

112TH CONGRESS
1ST SESSION

H. R. 2858

To amend the Internal Revenue Code of 1986 to allow a business credit for investments in rural microbusinesses.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 7, 2011

Mr. KIND (for himself and Mr. HERGER) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to allow a business credit for investments in rural microbusinesses.

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 “Rural Microbusiness
5 Investment Credit Act of 2011”.

6 **SEC. 2. RURAL MICROBUSINESS INVESTMENT CREDIT.**

7 (a) IN GENERAL.—Subpart D of part IV of sub-
8 chapter A of chapter 1 of the Internal Revenue Code of
9 1986 (relating to business related credits) is amended by
10 adding at the end the following new section:

1 **“SEC. 45S. RURAL MICROBUSINESS INVESTMENT CREDIT.**

2 “(a) IN GENERAL.—For purposes of section 38, the
3 amount of the rural microbusiness investment credit deter-
4 mined under this section for any taxable year with respect
5 to a rural microbusiness is equal to 35 percent of the
6 qualified new investments in the rural microbusiness for
7 the taxable year.

8 “(b) LIMITATIONS.—

9 “(1) PER BUSINESS LIMITATIONS.—The
10 amount allowed as a credit under subsection (a) with
11 respect to any rural microbusiness for a taxable year
12 shall not exceed—

13 “(A) \$10,000, reduced (but not below
14 zero) by

15 “(B) the amount allowed under subsection
16 (a) to the rural microbusiness for all preceding
17 taxable years.

18 “(2) PER TAXPAYER LIMITATIONS.—The
19 amount allowed as a credit under subsection (a) with
20 respect to any taxpayer with respect to all rural
21 microbusinesses of the taxpayer for a taxable year
22 shall not exceed—

23 “(A) \$10,000, reduced (but not below
24 zero) by

1 “(B) the amount allowed under subsection
2 (a) to the taxpayer with respect to rural micro-
3 businesses for all preceding taxable years.

4 “(c) DEFINITIONS.—For purposes of this section—

5 “(1) QUALIFIED NEW INVESTMENT.—The term
6 ‘qualified new investment’ means the excess of—

7 “(A) qualified expenditures paid or in-
8 curred for the taxable year, over

9 “(B) the greater of—

10 “(i) qualified expenditures paid or in-
11 curred for the preceding taxable year, or

12 “(ii) the average annual qualified ex-
13 penditures paid or incurred over the pre-
14 ceding three taxable years.

15 If the rural microbusiness was not in existence for
16 the entire 3-year period referred to in clause (ii) of
17 subparagraph (B), subparagraph (B) shall be ap-
18 plied without regard to so much of such subpara-
19 graph as precedes such clause (ii) and any taxable
20 years during such 3-year period for which the rural
21 microbusiness was not in existence shall be taken
22 into account as taxable years during which there
23 were no qualified expenditures.

24 “(2) QUALIFIED EXPENDITURES.—

1 “(A) IN GENERAL.—The term ‘qualified
2 expenditures’ means any amount which is paid
3 or incurred with respect to a rural microbusi-
4 ness. Such term includes costs for capital plant
5 and equipment, inventory expenses, and wages.

6 “(B) EXCEPTION.—Such term does not in-
7 clude—

8 “(i) any interest cost,

9 “(ii) the cost of any vehicle which is
10 not a qualified nonpersonal use vehicle (as
11 defined in section 274(i)), and

12 “(iii) the cost of any compensation or
13 benefits to the taxpayer claiming the cred-
14 it, including the taxpayer’s spouse and de-
15 pendants.

