

118TH CONGRESS  
1ST SESSION

# H. R. 368

To amend the Internal Revenue Code of 1986 to promote new business innovation, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 13, 2023

Mr. BUCHANAN introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to promote new business innovation, 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 “American Innovation  
5 Act of 2023”.

6 **SEC. 2. SIMPLIFICATION AND EXPANSION OF DEDUCTION**  
7 **FOR START-UP AND ORGANIZATIONAL EX-**  
8 **PENDITURES.**

9 (a) IN GENERAL.—Section 195 of the Internal Rev-  
10 enue Code of 1986 is amended by redesignating sub-

1 sections (c) and (d) as subsections (d) and (e), respec-  
2 tively, and by striking all that precedes subsection (d) (as  
3 so redesignated) and inserting the following:

4 **“SEC. 195. START-UP AND ORGANIZATIONAL EXPENDI-**  
5 **TURES.**

6 “(a) CAPITALIZATION OF EXPENDITURES.—Except  
7 as otherwise provided in this section, no deduction shall  
8 be allowed for start-up or organizational expenditures.

9 “(b) ELECTION TO DEDUCT.—

10 “(1) IN GENERAL.—If a taxpayer elects the ap-  
11 plication of this subsection with respect to any active  
12 trade or business—

13 “(A) the taxpayer shall be allowed a deduc-  
14 tion for the taxable year in which such active  
15 trade or business begins in an amount equal to  
16 the lesser of—

17 “(i) the aggregate amount of start-up  
18 and organizational expenditures paid or in-  
19 curred in connection with such active trade  
20 or business, or

21 “(ii) \$20,000, reduced (but not below  
22 zero) by the amount by which such aggre-  
23 gate amount exceeds \$120,000, and

24 “(B) the remainder of such start-up and  
25 organizational expenditures shall be charged to

1 capital account and allowed as an amortization  
2 deduction determined by amortizing such ex-  
3 penditures ratably over the 180-month period  
4 beginning with the month in which the active  
5 trade or business begins.

6 “(2) APPLICATION TO ORGANIZATIONAL EX-  
7 PENDITURES.—In the case of organizational expend-  
8 itures with respect to any corporation or partner-  
9 ship, the active trade or business referred to in para-  
10 graph (1) means the first active trade or business  
11 carried on by such corporation or partnership.

12 “(3) INFLATION ADJUSTMENT.—In the case of  
13 any taxable year beginning after December 31,  
14 2023, the \$20,000 and \$120,000 amounts in para-  
15 graph (1)(A)(ii) shall each be increased by an  
16 amount equal to—

17 “(A) such dollar amount, multiplied by

18 “(B) the cost-of-living adjustment deter-  
19 mined under section 1(f)(3) for the calendar  
20 year in which the taxable year begins, deter-  
21 mined by substituting ‘calendar year 2022’ for  
22 ‘calendar year 2016’ in subparagraph (A)(ii)  
23 thereof.

1 If any amount as increased under the preceding sen-  
2 tence is not a multiple of \$1,000, such amount shall  
3 be rounded to the nearest multiple of \$1,000.

4 “(c) ALLOWANCE OF DEDUCTION UPON LIQUIDA-  
5 TION OR DISPOSITION.—

6 “(1) LIQUIDATION OF PARTNERSHIP OR COR-  
7 PORATION.—If any partnership or corporation is  
8 completely liquidated by the taxpayer, any start-up  
9 or organizational expenditures paid or incurred in  
10 connection with such partnership or corporation  
11 which were not allowed as a deduction by reason of  
12 this section may be deducted to the extent allowable  
13 under section 165.

14 “(2) DISPOSITION OF TRADE OR BUSINESS.—If  
15 any trade or business is completely disposed of or  
16 discontinued by the taxpayer, any start-up expendi-  
17 tures paid or incurred in connection with such trade  
18 or business which were not allowed as a deduction  
19 by reason of this section (and not taken into account  
20 in connection with a liquidation to which paragraph  
21 (1) applies) may be deducted to the extent allowable  
22 under section 165. For purposes of this paragraph,  
23 in the case of any deduction allowed under sub-  
24 section (b)(1) with respect to both start-up and or-  
25 ganizational expenditures, the amount treated as so

1 allowed with respect to start-up expenditures shall  
2 bear the same ratio to such deduction as the start-  
3 up expenditures taken into account in determining  
4 such deduction bears to the aggregate of the start-  
5 up and organizational expenditures so taken into ac-  
6 count.”.

