

109TH CONGRESS
2D SESSION

S. 2720

To amend the Internal Revenue Code of 1986 to provide incentives to improve America's research competitiveness, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 4, 2006

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

A BILL

To amend the Internal Revenue Code of 1986 to provide incentives to improve America's research competitiveness, 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 “Research Competitive-
5 ness Act of 2006”.

6 **SEC. 2. SIMPLIFICATION OF RESEARCH AND DEVELOP-**
7 **MENT CREDIT.**

8 (a) SIMPLIFIED CREDIT FOR QUALIFIED RESEARCH
9 EXPENSES.—

1 (1) IN GENERAL.—Subsection (a) of section 41
 2 of the Internal Revenue Code of 1986 (relating to
 3 credit for increasing research activities) is amended
 4 to read as follows:

5 “(a) DETERMINATION OF CREDIT.—

6 “(1) IN GENERAL.—For purposes of section 38,
 7 the research credit determined under this section for
 8 the taxable year shall be equal to 20 percent of so
 9 much of the qualified research expenses for such
 10 taxable year as exceeds 50 percent of the average
 11 qualified research expenses for the 3 taxable years
 12 preceding the taxable year for which the credit is
 13 being determined.

14 “(2) SPECIAL RULE IN CASE OF NO QUALIFIED
 15 RESEARCH EXPENSES IN ANY OF 3 PRECEDING TAX-
 16 ABLE YEARS.—

17 “(A) TAXPAYERS TO WHICH PARAGRAPH
 18 APPLIES.—The credit under this section shall
 19 be determined under this paragraph if the tax-
 20 payer has no qualified research expenses in at
 21 least 1 of the 3 taxable years preceding the tax-
 22 able year for which the credit is being deter-
 23 mined.

24 “(B) CREDIT RATE.—The credit deter-
 25 mined under this paragraph shall be equal to

1 10 percent of the qualified research expenses
2 for the taxable year.”.

3 (2) CONFORMING AMENDMENT.—Section 41 of
4 such Code is amended by striking subsection (c).

5 (b) UNIFORM REIMBURSEMENT RATES FOR ALL
6 CONTRACT RESEARCH EXPENSES OTHER THAN
7 AMOUNTS PAID FOR BASIC RESEARCH.—

8 (1) IN GENERAL.—Section 41(b)(3) of the In-
9 ternal Revenue Code of 1986 (relating to contract
10 research expenses) is amended—

11 (A) by striking “65 percent” and inserting
12 “80 percent”, and

13 (B) by striking subparagraphs (C) and
14 (D).

15 (2) BASIC RESEARCH PAYMENTS.—Section
16 41(b) of such Code is amended by redesignating
17 paragraph (4) as paragraph (5) and by inserting
18 after paragraph (3) the following new paragraph:

19 “(4) BASIC RESEARCH PAYMENTS.—

20 “(A) IN GENERAL.—In the case of basic
21 research payments by the taxpayer, paragraph
22 (3)(A) shall be applied by substituting ‘100 per-
23 cent’ for ‘80 percent’.

24 “(B) BASIC RESEARCH PAYMENTS DE-
25 FINED.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘basic research payment’ means, with respect to any taxable year, any amount paid in cash during such taxable year by a corporation to any qualified organization for basic research but only if—

“(I) such payment is pursuant to a written agreement between such corporation and such qualified organization, and

“(II) such basic research is to be performed by such qualified organization.

“(ii) EXCEPTION TO REQUIREMENT THAT RESEARCH BE PERFORMED BY THE ORGANIZATION.—In the case of a qualified organization described in clause (iii) or (iv) of subparagraph (C), subclause (II) of clause (i) shall not apply.

“(C) QUALIFIED ORGANIZATION.—For purposes of this paragraph, the term ‘qualified organization’ means any of the following organizations:

“(i) EDUCATIONAL INSTITUTIONS.—
Any educational organization which—

1 “(I) is an institution of higher
2 education (within the meaning of sec-
3 tion 3304(f)), and

4 “(II) is described in section
5 170(b)(1)(A)(ii).

6 “(ii) CERTAIN SCIENTIFIC RESEARCH
7 ORGANIZATIONS.—Any organization not
8 described in clause (i) which—

9 “(I) is described in section
10 501(c)(3) and is exempt from tax
11 under section 501(a),

12 “(II) is organized and operated
13 primarily to conduct scientific re-
14 search, and

15 “(III) is not a private founda-
16 tion.

