

118TH CONGRESS  
1ST SESSION

# S. 2823

To amend the Internal Revenue Code of 1986 to safeguard beneficial tax treatment on certain expenses from bolstering the research and development sectors in foreign entities of concern.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 2023

Mr. RUBIO 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 safeguard beneficial tax treatment on certain expenses from bolstering the research and development sectors in foreign entities of concern.

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 “Securing America’s  
5 R&D Advantage Act”.

1 **SEC. 2. RESTORING IMMEDIATE EXPENSING FOR RE-**  
 2 **SEARCH AND DEVELOPMENT INVESTMENTS.**

3 (a) IN GENERAL.—Section 174 of the Internal Rev-  
 4 enue Code of 1986 is amended to read as follows:

5 **“SEC. 174. RESEARCH AND EXPERIMENTAL EXPENDITURES.**

6 **“(a) TREATMENT AS EXPENSES.—**

7 **“(1) IN GENERAL.—**A taxpayer may treat re-  
 8 search or experimental expenditures which are paid  
 9 or incurred by him during the taxable year in con-  
 10 nection with his trade or business as expenses which  
 11 are not chargeable to capital account. The expendi-  
 12 tures so treated shall be allowed as a deduction.

13 **“(2) WHEN METHOD MAY BE ADOPTED.—**

14 **“(A) WITHOUT CONSENT.—**A taxpayer  
 15 may, without the consent of the Secretary,  
 16 adopt the method provided in this subsection  
 17 for his first taxable year for which expenditures  
 18 described in paragraph (1) are paid or incurred.

19 **“(B) WITH CONSENT.—**A taxpayer may,  
 20 with the consent of the Secretary, adopt at any  
 21 time the method provided in this subsection.

22 **“(3) SCOPE.—**The method adopted under this  
 23 subsection shall apply to all expenditures described  
 24 in paragraph (1). The method adopted shall be ad-  
 25 hered to in computing taxable income for the taxable  
 26 year and for all subsequent taxable years unless,

1 with the approval of the Secretary, a change to a  
2 different method is authorized with respect to part  
3 or all of such expenditures.

4 “(b) AMORTIZATION OF CERTAIN RESEARCH AND  
5 EXPERIMENTAL EXPENDITURES.—

6 “(1) IN GENERAL.—At the election of the tax-  
7 payer, made in accordance with regulations pre-  
8 scribed by the Secretary, research or experimental  
9 expenditures which are—

10 “(A) paid or incurred by the taxpayer in  
11 connection with his trade or business,

12 “(B) not treated as expenses under sub-  
13 section (a), and

14 “(C) chargeable to capital account but not  
15 chargeable to property of a character which is  
16 subject to the allowance under section 167 (re-  
17 lating to allowance for depreciation, etc.) or sec-  
18 tion 611 (relating to allowance for depletion),

19 may be treated as deferred expenses. In computing  
20 taxable income, such deferred expenses shall be al-  
21 lowed as a deduction ratably over such period of not  
22 less than 60 months as may be selected by the tax-  
23 payer (beginning with the month in which the tax-  
24 payer first realizes benefits from such expenditures).

25 Such deferred expenses are expenditures properly

1 chargeable to capital account for purposes of section  
2 1016(a)(1) (relating to adjustments to basis of prop-  
3 erty).

4 “(2) TIME FOR AND SCOPE OF ELECTION.—The  
5 election provided by paragraph (1) may be made for  
6 any taxable year, but only if made not later than the  
7 time prescribed by law for filing the return for such  
8 taxable year (including extensions thereof). The  
9 method so elected, and the period selected by the  
10 taxpayer, shall be adhered to in computing taxable  
11 income for the taxable year for which the election is  
12 made and for all subsequent taxable years unless,  
13 with the approval of the Secretary, a change to a  
14 different method (or to a different period) is author-  
15 ized with respect to part or all of such expenditures.  
16 The election shall not apply to any expenditure paid  
17 or incurred during any taxable year before the tax-  
18 able year for which the taxpayer makes the election.

19 “(c) LAND AND OTHER PROPERTY.—This section  
20 shall not apply to any expenditure for the acquisition or  
21 improvement of land, or for the acquisition or improve-  
22 ment of property to be used in connection with the re-  
23 search or experimentation and of a character which is sub-  
24 ject to the allowance under section 167 (relating to allow-  
25 ance for depreciation, etc.) or section 611 (relating to al-

1 lowance for depletion); but for purposes of this section al-  
2 lowances under section 167, and allowances under section  
3 611, shall be considered as expenditures.

4 “(d) EXPLORATION EXPENDITURES.—This section  
5 shall not apply to any expenditure paid or incurred for  
6 the purpose of ascertaining the existence, location, extent,  
7 or quality of any deposit of ore or other mineral (including  
8 oil and gas).

9 “(e) FOREIGN ADVERSARIES.—This section shall not  
10 apply to any expenditure which is attributable to research  
11 or experimentation conducted in any covered nation (as  
12 defined in section 4872(d)(2) of title 10, United States  
13 Code).

