

112TH CONGRESS
2D SESSION

H. R. 6353

To amend the Internal Revenue Code of 1986 to allow a deduction for patent box profit from the use of United States patents.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2012

Ms. SCHWARTZ (for herself and Mr. BOUSTANY) 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 allow a deduction for patent box profit from the use of United States patents.

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 “Manufacturing Amer-
5 ican Innovation Act of 2012”.

6 **SEC. 2. DEDUCTION FOR PATENT BOX PROFITS.**

7 (a) IN GENERAL.—Part VI of subchapter B of chap-
8 ter 1 of the Internal Revenue Code of 1986 is amended
9 by adding at the end the following new section:

1 **“SEC. 200. PATENT BOX PROFITS.**

2 “(a) ALLOWANCE OF DEDUCTION.—If the taxpayer
3 elects the application of this section, there shall be allowed
4 as a deduction an amount equal to 71 percent of the lesser
5 of—

6 “(1) the patent box profit of the taxpayer for
7 the taxable year, or

8 “(2) taxable income (determined without regard
9 to this section) for the taxable year.

10 “(b) PATENT BOX PROFIT.—For purposes of this
11 section—

12 “(1) IN GENERAL.—Except as provided by
13 paragraph (9), the term ‘patent box profit’ means,
14 with respect to a taxable year, IP profit multiplied
15 by the ratio—

16 “(A) the numerator of which is the 5-year
17 research and development expenditures of the
18 taxpayer with respect to the taxable year, and

19 “(B) the denominator of which is the 5-
20 year total costs of the taxpayer with respect to
21 the taxable year.

22 “(2) IP PROFIT.—The term ‘IP profit’ means
23 the excess (if any) of—

24 “(A) patent gross receipts, over

25 “(B) the sum of—

1 “(i) the taxpayer’s cost of goods sold
2 for the taxable year that are properly allo-
3 cable to patent gross receipts,

4 “(ii) other expenses, losses, or deduc-
5 tions (other than the deduction allowed
6 under this section), which are properly al-
7 locable to patent gross receipts, as deter-
8 mined by the Secretary, plus

9 “(iii) routine profit.

10 “(3) ROUTINE PROFIT.—The term ‘routine
11 profit’ means—

12 “(A) the taxpayer’s cost of goods sold for
13 the taxable year properly allocable to patent
14 gross receipts reduced by the sum of cost of
15 raw materials, cost of items purchased for re-
16 sale, and amounts incurred for intangible prop-
17 erty rights (including royalties and amortiza-
18 tion), multiplied by

19 “(B) 15 percent.

20 “(4) ALLOCATION METHOD.—The Secretary
21 shall prescribe rules for the proper allocation of
22 items described in this paragraph for purposes of de-
23 termining patent box profit. Such rules shall provide
24 for the proper allocation of items whether or not

1 such items are directly allocable to patent gross re-
2 cepts.

3 “(5) SPECIAL RULES.—

4 “(A) DETERMINATION OF COSTS.—

5 “(i) IN GENERAL.—Cost shall be de-
6 termined in accordance with the principles
7 of sections 263A and 471, as provided for
8 by the Secretary under regulations or other
9 guidance.

10 “(ii) ITEMS BROUGHT INTO UNITED
11 STATES.—For purposes of determining
12 cost of goods sold, any item or service
13 brought into the United States shall be
14 treated as acquired by purchase, and its
15 cost shall be treated as not less than its
16 value immediately after it entered the
17 United States. A similar rule shall apply in
18 determining the adjusted basis of leased or
19 rented property where the lease or rental
20 gives rise to patent gross receipts.

21 “(iii) EXPORTS FOR FURTHER MANU-
22 FACTURE.—In the case of any property de-
23 scribed in clause (ii) that had been ex-
24 ported by the taxpayer for further manu-
25 facture, the increase in cost or adjusted

1 basis under subparagraph (A) shall not ex-
2 ceed the difference between the value of
3 the property when exported and the value
4 of the property when brought back into the
5 United States after the further manufac-
6 ture.

