

118TH CONGRESS
1ST SESSION

S. 866

To amend the Internal Revenue Code of 1986 to enhance tax benefits for research activities.

IN THE SENATE OF THE UNITED STATES

MARCH 16, 2023

Ms. HASSAN (for herself, Mr. YOUNG, Ms. CORTEZ MASTO, Mr. BARRASSO, Ms. SINEMA, Mr. TILLIS, Mrs. FEINSTEIN, Mr. DAINES, Mr. KELLY, Mr. HAGERTY, Mrs. MURRAY, Mr. MORAN, Mr. PETERS, and Mr. WICKER) 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 enhance tax benefits for research activities.

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 and Jobs Act”.

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

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

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

2 “(a) TREATMENT AS EXPENSES.—

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

9 “(2) WHEN METHOD MAY BE ADOPTED.—

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

15 “(B) WITH CONSENT.—A taxpayer may,
16 with the consent of the Secretary, adopt at any
17 time the method provided in this subsection.

18 “(3) SCOPE.—The method adopted under this
19 subsection shall apply to all expenditures described
20 in paragraph (1). The method adopted shall be ad-
21 hered to in computing taxable income for the taxable
22 year and for all subsequent taxable years unless,
23 with the approval of the Secretary, a change to a
24 different method is authorized with respect to part
25 or all of such expenditures.

1 “(b) AMORTIZATION OF CERTAIN RESEARCH AND
2 EXPERIMENTAL EXPENDITURES.—

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

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

9 “(B) not treated as expenses under sub-
10 section (a), and

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

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

22 Such deferred expenses are expenditures properly
23 chargeable to capital account for purposes of section
24 1016(a)(1) (relating to adjustments to basis of prop-
25 erty).

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

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

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

6 “(e) ONLY REASONABLE RESEARCH EXPENDITURES
7 ELIGIBLE.—This section shall apply to a research or ex-
8 perimental expenditure only to the extent that the amount
9 thereof is reasonable under the circumstances.

10 “(f) CROSS REFERENCES.—

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

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

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

“Sec. 174. Research and experimental expenditures”.

21 (c) CONFORMING AMENDMENTS.—

22 (1) Section 41(d)(1)(A) is amended by striking
23 “specified research or experimental expenditures
24 under section 174” and inserting “expenses under
25 section 174”.

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

3 “(c) CREDIT FOR INCREASING RESEARCH ACTIVI-
4 TIES.—

5 “(1) IN GENERAL.—No deduction shall be al-
6 lowed for that portion of the qualified research ex-
7 penses (as defined in section 41(b)) or basic re-
8 search expenses (as defined in section 41(e)(2)) oth-
9 erwise allowable as a deduction for the taxable year
10 which is equal to the amount of the credit deter-
11 mined for such taxable year under section 41(a).

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

14 “(A) the amount of the credit determined
15 for the taxable year under section 41(a)(1), ex-
16 ceeds

17 “(B) the amount allowable as a deduction
18 for such taxable year for qualified research ex-
19 penses or basic research expenses (determined
20 without regard to paragraph (1)),

21 the amount chargeable to capital account for the
22 taxable year for such expenses shall be reduced by
23 the amount of such excess.

24 “(3) ELECTION OF REDUCED CREDIT.—

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

4 “(i) paragraphs (1) and (2) shall not
5 apply, and

6 “(ii) the amount of the credit under
7 section 41(a) shall be the amount deter-
8 mined under subparagraph (B).

9 “(B) AMOUNT OF REDUCED CREDIT.—The
10 amount of credit determined under this sub-
11 paragraph for any taxable year shall be the
12 amount equal to the excess of—

13 “(i) the amount of credit determined
14 under section 41(a) without regard to this
15 paragraph, over

16 “(ii) the product of—

17 “(I) the amount described in
18 clause (i), and

19 “(II) the rate of tax under sec-
20 tion 11(b).

21 “(C) ELECTION.—An election under this
22 paragraph for any taxable year shall be made
23 not later than the time for filing the return of
24 tax for such year (including extensions), shall
25 be made on such return, and shall be made in

1 such manner as the Secretary may prescribe.
 2 Such an election, once made, shall be irrev-
 3 ocable.

