

110TH CONGRESS  
1ST SESSION

# S. 41

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

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IN THE SENATE OF THE UNITED STATES

JANUARY 4, 2007

Mr. BAUCUS 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 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 2007".

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

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

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.

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

3           (2) CONFORMING AMENDMENT.—Section 41 of  
4           such Code, as amended by section 104 of division A  
5           of the Tax Relief and Health Care Act of 2006, is  
6           amended by striking subsection (c).

7           (b) 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

12 For purposes of this paragraph—

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

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) PERMANENT EXTENSION OF CREDIT.—

20           (1) IN GENERAL.—Section 41 of the Internal  
21           Revenue Code of 1986 is amended by striking sub-  
22           section (h).

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

## 1 (d) CONFORMING AMENDMENTS.—

2       (1) Section 41 of the Internal Revenue Code of  
3 1986 is amended by redesignating subsections (d),  
4 (f), and (g) as subsections (c), (d), and (e), respec-  
5 tively.6       (2) Paragraphs (2)(A) and (5) (as redesignated  
7 by subsection (b)(2)) of section 41(b) of such Code  
8 are each amended by striking “subsection (f)(1)”  
9 and inserting “subsection (d)(1)”.10       (3) Sections 45C(d)(3), 45G(e)(2), and  
11 936(h)(5)(C)(i)(IV)(c) of such Code are each  
12 amended by striking “section 41(f)” and inserting  
13 “section 41(d)”.14       (4) Section 54(l)(3)(A) of such Code is amend-  
15 ed by striking “section 41(g)” and inserting “section  
16 41(e)”.17       (5) Section 170(e)(4)(B)(i) of such Code is  
18 amended by striking “subparagraph (A) or subpara-  
19 graph (B) of section 41(e)(6)” and inserting “clause  
20 (i) or (ii) of section 41(b)(4)(C)”.21       (6) Sections 197(f)(1)(C), 197(f)(9)(C)(i)(II),  
22 and 280C(b)(3) of such Code are each amended by  
23 striking “section 41(f)(1)” and inserting “section  
24 41(d)(1)”.

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

19 (f) STUDY OF COMPLIANCE WITH SUBSTANTIATION  
20 REQUIREMENTS.—The Secretary of the Treasury or his  
21 delegate shall, not later than 1 year after the date of the  
22 enactment of this Act, conduct a study of taxpayer compli-  
23 ance with the substantiation requirements for claiming the  
24 credit allowed under section 41 of the Internal Revenue  
25 Code of 1986, including a study of—

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

9 The Secretary shall report the results of such study to  
10 the Committee on Ways and Means of the House of Rep-  
11 resentatives and the Committee on Finance of the Senate,  
12 including any recommendations for administrative or leg-  
13 islative actions which could be taken to improve compli-  
14 ance with such requirements.

15 SEC. 3. TAX CREDIT FOR INVESTMENTS IN SMALL TECH-  
16 NOLOGY INNOVATION COMPANIES.

17 (a) IN GENERAL.—Subpart D of part IV of sub-  
18 chapter A of chapter 1 of the Internal Revenue Code of  
19 1986 is amended by adding at the end the following new  
20 section:

## 21 "SEC. 45N. RESEARCH INVESTMENT TAX CREDIT.

22        "(a) ALLOWANCE OF CREDIT.—

23       “(1) IN GENERAL.—For purposes of section 38,  
24       in the case of a taxpayer who holds a qualified eq-  
25       uity investment on a credit allowance date of such

1 investment which occurs during the taxable year, the  
2 research investment tax credit determined under this  
3 section for such taxable year is an amount equal to  
4 the 5 percent of the amount paid to the qualified re-  
5 search entity for such investment at its original  
6 issue.

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

11 “(A) the date on which such investment is  
12 initially made, and

13 “(B) each of the 4 anniversary dates of  
14 such date thereafter.