7 (b) ORGANIZATIONAL EXPENDITURES.—Section  
8 195(d) of such Code, as redesignated by subsection (a),  
9 is amended by adding at the end the following new para-  
10 graphs:

11 “(3) ORGANIZATIONAL EXPENDITURES.—The  
12 term ‘organizational expenditures’ means any ex-  
13 penditure which—

14 “(A) is incident to the creation of a cor-  
15 poration or a partnership,

16 “(B) is chargeable to capital account, and

17 “(C) is of a character which, if expended  
18 incident to the creation of a corporation or a  
19 partnership having an ascertainable life, would  
20 be amortizable over such life.

21 “(4) APPLICATION TO CERTAIN DISREGARDED  
22 ENTITIES.—In the case of any entity with a single  
23 owner that is disregarded as an entity separate from  
24 its owner, this section shall be applied in the same  
25 manner as if such entity were a corporation.”.

1 (c) ELECTION.—Section 195(e)(2) of such Code, as  
2 redesignated by subsection (a), is amended to read as fol-  
3 lows:

4 “(2) PARTNERSHIPS AND S CORPORATIONS.—In  
5 the case of any partnership or S corporation, the  
6 election under subsection (b) shall be made (and this  
7 section shall be applied) at the entity level.”.

8 (d) CONFORMING AMENDMENTS.—

9 (1)(A) Part VIII of subchapter B of chapter 1  
10 is amended by striking section 248 of such Code  
11 (and by striking the item relating to such section in  
12 the table of sections of such part).

13 (B) Section 170(b)(2)(D)(ii) of such Code is  
14 amended by striking “(except section 248)”.

15 (C) Section 312(n)(3) of such Code is amended  
16 by striking “Sections 173 and 248” and inserting  
17 “Sections 173 and 195”.

18 (D) Section 535(b)(3) of such Code is amended  
19 by striking “(except section 248)”.

20 (E) Section 545(b)(3) of such Code is amended  
21 by striking “(except section 248)”.

22 (F) Section 545(b)(4) of such Code is amended  
23 by striking “(except section 248)”.

24 (G) Section 834(c)(7) of such Code is amended  
25 by striking “(except section 248)”.

1 (H) Section 852(b)(2)(C) of such Code is  
2 amended by striking “(except section 248)”.

3 (I) Section 857(b)(2)(A) of such Code is  
4 amended by striking “(except section 248)”.

5 (J) Section 1363(b) of such Code is amended  
6 by adding “and” at the end of paragraph (2), by  
7 striking paragraph (3), and by redesignating para-  
8 graph (4) as paragraph (3).

9 (K) Section 1375(b)(1)(B)(i) of such Code is  
10 amended by striking “(other than the deduction al-  
11 lowed by section 248, relating to organization ex-  
12 penditures)”.

13 (2)(A) Section 709 of such Code is amended to  
14 read as follows:

15 **“SEC. 709. TREATMENT OF SYNDICATION FEES.**

16 “No deduction shall be allowed under this chapter to  
17 a partnership or to any partner of the partnership for any  
18 amounts paid or incurred to promote the sale of (or to  
19 sell) an interest in the partnership.”.

20 (B) The item relating to section 709 in the  
21 table of sections for part I of subchapter K of chap-  
22 ter 1 of such Code is amended to read as follows:

“Sec. 709. Treatment of syndication fees.”.

23 (3) Section 1202(e)(2)(A) of such Code is  
24 amended by striking “section 195(c)(1)(A)” and in-  
25 serting “section 195(d)(1)(A)”.

1           (4) The item relating to section 195 in the table  
2           of contents of part VI of subchapter B of chapter 1  
3           of such Code is amended to read as follows:

“Sec. 195. Start-up and organizational expenditures.”.

