

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 436
OFFERED BY MR. LEVIN OF MICHIGAN**

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 Jobs
3 and Tax Relief Act”.

**4 SEC. 2. TEMPORARY TAX CREDIT FOR INCREASED PAY-
5 ROLL.**

6 (a) IN GENERAL.—In the case of a qualified employer
7 who elects the application of this section, there shall be
8 allowed as a credit against the tax imposed by chapter
9 1 of the Internal Revenue Code of 1986 for the taxable
10 year which includes December 31, 2012, an amount equal
11 to 10 percent of the excess (if any) of—

12 (1) the sum of the wages and compensation
13 paid by such qualified employer for qualified services
14 during calendar year 2012, over

15 (2) the sum of such wages and compensation
16 paid during calendar year 2011.

1 (b) LIMITATION.—The amount of the excess taken
2 into account under subsection (a) with respect to any
3 qualified employer shall not exceed \$5,000,000.

4 (c) WAGES AND COMPENSATION.—For purposes of
5 this section—

6 (1) WAGES.—The term “wages” has the mean-
7 ing given such term under section 3121 of the Inter-
8 nal Revenue Code of 1986 for purposes of the tax
9 imposed by section 3111(a) of such Code.

10 (2) COMPENSATION.—The term “compensa-
11 tion” has the meaning given such term under section
12 3231 of such Code for purposes of the portion of the
13 tax imposed by section 3221(a) of such Code that
14 corresponds to the tax imposed by section 3111(a)
15 of such Code.

16 (3) APPLICATION OF CONTRIBUTION AND BEN-
17 EFIT BASE TO CALENDAR YEAR 2011.—For purposes
18 of determining wages and compensation under sub-
19 section (a)(2), the contribution and benefit base as
20 determined under section 230 of the Social Security
21 Act shall be such amount as in effect for calendar
22 year 2012.

23 (4) SPECIAL RULE WHEN NO WAGES OR COM-
24 PENSATION IN 2011.—In any case in which the sum
25 of the wages and compensation paid by a qualified

1 employer for qualified services during calendar year
2 2011 is zero, then the amount taken into account
3 under subsection (a)(2) shall be 80 percent of the
4 amount taken into account under subsection (a)(1).

5 (5) COORDINATION WITH OTHER EMPLOYMENT
6 CREDITS.—The amount of the excess taken into ac-
7 count under subsection (a) shall be reduced by the
8 sum of all other Federal tax credits determined with
9 respect to wages or compensation paid in calendar
10 year 2012.

11 (d) OTHER DEFINITIONS.—

12 (1) QUALIFIED EMPLOYER.—For purposes of
13 this section—

14 (A) IN GENERAL.—The term “qualified
15 employer” has the meaning given such term
16 under section 3111(d)(2) of the Internal Rev-
17 enue Code of 1986, determined by substituting
18 “section 101 of the Higher Education Act of
19 1965” for “section 101(b) of the Higher Edu-
20 cation Act of 1965” in subparagraph (B) there-
21 of.

22 (B) AGGREGATION RULES.—Rules similar
23 to the rules of sections 414(b), 414(c), 414(m),
24 and 414(o) of such Code shall apply to deter-
25 mine when multiple entities shall be treated as

1 a single employer, and rules with respect to
2 predecessor and successor employers may be
3 applied, in such manner as may be prescribed
4 by the Secretary of the Treasury or the Sec-
5 retary's designee (in this section referred to as
6 the "Secretary").

7 (2) QUALIFIED SERVICES.—The term "qualified
8 services" means services performed by an individual
9 who is not described in section 51(i)(1) of such Code
10 (applied by substituting "qualified employer" for
11 "taxpayer" each place it appears)—

12 (A) in a trade or business of the qualified
13 employer, or

14 (B) in the case of a qualified employer ex-
15 empt from tax under section 501(a) of such
16 Code, in furtherance of the activities related to
17 the purpose or function constituting the basis of
18 the employer's exemption under section 501 of
19 such Code.