17 “(iii) SCIENTIFIC TAX-EXEMPT ORGA-
18 NIZATIONS.—Any organization which—

19 “(I) is described in section
20 501(c)(3) (other than a private foun-
21 dation) or section 501(c)(6),

22 “(II) is exempt from tax under
23 section 501(a),

24 “(III) is organized and operated
25 primarily to promote scientific re-

1 search by qualified organizations de-
2 scribed in clause (i) pursuant to writ-
3 ten research agreements, and

4 “(IV) currently expends substan-
5 tially all of its funds or substantially
6 all of the basic research payments re-
7 ceived by it for grants to, or contracts
8 for basic research with, an organiza-
9 tion described in clause (i).

10 “(iv) CERTAIN GRANT ORGANIZA-
11 TIONS.—Any organization not described in
12 clause (ii) or (iii) which—

13 “(I) is described in section
14 501(c)(3) and is exempt from tax
15 under section 501(a) (other than a
16 private foundation),

17 “(II) is established and main-
18 tained by an organization established
19 before July 10, 1981, which meets the
20 requirements of subclause (I),

21 “(III) is organized and operated
22 exclusively for the purpose of making
23 grants to organizations described in
24 clause (i) pursuant to written research

1 agreements for purposes of basic re-
2 search, and

3 “(IV) makes an election, rev-
4 ocable only with the consent of the
5 Secretary, to be treated as a private
6 foundation for purposes of this title
7 (other than section 4940, relating to
8 excise tax based on investment in-
9 come).

10 “(D) DEFINITIONS AND SPECIAL RULES.—

11 For purposes of this paragraph—

12 “(i) BASIC RESEARCH.—The term
13 ‘basic research’ means any original inves-
14 tigation for the advancement of scientific
15 knowledge not having a specific commercial
16 objective, except that such term shall not
17 include—

18 “(I) basic research conducted
19 outside of the United States, and

20 “(II) basic research in the social
21 sciences, arts, or humanities.

22 “(ii) TRADE OR BUSINESS QUALIFICA-
23 TION.—For purposes of applying para-
24 graph (1) to this paragraph, any basic re-
25 search payments shall be treated as an

amount paid in carrying on a trade or business of the taxpayer in the taxable year in which it is paid (without regard to the provisions of paragraph (3)(B)).

“(iii) CERTAIN CORPORATIONS NOT ELIGIBLE.—The term ‘corporation’ shall not include—

“(I) an S corporation,

“(II) a personal holding company (as defined in section 542), or

“(III) a service organization (as defined in section 414(m)(3)).”.

(3) CONFORMING AMENDMENTS.—

(A) Section 41 of such Code is amended by striking subsection (e).

(B) Section 41(f) of such Code is amended by striking paragraph (6).

(c) PERMANENT EXTENSION OF CREDIT.—

(1) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 is amended by striking subsection (h).

(2) CONFORMING AMENDMENT.—Paragraph (1) of section 45C(b) of such Code is amended by striking subparagraph (D).

(d) CONFORMING AMENDMENTS.—

1 (1) Section 41 of the Internal Revenue Code of
2 1986 is amended by redesignating subsections (d),
3 (f), and (g) as subsections (c), (d), and (e), respec-
4 tively.

5 (2) Paragraphs (2)(A) and (5) (as redesignated
6 by subsection (b)(2)) of section 41(b) of such Code
7 are each amended by striking “subsection (f)(1)”
8 and inserting “subsection (d)(1)”.

9 (3) Sections 45C(d)(3), 45G(e)(2), and
10 936(h)(5)(C)(i)(IV)(c) of such Code are each
11 amended by striking “section 41(f)” and inserting
12 “section 41(d)”.

13 (4) Section 54(l)(3)(A) of such Code is amend-
14 ed by striking “section 41(g)” and inserting “section
15 41(e)”.

16 (5) Section 170(e)(4)(B)(i) of such Code is
17 amended by striking “subparagraph (A) or subpara-
18 graph (B) of section 41(e)(6)” and inserting “clause
19 (i) or (ii) of section 41(b)(4)(C)”.

20 (6) Sections 197(f)(1)(C), 197(f)(9)(C)(i)(II),
21 and 280C(b)(3) of such Code are each amended by
22 striking “section 41(f)(1)” and inserting “section
23 41(d)(1)”.

1 (7) Section 280C(b)(3) of such Code is amend-
 2 ed by striking “section 41(f)(5)” and inserting “sec-
 3 tion 41(d)(5)”.

4 (8) Section 280C(b)(3) of such Code is amend-
 5 ed by striking “section 41(f)(1)(B)” and inserting
 6 “section 41(d)(1)(B)”.