7 “(B) 5-YEAR RESEARCH AND DEVELOP-
8 MENT EXPENDITURES.—The term ‘5-year re-
9 search and development expenditures’ means
10 with respect to a taxable year the research and
11 development expenditures paid or incurred by
12 the taxpayer for the performance of research
13 and development in the United States for which
14 a deduction is allowed under subsection (a) or
15 (b) of section 174 (determined without regard
16 to section 41) for the 5-taxable-year period end-
17 ing with the taxable year.

18 “(C) 5-YEAR TOTAL COSTS.—The term ‘5-
19 year total costs’ means with respect to a taxable
20 year the excess of—

21 “(i) all costs paid or incurred by the
22 taxpayer for the 5-taxable year period end-
23 ing with such taxable year, over

24 “(ii) the sum of—

1 “(I) the taxpayer’s cost of goods
2 sold for such 5-taxable year period,

3 “(II) interest paid or accrued for
4 such 5-taxable year period,

5 “(III) taxes paid or accrued for
6 such 5-taxable year period, and

7 “(IV) the net gain or loss for
8 such 5-taxable year period from the
9 sale or exchange of capital assets.

10 “(D) RULES RELATING TO 5-YEAR PE-
11 RIOD.—For purposes of this paragraph—

12 “(i) NOT IN EXISTENCE FOR ENTIRE
13 5-YEAR PERIOD.—If the taxpayer was not
14 in existence for the entire 5-year period re-
15 ferred to in subparagraphs (B) and (C),
16 such subparagraphs shall be applied on the
17 basis of the period during which such tax-
18 payer was in existence.

19 “(ii) TREATMENT OF PREDE-
20 CESSORS.—Any reference in this para-
21 graph to a taxpayer shall include a ref-
22 erence to any predecessor of such taxpayer.

23 “(6) PATENT GROSS RECEIPTS.—

24 “(A) IN GENERAL.—The term ‘patent
25 gross receipts’ means gross receipts of the tax-

1 payer for the taxable year which are derived
2 from the sale, lease, license, or other disposition
3 of property in the ordinary course of a United
4 States trade or business of the taxpayer in
5 which qualified patent property is used directly
6 or indirectly if more than a substantial percent-
7 age of the value of the such property is derived
8 from the use of one or more qualified patents.

9 “(B) SPECIAL RULES.—For purposes of
10 this paragraph—

11 “(i) COMPENSATION FOR INFRINGE-
12 MENT OF A PATENT.—The term ‘patent
13 gross receipts’ includes compensation for
14 the infringement of a qualified patent to
15 the extent the compensation is included in
16 gross income of the taxpayer.

17 “(ii) SALES TO RELATED PERSONS.—
18 The term ‘patent gross receipts’ shall not
19 include any gross receipts of the taxpayer
20 derived from sales of a qualified patent to
21 a related person.

22 “(iii) REGULATIONS.—

23 “(I) IN GENERAL.—Under regu-
24 lations or other guidance prescribed
25 by the Secretary, such term shall not

1 include any transaction with a related
2 person which the Secretary determines
3 abuses the purposes of this para-
4 graph.

5 “(II) RELATED PERSON.—A per-
6 son shall be treated as related to an-
7 other person if such persons are treat-
8 ed as a single employer under sub-
9 section (a) or (b) of section 52 or sub-
10 section (m) or (o) of section 414, ex-
11 cept that determinations under sub-
12 sections (a) and (b) of section 52 shall
13 be made without regard to section
14 1563(b).

15 “(7) QUALIFIED PATENT PROPERTY.—The
16 term ‘qualified patent property’ means property
17 which is—

18 “(A) a qualified patent, or

19 “(B) a product which incorporates a quali-
20 fied patent or patents if more than a substan-
21 tial percentage of the value of the product is de-
22 rived from the use of one or more qualified pat-
23 ents.

