

107TH CONGRESS  
2D SESSION

# S. 1940

To amend the Internal Revenue Code of 1986 to provide that corporate tax benefits from stock option compensation expenses are allowed only to the extent such expenses are included in a corporation's financial statements.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2002

Mr. LEVIN (for himself, Mr. MCCAIN, Mr. FITZGERALD, Mr. DURBIN, and Mr. DAYTON) 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 from stock option compensation expenses are allowed only to the extent such expenses are included in a corporation's financial statements.

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 the Double  
5       Standard for Stock Options Act”.

1 **SEC. 2. REQUIREMENTS FOR CONSISTENT TREATMENT OF**  
 2 **STOCK OPTIONS BY CORPORATIONS.**

3 (a) CONSISTENT TREATMENT FOR TAX DEDUC-  
 4 TION.—Section 83(h) of the Internal Revenue Code of  
 5 1986 (relating to deduction of employer) is amended—

6 (1) by striking “In the case of” and inserting:

7 “(1) IN GENERAL.—In the case of”, and

8 (2) by adding at the end the following new  
 9 paragraph:

10 “(2) SPECIAL RULES FOR PROPERTY TRANS-  
 11 FERRED PURSUANT TO STOCK OPTIONS.—

12 “(A) IN GENERAL.—In the case of prop-  
 13 erty transferred in connection with a stock op-  
 14 tion, the deduction otherwise allowable under  
 15 paragraph (1) shall not exceed the amount the  
 16 taxpayer has treated as an expense for the pur-  
 17 pose of ascertaining income, profit, or loss in a  
 18 report or statement to shareholders, partners,  
 19 or other proprietors (or to beneficiaries). In no  
 20 event shall such deduction be allowed before the  
 21 taxable year described in paragraph (1).

22 “(B) SPECIAL RULES FOR CONTROLLED  
 23 GROUPS.—The Secretary shall prescribe rules  
 24 for the application of this paragraph in cases  
 25 where the stock option is granted by a parent

1           or subsidiary corporation (within the meaning  
2           of section 424) of the employer corporation.”.

3           (b) CONSISTENT TREATMENT FOR RESEARCH TAX  
4 CREDIT.—Section 41(b)(2)(D) of the Internal Revenue  
5 Code of 1986 (defining wages for purposes of credit for  
6 increasing research expenses) is amended by inserting at  
7 the end the following new clause:

8                   “(iv) SPECIAL RULE FOR STOCK OP-  
9                   TIONS AND STOCK-BASED PLANS.—The  
10                  term ‘wages’ shall not include any amount  
11                  of property transferred in connection with  
12                  a stock option and required to be included  
13                  in a report or statement under section  
14                  83(h)(2) until it is so included, and the  
15                  portion of such amount which may be  
16                  treated as wages for a taxable year shall  
17                  not exceed the amount of the deduction al-  
18                  lowed under section 83(h) for such taxable  
19                  year with respect to such amount.”.

20           (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to property transferred and wages  
22 provided on or after the date of the enactment of this Act.

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