7 (9) Section 280C(c)(1) of such Code is amend-
 8 ed by striking “section 41(e)(2)” and inserting “sec-
 9 tion 41(b)(4)(B)”.

10 (10) Section 280C(c)(2)(A) of such Code is
 11 amended by striking “section 41(a)(1)” and insert-
 12 ing “section 41(a)”.

13 (11) Sections 936(j)(5)(D) and 965(c)(2)(C)(i)
 14 of such Code are each amended by striking “section
 15 41(f)(3)” and inserting “section 41(d)(3)”.

16 (e) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to taxable years beginning after
 18 December 31, 2007.

19 **SEC. 3. TAX CREDIT FOR INVESTMENTS IN SMALL TECH-**
 20 **NOLOGY INNOVATION COMPANIES.**

21 (a) IN GENERAL.—Subpart D of part IV of sub-
 22 chapter A of chapter 1 of the Internal Revenue Code of
 23 1986 is amended by adding at the end the following new
 24 section:

1 **“SEC. 45N. RESEARCH INVESTMENT TAX CREDIT.**

2 “(a) ALLOWANCE OF CREDIT.—

3 “(1) IN GENERAL.—For purposes of section 38,
4 in the case of a taxpayer who holds a qualified eq-
5 uity investment on a credit allowance date of such
6 investment which occurs during the taxable year, the
7 research investment tax credit determined under this
8 section for such taxable year is an amount equal to
9 the 5 percent of the amount paid to the qualified re-
10 search entity for such investment at its original
11 issue.

12 “(2) CREDIT ALLOWANCE DATE.—For purposes
13 of paragraph (1), the term ‘credit allowance date’
14 means, with respect to any qualified equity invest-
15 ment—

16 “(A) the date on which such investment is
17 initially made, and

18 “(B) each of the 4 anniversary dates of
19 such date thereafter.

20 “(b) QUALIFIED EQUITY INVESTMENT.—For pur-
21 poses of this section—

22 “(1) IN GENERAL.—The term ‘qualified equity
23 investment’ means any equity investment in a quali-
24 fied research entity if—

25 “(A) such investment is acquired by the
26 taxpayer at its original issue (directly or

1 through an underwriter) solely in exchange for
2 cash,

3 “(B) substantially all of such cash is used
4 by the qualified research entity to make quali-
5 fied research investments, and

6 “(C) such investment is designated for
7 purposes of this section by the qualified re-
8 search entity.

9 Such term shall not include any equity investment
10 issued by a qualified research entity more than 5
11 years after the date that such entity receives an allo-
12 cation under subsection (e). Any allocation not used
13 within such 5-year period may be reallocated by the
14 Secretary under subsection (e).

15 “(2) LIMITATION.—The maximum amount of
16 equity investments issued by a qualified research en-
17 tity which may be designated under paragraph
18 (1)(C) by such entity shall not exceed the portion of
19 the limitation amount allocated under subsection (f)
20 to such entity.

21 “(3) SAFE HARBOR FOR DETERMINING USE OF
22 CASH.—The requirement of paragraph (1)(B) shall
23 be treated as met if at least 85 percent of the aggre-
24 gate gross assets of the qualified research entity are
25 invested in qualified research investments.

1 “(4) TREATMENT OF SUBSEQUENT PUR-
 2 CHASERS.—The term ‘qualified research investment’
 3 includes any equity investment which would (but for
 4 paragraph (1)(A)) be a qualified equity investment
 5 in the hands of the taxpayer if such investment was
 6 a qualified equity investment in the hands of a prior
 7 holder.

8 “(5) REDEMPTIONS.—A rule similar to the rule
 9 of section 1202(c)(3) shall apply for purposes of this
 10 subsection.

11 “(6) EQUITY INVESTMENT.—The term ‘equity
 12 investment’ means—

13 “(A) any stock (other than nonqualified
 14 preferred stock as defined in section 351(g)(2))
 15 in an entity which is a corporation, and

16 “(B) any capital interest in an entity
 17 which is a partnership.

18 “(c) QUALIFIED RESEARCH ENTITY.—For purposes
 19 of this section, the term ‘qualified research entity’ means
 20 any domestic corporation or partnership if—

21 “(1) the primary mission of the entity is serv-
 22 ing, or providing investment capital for, qualifying
 23 small business innovation companies,

24 “(2) the entity maintains accountability to engi-
 25 neers, scientists, and other research-related profes-

1 sionals through their representation on any gov-
 2 erning board of the entity or on any advisory board
 3 to the entity, and

4 “(3) the entity is certified by the Secretary for
 5 purposes of this section as being a qualified research
 6 entity.

