

112TH CONGRESS
2D SESSION

S. 3460

To amend the Internal Revenue Code of 1986 to provide for startup businesses to use a portion of the research and development credit to offset payroll taxes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2012

Mr. COONS (for himself, Mr. ENZI, Mr. SCHUMER, and Mr. RUBIO) 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 for startup businesses to use a portion of the research and development credit to offset payroll taxes.

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 “Startup Innovation
5 Credit Act of 2012”.

6 **SEC. 2. TREATMENT OF RESEARCH CREDIT FOR CERTAIN**
7 **STARTUP COMPANIES.**

8 (a) IN GENERAL.—

1 (1) IN GENERAL.—Section 41 of the Internal
 2 Revenue Code of 1986 is amended by adding at the
 3 end the following new subsection:

4 “(i) TREATMENT OF CREDIT TO QUALIFIED SMALL
 5 BUSINESSES.—

6 “(1) IN GENERAL.—At the election of a quali-
 7 fied small business, the payroll tax credit portion of
 8 the credit determined under subsection (a) shall be
 9 treated as a credit allowed under section 3111(f)
 10 (and not under this section).

11 “(2) PAYROLL TAX CREDIT PORTION.—For
 12 purposes of this subsection, the payroll tax credit
 13 portion of the credit determined under subsection
 14 (a) for any taxable year is so much of such credit
 15 as does not exceed \$250,000.

16 “(3) QUALIFIED SMALL BUSINESS.—For pur-
 17 poses of this subsection—

18 “(A) IN GENERAL.—The term ‘qualified
 19 small business’ means, with respect to any tax-
 20 able year—

21 “(i) a corporation, partnership, or S
 22 corporation if—

23 “(I) the gross receipts (as deter-
 24 mined under subsection (c)(7)) of

1 such entity for the taxable year is less
 2 than \$5,000,000, and

3 “(II) such entity did not have
 4 gross receipts (as so determined) for
 5 any period preceding the 5-taxable-
 6 year period ending with such taxable
 7 year, and

8 “(ii) any person not described in sub-
 9 paragraph (A) if clauses (i) and (ii) of sub-
 10 paragraph (A) applied to such person, de-
 11 termined—

12 “(I) by substituting ‘person’ for
 13 ‘entity’ each place it appears), and

14 “(II) in the case of an individual,
 15 by only taking into account the aggre-
 16 gate gross receipts received by such
 17 individual in carrying on trades or
 18 businesses of such individual.

19 “(B) LIMITATION.—Such term shall not
 20 include an organization which is exempt from
 21 taxation under section 501.

22 “(4) ELECTION.—

23 “(A) IN GENERAL.—In the case of a part-
 24 nership or S corporation, an election under this
 25 subsection shall be made at the entity level.

1 “(B) REVOCATION.—An election under
2 this subsection may not be revoked without the
3 consent of the Secretary.

4 “(C) LIMITATION.—A taxpayer may not
5 make an election under this subsection if such
6 taxpayer has made an election under this sub-
7 section for 5 or more preceding taxable years.

8 “(5) AGGREGATION RULES.—For purposes of
9 determining the \$250,000 limitation under para-
10 graph (2) and determining gross receipts under
11 paragraph (3), all members of the same controlled
12 group of corporations (within the meaning of section
13 267(f)) and all persons under common control (with-
14 in the meaning of section 52(b) but determined by
15 treating an interest of more than 50 percent as a
16 controlling interest) shall be treated as 1 person.

17 “(6) REGULATIONS.—The Secretary shall pre-
18 scribe such regulations as may be necessary to carry
19 out the purposes of this subsection, including—

20 “(A) regulations to prevent the avoidance
21 of the purposes of paragraph (3) through the
22 use of successor companies or other means,

23 “(B) regulations to minimize compliance
24 and recordkeeping burdens under this sub-
25 section for start-up companies, and

“(C) regulations for recapturing the benefit of credits determined under section 3111(f) in cases where there is a subsequent adjustment to the payroll tax credit portion of the credit determined under subsection (a), including requiring amended returns in the cases where there is such an adjustment.”.

