

112TH CONGRESS
1ST SESSION

S. 1375

To amend the Internal Revenue Code of 1986 to provide that corporate tax benefits based upon stock option compensation expenses be consistent with accounting expenses shown in corporate financial statements for such compensation.

IN THE SENATE OF THE UNITED STATES

JULY 14, 2011

Mr. LEVIN (for himself and Mr. BROWN of Ohio) 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 provide that corporate tax benefits based upon stock option compensation expenses be consistent with accounting expenses shown in corporate financial statements for such compensation.

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 “Ending Excessive Cor-
5 porate Deductions for Stock Options Act”.

1 **SEC. 2. CONSISTENT TREATMENT OF STOCK OPTIONS BY**
 2 **CORPORATIONS.**

3 (a) CONSISTENT TREATMENT FOR WAGE DEDUC-
 4 TION.—

5 (1) IN GENERAL.—Section 83(h) of the Internal
 6 Revenue Code of 1986 (relating to deduction of em-
 7 ployer) is amended—

8 (A) by striking “In the case of” and in-
 9 serting:

10 “(1) IN GENERAL.—In the case of”, and

11 (B) by adding at the end the following new
 12 paragraph:

13 “(2) STOCK OPTIONS.—In the case of property
 14 transferred to a person in connection with a stock
 15 option, any deduction related to such stock option
 16 shall be allowed only under section 162(q) and para-
 17 graph (1) shall not apply.”.

18 (2) TREATMENT OF COMPENSATION PAID WITH
 19 STOCK OPTIONS.—Section 162 of such Code (relat-
 20 ing to trade or business expenses) is amended by re-
 21 designating subsection (q) as subsection (r) and by
 22 inserting after subsection (p) the following new sub-
 23 section:

24 “(q) TREATMENT OF COMPENSATION PAID WITH
 25 STOCK OPTIONS.—

1 “(1) IN GENERAL.—In the case of compensa-
2 tion for personal services that is paid with stock op-
3 tions, the deduction under subsection (a)(1) shall
4 not exceed the amount the taxpayer has treated as
5 compensation cost with respect to such stock options
6 for the purpose of ascertaining income, profit, or
7 loss in a report or statement to shareholders, part-
8 ners, or other proprietors (or to beneficiaries), and
9 shall be taken into account in the same period that
10 such compensation cost is recognized for such pur-
11 pose.

12 “(2) SPECIAL RULES FOR CONTROLLED
13 GROUPS.—The Secretary may prescribe rules for the
14 application of paragraph (1) in cases where the
15 stock option is granted by—

16 “(A) a parent or subsidiary corporation
17 (within the meaning of section 424) of the tax-
18 payer, or

19 “(B) another corporation.”.

20 (b) CONSISTENT TREATMENT FOR RESEARCH TAX
21 CREDIT.—Section 41(b)(2)(D) of the Internal Revenue
22 Code of 1986 (defining wages for purposes of credit for
23 increasing research expenses) is amended by inserting at
24 the end the following new clause:

1 “(iv) SPECIAL RULE FOR STOCK OP-
2 TIONS.—The amount which may be treated
3 as wages for any taxable year in connec-
4 tion with the issuance of a stock option
5 shall not exceed the amount allowed for
6 such taxable year as a compensation de-
7 duction under section 162(q) with respect
8 to such stock option.”.

9 (c) APPLICATION OF AMENDMENTS.—The amend-
10 ments made by this section shall apply to stock options
11 exercised after the date of the enactment of this Act, ex-
12 cept that—

13 (1) such amendments shall not apply to stock
14 options that were granted before such date and that
15 vested in taxable periods beginning on or before
16 June 15, 2005,

17 (2) for stock options that were granted before
18 such date of enactment and vested during taxable
19 periods beginning after June 15, 2005, and ending
20 before such date of enactment, a deduction under
21 section 162(q) of the Internal Revenue Code of 1986
22 (as added by subsection (a)(2)) shall be allowed in
23 the first taxable period of the taxpayer that ends
24 after such date of enactment,

1 (3) for public entities reporting as small busi-
2 ness issuers and for non-public entities required to
3 file public reports of financial condition, paragraphs
4 (1) and (2) shall be applied by substituting “Decem-
5 ber 15, 2005” for “June 15, 2005”, and

6 (4) no deduction shall be allowed under section
7 83(h) or section 162(q) of such Code with respect to
8 any stock option the vesting date of which is
9 changed to accelerate the time at which the option
10 may be exercised in order to avoid the applicability
11 of such amendments.

12 **SEC. 3. APPLICATION OF EXECUTIVE PAY DEDUCTION**
13 **LIMIT.**

14 (a) **IN GENERAL.**—Subparagraph (D) of section
15 162(m)(4) of the Internal Revenue Code of 1986 (defining
16 applicable employee remuneration) is amended to read as
17 follows:

18 “(D) **STOCK OPTION COMPENSATION.**—
19 The term ‘applicable employee remuneration’
20 shall include any compensation deducted under
21 subsection (q), and such compensation shall not
22 qualify as performance-based compensation
23 under subparagraph (C).”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to stock options exercised or grant-
3 ed after the date of the enactment of this Act.

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