20 (e) APPLICATION OF CERTAIN RULES.—Rules simi-
21 lar to the rules of sections 280C(a) and 6501(m) of the
22 Internal Revenue Code of 1986 shall apply with respect
23 to the credit determined under this section.

24 (f) TREATMENT OF CREDIT.—For purposes of the
25 Internal Revenue Code of 1986—

1 (1) TAXABLE EMPLOYERS.—

2 (A) IN GENERAL.—The credit allowed
3 under subsection (a) with respect to qualified
4 services described in subsection (d)(2)(A) for
5 any taxable year shall be added to the current
6 year business credit under section 38(b) of such
7 Code for such taxable year and shall be treated
8 as a credit allowed under subpart D of part IV
9 of subchapter A of chapter 1 of such Code.

10 (B) LIMITATION ON CARRYBACKS.—No
11 portion of the unused business credit under sec-
12 tion 38 of such Code for any taxable year which
13 is attributable to an increase in the current
14 year business credit by reason of subparagraph
15 (A) may be carried to a taxable year beginning
16 before the date of the enactment of this section.

17 (2) TAX-EXEMPT EMPLOYERS.—

18 (A) IN GENERAL.—The credit allowed
19 under subsection (a) with respect to qualified
20 services described in subsection (d)(2)(B) for
21 any taxable year—

22 (i) shall be treated as a credit allowed
23 under subpart C of part IV of subchapter
24 A of chapter 1 of such Code, and

1 (ii) shall be added to the credits de-
2 scribed in subparagraph (A) of section
3 6211(b)(4) of such Code.

4 (B) CONFORMING AMENDMENT.—Section
5 1324(b)(2) of title 31, United States Code, is
6 amended by inserting “or due under section 2
7 of the Small Business Jobs and Tax Relief Act”
8 after “the Housing Assistance Tax Act of
9 2008”.

10 (g) TREATMENT OF POSSESSIONS.—

11 (1) PAYMENTS TO POSSESSIONS.—

12 (A) MIRROR CODE POSSESSIONS.—The
13 Secretary shall pay to each possession of the
14 United States with a mirror code tax system
15 amounts equal to the loss to that possession by
16 reason of the application of subsections (a)
17 through (f). Such amounts shall be determined
18 by the Secretary based on information provided
19 by the government of the respective possession
20 of the United States.

21 (B) OTHER POSSESSIONS.—The Secretary
22 shall pay to each possession of the United
23 States which does not have a mirror code tax
24 system the amount estimated by the Secretary
25 as being equal to the loss to that possession

1 that would have occurred by reason of the ap-
2 plication of subsections (a) through (f) if a mir-
3 ror code tax system had been in effect in such
4 possession. The preceding sentence shall not
5 apply with respect to any possession of the
6 United States unless such possession establishes
7 to the satisfaction of the Secretary that the pos-
8 session has implemented (or, at the discretion
9 of the Secretary, will implement) an income tax
10 benefit which is substantially equivalent to the
11 income tax credit allowed under such sub-
12 sections.

13 (2) COORDINATION WITH CREDIT ALLOWED
14 AGAINST UNITED STATES INCOME TAXES.—No in-
15 crease in the credit determined under section 38(b)
16 of the Internal Revenue Code of 1986 against
17 United States income taxes for any taxable year de-
18 termined by reason of subsection (f)(1)(A) shall be
19 taken into account with respect to any person—

20 (A) to whom a credit is allowed against
21 taxes imposed by the possession by reason of
22 this section for such taxable year, or

23 (B) who is eligible for a payment under a
24 plan described in paragraph (1)(B) with respect
25 to such taxable year.

1 (3) DEFINITIONS AND SPECIAL RULES.—

2 (A) POSSESSION OF THE UNITED
3 STATES.—For purposes of this subsection, the
4 term “possession of the United States” includes
5 American Samoa, Guam, the Commonwealth of
6 the Northern Mariana Islands, the Common-
7 wealth of Puerto Rico, and the United States
8 Virgin Islands.