24 “(8) QUALIFIED PATENT.—

1 “(A) IN GENERAL.—The term ‘qualified
2 patent’ means a patent—

3 “(i) issued or extended by, or for
4 which an application is pending before, the
5 United States Patent and Trademark Of-
6 fice under title 35, United States Code,

7 “(ii) with respect to which—

8 “(I) the taxpayer is the patent
9 owner or the holder of an exclusive li-
10 cense to exploit the patent within a
11 specified territory or for a specific
12 purpose,

13 “(II) the taxpayer is actively in-
14 volved in the decisionmaking con-
15 nected with exploiting the patent, and

16 “(III) either the taxpayer or a
17 member of the affiliated group of
18 which the taxpayer is a member per-
19 formed significant activity to develop
20 the patented invention, its application,
21 or a product incorporating the pat-
22 ented invention, and

23 “(iii) for any taxable year beginning
24 after the third taxable year beginning after
25 the date of the enactment of this section,

1 more than a substantial percentage of the
2 activity to develop the patented invention
3 or its application occurs in the United
4 States.

5 Clause (iii) shall not apply to a patent if a
6 member of the taxpayer's affiliated group per-
7 formed more than a substantial percentage of
8 the activity to develop the patent outside the
9 United States prior to the end of such third
10 taxable year, and the taxpayer owns the patent
11 in the United States at the end of such third
12 taxable year.

13 “(B) SPECIAL RULE FOR CERTAIN FOR-
14 EIGN PATENTS.—If the taxpayer—

15 “(i) is the patent owner or the holder
16 of an exclusive license to exploit a patent
17 which meets the requirements of subpara-
18 graph (A),

19 “(ii) is issued or extended by a foreign
20 country a patent for the same or substan-
21 tially similar invention or application as
22 the patent described in clause (i), and

23 “(iii) is the owner of, or the holder of
24 an exclusive license to exploit, the foreign
25 patent described in clause (ii),

1 then the foreign patent described in clause (ii)
2 shall be treated as a qualified patent for pur-
3 poses of this section.

4 “(C) SPECIAL RULES RELATING TO LI-
5 CENSING.—

6 “(i) QUALIFIED PATENT.—In the case
7 of a license of a patent, the patent shall
8 not be treated as a qualified patent unless
9 the licensor—

10 “(I) certifies to the licensee (in
11 such form and manner as the Sec-
12 retary may prescribe) that the patent
13 is a qualified patent, and

14 “(II) provides to the licensee
15 such information as the Secretary
16 may require to determine whether the
17 patent is a qualified patent.

18 “(ii) ROYALTIES.—Royalties, profit
19 shares, and similar amounts received from
20 the license or use of a qualified patent
21 shall be treated as qualified patent gross
22 receipts if the licensor meets the require-
23 ments of clause (i) and has developed or
24 has acquired and added substantial value
25 to the qualified patent, but only so long as

1 the licensor is regularly engaged in the de-
2 velopment and addition of substantial
3 value to property of such kind.

4 “(D) SPECIAL RULES RELATING TO PAT-
5 ENT CLAIMS DENIED OR RULED INVALID.—

6 “(i) RECAPTURE.—If—

7 “(I) there is a recapture event
8 with respect to any claim contained in
9 a qualified patent, and

10 “(II) a deduction was allowed
11 under subsection (a) for any taxable
12 year with respect to such claim,
13 the tax imposed by this chapter for the
14 taxable year in which such recapture event
15 occurs shall be increased by the recapture
16 amount.

17 “(ii) RECAPTURE EVENT.—For pur-
18 poses of clause (i), the term ‘recapture
19 event’ means, with respect to a claim
20 that—

21 “(I) the patent does not issue on
22 the basis (in whole or in part) of such
23 claim, or

24 “(II) such claim is determined by
25 the United States Patent and Trade-

1 mark Office or a court of competent
2 jurisdiction not to be valid.

3 “(iii) RECAPTURE AMOUNT.—For
4 purposes of clause (i), the recapture
5 amount with respect to a claim is the sum
6 of—

7 “(I) the excess of the amount by
8 which—

9 “(aa) the total tax (deter-
10 mined without regard to sub-
11 section (a)) that would be shown
12 on returns of tax of the taxpayer
13 for all taxable years for which a
14 deduction was allowed under sub-
15 section (a) with respect to such
16 claim, exceeds

17 “(bb) the total tax shown on
18 all returns of tax of the taxpayer
19 for all taxable years for which a
20 deduction was allowed under sub-
21 section (a) with respect to such
22 claim, determined with regard to
23 subsection (a), plus

24 “(II) in the case of a recapture
25 event described in clause (ii)(I), inter-

1 est at the underpayment rate estab-
2 lished under section 6621 on the
3 amount determined under subclause
4 (I) for each prior taxable year for the
5 period beginning on the due date for
6 filing the return for the prior taxable
7 year involved.

