

112TH CONGRESS
1ST SESSION

H. R. 1661

To amend the Internal Revenue Code of 1986 to allow loans from certain retirement plans for the payment of certain small business expenses.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2011

Ms. TSONGAS (for herself, Ms. RICHARDSON, Mr. KILDEE, Mr. KEATING, Mr. COURTNEY, and Ms. CLARKE of New York) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to allow loans from certain retirement plans for the payment of certain small business expenses.

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 Relief and Retirement Restoration Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Small businesses are critical to the eco-
9 nomic recovery of the United States.

1 (2) As a consequence of the recession that
2 began in December 2007, even fundamentally
3 healthy small businesses have been unable to access
4 the credit they need.

5 (3) Data released by the Federal Deposit Insur-
6 ance Corporation indicate that lending to small busi-
7 nesses fell in 2009 by “the largest percentage de-
8 cline since 1942”.

9 (4) Limited access to credit has forced many
10 small business owners to use their personal assets,
11 including retirement savings, to ensure that their en-
12 terprises survive.

13 (5) Such actions have helped to mitigate fur-
14 ther job losses.

15 (6) While it is appropriate for Congress to re-
16 sist calls to allow individual retirement account hold-
17 ers to withdraw loans during normal economic times,
18 the current recession represents an extraordinary
19 situation during which extraordinary measures must
20 be taken.

21 (7) A targeted and temporary suspension of
22 penalties for loans made from retirement accounts
23 will help small businesses recover and provide a di-
24 rect infusion of funds into the economy.

1 **SEC. 3. LOANS FROM INDIVIDUAL RETIREMENT PLANS FOR**
2 **CERTAIN SMALL BUSINESS EXPENSES.**

3 (a) IN GENERAL.—Subsection (e) of section 408 of
4 the Internal Revenue Code of 1986 is amended by adding
5 at the end the following new paragraph:

6 “(7) TEMPORARY EXCEPTION FOR LOANS FROM
7 INDIVIDUAL RETIREMENT PLANS FOR CERTAIN
8 SMALL BUSINESS EXPENSES.—

9 “(A) IN GENERAL.—On election of the tax-
10 payer, paragraphs (2) and (3) of this subsection
11 and section 4975 shall not apply with respect to
12 any qualified small business loan from an indi-
13 vidual retirement plan to the individual for
14 whose benefit the plan is maintained.

15 “(B) QUALIFIED SMALL BUSINESS
16 LOAN.—For purposes of this paragraph—

17 “(i) IN GENERAL.—The term ‘quali-
18 fied small business loan’ means, with re-
19 spect to any taxable year, a loan the prin-
20 cipal amount of which does not exceed the
21 amounts paid or incurred by the taxpayer,
22 with respect to a trade or business carried
23 on by the taxpayer—

24 “(I) for the purchase of property
25 which is placed in service during the
26 taxable year which is used in the

1 trade or business of the taxpayer and
2 which is subject to the allowance for
3 depreciation provided in section 167
4 or is real property used in such trade
5 or business, or

6 “(II) for salaries or wages (other
7 than for bonuses) of unrelated em-
8 ployees in such trade or business for
9 the taxable year.

10 “(ii) AGGREGATION OF LOANS.—All
11 loans with respect to which the taxpayer
12 elects the application of this paragraph for
13 the taxable year shall be aggregated for
14 purposes of determining whether a loan is
15 a qualified small business loan under
16 clause (i).

17 “(C) REQUIREMENTS RELATED TO LOAN
18 REPAYMENTS.—

19 “(i) REQUIREMENT THAT LOAN BE
20 REPAYED WITHIN 5 YEARS.—Paragraph (1)
21 shall not apply to any loan unless such
22 loan is required, by its terms, to be repaid
23 within 5 years.

24 “(ii) REQUIREMENT OF LEVEL AMOR-
25 TIZATION.—Rules similar to the rules of

1 section 72(p)(2)(C) shall apply for pur-
2 poses of this subsection.