9 (B) MIRROR CODE TAX SYSTEM.—For pur-
10 poses of this subsection, the term “mirror code
11 tax system” means, with respect to any posses-
12 sion of the United States, the income tax sys-
13 tem of such possession if the income tax liabil-
14 ity of the residents of such possession under
15 such system is determined by reference to the
16 income tax laws of the United States as if such
17 possession were the United States.

18 (C) TREATMENT OF PAYMENTS.—For pur-
19 poses of section 1324(b)(2) of title 31, United
20 States Code, the payments under this sub-
21 section shall be treated in the same manner as
22 a refund due from credit provisions described in
23 such section.

1 (h) REGULATIONS.—The Secretary shall prescribe
2 such regulations or guidance as are necessary to carry out
3 the provisions of this section.

4 **SEC. 3. EXTENSION OF ALLOWANCE FOR BONUS DEPRECIATION FOR CERTAIN BUSINESS ASSETS.**

6 (a) EXTENSION OF 100 PERCENT BONUS DEPRECIATION.—

8 (1) IN GENERAL.—Paragraph (5) of section
9 168(k) of the Internal Revenue Code of 1986 is
10 amended—

11 (A) by striking “January 1, 2012” each
12 place it appears and inserting “January 1,
13 2013”, and

14 (B) by striking “January 1, 2013” and in-
15 serting “January 1, 2014”.

16 (2) CONFORMING AMENDMENTS.—

17 (A) The heading for paragraph (5) of sec-
18 tion 168(k) of such Code is amended by strik-
19 ing “PRE-2012 PERIODS” and inserting “PRE-
20 2013 PERIODS”.

21 (B) Clause (ii) of section 460(c)(6)(B) of
22 such Code is amended by striking “January 1,
23 2011 (January 1, 2012” and inserting “Janu-
24 ary 1, 2013 (January 1, 2014”.

25 (3) EFFECTIVE DATES.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), the amendments made by
3 this section shall apply to property placed in
4 service after December 31, 2011.

5 (B) CONFORMING AMENDMENT.—The
6 amendment made by paragraph (2)(B) shall
7 apply to property placed in service after Decem-
8 ber 31, 2010.

9 (b) EXPANSION OF ELECTION TO ACCELERATE AMT
10 CREDITS IN LIEU OF BONUS DEPRECIATION.—

11 (1) IN GENERAL.—Paragraph (4) of section
12 168(k) of the Internal Revenue Code of 1986 is
13 amended to read as follows:

14 “(4) ELECTION TO ACCELERATE AMT CREDITS
15 IN LIEU OF BONUS DEPRECIATION.—

16 “(A) IN GENERAL.—If a corporation elects
17 to have this paragraph apply for any taxable
18 year—

19 “(i) paragraph (1) shall not apply to
20 any eligible qualified property placed in
21 service by the taxpayer in such taxable
22 year,

23 “(ii) the applicable depreciation meth-
24 od used under this section with respect to

1 such property shall be the straight line
2 method, and

3 “(iii) the limitation imposed by section
4 53(c) for such taxable year shall be in-
5 creased by the bonus depreciation amount
6 which is determined for such taxable year
7 under subparagraph (B).

8 “(B) BONUS DEPRECIATION AMOUNT.—
9 For purposes of this paragraph—

10 “(i) IN GENERAL.—The bonus depre-
11 ciation amount for any taxable year is an
12 amount equal to 20 percent of the excess
13 (if any) of—

14 “(I) the aggregate amount of de-
15 preciation which would be allowed
16 under this section for eligible qualified
17 property placed in service by the tax-
18 payer during such taxable year if
19 paragraph (1) applied to all such
20 property, over

21 “(II) the aggregate amount of
22 depreciation which would be allowed
23 under this section for eligible qualified
24 property placed in service by the tax-
25 payer during such taxable year if

1 paragraph (1) did not apply to any
2 such property.

3 The aggregate amounts determined under
4 subclauses (I) and (II) shall be determined
5 without regard to any election made under
6 subsection (b)(2)(D), (b)(3)(D), or (g)(7)
7 and without regard to subparagraph
8 (A)(ii).