16 “(3) RURAL MICROBUSINESS.—

17 “(A) IN GENERAL.—The term ‘rural
18 microbusiness’ means any trade or business if—

19 “(i) such trade or business is operated
20 as a proprietorship, partnership, trust (to
21 the extent that the trust is a pass-thru en-
22 tity), S corporation, or other pass-thru en-
23 tity,

1 “(ii) each of the owners of such trade
2 or business, with respect to the taxable
3 year for which the credit is claimed—

4 “(I) materially participates (as
5 determined under rules similar to the
6 rules of section 469(h)) in such trade
7 or business, and

8 “(II) in the case of any trade or
9 business substantially all of the activ-
10 ity of which is in agricultural produc-
11 tion, is a first-time farmer (as defined
12 in section 147(c)(2)(C)),

13 “(iii) such trade or business is carried
14 on, and physically located, in a distressed
15 rural area during the taxable year for
16 which the credit is claimed,

17 “(iv) such trade or business employs
18 not more than 5 full time (or full-time
19 equivalent) employees during the taxable
20 year for which the credit is claimed, and

21 “(v) which meets the gross revenue
22 test under subparagraph (D) for the first
23 taxable year in which the credit under sub-
24 section (a) is allowable with respect to the
25 trade or business.

1 “(B) EXCEPTIONS.—Such term shall not
2 include—

3 “(i) any trade or business which in-
4 cludes, in whole or in part, any private or
5 commercial golf course, country club, mas-
6 sage parlor, hot tub facility, suntan facil-
7 ity, racetrack or other facility used for
8 gambling, or any store the principal busi-
9 ness of which is the sale of alcoholic bev-
10 erages for consumption off premises, or

11 “(ii) any trade or business with re-
12 spect to which records are required under
13 section 2257 of title 18, United States
14 Code, to be maintained with respect to any
15 performer.

16 “(C) GROSS REVENUE TEST.—

17 “(i) IN GENERAL.—A trade or busi-
18 ness meets the gross revenue test of this
19 subparagraph for any taxable year if the
20 average annual gross revenue of the trade
21 or business for the 3-taxable year period
22 ending with the taxable year does not ex-
23 ceed \$1,000,000.

24 “(ii) AGGREGATION RULES.—All per-
25 sons treated as a single employer under

1 subsection (a) or (b) or section 52 or sub-
2 section (m) or (o) of section 414 shall be
3 treated as a trade or business for purposes
4 of clause (i).

5 “(iii) SPECIAL RULES FOR ENTITIES
6 NOT IN EXISTENCE FOR ENTIRE 3-YEAR
7 PERIOD, ETC.—Rules similar to the rules
8 of subparagraphs (A), (B), and (D) of sec-
9 tion 448(c)(3) shall apply for purposes of
10 this subparagraph.

11 “(D) SELF-EMPLOYED INDIVIDUALS.—For
12 purposes of this paragraph, if, with respect to
13 a trade or business, an individual is treated as
14 an employee under section 401(c), such indi-
15 vidual shall be treated as an employee of such
16 trade or business for purposes of the preceding
17 sentence.

18 “(E) FULL-TIME EQUIVALENT EM-
19 PLOYEE.—For purposes of this paragraph—

20 “(i) IN GENERAL.—The term ‘full-
21 time equivalent employee’ means a number
22 of employees equal to the number deter-
23 mined by dividing—

24 “(I) the total number of hours of
25 service for which wages were paid by

1 the employer to employees during the
2 taxable year, by

3 “(II) 2,080.

4 Such number shall be rounded to the next
5 lowest whole number if not otherwise a
6 whole number.

7 “(ii) EXCESS HOURS NOT COUNT-
8 ED.—If an employee works in excess of
9 2,080 hours of service during any taxable
10 year, such excess shall not be taken into
11 account under clause (i).

12 “(iii) HOURS OF SERVICE.—The Sec-
13 retary, in consultation with the Secretary
14 of Labor, shall prescribe such regulations,
15 rules, and guidance as may be necessary to
16 determine the hours of service of an em-
17 ployee, including rules for the application
18 of this paragraph to employees who are not
19 compensated on an hourly basis.

20 “(4) DISTRESSED RURAL AREA.—

21 “(A) IN GENERAL.—The term ‘distressed
22 rural area’ means any qualified area in the
23 United States—

24 “(i) that has lost at least 5 percent of
25 its population over the last 10 years,

1 “(ii) that lost at least 10 percent if its
2 population over the last 20 years,

3 “(iii) that has median family income
4 below 85 percent of the national median
5 family income,

6 “(iv) that has a poverty rate that ex-
7 ceeds 12.5 percent, or

8 “(v) where average unemployment in
9 the preceding year exceeds 120 percent of
10 the national average.