8 “(9) ALTERNATIVE DETERMINATION OF PAT-
9 ENT BOX PROFIT.—

10 “(A) IN GENERAL.—In accordance with
11 regulations or other guidance provided by the
12 Secretary, the taxpayer may elect to determine
13 patent box profit as the amount equal to the
14 net income derived from patent gross receipts
15 related to exploitation of the qualified patent
16 that would be received for the taxable year if all
17 transactions of the taxpayer for the taxable
18 year were conducted at arm’s length under the
19 principles of section 482.

20 “(B) ELECTION.—An election under sub-
21 paragraph (A) for a taxable year shall apply
22 with respect to all qualified patents. Such elec-
23 tion, once made, may be revoked only with the
24 consent of the Secretary.

1 “(c) ALTERNATIVE METHOD FOR CERTAIN TAX-
 2 PAYERS.—In the case of a taxpayer which meets the
 3 \$5,000,000 gross receipts test of section 448(c) for the
 4 taxable year, patent box profit shall be the greater of the
 5 amount determined under subsection (b) or 50 percent of
 6 IP profit.

7 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
 8 poses of this section—

9 “(1) APPLICATION OF SECTION TO PASS-THRU
 10 ENTITIES.—

11 “(A) PARTNERSHIPS AND S CORPORA-
 12 TIONS.—In the case of a partnership or S cor-
 13 poration—

14 “(i) the deduction under subsection
 15 (a) shall be determined at the partner or
 16 shareholder level,

17 “(ii) except as provided in clause (i),
 18 all determinations relating to receipts, ex-
 19 penses, and whether a patent is a qualified
 20 patent shall be made at the entity level,
 21 and

22 “(iii) each partner or shareholder
 23 shall take into account such person’s allo-
 24 cable share of each item described in
 25 clause (i) or (ii) of subsection (b)(2)(A)

1 (determined without regard to whether the
2 items described in such clause (i) exceed
3 the items described in such clause (ii)).

4 “(B) TRUSTS AND ESTATES.—In the case
5 of a trust or estate—

6 “(i) the items referred to in subpara-
7 graph (A)(ii) (as determined therein) shall
8 be apportioned between the beneficiaries
9 and the fiduciary (and among the bene-
10 ficiaries) under regulations prescribed by
11 the Secretary, and

12 “(ii) for purposes of paragraph (2),
13 adjusted gross income of the trust or es-
14 tate shall be determined as provided in sec-
15 tion 67(e) with the adjustments described
16 in such paragraph.

17 “(C) APPLICATION TO INDIVIDUALS.—In
18 the case of an individual, subsection (a)(2) shall
19 be applied by substituting ‘adjusted gross in-
20 come’ for ‘taxable income’. For purposes of the
21 preceding sentence, adjusted gross income shall
22 be determined—

23 “(i) after application of sections 86,
24 135, 137, 199, 219, 221, 222, and 469,
25 and

1 “(ii) without regard to this section.

2 “(D) AGRICULTURAL AND HORTI-
3 CULTURAL COOPERATIVES.—

4 “(i) DEDUCTION ALLOWED TO PA-
5 TRONS.—Any person who receives a quali-
6 fied payment from a specified agricultural
7 or horticultural cooperative shall be al-
8 lowed for the taxable year in which such
9 payment is received a deduction under sub-
10 section (a) equal to the portion of the de-
11 duction allowed under subsection (a) to
12 such cooperative which is—

13 “(I) allowed with respect to the
14 portion of the patent box profit to
15 which such payment is attributable,
16 and

17 “(II) identified by such coopera-
18 tive in a written notice mailed to such
19 person during the payment period de-
20 scribed in section 1382(d).

21 “(ii) COOPERATIVE DENIED DEDUC-
22 TION FOR PORTION OF QUALIFIED PAY-
23 MENTS.—The taxable income of a specified
24 agricultural or horticultural cooperative
25 shall not be reduced under section 1382 by

1 reason of that portion of any qualified pay-
2 ment as does not exceed the deduction al-
3 lowable under clause (i) with respect to
4 such payment.