9 “(ii) LIMITATION.—The bonus depre-
10 ciation amount for any taxable year shall
11 not exceed the lesser of—

12 “(I) 50 percent of the minimum
13 tax credit under section 53(b) for the
14 first taxable year ending after Decem-
15 ber 31, 2011, reduced (but not below
16 zero) by the sum of the bonus depre-
17 ciation amounts for all taxable years
18 ending after such date for which an
19 election under this paragraph was
20 made which precede the taxable year
21 for which the determination is made
22 (other than amounts determined with
23 respect to property placed in service
24 by the taxpayer on or before such
25 date), or

1 “(II) the minimum tax credit
2 under section 53(b) for such taxable
3 year determined by taking into ac-
4 count only the adjusted minimum tax
5 for taxable years ending before Janu-
6 ary 1, 2012 (determined by treating
7 credits as allowed on a first-in, first-
8 out basis).

9 “(iii) AGGREGATION RULE.—All cor-
10 porations which are treated as a single em-
11 ployer under section 52(a) shall be treat-
12 ed—

13 “(I) as 1 taxpayer for purposes
14 of this paragraph, and

15 “(II) as having elected the appli-
16 cation of this paragraph if any such
17 corporation so elects.

18 “(C) ELIGIBLE QUALIFIED PROPERTY.—
19 For purposes of this paragraph, the term ‘eligi-
20 ble qualified property’ means qualified property
21 under paragraph (2), except that in applying
22 paragraph (2) for purposes of this paragraph—

23 “(i) ‘March 31, 2008’ shall be sub-
24 stituted for ‘December 31, 2007’ each
25 place it appears in subparagraph (A) and

1 clauses (i) and (ii) of subparagraph (E)
2 thereof,

3 “(ii) ‘April 1, 2008’ shall be sub-
4 stituted for ‘January 1, 2008’ in subpara-
5 graph (A)(iii)(I) thereof, and

6 “(iii) only adjusted basis attributable
7 to manufacture, construction, or produc-
8 tion—

9 “(I) after March 31, 2008, and
10 before January 1, 2010, and

11 “(II) after December 31, 2010,
12 and before January 1, 2013, shall be
13 taken into account under subpara-
14 graph (B)(ii) thereof.

15 “(D) CREDIT REFUNDABLE.—For pur-
16 poses of section 6401(b), the aggregate increase
17 in the credits allowable under part IV of sub-
18 chapter A for any taxable year resulting from
19 the application of this paragraph shall be treat-
20 ed as allowed under subpart C of such part
21 (and not any other subpart).

22 “(E) OTHER RULES.—

23 “(i) ELECTION.—Any election under
24 this paragraph may be revoked only with
25 the consent of the Secretary.

1 “(ii) PARTNERSHIPS WITH ELECTING
2 PARTNERS.—In the case of a corporation
3 making an election under subparagraph
4 (A) and which is a partner in a partner-
5 ship, for purposes of determining such cor-
6 poration’s distributive share of partnership
7 items under section 702—

8 “(I) paragraph (1) shall not
9 apply to any eligible qualified prop-
10 erty, and

11 “(II) the applicable depreciation
12 method used under this section with
13 respect to such property shall be the
14 straight line method.

15 “(iii) CERTAIN PARTNERSHIPS.—In
16 the case of a partnership in which more
17 than 50 percent of the capital and profits
18 interests are owned (directly or indirectly)
19 at all times during the taxable year by one
20 corporation (or by corporations treated as
21 1 taxpayer under subparagraph (B)(iii)),
22 for purposes of subparagraph (B), each
23 partner shall take into account its distribu-
24 tive share of the amounts determined by
25 the partnership under subclauses (I) and

1 (II) of clause (i) of such subparagraph for
2 the taxable year of the partnership ending
3 with or within the taxable year of the part-
4 ner. The preceding sentence shall apply
5 only to amounts determined with respect to
6 property placed in service after December
7 31, 2011.