7 “(d) QUALIFIED RESEARCH INVESTMENTS.—For
 8 purposes of this section—

9 “(1) IN GENERAL.—The term ‘qualified re-
 10 search investment’ means—

11 “(A) any capital or equity investment in,
 12 or loan to, any qualifying small business inno-
 13 vation company, which when added to any other
 14 such investment in or loan to such company
 15 taken into account for purposes of this section
 16 for any taxable year does not exceed
 17 \$10,000,000, and

18 “(B) the purchase from another qualified
 19 research entity of any loan made by such entity
 20 which is a qualified research investment.

21 “(2) QUALIFYING SMALL BUSINESS INNOVA-
 22 TION COMPANY.—

23 “(A) IN GENERAL.—For purposes of para-
 24 graph (1), the term ‘qualifying small business
 25 innovation company’ means, with respect to any

1 taxable year, any corporation (including a non-
2 profit corporation) or partnership if for such
3 year—

4 “(i) the gross receipts of such entity
5 do not exceed \$10,000,000,

6 “(ii) the aggregate gross assets of
7 such entity do not exceed \$25,000,000,
8 and

9 “(iii) at least 50 percent of the gross
10 expenditures of such entity would qualify
11 as research or experimental expenditures
12 under section 174.

13 All persons treated as a single employer under
14 subsection (a) or (b) of section 52 or subsection
15 (m) or (o) of section 414 shall be treated as one
16 person for purposes of this subparagraph.

17 “(B) AGGREGATE GROSS ASSETS.—For
18 purposes of subparagraph (A)(ii), the term ‘ag-
19 gregate gross assets’ shall have meaning given
20 such term by section 1202(d)(2), except such
21 term shall not include intangibles and goodwill.

22 “(e) NATIONAL LIMITATION ON AMOUNT OF INVEST-
23 MENTS DESIGNATED.—

1 “(1) IN GENERAL.—There is a research invest-
 2 ment tax credit limitation for each calendar year.
 3 Such limitation is—

4 “(A) \$500,000,000 for 2007,

5 “(B) \$750,000,000 for 2008 and 2009,
 6 and

7 “(C) \$1,000,000,000 for 2010 and 2011.

8 “(2) ALLOCATION OF LIMITATION.—The limita-
 9 tion under paragraph (1) shall be allocated by the
 10 Secretary among qualified research entities selected
 11 by the Secretary, with not more than \$25,000,000
 12 allocated to any 1 qualified research entity in any
 13 calendar year. In making allocations under the pre-
 14 ceding sentence, the Secretary shall give priority to
 15 any entity—

16 “(A) with a record of having successfully
 17 provided capital or technical assistance to quali-
 18 fying small business innovation companies, or

19 “(B) which intends to satisfy the require-
 20 ment under subsection (b)(1)(B) by making
 21 qualified research investments in 1 or more
 22 companies in which persons unrelated to such
 23 entity (within the meaning of section 267(b) or
 24 707(b)(1)) hold the majority equity interest,
 25 and

1 if more than 1 qualified research entity meets sub-
 2 paragraph (A) or (B), the Secretary shall give pri-
 3 ority to the entity with the earliest investment. If in-
 4 sufficient allocations are available for all qualified
 5 applicants in any calendar year, the priorities estab-
 6 lished for such applicants without allocations shall
 7 be carried over to the succeeding calendar year.

8 “(3) CARRYOVER OF UNUSED LIMITATION.—If
 9 the research investment tax credit limitation for any
 10 calendar year exceeds the aggregate amount allo-
 11 cated under paragraph (2) for such year, such limi-
 12 tation for the succeeding calendar year shall be in-
 13 creased by the amount of such excess. No amount
 14 may be carried under the preceding sentence to any
 15 calendar year after 2018.

16 “(f) RECAPTURE OF CREDIT IN CERTAIN CASES.—

17 “(1) IN GENERAL.—If, at any time during the
 18 7-year period beginning on the date of the original
 19 issue of a qualified equity investment in a qualified
 20 research entity, there is a recapture event with re-
 21 spect to such investment, then the tax imposed by
 22 this chapter for the taxable year in which such event
 23 occurs shall be increased by the credit recapture
 24 amount.

1 “(2) CREDIT RECAPTURE AMOUNT.—For pur-
 2 poses of paragraph (1), the credit recapture amount
 3 is an amount equal to the sum of—

4 “(A) the aggregate decrease in the credits
 5 allowed to the taxpayer under section 38 for all
 6 prior taxable years which would have resulted if
 7 no credit had been determined under this sec-
 8 tion with respect to such investment, plus

9 “(B) interest at the underpayment rate es-
 10 tablished under section 6621 on the amount de-
 11 termined under subparagraph (A) for each
 12 prior taxable year for the period beginning on
 13 the due date for filing the return for the prior
 14 taxable year involved.