11 “(B) QUALIFIED AREA.—For purposes of
12 subparagraph (A), the term ‘qualified area’
13 means—

14 “(i) any area other than—

15 “(I) a city or town that has a
16 population of greater than 50,000 in-
17 habitants, and

18 “(II) any urbanized area contig-
19 uous and adjacent to a city or town
20 described in subclause (I), and

21 “(ii) any county in which—

22 “(I) there is no city or town that
23 has a population of greater than
24 100,000 inhabitants,

1 “(II) there are no urbanized
2 areas contiguous and adjacent to a
3 city or town described in subclause
4 (I),

5 “(III) there is not more than one
6 city or town that has a population of
7 greater than 50,000 inhabitants, and

8 “(IV) the average unemployment
9 in the preceding year exceeds 140 per-
10 cent of the national average.

11 “(C) RELEVANT SOURCES OF INFORMA-
12 TION.—In determining whether an area is a
13 distressed rural area under this paragraph,
14 such determination shall be made in accordance
15 with the most recent information from the Bu-
16 reau of the Census, the Bureau of Labor Statis-
17 tics, or other government entity with relevant
18 information.

19 “(5) RELATED PERSONS.—A person shall be
20 treated as related to another person if the relation-
21 ship between such persons would result in the dis-
22 allowance of losses under section 267 or 707(b) (but,
23 in applying section 267(b) and (c) for purposes of
24 this section, paragraph (4) of section 267(c) shall be
25 treated as providing that the family of an individual

1 shall include only his spouse, ancestors, and lineal
2 descendants).

3 “(d) DENIAL OF DOUBLE BENEFIT.—No deduction
4 or credit shall be allowed under any other provision of this
5 chapter for any amount taken into account in determining
6 the credit under this section.

7 “(e) OTHER RULES.—

8 “(1) MARRIED COUPLE MUST FILE JOINT RE-
9 TURN.—Rules similar to the rules of paragraphs (2),
10 (3), and (4) of section 21(e) shall apply for purposes
11 of this section.

12 “(2) DENIAL OF CREDIT TO DEPENDENTS.—No
13 credit shall be allowed under this section to any indi-
14 vidual with respect to whom a deduction is allowed
15 under section 151 is allowable to another taxpayer
16 for a taxable year beginning in the calendar year in
17 which such individual’s calendar year begins.”.

18 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-
19 NESS CREDIT.—Section 38(b) of such Code (defining cur-
20 rent year business credit) is amended by striking “plus”
21 at the end of paragraph (35), by striking the period at
22 the end of paragraph (36) and inserting “, plus”, and by
23 adding at the end the following new paragraph:

24 “(37) the rural microbusiness investment credit
25 determined under section 45S(a).”.

1 (c) CARRYOVER OF UNUSED CREDIT.—Subsection
2 (a) of section 39 of such Code is amended by adding at
3 the end the following new paragraph:

4 “(5) 5-YEAR CARRYBACK FOR RURAL MICRO-
5 BUSINESS INVESTMENT CREDIT.—Notwithstanding
6 subsection (d), in the case of the rural microbusiness
7 investment credit—

8 “(A) this section shall be applied sepa-
9 rately from the business credit and the mar-
10 ginal oil and gas well production credit (other
11 than the rural microbusiness investment credit),

12 “(B) paragraph (1) shall be applied by
13 substituting ‘each of the 5 taxable years’ for
14 ‘the taxable year’ in subparagraph (A) thereof,
15 and

16 “(C) paragraph (2) shall be applied—

17 “(i) by substituting ‘25 taxable years’
18 for ‘21 taxable years’ in subparagraph (A)
19 thereof, and

20 “(ii) by substituting ‘24 taxable years’
21 for ‘20 taxable years’ in subparagraph (B)
22 thereof.”.

23 (d) CONFORMING AMENDMENT.—The table of sec-
24 tions for subpart D of part IV of subchapter A of chapter

1 1 of such Code is amended by adding at the end the fol-
2 lowing new item:

“Sec. 45S. Rural microbusiness investment credit.”.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to expenditures made in taxable
5 years beginning after the date of the enactment of this
6 Act.

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