116TH CONGRESS
2D SESSION

S.

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

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on ____________

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.—
(A) Deduction limited to individuals.—

(i) In general.—Section 199A(a) of the Internal Revenue Code of 1986 is amended by striking “In the case of a taxpayer other than a corporation” and inserting “In the case of an individual”.

(ii) Application to trusts and estates.—Section of such Code is amended by adding at the end the following new subsection:

“(j) Deduction for qualified business income.—No deduction shall be allowed under section 199A to an estate or trust.”.

(B) Married taxpayers must file joint return.—Section 199A(f) of such Code is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

“(4) No deduction for married individuals filing separate returns.—If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and the taxpayer’s spouse file a joint return for the taxable year.”.
(2) AMOUNT OF DEDUCTION.—

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

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

“(2) the threshold amount, or

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

(B) MODIFICATION OF THRESHOLD
AMOUNT.—

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

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

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

“(b) LIMITATIONS.—
“(1) LIMITATION BASED ON TAXABLE INCOME.—The amount of the deduction allowed under subsection (a) (determined without regard to this paragraph) shall be reduced (but not below zero) by an amount which bears the same ratio to such amount as—

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

“(B) $100,000.

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

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

“(B) 50 percent of so much of the W-2 wages (as defined in subsection (g)(1)) with respect to such trade or business as are so allocable.”.
(3) **TREATMENT OF QUALIFIED REIT DIVIDENDS.**—

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

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

and

(ii) by inserting “(other than a qualified REIT dividend)” after “Any dividend” in paragraph (3)(B)(ii).

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

“Such term shall not include any dividend on any share of stock with respect to which the holding period requirements of section 246(c) are not met or to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.”.

(4) **CONFORMING AMENDMENTS.**—

(A) Section 199A(e)(1) of the Internal Revenue Code of 1986 is amended by striking
“any qualified trade or business” and inserting
“all qualified trades or businesses”.

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

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

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

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

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

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

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

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

“(2) TREATMENT OF TRADES OR BUSINESSES
IN PUERTO RICO.—In the case of any taxpayer with
qualified business income from sources within the commonwealth of Puerto Rico, if all such income is taxable under section 1 for such taxable year, then for purposes of determining the qualified business income of such taxpayer for such taxable year, the term ‘United States’ shall include the Commonwealth of Puerto Rico.”.

(D) Section 199A(f)(6)(A) of such Code, as redesignated by paragraph (1) and subparagraph (C), is amended by striking “and wages”.

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

“(ii) W–2 wages.—For purposes of this subparagraph—

“(I) IN GENERAL.—The term ‘W–2 wages’ means, with respect to any person for any taxable year of such person, 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. Such amounts shall be determined after application of subsection (b).
“(II) Return requirement.—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.

“(III) Wages must be allocable to domestic production gross receipts.—Such term shall not include any amount which is not properly allocable to domestic production gross receipts for purposes of paragraph (3)(A).”.

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

(G) Section 199A of such Code is amended by striking subsection (h) and by redesignating subsection (i) as subsection (h).
(b) Modification of Definition of Qualified Trade or Business.—Section 199A(d) of the Internal Revenue Code of 1986 is amended to read as follows:

“(d) Qualified Trade or Business.—For purposes of this section, the term ‘qualified trade or business’ means any trade or business other than the trade or business of performing services as an employee.”.

(c) Exclusion of Mark to Market Gain or Loss of Traders in Securities and Commodities From Qualified Business Income.—Section 199A(c)(3)(B) of the Internal Revenue Code of 1986 is amended by redesignating clause (vii) as clause (viii) and by inserting after clause (vi) the following new clause:

“(vii) Any gain or loss taken into account under section 475(f).”.

(d) Treatment of Qualified Business Income Distributed by RICs.—

(1) In General.—Section 852(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(10) Treatment by Shareholders of Qualified Business Income.—

“(A) In General.—In any case in which—
“(i) a dividend is received from a regulated investment company, and

“(ii) such company meets the requirements of subsection (a) for the taxable year during which it paid such dividend,

then every shareholder of such company shall treat as qualified business income under section 199A(c) that portion of such dividend reported by such company as eligible for such treatment in written statements furnished to its shareholders.

“(B) LIMITATION.—For purposes of subparagraph (A), the aggregate amount which may be reported as dividends eligible to be treated as qualified business income under section 199A(c) shall not exceed the sum of—

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

“(ii) the net amount of the company’s allocable share for the taxable year of each qualified item of income, gain, deduction, and loss (as defined in subsection (c)(3) of section 199A, determined after the application of subsection (c)(4) thereof) from a
publicly traded partnership (as defined in section 7704(b)) which is not treated as a corporation under section 7704(a).”.

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

“(5) TREATMENT OF CERTAIN DIVIDENDS RECEIVED FROM REGULATED INVESTMENT COMPANIES.—For the treatment under paragraph (1) of certain dividends received from regulated investment companies, see section 852(b)(10).”.

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