

111TH CONGRESS
1ST SESSION

S. 1491

To amend the Internal Revenue Code of 1986 to provide that corporate tax benefits based upon stock option compensation expenses be consistent with accounting expenses shown in corporate financial statements for such compensation.

IN THE SENATE OF THE UNITED STATES

JULY 22, 2009

Mr. LEVIN (for himself and Mr. MCCAIN) 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 that corporate tax benefits based upon stock option compensation expenses be consistent with accounting expenses shown in corporate financial statements for such compensation.

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 Excessive Cor-
5 porate Deductions for Stock Options Act”.

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

3 (a) CONSISTENT TREATMENT FOR WAGE DEDUC-
 4 TION.—

5 (1) IN GENERAL.—Section 83(h) of the Internal
 6 Revenue Code of 1986 (relating to deduction of em-
 7 ployer) is amended—

8 (A) by striking “In the case of” and in-
 9 serting:

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

11 (B) by adding at the end the following new
 12 paragraph:

13 “(2) STOCK OPTIONS.—In the case of property
 14 transferred to a person in connection with the exer-
 15 cise of a stock option, any deduction by the employer
 16 related to such stock option shall be allowed only
 17 under section 162(q) and paragraph (1) shall not
 18 apply.”.

19 (2) TREATMENT OF COMPENSATION PAID WITH
 20 STOCK OPTIONS.—Section 162 of such Code (relat-
 21 ing to trade or business expenses) is amended by re-
 22 designating subsection (q) as subsection (r) and by
 23 inserting after subsection (p) the following new sub-
 24 section:

25 “(q) TREATMENT OF COMPENSATION PAID WITH
 26 STOCK OPTIONS.—

1 “(1) IN GENERAL.—In the case of compensa-
 2 tion for personal services that is paid with stock op-
 3 tions, the deduction under subsection (a)(1) shall
 4 not exceed the amount the taxpayer has treated as
 5 an expense with respect to such stock options for the
 6 purpose of ascertaining income, profit, or loss in a
 7 report or statement to shareholders, partners, or
 8 other proprietors (or to beneficiaries), and shall be
 9 allowed in the same period that the accounting ex-
 10 pense is recognized.

11 “(2) SPECIAL RULES FOR CONTROLLED
 12 GROUPS.—The Secretary shall prescribe rules for the
 13 application of paragraph (1) in cases where the
 14 stock option is granted by a parent or subsidiary
 15 corporation (within the meaning of section 424) of
 16 the employer corporation.”.

17 (b) CONSISTENT TREATMENT FOR RESEARCH TAX
 18 CREDIT.—Section 41(b)(2)(D) of the Internal Revenue
 19 Code of 1986 (defining wages for purposes of credit for
 20 increasing research expenses) is amended by inserting at
 21 the end the following new clause:

22 “(iv) SPECIAL RULE FOR STOCK OP-
 23 TIONS.—The amount which may be treated
 24 as wages for any taxable year in connec-
 25 tion with the issuance of a stock option

1 shall not exceed the amount allowed for
2 such taxable year as a compensation de-
3 duction under section 162(q) with respect
4 to such stock option.”.

5 (c) APPLICATION OF AMENDMENTS.—The amend-
6 ments made by this section shall apply to stock options
7 exercised after the date of the enactment of this Act, ex-
8 cept that—

9 (1) such amendments shall not apply to stock
10 options that were granted before such date and that
11 vested in taxable periods beginning on or before
12 June 15, 2005,

13 (2) for stock options that were granted before
14 such date of enactment and vested during taxable
15 periods beginning after June 15, 2005, and ending
16 before such date of enactment, a deduction under
17 section 162(q) of the Internal Revenue Code of 1986
18 (as added by subsection (a)(2)) shall be allowed in
19 the first taxable period of the taxpayer that ends
20 after such date of enactment,

21 (3) for public entities reporting as small busi-
22 ness issuers and for non-public entities required to
23 file public reports of financial condition, paragraphs
24 (1) and (2) shall be applied by substituting “Decem-
25 ber 15, 2005” for “June 15, 2005”, and

1 (4) no deduction shall be allowed under section
 2 83(h) or section 162(q) of such Code with respect to
 3 any stock option the vesting date of which is
 4 changed to accelerate the time at which the option
 5 may be exercised in order to avoid the applicability
 6 of such amendments.

7 **SEC. 3. APPLICATION OF EXECUTIVE PAY DEDUCTION**
 8 **LIMIT.**

9 (a) IN GENERAL.—Subparagraph (D) of section
 10 162(m)(4) of the Internal Revenue Code of 1986 (defining
 11 applicable employee remuneration) is amended to read as
 12 follows:

13 “(D) STOCK OPTION COMPENSATION.—
 14 The term ‘applicable employee remuneration’
 15 shall include any compensation deducted under
 16 subsection (q), and such compensation shall not
 17 qualify as performance-based compensation
 18 under subparagraph (C).”.

19 (b) EFFECTIVE DATE.—The amendment made by
 20 this section shall apply to stock options exercised or grant-
 21 ed after the date of the enactment of this Act.

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