14 “(f) ONLY REASONABLE RESEARCH EXPENDITURES  
15 ELIGIBLE.—This section shall apply to a research or ex-  
16 perimental expenditure only to the extent that the amount  
17 thereof is reasonable under the circumstances.

18 “(g) CROSS REFERENCES.—

19 “(1) For adjustments to basis of property for  
20 amounts allowed as deductions as deferred expenses  
21 under subsection (b), see section 1016(a)(14).

22 “(2) For election of 10-year amortization of ex-  
23 penditures allowable as a deduction under subsection  
24 (a), see section 59(e).”

1 (b) CLERICAL AMENDMENT.—The table of sections  
2 for part VI of subchapter B of chapter 1 is amended by  
3 striking the item relating to section 174 and inserting the  
4 following new item:

“Sec. 174. Research and experimental expenditures”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) Section 41(d)(1)(A) is amended by striking  
7 “specified research or experimental expenditures  
8 under section 174” and inserting “expenses under  
9 section 174”.

10 (2) Section 280C(c) is amended to read as fol-  
11 lows:

12 “(c) CREDIT FOR INCREASING RESEARCH ACTIVI-  
13 TIES.—

14 “(1) IN GENERAL.—No deduction shall be al-  
15 lowed for that portion of the qualified research ex-  
16 penses (as defined in section 41(b)) or basic re-  
17 search expenses (as defined in section 41(e)(2)) oth-  
18 erwise allowable as a deduction for the taxable year  
19 which is equal to the amount of the credit deter-  
20 mined for such taxable year under section 41(a).

21 “(2) SIMILAR RULE WHERE TAXPAYER CAP-  
22 ITALIZES RATHER THAN DEDUCTS EXPENSES.—If—

23 “(A) the amount of the credit determined  
24 for the taxable year under section 41(a)(1), ex-  
25 ceeds

1           “(B) the amount allowable as a deduction  
2           for such taxable year for qualified research ex-  
3           penses or basic research expenses (determined  
4           without regard to paragraph (1)),  
5           the amount chargeable to capital account for the  
6           taxable year for such expenses shall be reduced by  
7           the amount of such excess.

8           “(3) ELECTION OF REDUCED CREDIT.—

9           “(A) IN GENERAL.—In the case of any  
10          taxable year for which an election is made  
11          under this paragraph—

12                 “(i) paragraphs (1) and (2) shall not  
13                 apply, and

14                 “(ii) the amount of the credit under  
15                 section 41(a) shall be the amount deter-  
16                 mined under subparagraph (B).

17           “(B) AMOUNT OF REDUCED CREDIT.—The  
18          amount of credit determined under this sub-  
19          paragraph for any taxable year shall be the  
20          amount equal to the excess of—

21                 “(i) the amount of credit determined  
22                 under section 41(a) without regard to this  
23                 paragraph, over

24                 “(ii) the product of—

1                   “(I) the amount described in  
2                   clause (i), and

3                   “(II) the rate of tax under sec-  
4                   tion 11(b).

5                   “(C) ELECTION.—An election under this  
6                   paragraph for any taxable year shall be made  
7                   not later than the time for filing the return of  
8                   tax for such year (including extensions), shall  
9                   be made on such return, and shall be made in  
10                  such manner as the Secretary may prescribe.  
11                  Such an election, once made, shall be irrev-  
12                  ocable.

13                  “(4) CONTROLLED GROUPS.—Paragraph (3) of  
14                  subsection (b) shall apply for purposes of this sub-  
15                  section.”.

16                  (d) EFFECTIVE DATE.—The amendments made by  
17                  this section shall apply to amounts paid or incurred in tax-  
18                  able years beginning after the date of enactment of this  
19                  Act.

20   **SEC. 3. EXPANDING REFUNDABLE RESEARCH CREDIT FOR**  
21                   **NEW AND SMALL BUSINESSES.**

22                  (a) INCREASING CAP ON REFUNDABLE CREDIT.—

23                   (1) IN GENERAL.—Subclause (I) of section  
24                  41(h)(4)(B)(i) of the Internal Revenue Code of 1986



1 is amended by striking “\$250,000” and inserting  
2 “the applicable amount”.

3 (2) APPLICABLE AMOUNT.—Subclause (II) of  
4 section 41(h)(4)(B)(i) of such Code is amended to  
5 read as follows:

6 “(II) APPLICABLE AMOUNT.—  
7 For purposes of subclause (I), the ap-  
8 plicable amount is—

9 “(aa) in the case of any tax-  
10 able year beginning after Decem-  
11 ber 31, 2022, and before Janu-  
12 ary 1, 2024, \$500,000,

13 “(bb) in the case of any tax-  
14 able year beginning after Decem-  
15 ber 31, 2023, and before Janu-  
16 ary 1, 2025, \$525,000,

17 “(cc) in the case of any tax-  
18 able year beginning after Decem-  
19 ber 31, 2024, and before Janu-  
20 ary 1, 2026, \$550,000,