(2) CONFORMING AMENDMENT.—Section 280C(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(5) TREATMENT OF QUALIFIED SMALL BUSINESS CREDIT.—For purposes of determining the amount of any credit under section 41(a) under this subsection, any election under section 41(i) shall be disregarded.”.

(b) CREDIT ALLOWED AGAINST FICA TAXES.—

(1) IN GENERAL.—Section 3111 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(f) CREDIT FOR RESEARCH EXPENDITURES OF QUALIFIED SMALL BUSINESSES.—

“(1) IN GENERAL.—In the case of a qualified small business which has made an election under section 41(i), there shall be allowed as a credit

1 against the tax imposed by subsection (a) on wages
2 paid with respect to the employment of all employees
3 of the qualified small business for days in an appli-
4 cable calendar quarter an amount equal to the pay-
5 roll tax credit portion of the research credit deter-
6 mined under section 41(a).

7 “(2) CARRYOVER OF UNUSED CREDIT.—In any
8 case in which the payroll tax credit portion of the re-
9 search credit determined under section 41(a) exceeds
10 the tax imposed under subsection (a) for an applica-
11 ble calendar quarter—

12 “(A) the succeeding calendar quarter shall
13 be treated as an applicable calendar quarter,
14 and

15 “(B) the amount of credit allowed under
16 paragraph (1) shall be reduced by the amount
17 of credit allowed under such paragraph for all
18 preceding applicable calendar quarters.

19 “(3) ALLOCATION OF CREDIT FOR CON-
20 TROLLED GROUPS, ETC.—In determining the
21 amount of the credit under this subsection—

22 “(A) all persons treated as a single tax-
23 payer under section 41 shall be treated as a
24 single taxpayer under this section, and

1 “(B) the credit (if any) allowable by this
 2 section to each such member shall be its pro-
 3 portionate share of the qualified research ex-
 4 penses, basic research payments, and amounts
 5 paid or incurred to energy research consor-
 6 tiums, giving rise to the credit allowable under
 7 section 41.

8 “(4) DEFINITIONS.—For purposes of this sub-
 9 section—

10 “(A) APPLICABLE CALENDAR QUARTER.—

11 The term ‘applicable calendar quarter’ means—

12 “(i) the first calendar quarter fol-
 13 lowing the date on which the qualified
 14 small business files a return under section
 15 6012 for the taxable year for which the
 16 payroll tax credit portion of the research
 17 credit under section 41(a) is determined,
 18 and

19 “(ii) any succeeding calendar quarter
 20 treated as an applicable calendar quarter
 21 under paragraph (2)(A).

22 “For purposes of determining the date on
 23 which a return is filed, rules similar to the rules
 24 of section 6513 shall apply.

1 “(B) OTHER TERMS.—Any term used in
 2 this subsection which is also used in section 41
 3 shall have the meaning given such term under
 4 section 41.”.

5 (2) TRANSFERS TO FEDERAL OLD-AGE AND
 6 SURVIVORS INSURANCE TRUST FUND.—There are
 7 hereby appropriated to the Federal Old-Age and
 8 Survivors Trust Fund and the Federal Disability In-
 9 surance Trust Fund established under section 201
 10 of the Social Security Act (42 U.S.C. 401) amounts
 11 equal to the reduction in revenues to the Treasury
 12 by reason of the amendments made by paragraph
 13 (1). Amounts appropriated by the preceding sen-
 14 tence shall be transferred from the general fund at
 15 such times and in such manner as to replicate to the
 16 extent possible the transfers which would have oc-
 17 curred to such Trust Fund had such amendments
 18 not been enacted.

19 (c) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to taxable years beginning after
 21 December 31, 2011.

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