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1ST SESSION

S. 1893

To permit biomedical research corporations to engage in certain financings and other transactions without incurring limitations on net operating loss carryforwards and certain built-in losses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 19, 2005

Mr. SANTORUM introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To permit biomedical research corporations to engage in certain financings and other transactions without incurring limitations on net operating loss carryforwards and certain built-in losses, and for other purposes.

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 “Biotechnology Future
5 Investment Expansion Act of 2005”.

1 **SEC. 2. RESTORING THE BENEFIT OF TAX INCENTIVES FOR**
2 **BIOMEDICAL RESEARCH AND CLINICAL**
3 **TRIALS.**

4 (a) IN GENERAL.—Subsection (l) of section 382 of
5 the Internal Revenue Code of 1986 is amended by adding
6 at the end the following new paragraph:

7 “(9) CERTAIN FINANCING TRANSACTIONS OF
8 BIOMEDICAL RESEARCH CORPORATIONS.—

9 “(A) GENERAL RULE.—In the case of a
10 biomedical research corporation, any owner
11 shift involving a 5-percent shareholder which
12 occurs as the result of a qualified investment or
13 qualified transaction during the testing period
14 shall be treated for purposes of this section
15 (other than this paragraph) as occurring before
16 the testing period.

17 “(B) BIOMEDICAL RESEARCH CORPORA-
18 TION.—For purposes of this paragraph, the
19 term ‘biomedical research corporation’ means,
20 with respect to any qualified investment, any
21 domestic corporation subject to tax under this
22 subchapter which is not in bankruptcy and
23 which, as of the time of the closing on such in-
24 vestment—

25 “(i) holds the rights to a drug or bio-
26 logic for which an investigational new drug

1 application is in effect under section 505
2 of the Federal Food, Drug, and Cosmetic
3 Act, and

4 “(ii) certifies that, as of the time of
5 such closing, the drug or biologic is, or in
6 the 3 month period before and after such
7 closing has been, under study pursuant to
8 an investigational use exemption under sec-
9 tion 505(i) of the Federal Food, Drug, and
10 Cosmetic Act.

11 “(C) QUALIFIED INVESTMENT.—For pur-
12 poses of this paragraph, the term ‘qualified in-
13 vestment’ means any acquisition of stock by a
14 shareholder (who after such acquisition is a less
15 than 50 percent shareholder) in a biomedical
16 research corporation if such stock is acquired at
17 its original issue (directly or through an under-
18 writer) solely in exchange for cash.

19 “(D) QUALIFIED TRANSACTION.—For pur-
20 poses of this paragraph, the term ‘qualified
21 transaction’ means any acquisition of stock in a
22 biomedical research corporation if such stock is
23 acquired as part of a merger or acquisition by
24 another biomedical research corporation that is
25 a loss corporation. If the acquiring loss corpora-

1 tion is a member of a controlled group of cor-
2 porations under section 1563(a), the group
3 must be a loss group.

4 “(E) STOCK ISSUED IN EXCHANGE FOR
5 CONVERTIBLE DEBT.—For purposes of this
6 paragraph, stock issued by a biomedical re-
7 search corporation in exchange for its convert-
8 ible debt (or stock deemed under this section to
9 be so issued) shall be treated as stock acquired
10 by the debt holder at its original issue and sole-
11 ly in exchange for cash if the debt holder pre-
12 viously acquired the convertible debt at its
13 original issue and solely in exchange for cash.
14 In the case of an acquisition of stock in ex-
15 change for convertible debt, the requirements of
16 this paragraph shall be applied separately as of
17 the time of closing on the investment in con-
18 vertible debt, and as of the time of actual con-
19 version (or deemed conversion under this sec-
20 tion) of the convertible debt for stock.

21 “(F) BIOMEDICAL RESEARCH CORPORA-
22 TION MUST MEET 3-YEAR EXPENDITURE AND
23 CONTINUITY OF BUSINESS TESTS WITH RE-
24 SPECT TO ANY QUALIFIED INVESTMENT.—

1 “(i) IN GENERAL.—This paragraph
2 shall not apply to a qualified investment or
3 transaction in a biomedical research cor-
4 poration unless such corporation meets the
5 expenditure test for each year of the meas-
6 uring period and the continuity of business
7 test.

8 “(ii) MEASURING PERIOD.—For pur-
9 poses of this subparagraph, the term
10 ‘measuring period’ means, with respect to
11 any qualified investment or transaction,
12 the taxable year of the biomedical research
13 corporation in which the closing on the in-
14 vestment occurs, and the 2 preceding tax-
15 able years.

16 “(iii) EXPENDITURE TEST.—A bio-
17 medical research corporation meets the ex-
18 penditure test of this subparagraph for a
19 taxable year if at least 35 percent of its ex-
20 penditures for the taxable year (including,
21 for purposes of this clause, payments in re-
22 demption of its stock) are expenditures de-
23 scribed in section 41(b) or clinical and pre-
24 clinical expenditures.

1 “(iv) CONTINUITY OF BUSINESS
2 TEST.—A biomedical research corporation
3 meets the continuity of business test if, at
4 all times during the 2-year period following
5 a qualified investment or transaction, such
6 corporation continues the business enter-
7 prise of such corporation.

8 “(G) EFFECT OF CORPORATE REDEMP-
9 TIONS ON QUALIFIED INVESTMENTS.—Rules
10 similar to the rules of section 1202(c)(3) shall
11 apply to qualified investments under this para-
12 graph except that ‘stock acquired in a qualified
13 investment’ shall be substituted for ‘qualified
14 small business stock’ each place it appears
15 therein.

16 “(H) EFFECT OF OTHER TRANSACTIONS
17 BETWEEN BIOMEDICAL RESEARCH CORPORA-
18 TIONS AND INVESTORS MAKING QUALIFIED IN-
19 VESTMENTS.—

20 “(i) IN GENERAL.—If, during the 2-
21 year period beginning 1 year before any
22 qualified investment, the biomedical re-
23 search corporation engages in another
24 transaction with a member of its qualified
25 investment group and such biomedical re-

1 search corporation receives any consider-
2 ation other than cash in such transaction,
3 there shall be a presumption that stock re-
4 ceived in the otherwise qualified investment
5 transaction was not received solely in ex-
6 change for cash.

7 “(ii) QUALIFIED INVESTMENT
8 GROUP.—For purposes of this subpara-
9 graph, the term ‘qualified investment
10 group’ means, with respect to any qualified
11 investment, one or more persons who re-
12 ceive stock issued in exchange for the
13 qualified investment, and any person re-
14 lated to such persons within the meaning
15 of section 267(b) or section 707(b).

16 “(iii) REGULATIONS.—The Secretary
17 shall promulgate regulations exempting
18 from this subparagraph transactions which
19 are customary in the bioscience research
20 industry and are of minor value relative to
21 the amount of the qualified investment.

22 “(I) REGULATIONS.—The Secretary may
23 issue such regulations as may be appropriate to
24 achieve the purposes of this paragraph, to pre-
25 vent abuse, and to provide for treatment of bio-

1 medical research corporations under sections
2 383 and 384 that is consistent with the pur-
3 poses of this paragraph.”.

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

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