5 “(iii) TAXABLE INCOME OF COOPERA-
6 TIVES DETERMINED WITHOUT REGARD TO
7 CERTAIN DEDUCTIONS.—For purposes of
8 this section, the taxable income of a speci-
9 fied agricultural or horticultural coopera-
10 tive shall be computed without regard to
11 any deduction allowable under subsection
12 (b) or (c) of section 1382 (relating to pa-
13 tronage dividends, per-unit retain alloca-
14 tions, and nonpatronage distributions).

15 “(iv) SPECIAL RULE FOR MARKETING
16 COOPERATIVES.—For purposes of this sec-
17 tion, a specified agricultural or horti-
18 cultural cooperative described in clause
19 (vi)(II) shall be treated as having manufac-
20 tured, produced, grown, or extracted in
21 whole or significant part any qualifying
22 production property marketed by the orga-
23 nization which its patrons have so manu-
24 factured, produced, grown, or extracted.

1 “(v) QUALIFIED PAYMENT.—For pur-
2 poses of this paragraph, the term ‘qualified
3 payment’ means, with respect to any per-
4 son, any amount which—

5 “(I) is described in paragraph (1)
6 or (3) of section 1385(a),

7 “(II) is received by such person
8 from a specified agricultural or horti-
9 cultural cooperative, and

10 “(III) is attributable to patent
11 box profits with respect to which a de-
12 duction is allowed to such cooperative
13 under subsection (a).

14 “(vi) SPECIFIED AGRICULTURAL OR
15 HORTICULTURAL COOPERATIVE.—For pur-
16 poses of this paragraph, the term ‘specified
17 agricultural or horticultural cooperative’
18 means an organization to which part I of
19 subchapter T applies which is the owner
20 of, or the holder of an exclusive license to
21 exploit, a qualified patent.

22 “(E) REGULATIONS.—The Secretary may
23 prescribe rules requiring or restricting the allo-
24 cation of items under this paragraph and may

1 prescribe such reporting requirements as the
2 Secretary determines appropriate.

3 “(2) SPECIAL RULE FOR AFFILIATED
4 GROUPS.—

5 “(A) IN GENERAL.—All members of an ex-
6 panded affiliated group shall be treated as a
7 single corporation for purposes of this section.

8 “(B) EXPANDED AFFILIATED GROUP.—
9 For purposes of this section, the term ‘ex-
10 panded affiliated group’ means an affiliated
11 group as defined in section 1504(a), deter-
12 mined—

13 “(i) by substituting ‘more than 50
14 percent’ for ‘at least 80 percent’ each place
15 it appears, and

16 “(ii) without regard to paragraphs (2)
17 and (4) of section 1504(b).

18 “(C) ALLOCATION OF DEDUCTION.—Ex-
19 cept as provided in regulations, the deduction
20 under subsection (a) shall be allocated among
21 the members of the expanded affiliated group in
22 proportion to each member’s respective amount
23 (if any) of patent box profit.

1 “(3) COORDINATION WITH MINIMUM TAX.—For
2 purposes of determining alternative minimum tax-
3 able income under section 55—

4 “(A) patent box profit shall be determined
5 without regard to any adjustments under sec-
6 tions 56 through 59, and

7 “(B) in the case of a corporation, sub-
8 section (a)(2) shall be applied by substituting
9 ‘alternative minimum taxable income’ for ‘tax-
10 able income’.

11 “(4) COORDINATION WITH DOMESTIC PRODUC-
12 TION ACTIVITIES DEDUCTION.—This section shall be
13 applied without regard to section 199.

14 “(5) UNRELATED BUSINESS TAXABLE IN-
15 COME.—For purposes of determining the tax im-
16 posed by section 511, subsection (a)(2) shall be ap-
17 plied by substituting ‘unrelated business taxable in-
18 come’ for ‘taxable income’.