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

7 (d) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply to amounts paid or incurred in tax-
 9 able years beginning after December 31, 2021.

10 **SEC. 3. EXPANDING REFUNDABLE RESEARCH CREDIT FOR**
 11 **NEW AND SMALL BUSINESSES.**

12 (a) INCREASING CAP ON REFUNDABLE CREDIT.—

13 (1) IN GENERAL.—Subclause (I) of section
 14 41(h)(4)(B)(i) of the Internal Revenue Code of 1986
 15 is amended by striking “\$250,000” and inserting
 16 “the applicable amount”.

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

20 “(II) APPLICABLE AMOUNT.—

21 For purposes of subclause (I), the ap-
 22 plicable amount is—

23 “(aa) in the case of any tax-
 24 able year beginning after Decem-

1 ber 31, 2022, and before Janu-
2 ary 1, 2024, \$500,000,

3 “(bb) in the case of any tax-
4 able year beginning after Decem-
5 ber 31, 2023, and before Janu-
6 ary 1, 2025, \$525,000,

7 “(cc) in the case of any tax-
8 able year beginning after Decem-
9 ber 31, 2024, and before Janu-
10 ary 1, 2026, \$550,000,

11 “(dd) in the case of any tax-
12 able year beginning after Decem-
13 ber 31, 2025, and before Janu-
14 ary 1, 2027, \$575,000,

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

19 “(ff) in the case of any tax-
20 able year beginning after Decem-
21 ber 31, 2027, and before Janu-
22 ary 1, 2029, \$625,000,

23 “(gg) in the case of any tax-
24 able year beginning after Decem-

1 ber 31, 2028, and before Janu-
2 ary 1, 2030, \$650,000,

3 “(hh) in the case of any tax-
4 able year beginning after Decem-
5 ber 31, 2029, and before Janu-
6 ary 1, 2031, \$675,000,

7 “(ii) in the case of any tax-
8 able year beginning after Decem-
9 ber 31, 2030, and before Janu-
10 ary 1, 2032, \$700,000,

11 “(jj) in the case of any tax-
12 able year beginning after Decem-
13 ber 31, 2031, and before Janu-
14 ary 1, 2033, \$725,000, and

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

18 (3) CONFORMING AMENDMENTS.—

19 (A) Clause (ii) of section 41(h)(5)(B) of
20 such Code is amended by striking “each of the
21 \$250,000 amounts” and inserting “the applica-
22 ble amount”.

23 (B) Section 3111(f) of such Code is
24 amended—

25 (i) in paragraph (1)—

1 (I) by striking “(applied without
2 regard to subclause (II) thereof),
3 and” and inserting a period,

4 (II) by striking subparagraph
5 (B), and

6 (III) by striking “for a taxable
7 year” and all that follows through “al-
8 lowed as a credit” and inserting “for
9 a taxable year, there shall be allowed
10 as a credit”,

11 (ii) in paragraph (2)—

12 (I) by striking “paragraph
13 (1)(A)” and inserting “paragraph
14 (1)”, and

15 (II) by striking “, and the credit
16 allowed by paragraph (1)(B) shall not
17 exceed the tax imposed by subsection
18 (b) for any calendar quarter,” and

19 (iii) in paragraph (4)—

20 (I) by striking “credits” and in-
21 serting “credit”, and

22 (II) by striking “or (b)”.

23 (b) EXTENSION OF ELIGIBILITY AND APPLICABILITY
24 OF ELECTION.—

1 “(D) SPECIAL RULES FOR QUALIFIED
2 SMALL BUSINESSES.—In the case of a qualified
3 small business (as defined in subsection
4 (h)(3))—

5 “(i) subparagraph (A) shall be applied
6 by substituting ‘20 percent’ for ‘14 per-
7 cent’, and

8 “(ii) if subparagraph (B) applies to
9 such taxpayer, at the election of the tax-
10 payer—

11 “(I) subparagraph (B)(ii) shall
12 be applied by substituting ‘10 percent’
13 for ‘6 percent’, or

14 “(II) in lieu of applying subpara-
15 graph (B), the average under sub-
16 paragraph (A) shall be determined by
17 disregarding any taxable year in the
18 3-year period described in such sub-
19 paragraph in which there were no
20 qualified research expenses.”.

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

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