4           (e) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to expenditures paid or incurred  
6 in connection with active trades or businesses which begin  
7 in taxable years beginning after December 31, 2022.

8 **SEC. 3. PRESERVATION OF START-UP NET OPERATING**  
9                   **LOSSES AND TAX CREDITS AFTER OWNER-**  
10                   **SHIP CHANGE.**

11           (a) APPLICATION TO NET OPERATING LOSSES.—  
12 Section 382(d) of the Internal Revenue Code of 1986 is  
13 amended by adding at the end the following new para-  
14 graph:

15                   “(4) EXCEPTION FOR START-UP LOSSES.—

16                           “(A) IN GENERAL.—In the case of any net  
17                   operating loss carryforward described in para-  
18                   graph (1)(A) which arose in a start-up period  
19                   taxable year, the amount of such net operating  
20                   loss carryforward otherwise taken into account  
21                   under such paragraph shall be reduced by the  
22                   net start-up loss determined with respect to the  
23                   trade or business referred to in subparagraph  
24                   (B)(i) for such start-up period taxable year.



1           “(B) START-UP PERIOD TAXABLE YEAR.—

2           The term ‘start-up period taxable year’ means  
3           any taxable year of the old loss corporation  
4           which—

5                   “(i) begins before the close of the 3-  
6                   year period beginning on the date on which  
7                   any trade or business of such corporation  
8                   begins as an active trade or business (as  
9                   determined under section 195(d)(2) with-  
10                  out regard to subparagraph (B) thereof),  
11                  and

12                   “(ii) ends after January 31, 2023.

13           “(C) NET START-UP LOSS.—

14                   “(i) IN GENERAL.—The term ‘net  
15                   start-up loss’ means, with respect to any  
16                   trade or business referred to in subpara-  
17                   graph (B)(i) for any start-up period tax-  
18                   able year, the amount which bears the  
19                   same ratio (but not greater than 1) to the  
20                   net operating loss carryforward which  
21                   arose in such start-up period taxable year  
22                   as—

23                           “(I) the net operating loss (if  
24                           any) which would have been deter-  
25                           mined for such start-up period taxable

1 year if only items of income, gain, de-  
2 duction, and loss properly allocable to  
3 such trade or business were taken into  
4 account, bears to

5 “(II) the amount of the net oper-  
6 ating loss determined for such start-  
7 up period taxable year.

8 “(ii) SPECIAL RULE FOR LAST TAX-  
9 ABLE YEAR IN START-UP PERIOD.—In the  
10 case of any start-up period taxable year  
11 which ends after the close of the 3-year pe-  
12 riod described in subparagraph (B)(i) with  
13 respect to any trade or business, the net  
14 start-up loss with respect to such trade or  
15 business for such start-up period taxable  
16 year shall be the same proportion of such  
17 loss (determined without regard to this  
18 clause) as the proportion of such start-up  
19 period taxable year which is on or before  
20 the last day of such period.

21 “(D) APPLICATION TO NET OPERATING  
22 LOSS ARISING IN YEAR OF OWNERSHIP  
23 CHANGE.—Subparagraph (A) shall apply to any  
24 net operating loss described in paragraph  
25 (1)(B) in the same manner as such subpara-

1 graph applies to net operating loss  
2 carryforwards described in paragraph (1)(A),  
3 but by only taking into account the amount of  
4 such net operating loss (and the amount of the  
5 net start-up loss) which is allocable under para-  
6 graph (1)(B) to the period described in such  
7 paragraph. Proper adjustment in the allocation  
8 of the net start-up loss under the preceding  
9 sentence shall be made in the case of a taxable  
10 year to which subparagraph (C)(ii) applies.

11 “(E) APPLICATION TO TAXABLE YEARS  
12 WHICH ARE START-UP PERIOD TAXABLE YEARS  
13 WITH RESPECT TO MORE THAN 1 TRADE OR  
14 BUSINESS.—In the case of any net operating  
15 loss carryforward which arose in a taxable year  
16 which is a start-up period taxable year with re-  
17 spect to more than 1 trade or business—

18 “(i) this paragraph shall be applied  
19 separately with respect to each such trade  
20 or business, and

21 “(ii) the aggregate reductions under  
22 subparagraph (A) shall not exceed such net  
23 operating loss carryforward.

