

113TH CONGRESS  
2D SESSION

# S. 2139

To amend the Internal Revenue Code of 1986 to extend the exclusion for small business stock, to provide incentives for small business high technology research investment, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 13, 2014

Mr. MENENDEZ (for himself and Mr. TOOMEY) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to extend the exclusion for small business stock, to provide incentives for small business high technology research investment, 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. PERMANENT FULL EXCLUSION APPLICABLE TO**

4 **QUALIFIED SMALL BUSINESS STOCK.**

5 (a) IN GENERAL.—Paragraph (4) of section 1202(a)  
6 of the Internal Revenue Code of 1986 is amended—

7 (1) by striking “and before January 1, 2014”,

8 and

1           (2) by striking “CERTAIN PERIODS IN 2010,  
2           2011, 2012, AND 2013” in the heading and inserting  
3           “CERTAIN PERIODS AFTER 2009”.

4           (b) CONFORMING AMENDMENTS.—

5           (1) The heading for section 1202 of the Inter-  
6           nal Revenue Code of 1986 is amended by striking  
7           “**PARTIAL**”.

8           (2) The item relating to section 1202 in the  
9           table of sections for part I of subchapter P of chap-  
10          ter 1 of such Code is amended by striking “Partial  
11          exclusion” and inserting “Exclusion”.

12          (3) Section 1223(13) of such Code is amended  
13          by striking “1202(a)(2),”.

14          (c) INCREASE IN GROSS ASSET THRESHOLD.—

15          (1) IN GENERAL.—Paragraph (1) of section  
16          1202(d) of the Internal Revenue Code of 1986 is  
17          amended by striking “\$50,000,000” each place it  
18          appears and inserting “\$150,000,000”.

19          (2) ADJUSTMENT FOR INFLATION.—Subsection  
20          (d) of section 1202 of such Code is amended by add-  
21          ing at the end the following new paragraph:

22                 “(4) ADJUSTMENT FOR INFLATION.—In the  
23          case of any taxable year beginning after December  
24          31, 2014, the \$150,000,000 amount in subpara-

1 graphs (A) and (B) of paragraph (1) shall be in-  
 2 creased by an amount equal to—

3 “(A) such dollar amount, multiplied by

4 “(B) the cost-of-living adjustment deter-  
 5 mined under section 1(f)(3) for the calendar  
 6 year in which the taxable year begins, by sub-  
 7 stituting ‘calendar year 2013’ for ‘calendar year  
 8 1992’ in subparagraph (B) thereof.

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

12 (d) EFFECTIVE DATE.—The amendments made by  
 13 this section shall apply to stock acquired after December  
 14 31, 2013.

15 **SEC. 2. EXCEPTION FROM PASSIVE LOSS RULES FOR IN-**  
 16 **VESTMENTS IN HIGH TECHNOLOGY RE-**  
 17 **SEARCH SMALL BUSINESS PASS-THRU ENTI-**  
 18 **TIES.**

19 (a) IN GENERAL.—Subsection (c) of section 469 of  
 20 the Internal Revenue Code of 1986 is amended by redesi-  
 21 gnating paragraphs (4) through (7) as paragraphs (5)  
 22 through (8), respectively, and by inserting after paragraph  
 23 (3) the following new paragraph:

24 “(4) HIGH TECHNOLOGY RESEARCH ACTIVI-  
 25 TIES.—

1           “(A) IN GENERAL.—The term ‘passive ac-  
2           tivity’ shall not include any qualified research  
3           activity of the taxpayer carried on by a high  
4           technology research small business pass-thru  
5           entity.

6           “(B) TREATMENT OF LOSSES AND DEDUC-  
7           TIONS.—

8           “(i) IN GENERAL.—Losses or deduc-  
9           tions of a taxpayer relating to qualified re-  
10          search activities carried on by a high tech-  
11          nology research small business pass-thru  
12          entity shall not be treated as losses or de-  
13          ductions, respectively, from a passive activ-  
14          ity except as provided in clause (ii) and  
15          subparagraph (C).

16          “(ii) LIMITATION.—Clause (i) shall  
17          apply to losses and deductions of a tax-  
18          payer relating to a high technology small  
19          business pass-thru entity for a taxable year  
20          only to the extent that the aggregate losses  
21          and deductions of the taxpayer relating to  
22          qualified research activities of such entity  
23          for such taxable year do not exceed the  
24          portion of the taxpayer’s adjusted basis in  
25          the taxpayer’s ownership interest in such

1           entity that is attributable to money or  
2           other property contributed—

3                   “(I) in exchange for such owner-  
4                   ship interest, and

5                   “(II) specifically for use in con-  
6                   nection with qualified research activi-  
7                   ties.