3 “(iii) FAILURE TO REPAY TREATED AS
4 DISTRIBUTION.—A qualified small business
5 loan shall not be treated as a distribution
6 from the individual retirement plan except
7 that any repayment of a qualified small
8 business loan which is not made on the
9 date that such payment is due shall be
10 treated as a distribution from the indi-
11 vidual retirement plan on such date.

12 “(D) RELATED PERSONS.—For purposes
13 of this paragraph, a person shall be treated as
14 related to another person if the relationship be-
15 tween such persons would result in the disallow-
16 ance of losses under section 267 or 707(b).

17 “(E) TERMINATION.—Subparagraph (A)
18 shall not apply to any loan made after Decem-
19 ber 31, 2011.”.

20 (b) EFFECTIVE DATE.—

21 (1) IN GENERAL.—The amendments made by
22 this section shall apply to loans made after Decem-
23 ber 31, 2007.

24 (2) DISTRIBUTIONS PRIOR TO DATE OF ENACT-
25 MENT.—In the case of any distribution made after

1 December 31, 2007, and before the date of the en-
2 actment of this Act, if the taxpayer so elects (at
3 such time and in such form and manner as the Sec-
4 retary of the Treasury shall prescribe), such dis-
5 tribution shall be treated as a loan for purposes of
6 section 408(e)(7) of the Internal Revenue Code of
7 1986, but only to the extent such distribution does
8 not exceed the amount described in subparagraph
9 (B) thereof (in the taxable year of distribution), and
10 only if beginning on a date not later than 1 year
11 after the date of the enactment of this Act such dis-
12 tribution meets the requirements of section
13 408(e)(7) of such Code.

14 **SEC. 4. QUALIFIED SMALL BUSINESS LOANS FROM QUALI-**
15 **FIED EMPLOYER PLAN.**

16 (a) IN GENERAL.—Subsection (p) of section 72 of the
17 Internal Revenue Code of 1986 is amended by adding at
18 the end the following new paragraph:

19 “(6) SPECIAL RULE FOR QUALIFIED SMALL
20 BUSINESS LOANS.—

21 “(A) IN GENERAL.—On the election of the
22 taxpayer, paragraph (1) shall not apply to any
23 loan to the extent that such loan is a qualified
24 small business loan that meets the requirements

1 of subparagraphs (B)(i) and (C) of paragraph
2 (2).

3 “(B) APPLICATION OF LIMITATION AND
4 COORDINATION WITH PRE-EFFECTIVE DATE
5 LOANS.—Any qualified small business loan shall
6 be taken into account under paragraph (2) only
7 with respect to amounts received as a loan
8 (other than qualified small business loans) after
9 the date of the enactment of this paragraph.

10 “(C) QUALIFIED SMALL BUSINESS
11 LOAN.—For purposes of this paragraph, the
12 term ‘qualified small business loan’ shall have
13 the meaning given such term in section
14 408(e)(7)(B).

15 “(D) TERMINATION.—This paragraph
16 shall not apply to any amount received as a
17 loan after December 31, 2011.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to loans made after December 31,
20 2007.

21 (c) DISTRIBUTIONS PRIOR TO DATE OF ENACT-
22 MENT.—In the case of any distribution made after Decem-
23 ber 31, 2007, and before the date of the enactment of
24 this Act, if the taxpayer so elects (at such time and in
25 such form and manner as the Secretary of the Treasury

1 shall prescribe), such distribution shall be treated as a
2 loan to which section 72(p)(1) of the Internal Revenue
3 Code of 1986 does not apply, but only to the extent such
4 distribution does not exceed the amount described in sec-
5 tion 408(e)(7)(B) of such Code (in the taxable year of dis-
6 tribution), and only if beginning on a date not later than
7 1 year after the date of the enactment of this Act such
8 distribution is structured as a loan which meets the re-
9 quirements of subparagraphs (B)(i) and (C) of section
10 72(p)(2) of such Code.

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