15 No deduction shall be allowed under this chapter for
 16 interest described in subparagraph (B).

17 “(3) RECAPTURE EVENT.—For purposes of
 18 paragraph (1), there is a recapture event with re-
 19 spect to an equity investment in a qualified research
 20 entity if—

21 “(A) such entity ceases to be a qualified
 22 research entity,

23 “(B) the proceeds of the investment cease
 24 to be used as required of subsection (b)(1)(B),
 25 or

1 “(C) such investment is redeemed by such
2 entity.

3 “(4) SPECIAL RULES.—

4 “(A) TAX BENEFIT RULE.—The tax for
5 the taxable year shall be increased under para-
6 graph (1) only with respect to credits allowed
7 by reason of this section which were used to re-
8 duce tax liability. In the case of credits not so
9 used to reduce tax liability, the carryforwards
10 and carrybacks under section 39 shall be appro-
11 priately adjusted.

12 “(B) NO CREDITS AGAINST TAX.—Any in-
13 crease in tax under this subsection shall not be
14 treated as a tax imposed by this chapter for
15 purposes of determining the amount of any
16 credit under this chapter or for purposes of sec-
17 tion 55.

18 “(g) REGULATIONS.—The Secretary shall prescribe
19 such regulations as may be appropriate to carry out this
20 section, including regulations—

21 “(1) which prevent the abuse of the purposes of
22 this section,

23 “(2) which provide rules for determining wheth-
24 er the requirement of subsection (b)(1)(B) is treated
25 as met,

1 “(3) which impose appropriate reporting re-
2 quirements, and

3 “(4) which apply the provisions of this section
4 to newly formed entities.”.

5 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
6 tion 38(b) of the Internal Revenue Code of 1986 (relating
7 to current year business credit) is amended by striking
8 “and” at the end of paragraph (29), by striking the period
9 at the end of paragraph (30) and inserting “, plus”, and
10 by adding at the end the following new paragraph:

11 “(31) the credit determined under section
12 45N(a).”.

13 (c) CONFORMING AMENDMENT.—The table of sec-
14 tions for subpart D of part IV of subchapter A of chapter
15 1 of the Internal Revenue Code of 1986 is amended by
16 adding at the end the following new item:

“Sec. 45N. Research investment tax credit.”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to investments made after Decem-
19 ber 31, 2006.

20 **SEC. 4. TAX-EXEMPT FINANCING OF RESEARCH PARK FA-**
21 **CILITIES.**

22 (a) IN GENERAL.—Subsection (a) of section 142 is
23 amended—

24 (1) by striking “or” at the end of paragraph
25 (14),

1 (2) by striking the period at the end of para-
2 graph (15) and inserting “, or”, and

3 (3) by inserting at the end the following new
4 paragraph:

5 “(16) research park facility.”.

6 (b) DEFINITION.—Section 142 is amended by insert-
7 ing at the end the following new subsection:

8 “(n) RESEARCH PARK FACILITY.—For purposes of
9 subsection (a)(15), the term ‘research park facility’ means
10 a facility (including buildings, land, or other structures)
11 which is used in connection with research and experimen-
12 tation (as defined in section 168(i)(11)). For purposes of
13 the preceding sentence, such term includes facilities which
14 are directly related and ancillary to a research park facil-
15 ity (determined without regard to this sentence) if—

16 “(1) such facilities are located on the same site
17 as the research park facility, and

18 “(2) not more than 25 percent of the net pro-
19 ceeds of the issue are used to provide such facili-
20 ties.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply with respect to bonds issued on
23 or after the date of the enactment of this Act.

1 **SEC. 5. CLARIFICATION OF APPLICATION OF PRIVATE AC-**
2 **TIVITY BOND RULES WITH RESPECT TO**
3 **FUNDING OF FEDERAL RESEARCH AGREE-**
4 **MENTS.**

5 Not later than June 30, 2007, the Secretary of the
6 Treasury shall prescribe guidance identifying the cir-
7 cumstances, if any, in which the rights of the Federal Gov-
8 ernment granted under chapter 18 of title 35, United
9 States Code (commonly known as the Bayh-Dole Act
10 (Pub. Law No. 96–517)) constitute private business use
11 under the private activity bond rules in section 141 of the
12 Internal Revenue Code of 1986.

○