8           For purposes of the preceding sentence,  
9           the taxpayer’s basis shall not include any  
10          portion of such basis which is attributable  
11          to an increase in a partner’s share of the  
12          liabilities of a partnership that is consid-  
13          ered under section 752(a) as a contribution  
14          of money.

15          “(C) TREATMENT OF CARRYOVERS.—Sub-  
16          paragraph (B)(i) shall not apply to the portion  
17          of any loss or deduction that is carried over  
18          under subsection (b) into a taxable year other  
19          than the taxable year in which such loss or de-  
20          duction arose.

21          “(D) QUALIFIED RESEARCH ACTIVITY.—  
22          For purposes of this paragraph, the term  
23          ‘qualified research activity’ means any activity  
24          constituting qualified research (within the  
25          meaning of section 41(d)(1)(B) and taking into

1 account paragraphs (3) and (4) of section  
2 41(d)) which involves a process of experimen-  
3 tation.

4 “(E) HIGH TECHNOLOGY RESEARCH  
5 SMALL BUSINESS PASS-THRU ENTITY.—For  
6 purposes of this paragraph, the term ‘high tech-  
7 nology research small business pass-thru entity’  
8 means any domestic pass-thru entity for any  
9 taxable year if—

10 “(i) either—

11 “(I) more than 75 percent of the  
12 entity’s expenditures (including sala-  
13 ries, rent and overhead) for such tax-  
14 able year are paid or incurred in con-  
15 nection with qualified research (within  
16 the meaning of section 41(d)(1)(B),  
17 taking into account paragraphs (3)  
18 and (4) of section 41(d)) that involves  
19 a process of experimentation con-  
20 ducted by the entity, or

21 “(II) more than 50 percent of  
22 the entity’s expenditures for such tax-  
23 able year constitute qualified research  
24 expenses (as defined in section 41(b),  
25 but determined without regard to the

1 phrase ‘65 percent of’ in paragraph  
2 (3)(A) thereof),

3 “(ii) such entity is a small business  
4 (within the meaning of section  
5 41(b)(3)(D)(iii), applied by substituting  
6 ‘250’ for ‘500’ in subclause (I) thereof),  
7 and

8 “(iii) at no time during the taxable  
9 year does the entity have aggregate gross  
10 assets in excess of \$150,000,000.

11 “(F) PROVISIONS RELATED TO AGGRE-  
12 GATE GROSS ASSETS LIMITATION.—For pur-  
13 poses of this paragraph—

14 “(i) IN GENERAL.—Except as other-  
15 wise provided in this subparagraph, the  
16 term ‘aggregate gross assets’ has the  
17 meaning given such term in section  
18 1202(d)(2).

19 “(ii) EXCEPTION FOR CERTAIN IN-  
20 TANGIBLES.—Any section 197 intangible  
21 (as defined in section 197(d) and deter-  
22 mined without regard to section 197(e))  
23 which is used directly in connection with  
24 the research referred to in subparagraph

1 (E)(i) shall not be taken into account in  
2 determining aggregate gross assets.

3 “(iii) EXCEPTION FOR CERTAIN FOL-  
4 LOW-ON INVESTMENTS.—Cash from a sale  
5 of equity interests shall not be taken into  
6 account in determining aggregate gross as-  
7 sets if—

8 “(I) the aggregate gross assets of  
9 such entity (determined immediately  
10 after such sale and without regard to  
11 this clause) do not exceed the sum of  
12 \$150,000,000, plus 25 percent of the  
13 aggregate gross assets of such entity  
14 (determined immediately before such  
15 sale and without regard to this  
16 clause), and

17 “(II) the aggregate gross assets  
18 of such entity (determined imme-  
19 diately before such sale and without  
20 regard to this clause) do not exceed  
21 \$150,000,000.

22 Sales of equity interests which are part of  
23 the same plan or arrangement, or which  
24 are carried out with the principal purpose  
25 of increasing the amount of cash to which



1 this clause applies (determined without re-  
2 gard to this sentence), shall be treated as  
3 a single sale for purposes of this clause.

