

110TH CONGRESS  
1ST SESSION

# S. 2116

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.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2007

Mr. LEVIN 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 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 Corporate Tax  
5 Favors 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 the exer-  
 15 cise of a stock option, any deduction by the employer  
 16 related to such stock option shall be allowed only  
 17 under section 162(q) and paragraph (1) shall not  
 18 apply.”.

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

25 “(q) TREATMENT OF COMPENSATION PAID WITH  
 26 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           an expense with respect to such stock options for the  
6           purpose of ascertaining income, profit, or loss in a  
7           report or statement to shareholders, partners, or  
8           other proprietors (or to beneficiaries), and shall be  
9           allowed in the same period that the accounting ex-  
10          pense is recognized.

11          “(2) SPECIAL RULES FOR CONTROLLED  
12          GROUPS.—The Secretary shall prescribe rules for the  
13          application of paragraph (1) in cases where the  
14          stock option is granted by a parent or subsidiary  
15          corporation (within the meaning of section 424) of  
16          the employer corporation.”.

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

22                  “(iv) SPECIAL RULE FOR STOCK OP-  
23                  TIONS.—The amount which may be treated  
24                  as wages for any taxable year in connec-  
25                  tion with the issuance of a stock option

1           shall not exceed the amount allowed for  
2           such taxable year as a compensation de-  
3           duction under section 162(q) with respect  
4           to such stock option.”.

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

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

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

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

1           (4) no deduction shall be allowed under section  
2           83(h) or section 162(q) of such Code with respect to  
3           any stock option the vesting date of which is  
4           changed to accelerate the time at which the option  
5           may be exercised in order to avoid the applicability  
6           of such amendments.

7 **SEC. 3. APPLICATION OF EXECUTIVE PAY DEDUCTION**  
8           **LIMIT.**

9           (a) **IN GENERAL.**—Subparagraph (D) of section  
10          162(m)(4) of the Internal Revenue Code of 1986 (defining  
11          applicable employee remuneration) is amended to read as  
12          follows:

13                   “(D) **STOCK OPTION COMPENSATION.**—  
14                   The term ‘applicable employee remuneration’  
15                   shall include any compensation deducted under  
16                   subsection (q), and such compensation shall not  
17                   qualify as performance-based compensation  
18                   under subparagraph (C).”.

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

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