

110TH CONGRESS
2D SESSION

H. R. 5681

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2008

Mr. MCNERNEY 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 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 “Innovation Tax Credit
5 Act of 2008”.

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

8 (a) TRANSITION TO FULLY-IMPLEMENTED SIM-
9 PLIFIED CREDIT FOR QUALIFIED RESEARCH EX-
10 PANSES.—

1 (1) PHASE-OUT OF TRADITIONAL CREDIT.—

2 Section 41(a) of the Internal Revenue Code of 1986
3 is amended—

4 (A) by striking “20 percent” each place it
5 appears and inserting “the applicable percent-
6 age”, and

7 (B) by adding at the end the following new
8 flush sentence:

9 “For purposes of this subsection, the term ‘applicable per-
10 centage’ means 20 percent with respect to taxable years
11 beginning in 2008 and 2009.”.

12 (2) PHASE-IN OF SIMPLIFIED CREDIT.—Section
13 41(c)(5)(A) of such Code is amended—

14 (A) by striking “12 percent” and inserting
15 “the applicable percentage”, and

16 (B) by adding at the end the following new
17 sentence: “For purposes of the preceding sen-
18 tence, the term ‘applicable percentage’ means
19 16 percent with respect to taxable years begin-
20 ning in 2008 and 18 percent with respect to
21 taxable years beginning in 2009”.

22 (3) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply to taxable years begin-
24 ning after December 31, 2007.

1 (b) FULLY-IMPLEMENTED SIMPLIFIED CREDIT FOR
2 QUALIFIED RESEARCH EXPENSES.—

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

7 “(a) DETERMINATION OF CREDIT.—

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

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

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

1 “(B) CREDIT RATE.—The credit deter-
 2 mined under this paragraph shall be equal to
 3 10 percent of the qualified research expenses
 4 for the taxable year.”.

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

7 (c) UNIFORM REIMBURSEMENT RATES FOR ALL
 8 CONTRACT RESEARCH EXPENSES OTHER THAN
 9 AMOUNTS PAID FOR BASIC RESEARCH.—

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

13 (A) by striking “65 percent” and inserting
 14 “80 percent”, and

15 (B) by striking subparagraphs (C) and
 16 (D).

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

21 “(4) BASIC RESEARCH PAYMENTS.—

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

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

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

9 “(I) such payment is pursuant to
10 a written agreement between such cor-
11 poration and such qualified organiza-
12 tion, and

13 “(II) such basic research is to be
14 performed by such qualified organiza-
15 tion.

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

22 “(C) QUALIFIED ORGANIZATION.—For
23 purposes of this paragraph, the term ‘qualified
24 organization’ means any of the following orga-
25 nizations:

1 “(i) EDUCATIONAL INSTITUTIONS.—

2 Any educational organization which—

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

6 “(II) is described in section
7 170(b)(1)(A)(ii).

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

11 “(I) is described in section
12 501(c)(3) and is exempt from tax
13 under section 501(a),

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

17 “(III) is not a private founda-
18 tion.

19 “(iii) SCIENTIFIC TAX-EXEMPT ORGA-
20 NIZATIONS.—Any organization which—

21 “(I) is described in section
22 501(c)(3) (other than a private foun-
23 dation) or section 501(c)(6),

24 “(II) is exempt from tax under
25 section 501(a),

1 “(III) is organized and operated
2 primarily to promote scientific re-
3 search by qualified organizations de-
4 scribed in clause (i) pursuant to writ-
5 ten research agreements, and

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

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

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

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

23 “(III) is organized and operated
24 exclusively for the purpose of making
25 grants to organizations described in

1 clause (i) pursuant to written research
2 agreements for purposes of basic re-
3 search, and

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

11 “(D) DEFINITIONS AND SPECIAL RULES.—

12 For purposes of this paragraph—

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

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

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

23 “(ii) TRADE OR BUSINESS QUALIFICA-
24 TION.—For purposes of applying para-
25 graph (1) to this paragraph, any basic re-

1 search payments shall be treated as an
 2 amount paid in carrying on a trade or
 3 business of the taxpayer in the taxable
 4 year in which it is paid (without regard to
 5 the provisions of paragraph (3)(B)).

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

9 “(I) an S corporation,

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

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

14 (3) CONFORMING AMENDMENTS.—

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

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

19 (C) Section 45C(b)(1)(B)(ii) of such Code
 20 is amended by striking “65 percent” and insert-
 21 ing “80 percent”.

22 (d) PERMANENT EXTENSION OF CREDIT.—

23 (1) IN GENERAL.—Section 41 of the Internal
 24 Revenue Code of 1986 is amended by striking sub-
 25 section (h).

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

4 (3) EFFECTIVE DATE.—The amendments made
5 by this subsection shall apply to taxable years begin-
6 ning after December 31, 2006.

7 (e) CONFORMING AMENDMENTS.—

8 (1) Section 41 of the Internal Revenue Code of
9 1986 is amended by redesignating subsections (d),
10 (f), and (g) as subsections (c), (d), and (e), respec-
11 tively.

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

16 (3) Sections 45C(d)(3), 45G(e)(2), and
17 936(h)(5)(C)(i)(IV)(c) of such Code are each
18 amended by striking “section 41(f)” and inserting
19 “section 41(d)”.

20 (4) Section 54(l)(3)(A) of such Code is amend-
21 ed by striking “section 41(g)” and inserting “section
22 41(e)”.

23 (5) Section 170(e)(4)(B)(i) of such Code is
24 amended by striking “subparagraph (A) or subpara-

1 graph (B) of section 41(e)(6)” and inserting “clause
2 (i) or (ii) of section 41(b)(4)(C)”.

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

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

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

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

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

19 (11) Sections 936(j)(5)(D) and 965(c)(2)(C)(i)
20 of such Code are each amended by striking “section
21 41(f)(3)” and inserting “section 41(d)(3)”.

22 (f) EFFECTIVE DATE.—Except as otherwise provided
23 in this section, the amendments made by this section shall
24 apply to taxable years beginning after December 31, 2009.

1 (g) STUDY OF COMPLIANCE WITH SUBSTANTIATION
2 REQUIREMENTS.—The Secretary of the Treasury or his
3 delegate shall, not later than 1 year after the date of the
4 enactment of this Act, conduct a study of taxpayer compli-
5 ance with the substantiation requirements for claiming the
6 credit allowed under section 41 of the Internal Revenue
7 Code of 1986, including a study of—

8 (1) whether taxpayers maintain adequate record
9 keeping to determine eligibility for, and correct
10 amount of, the credit,

11 (2) the impact of failure to comply with such
12 requirements on the oversight and enforcement re-
13 sponsibilities of the Internal Revenue Service, and

14 (3) the burdens imposed on other taxpayers by
15 failure to comply with such requirements.

16 The Secretary shall report the results of such study to
17 the Committee on Ways and Means of the House of Rep-
18 resentatives and the Committee on Finance of the Senate,
19 including any recommendations for administrative or leg-
20 islative actions which could be taken to improve compli-
21 ance with such requirements.

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