4 “(iv) INFLATION ADJUSTMENT.—In  
5 the case of any taxable year beginning  
6 after 2014, the \$150,000,000 amount in  
7 subparagraph (E)(iii) and subclauses (I)  
8 and (II) of clause (iii) shall each be in-  
9 creased by an amount equal to—

10 “(I) such dollar amount, multi-  
11 plied by

12 “(II) the cost of living adjust-  
13 ment determined under section 1(f)(3)  
14 for the calendar year in which the tax-  
15 able year begins determined by sub-  
16 stituting ‘calendar year 2013’ for ‘cal-  
17 endar year 1992’ in subparagraph (B)  
18 thereof.

19 Any increase determined under the pre-  
20 ceding sentence shall be rounded to the  
21 nearest \$100,000.

22 “(G) CAPITAL EXPENDITURES TAKEN INTO  
23 ACCOUNT FOR EXPENDITURES TEST.—An ex-  
24 penditure shall not fail to be taken into account

1 under subparagraph (E)(i) merely because such  
2 expenditure is chargeable to capital account.

3 “(H) PASS-THRU ENTITY.—For purposes  
4 of this paragraph, the term ‘pass-thru entity’  
5 means any partnership, S corporation, or other  
6 entity identified by the Secretary as a pass-thru  
7 entity for purposes of this paragraph.

8 “(I) AGGREGATION RULES.—

9 “(i) IN GENERAL.—All persons treat-  
10 ed as a single employer under subsection  
11 (a) or (b) of section 52, or subsection (m)  
12 or (o) of section 414, shall be treated as a  
13 single entity for purposes of subparagraphs  
14 (E) and (F)(iii).

15 “(ii) LIMITATION WHERE ENTITY  
16 WOULD NOT QUALIFY.—No entity shall be  
17 treated as a high technology research small  
18 business pass-thru entity unless such enti-  
19 ty qualifies as such both with and without  
20 the application of clause (i).

21 “(J) ACTIVITIES NOT ENGAGED IN FOR  
22 PROFIT AND ECONOMIC SUBSTANCE RULES.—  
23 Section 183 and the economic substance rules  
24 of section 7701(o) shall not apply to disallow  
25 the losses, deductions, and credits of a high

1           technology research small business pass-thru  
2           entity solely as a result of losses incurred by  
3           such entity.”.

4           (b) MATERIAL PARTICIPATION NOT REQUIRED.—  
5 Paragraph (5) of section 469(c) of the Internal Revenue  
6 Code of 1986, as redesignated by subsection (a), is amend-  
7 ed by striking “and (3)” in the heading and text and in-  
8 serting “, (3), and (4)”.

9           (c) CERTAIN RESEARCH-RELATED DEDUCTIONS AND  
10 CREDITS OF HIGH TECHNOLOGY RESEARCH SMALL  
11 BUSINESS PASS-THRU ENTITIES ALLOWED FOR PUR-  
12 POSES OF DETERMINING ALTERNATIVE MINIMUM TAX.—

13           (1) DEDUCTION FOR RESEARCH AND EXPERI-  
14 MENTAL EXPENDITURES.—Paragraph (2) of section  
15 56(b) of the Internal Revenue Code of 1986 is  
16 amended by adding at the end the following new  
17 subparagraph:

18           “(E) EXCEPTION FOR HIGH TECHNOLOGY  
19 RESEARCH SMALL BUSINESS PASS-THRU ENTI-  
20 TIES.—In the case of a high technology re-  
21 search small business pass-thru entity (as de-  
22 fined in section 469(c)(4)), this paragraph shall  
23 not apply to any amount allowable as a deduc-  
24 tion under section 174(a).”.

1           (2) ALLOWANCE OF CERTAIN RESEARCH-RE-  
2           LATED CREDITS.—Subparagraph (B) of section  
3           38(c)(4) of such Code is amended by redesignating  
4           clauses (ii) through (ix) as clauses (iii) through (x),  
5           respectively, and by inserting after clause (i) the fol-  
6           lowing new clause:

7                           “(ii) the credits of an individual tax-  
8                           payer determined under sections 41 and  
9                           48D to the extent attributable to a high  
10                          technology research small business pass-  
11                          thru entity (as defined in section  
12                          469(c)(4)),”.

13           (d) EXCEPTION TO LIMITATION ON PASS-THRU OF  
14           RESEARCH CREDIT.—Subsection (g) of section 41 of such  
15           Code is amended by adding at the end the following:  
16           “Paragraphs (2) and (4) shall not apply with respect to  
17           any high technology research small business pass-thru en-  
18           tity (as defined in section 469(c)(4)).”.

19           (e) EFFECTIVE DATE.—The amendments made by  
20           this section shall apply to losses and credits arising in tax-  
21           able years beginning on or after the date of the enactment  
22           of this Act.

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