21 “(dd) in the case of any tax-  
22 able year beginning after Decem-  
23 ber 31, 2025, and before Janu-  
24 ary 1, 2027, \$575,000,

1           “(ee) in the case of any tax-  
2           able year beginning after Decem-  
3           ber 31, 2026, and before Janu-  
4           ary 1, 2028, \$600,000,

5           “(ff) in the case of any tax-  
6           able year beginning after Decem-  
7           ber 31, 2027, and before Janu-  
8           ary 1, 2029, \$625,000,

9           “(gg) in the case of any tax-  
10          able year beginning after Decem-  
11          ber 31, 2028, and before Janu-  
12          ary 1, 2030, \$650,000,

13          “(hh) in the case of any tax-  
14          able year beginning after Decem-  
15          ber 31, 2029, and before Janu-  
16          ary 1, 2031, \$675,000,

17          “(ii) in the case of any tax-  
18          able year beginning after Decem-  
19          ber 31, 2030, and before Janu-  
20          ary 1, 2032, \$700,000,

21          “(jj) in the case of any tax-  
22          able year beginning after Decem-  
23          ber 31, 2031, and before Janu-  
24          ary 1, 2033, \$725,000, and

1                   “(kk) in the case of any tax-  
2                   able year beginning after Decem-  
3                   ber 31, 2032, \$750,000.”.

4           (3) CONFORMING AMENDMENTS.—

5                   (A) Clause (ii) of section 41(h)(5)(B) of  
6                   such Code is amended by striking “each of the  
7                   \$250,000 amounts” and inserting “the applica-  
8                   ble amount”.

9                   (B) Section 3111(f) of such Code is  
10                  amended—

11                   (i) in paragraph (1)—

12                           (I) by striking “(applied without  
13                           regard to subclause (II) thereof),  
14                           and” and inserting a period,

15                           (II) by striking subparagraph  
16                           (B), and

17                           (III) by striking “for a taxable  
18                           year” and all that follows through “al-  
19                           lowed as a credit” and inserting “for  
20                           a taxable year, there shall be allowed  
21                           as a credit”,

22                   (ii) in paragraph (2)—

23                           (I) by striking “paragraph  
24                           (1)(A)” and inserting “paragraph  
25                           (1)”, and

1 (II) by striking “, and the credit  
2 allowed by paragraph (1)(B) shall not  
3 exceed the tax imposed by subsection  
4 (b) for any calendar quarter,” and  
5 (iii) in paragraph (4)—

6 (I) by striking “credits” and in-  
7 serting “credit”, and

8 (II) by striking “or (b)”.

9 (b) EXTENSION OF ELIGIBILITY AND APPLICABILITY  
10 OF ELECTION.—

11 (1) STARTUP DATE.—Subclause (II) of section  
12 41(h)(3)(A)(i) of the Internal Revenue Code of 1986  
13 is amended by striking “5-taxable-year period” and  
14 inserting “8-taxable-year period”.

15 (2) EXTENSION OF LIMITATION ON ELEC-  
16 TION.—Clause (ii) of section 41(h)(4)(B) of such  
17 Code is amended by striking “5 or more” and in-  
18 serting “8 or more”.

19 (c) GROSS RECEIPTS TEST.—Clause (i) of section  
20 41(h)(3)(A) of the Internal Revenue Code of 1986 is  
21 amended—

22 (1) by striking “\$5,000,000” in subclause (I)  
23 and inserting “\$15,000,000”, and

1           (2) by striking “gross receipts” in subclause  
 2           (II) and inserting “gross receipts in excess of  
 3           \$25,000”.

4           (d) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply to taxable years beginning after  
 6 December 31, 2022.

7 **SEC. 4. INCREASING ACCESS TO THE RESEARCH CREDIT**  
 8 **FOR STARTUPS.**

9           (a) IN GENERAL.—Paragraph (4) of section 41(c) of  
 10 the Internal Revenue Code of 1986 is amended by adding  
 11 at the end the following new subparagraph:

12                   “(D) SPECIAL RULES FOR QUALIFIED  
 13           SMALL BUSINESSES.—In the case of a qualified  
 14           small business (as defined in subsection  
 15           (h)(3))—

16                           “(i) subparagraph (A) shall be applied  
 17                           by substituting ‘20 percent’ for ‘14 per-  
 18                           cent’, and

19                           “(ii) if subparagraph (B) applies to  
 20                           such taxpayer, at the election of the tax-  
 21                           payer—

22                                   “(I) subparagraph (B)(ii) shall  
 23                                   be applied by substituting ‘10 percent’  
 24                                   for ‘6 percent’, or

1                   “(II) in lieu of applying subpara-  
2                   graph (B), the average under sub-  
3                   paragraph (A) shall be determined by  
4                   disregarding any taxable year in the  
5                   3-year period described in such sub-  
6                   paragraph in which there were no  
7                   qualified research expenses.”.

8           (b) EFFECTIVE DATE.—The amendment made by  
9 this section shall apply to taxable years beginning after  
10 the date of the enactment of this Act.

○