable year of each
 22 qualified item of income, gain, deduction,
 23 and loss (as defined in subsection (c)(3) of
 24 section 199A, determined after the applica-
 25 tion of subsection (c)(4) thereof) from a

1 publicly traded partnership (as defined in
2 section 7704(b)) which is not treated as a
3 corporation under section 7704(a).”.

4 (2) CONFORMING AMENDMENT.—Section
5 199A(c) of such Code is amended by adding at the
6 end the following new paragraph:

7 “(5) TREATMENT OF CERTAIN DIVIDENDS RE-
8 CEIVED FROM REGULATED INVESTMENT COMPA-
9 NIES.—For the treatment under paragraph (1) of
10 certain dividends received from regulated investment
11 companies, see section 852(b)(10).”.

12 (e) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 the date of the enactment of this Act.

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