19 “(6) ACQUISITIONS AND DISPOSITIONS.—The
20 Secretary shall provide for the application of this
21 subsection in cases where the taxpayer acquires, or
22 disposes of, the major portion of a trade or business
23 or the major portion of a separate unit of a trade
24 or business during the taxable year.

1 “(7) UNITED STATES.—The term ‘United
2 States’ includes the District of Columbia, Puerto
3 Rico, the Virgin Islands, Guam, American Samoa,
4 the Commonwealth of the Northern Mariana Is-
5 lands, the Federated States of Micronesia, the Re-
6 public of the Marshall Islands, and Palau.

7 “(e) ELECTION.—

8 “(1) IN GENERAL.—The taxpayer may make an
9 election to have this section apply for any taxable
10 year.

11 “(2) PASS-THRU ENTITIES.—In the case of a
12 pass-thru entity, the election shall be made at the
13 partner or shareholder level.

14 “(3) REVOCATION.—An election under para-
15 graph (1), once made, may be revoked only with the
16 consent of the Secretary.

17 “(f) REGULATIONS.—The Secretary shall prescribe
18 such regulations as may be appropriate to carry out this
19 section, including regulations which prevent the abuse of
20 the purposes of this section.”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 56(d)(1)(A) of such Code is amend-
23 ed by striking “deduction under section 199” both
24 places it appears and inserting “deductions under
25 sections 199 and 200”.

(2) Section 56(g)(4)(C) of such Code is amended by adding at the end the following new clause:

“(vii) DEDUCTION FOR DOMESTIC BUSINESS INCOME.—Clause (i) shall not apply to any amount allowable as a deduction under section 200.”.

(3) The following provisions of such Code are each amended by inserting “200,” after “199,”.

(A) Section 86(b)(2)(A).

(B) Section 135(c)(4)(A).

(C) Section 137(b)(3)(A).

(D) Section 219(g)(3)(A)(ii).

(E) Section 221(b)(2)(C)(i).

(F) Section 222 (b)(2)(C)(i).

(G) Section 246(b)(1).

(H) Section 469(i)(3)(F)(iii).

(4) Section 163(j)(6)(A)(i) of such Code is amended by striking “and” at the end of subclause (III) and by inserting after subclause (IV) the following new subclause:

“(V) any deduction allowable under section 200, and”.

(5) Section 170(b)(2)(C) of such Code is amended by striking “and” at the end of clause (iv), by striking the period at the end of clause (v) and

1 inserting “, and”, and by inserting after clause (v)
2 the following new clause:

3 “(vi) section 200.”.

4 (6) Section 172(d) of such Code is amended by
5 adding at the end the following new paragraph:

6 “(8) DOMESTIC BUSINESS INCOME.—The de-
7 duction under section 200 shall not be allowed.”.

8 (7) Section 199(c) of such Code is amended by
9 adding at the end the following new paragraph:

10 “(8) COORDINATION WITH PATENT BOX PROF-
11 ITS DEDUCTION.—Qualified production activities in-
12 come, taxable income, and domestic production gross
13 receipts shall be determined without regard to sec-
14 tion 200.”.

15 (8) Section 199(d)(2)(B) of such Code is
16 amended by striking “this section” and inserting
17 “this section and section 200”.

18 (9) Section 613(a) of such Code is amended by
19 striking “deduction under section 199” and insert-
20 ing “deductions under sections 199 and 200”.

21 (10) Section 613A(d)(1) of such Code is
22 amended by redesignating subparagraphs (C), (D),
23 and (E) as subparagraphs (D), (E), and (F), respec-
24 tively, and by inserting after subparagraph (B) the
25 following new subparagraph:

1 “(C) any deduction allowable under section
2 200,”.

3 (11) Section 1402(a) of such Code is amended
4 by striking “and” at the end of paragraph (16), by
5 redesignating paragraph (17) as paragraph (18),
6 and by inserting after paragraph (16) the following
7 new paragraph:

8 “(17) the deduction provided by section 200
9 shall not be allowed; and”.

10 (c) CLERICAL AMENDMENT.—The table of sections
11 for part VI of subchapter B of chapter 1 of such Code
12 is amended by adding at the end the following new item:

 “Sec. 200. Patent box profits.”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning after
15 the date of the enactment of this Act.

○