24 “(F) CONTINUITY OF BUSINESS REQUIRE-  
25 MENT.—If the new loss corporation does not

1 continue the trade or business referred to in  
2 subparagraph (B)(i) at all times during the 2-  
3 year period beginning on the change date, this  
4 paragraph shall not apply with respect to such  
5 trade or business.

6 “(G) CERTAIN TITLE 11 OR SIMILAR  
7 CASES.—

8 “(i) MULTIPLE OWNERSHIP  
9 CHANGES.—In the case of a 2nd ownership  
10 change to which subsection (l)(5)(D) ap-  
11 plies, this paragraph shall not apply for  
12 purposes of determining the pre-change  
13 loss with respect to such 2nd ownership  
14 change.

15 “(ii) CERTAIN INSOLVENCY TRANS-  
16 ACTIONS.—If subsection (l)(6) applies for  
17 purposes of determining the value of the  
18 old loss corporation under subsection (e),  
19 this paragraph shall not apply.

20 “(H) NOT APPLICABLE TO DISALLOWED  
21 INTEREST.—This paragraph shall not apply for  
22 purposes of applying the rules of paragraph (1)  
23 to the carryover of disallowed interest under  
24 paragraph (3).

1           “(I) TRANSITION RULE.—This paragraph  
2           shall not apply with respect to any trade or  
3           business if the date on which such trade or  
4           business begins as an active trade or business  
5           (as determined under section 195(d)(2) without  
6           regard to subparagraph (B) thereof) is on or  
7           before January 31, 2023.”.

8           (b) APPLICATION TO EXCESS CREDITS.—Section 383  
9           of such Code is amended by redesignating subsection (e)  
10          as subsection (f) and by inserting after subsection (d) the  
11          following new subsection:

12          “(e) EXCEPTION FOR START-UP EXCESS CREDITS.—

13                 “(1) IN GENERAL.—In the case of any unused  
14                 general business credit of the corporation under sec-  
15                 tion 39 which arose in a start-up period taxable  
16                 year, the amount of such unused general business  
17                 credit otherwise taken into account under subsection  
18                 (a)(2)(A) shall be reduced by the start-up excess  
19                 credit determined with respect to any trade or busi-  
20                 ness referred to in section 382(d)(4)(B)(i) for such  
21                 start-up period taxable year.

22                 “(2) START-UP PERIOD TAXABLE YEAR.—For  
23                 purposes of this subsection, the term ‘start-up pe-  
24                 riod taxable year’ has the meaning given such term  
25                 in section 382(d)(4)(B).

1           “(3) START-UP EXCESS CREDIT.—For purposes  
2 of this subsection, the term ‘start-up excess credit’  
3 means, with respect to any trade or business re-  
4 ferred to in section 382(d)(4)(B)(i) for any start-up  
5 period taxable year, the amount which bears the  
6 same ratio to the unused general business credit  
7 which arose in such start-up period taxable year  
8 as—

9           “(A) the amount of the general business  
10 credit which would have been determined for  
11 such start-up period taxable year if only credits  
12 properly allocable to such trade or business  
13 were taken into account, bears to

14           “(B) the amount of the general business  
15 credit determined for such start-up period tax-  
16 able year.

17           “(4) APPLICATION OF CERTAIN RULES.—Rules  
18 similar to the rules of subparagraphs (C)(ii), (D),  
19 (E), and (F) of section 382(d)(4) shall apply for  
20 purposes of this subsection.

21           “(5) TRANSITION RULE.—This subsection shall  
22 not apply with respect to any trade or business if  
23 the date on which such trade or business begins as  
24 an active trade or business (as determined under

1 section 195(d)(2) without regard to subparagraph  
2 (B) thereof) is on or before January 31, 2023.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to taxable years ending after Janu-  
5 ary 31, 2023.

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