

106TH CONGRESS
1ST SESSION

H. R. 2617

To amend the Internal Revenue Code of 1986 to allow a tax credit for development costs of encryption products with plaintext capability without the user's knowledge.

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 1999

Mr. GOSS (for himself, Mr. LEWIS of California, Mr. BASS, Mr. GIBBONS, and Mr. LAHOOD) 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 tax credit for development costs of encryption products with plaintext capability without the user's knowledge.

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 “Tax Relief for Respon-
5 sible Encryption Act of 1999”.

1 **SEC. 2. CREDIT FOR DEVELOPMENT COSTS OF**
 2 **ENCRYPTION PRODUCTS WITH PLAINTEXT**
 3 **CAPABILITY WITHOUT USER’S KNOWLEDGE.**

4 Subpart D of part IV of subchapter A of chapter 1
 5 of the Internal Revenue Code of 1986 (relating to business
 6 related credits) is amended by adding at the end the fol-
 7 lowing:

8 **“SEC. 45D. DEVELOPMENT COSTS OF ENCRYPTION PROD-**
 9 **UCTS WITH PLAINTEXT CAPABILITY WITH-**
 10 **OUT USER’S KNOWLEDGE.**

11 “(a) GENERAL RULE.—For purposes of section 38,
 12 in the case of a developer of computer software, the
 13 encrypted product-plaintext capability credit determined
 14 under this section is an amount equal to 15 percent of
 15 the taxpayer’s encrypted product-plaintext development
 16 capability costs during the taxable year.

17 “(b) ENCRYPTED PRODUCT-PLAINTEXT CAPABILITY
 18 DEVELOPMENT COSTS.—For purposes of this section—

19 “(1) IN GENERAL.—The term ‘encrypted prod-
 20 uct-plaintext capability development costs’ means
 21 amounts paid or incurred in connection with the de-
 22 velopment of computer software allowing for a
 23 plaintext access capability without the user’s knowl-
 24 edge of such access at the time such access occurs
 25 through any method, including the following meth-
 26 ods:

1 “(A) Access to fields where plaintext oc-
2 curs.

3 “(B) Key recovery.

4 “(C) Provision of decryption information.

5 “(D) Any other technique or methodology
6 that may be created that allows timely access to
7 plaintext or decryption information.

8 “(2) PLAINTEXT ACCESS CAPABILITY.—The
9 term ‘plaintext access capability’ means a technique
10 or methodology by which encrypted information,
11 data, or communications is converted to plaintext or
12 plainvoice, or by which access to decryption informa-
13 tion can be obtained.

14 “(3) COMPUTER SOFTWARE.—The term ‘com-
15 puter software’ has the meaning given to such term
16 by section 197(e)(3)(B) (without regard to the sec-
17 ond sentence thereof).

18 “(c) SPREAD OF PRE-EFFECTIVE DATE COSTS.—
19 For each of the taxable years beginning after December
20 31, 1991, and before January 1, 2000, in which the tax-
21 payer has encrypted product-plaintext capability develop-
22 ment costs, the aggregate amount of such costs shall be
23 treated as a carryforward under section 39 beginning with
24 the first taxable year beginning after December 31,
25 1999.”.

1 **SEC. 3. CURRENT YEAR BUSINESS CREDIT CALCULATION.**

2 Section 38(b) of such Code (relating to current year
3 business credit) is amended by striking “plus” at the end
4 of paragraph (11), by striking the period at the end of
5 paragraph (12) and inserting “, plus”, and by adding at
6 the end the following:

7 “(13) the encrypted product-plaintext capability
8 credit determined under section 45D(a).”.

9 **SEC. 4. CREDIT ALLOWED AGAINST REGULAR AND MIN-**
10 **IMUM TAX.**

11 (a) IN GENERAL.—Subsection (c) of section 38 of
12 such Code (relating to limitation based on amount of tax)
13 is amended by redesignating paragraph (3) as paragraph
14 (4) and by inserting after paragraph (2) the following new
15 paragraph:

16 “(3) SPECIAL RULES FOR ENCRYPTED PROD-
17 UCT-PLAINTEXT CAPABILITY DEVELOPMENT CRED-
18 IT.—

19 “(A) IN GENERAL.—In the case of the
20 encrypted product-plaintext capability credit—

21 “(i) this section and section 39 shall
22 be applied separately with respect to the
23 credit, and

24 “(ii) in applying paragraph (1) to the
25 credit—

1 “(I) subparagraph (A) thereof
2 shall not apply, and

3 “(II) the limitation under para-
4 graph (1) (as modified by subclause
5 (I)) shall be reduced by the credit al-
6 lowed under subsection (a) for the
7 taxable year (other than the encrypted
8 product-plaintext capability develop-
9 ment credit).

10 “(B) ENCRYPTED PRODUCT-PLAINTEXT
11 CAPABILITY DEVELOPMENT CREDIT.—For pur-
12 poses of this subsection, the term ‘encrypted
13 product-plaintext capability development credit’
14 means the credit allowable under subsection (a)
15 by reason of section 45D(a).”.

16 (b) CONFORMING AMENDMENT.—Subclause (II) of
17 section 38(c)(2)(A)(ii) of such Code is amended by insert-
18 ing “or the encrypted product-plaintext capability develop-
19 ment credit” after “employment credit”.

20 **SEC. 5. DISALLOWANCE OF DEDUCTION BY AMOUNT OF**
21 **CREDIT.**

22 Section 280C of such Code (relating to certain ex-
23 penses for which credits are allowable) is amended by add-
24 ing at the end the following:

1 “(d) CREDIT FOR ENCRYPTED PRODUCT-PLAINTEXT
 2 DEVELOPMENT CAPABILITY.—No deduction shall be al-
 3 lowed for that portion of the encrypted product-plaintext
 4 capability development costs (as defined in section
 5 45D(b)) made during the taxable year that is equal to the
 6 amount of credit determined for the taxable year under
 7 section 45D(a). In the case of a corporation which is a
 8 member of a controlled group of corporations (within the
 9 meaning of section 52(a)) or a trade or business which
 10 is treated as being under common control with other
 11 trades or businesses (within the meaning of section 52(b)),
 12 this subsection shall be applied under rules prescribed by
 13 the Secretary similar to the rules applicable under sub-
 14 sections (a) and (b) of section 52.”.

15 **SEC. 6. LIMITATION ON CARRYBACK.**

16 Subsection (d) of section 39 of such Code (relating
 17 to carryback and carryforward of unused credits) is
 18 amended by adding at the end the following:

19 “(9) NO CARRYBACK OF ENCRYPTED PRODUCT-
 20 PLAINTEXT CAPABILITY DEVELOPMENT CREDIT BE-
 21 FORE EFFECTIVE DATE.—No amount of unused
 22 business credit available under section 45D may be
 23 carried back to a taxable year beginning before Jan-
 24 uary 1, 2000.”.

1 **SEC. 7. CLERICAL AMENDMENT.**

2 The table of sections for subpart D of part IV of sub-
3 chapter A of chapter 1 of such Code is amended by insert-
4 ing after the item relating to section 45C the following:

“Sec. 45D. Development costs of encryption products with
plaintext capability without user’s knowledge.”.

5 **SEC. 8. EFFECTIVE DATE.**

6 The amendments made by this Act shall apply to tax-
7 able years beginning after December 31, 1999.

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