8 “(iv) SPECIAL RULE FOR PASSENGER
9 AIRCRAFT.—In the case of any passenger
10 aircraft, the written binding contract limi-
11 tation under paragraph (2)(A)(iii)(I) shall
12 not apply for purposes of subparagraphs
13 (B)(i)(I) and (C).”.

14 (2) EFFECTIVE DATE.—The amendment made
15 by this subsection shall apply to taxable years end-
16 ing after December 31, 2011.

17 (3) TRANSITIONAL RULE.—In the case of a tax-
18 able year beginning before January 1, 2012, and
19 ending after December 31, 2011, the bonus depre-
20 ciation amount determined under paragraph (4) of
21 section 168(k) of the Internal Revenue Code of 1986
22 for such year shall be the sum of—

23 (A) such amount determined under such
24 paragraph as in effect on the date before the
25 date of enactment of this Act—

1 (i) taking into account only property
2 placed in service before January 1, 2012,
3 and

4 (ii) multiplying the limitation under
5 subparagraph (C)(ii) of such paragraph (as
6 so in effect) by a fraction the numerator of
7 which is the number of days in the taxable
8 year before January 1, 2012, and the de-
9 nominator of which is the number of days
10 in the taxable year, and

11 (B) such amount determined under such
12 paragraph as amended by this Act—

13 (i) taking into account only property
14 placed in service after December 31, 2011,
15 and

16 (ii) multiplying the limitation under
17 subparagraph (B)(ii) of such paragraph
18 (as so in effect) by a fraction the numer-
19 ator of which is the number of days in the
20 taxable year after December 31, 2011, and
21 the denominator of which is the number of
22 days in the taxable year.

1 **SEC. 4. LIMITATION ON SECTION 199 DEDUCTION ATTRIB-**
2 **UTABLE TO OIL, NATURAL GAS, OR PRIMARY**
3 **PRODUCTS THEREOF.**

4 (a) DENIAL OF DEDUCTION.—Paragraph (4) of sec-
5 tion 199(c) of the Internal Revenue Code of 1986 is
6 amended by adding at the end the following new subpara-
7 graph:

8 “(E) SPECIAL RULE FOR CERTAIN OIL
9 AND GAS INCOME.—In the case of any taxpayer
10 who is a major integrated oil company (as de-
11 fined in section 167(h)(5)(B)) for the taxable
12 year, the term ‘domestic production gross re-
13 ceipts’ shall not include gross receipts from the
14 production, transportation, or distribution of
15 oil, natural gas, or any primary product (within
16 the meaning of subsection (d)(9)) thereof.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to taxable years beginning after
19 December 31, 2011.

20 **SEC. 5. PROHIBITION ON USING LAST-IN, FIRST-OUT AC-**
21 **COUNTING FOR MAJOR INTEGRATED OIL**
22 **COMPANIES.**

23 (a) IN GENERAL.—Section 472 of the Internal Rev-
24 enue Code of 1986 is amended by adding at the end the
25 following new subsection:

1 “(h) MAJOR INTEGRATED OIL COMPANIES.—Not-
2 withstanding any other provision of this section, a major
3 integrated oil company (as defined in section
4 167(h)(5)(B)) may not use the method provided in sub-
5 section (b) in inventorying of any goods.”.

6 (b) EFFECTIVE DATE AND SPECIAL RULE.—

7 (1) IN GENERAL.—The amendment made by
8 subsection (a) shall apply to taxable years beginning
9 after December 31, 2011.

10 (2) CHANGE IN METHOD OF ACCOUNTING.—In
11 the case of any taxpayer required by the amendment
12 made by this section to change its method of ac-
13 counting for its first taxable year beginning after
14 December 31, 2011—

15 (A) such change shall be treated as initi-
16 ated by the taxpayer,

17 (B) such change shall be treated as made
18 with the consent of the Secretary of the Treas-
19 ury, and

20 (C) the net amount of the adjustments re-
21 quired to be taken into account by the taxpayer
22 under section 481 of the Internal Revenue Code
23 of 1986 shall be taken into account ratably over

- 1 a period (not greater than 8 taxable years) be-
- 2 ginning with such first taxable year.