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

17 “(1) IN GENERAL.—The term ‘qualified equity  
18 investment’ means any equity investment in a qual-  
19 fied research entity if—

20 “(A) such investment is acquired by the  
21 taxpayer at its original issue (directly or  
22 through an underwriter) solely in exchange for  
23 cash,

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

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

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

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

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

24                         “(4) TREATMENT OF SUBSEQUENT PUR-  
25     CHASERS.—The term ‘qualified research investment’

1 includes any equity investment which would (but for  
2 paragraph (1)(A)) be a qualified equity investment  
3 in the hands of the taxpayer if such investment was  
4 a qualified equity investment in the hands of a prior  
5 holder.

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

9       “(6) EQUITY INVESTMENT.—The term ‘equity  
10 investment’ means—

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

14           “(B) any capital interest in an entity  
15 which is a partnership.

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

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

22           “(2) the entity maintains accountability to engi-  
23 neers, scientists, and other research-related profes-  
24 sionals through their representation on any gov-

1       erning board of the entity or on any advisory board  
2       to the entity, and

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

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

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

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

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

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

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

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

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

21        "(e) NATIONAL LIMITATION ON AMOUNT OF INVEST-  
22        MENTS DESIGNATED.—

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

25 Such limitation is—

1                   “(A) \$500,000,000 for 2007,  
2                   “(B) \$750,000,000 for 2008 and 2009,  
3                   and  
4                   “(C) \$1,000,000,000 for 2010 and 2011.

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

13                   “(A) with a record of having successfully  
14                   provided capital or technical assistance to qualifi-  
15                   fying small business innovation companies, or

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

23                   if more than 1 qualified research entity meets sub-  
24                   paragraph (A) or (B), the Secretary shall give pri-  
25                   ority to the entity with the earliest investment. If in-

1 sufficient allocations are available for all qualified  
2 applicants in any calendar year, the priorities estab-  
3 lished for such applicants without allocations shall  
4 be carried over to the succeeding calendar year.

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

13       “(f) RECAPTURE OF CREDIT IN CERTAIN CASES.—  
14           “(1) IN GENERAL.—If, at any time during the  
15 7-year period beginning on the date of the original  
16 issue of a qualified equity investment in a qualified  
17 research entity, there is a recapture event with re-  
18 spect to such investment, then the tax imposed by  
19 this chapter for the taxable year in which such event  
20 occurs shall be increased by the credit recapture  
21 amount.

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

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

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

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

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

18                  “(A) such entity ceases to be a qualified  
19                  research entity,

20                  “(B) the proceeds of the investment cease  
21                  to be used as required of subsection (b)(1)(B),  
22                  or

23                  “(C) such investment is redeemed by such  
24                  entity.

25                  “(4) SPECIAL RULES.—

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

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

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

18                     “(1) which prevent the abuse of the purposes of  
19                     this section,

20                     “(2) which provide rules for determining whether the requirement of subsection (b)(1)(B) is treated  
21                     as met,

23                     “(3) which impose appropriate reporting re-  
24                     quirements, and

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

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

9               “(31) the credit determined under section  
10               45N(a).”.

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

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

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

18               **SEC. 4. TAX-EXEMPT FINANCING OF RESEARCH PARK FA-**  
19               **CILITIES.**

20               (a) IN GENERAL.—Subsection (a) of section 142 is  
21               amended—

22               (1) by striking “or” at the end of paragraph  
23               (14),

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

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

3                   “(16) research park facility.”.

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

6       “(n) RESEARCH PARK FACILITY.—For purposes of  
7 subsection (a)(16), the term ‘research park facility’ means  
8 a facility (including buildings, land, or other structures)  
9 which is used in connection with research and experimen-  
10 tation (as defined in section 168(i)(11)). For purposes of  
11 the preceding sentence, such term includes facilities which  
12 are directly related and ancillary to a research park facil-  
13 ity (determined without regard to this sentence) if—

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

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

19 (c) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply with respect to bonds issued on  
21 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.

○