

113TH CONGRESS
2D SESSION

H. R. 4855

To amend the Internal Revenue Code of 1986 to provide an exception from the passive loss rules for investments in high technology research small business pass-thru entities.

IN THE HOUSE OF REPRESENTATIVES

JUNE 12, 2014

Mr. GERLACH (for himself, Mr. NEAL, Mr. KELLY of Pennsylvania, and Mr. KIND) 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 an exception from the passive loss rules for investments in high technology research small business pass-thru entities.

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. EXCEPTION FROM PASSIVE LOSS RULES FOR**
4 **INVESTMENTS IN HIGH TECHNOLOGY RE-**
5 **SEARCH SMALL BUSINESS PASS-THRU ENTI-**
6 **TIES.**

7 (a) IN GENERAL.—Subsection (c) of section 469 of
8 the Internal Revenue Code of 1986 is amended by redesign-

1 nating paragraphs (4) through (7) as paragraphs (5)
2 through (8), respectively, and by inserting after paragraph
3 (3) the following new paragraph:

4 “(4) HIGH TECHNOLOGY RESEARCH ACTIVITIES.—
5

6 “(A) IN GENERAL.—The term ‘passive ac-
7 tivity’ shall not include any qualified research
8 activity of the taxpayer carried on by a high
9 technology research small business pass-thru
10 entity.

11 “(B) TREATMENT OF LOSSES AND DEDUC-
12 TIONS.—

13 “(i) IN GENERAL.—Losses or deduc-
14 tions of a taxpayer relating to qualified re-
15 search activities carried on by a high tech-
16 nology research small business pass-thru
17 entity shall not be treated as losses or de-
18 ductions, respectively, from a passive activ-
19 ity except as provided in clause (ii) and
20 subparagraph (C).

21 “(ii) LIMITATION.—Clause (i) shall
22 apply to losses and deductions of a tax-
23 payer relating to a high technology small
24 business pass-thru entity for a taxable year
25 only to the extent that the aggregate losses

1 and deductions of the taxpayer relating to
2 qualified research activities of such entity
3 for such taxable year do not exceed the
4 portion of the taxpayer's adjusted basis in
5 the taxpayer's ownership interest in such
6 entity that is attributable to money or
7 other property contributed—

8 “(I) in exchange for such owner-
9 ship interest, and

10 “(II) specifically for use in con-
11 nection with qualified research activi-
12 ties.

13 For purposes of the preceding sentence,
14 the taxpayer's basis shall not include any
15 portion of such basis which is attributable
16 to an increase in a partner's share of the
17 liabilities of a partnership that is consid-
18 ered under section 752(a) as a contribution
19 of money.

20 “(C) TREATMENT OF CARRYOVERS.—Sub-
21 paragraph (B)(i) shall not apply to the portion
22 of any loss or deduction that is carried over
23 under subsection (b) into a taxable year other
24 than the taxable year in which such loss or de-
25 duction arose.

“(D) QUALIFIED RESEARCH ACTIVITY.—

For purposes of this paragraph, the term ‘qualified research activity’ means any activity constituting qualified research (within the meaning of section 41(d)(1)(B) and taking into account paragraphs (3) and (4) of section 41(d)) which involves a process of experimentation.

“(E) HIGH TECHNOLOGY RESEARCH

SMALL BUSINESS PASS-THRU ENTITY.—For purposes of this paragraph, the term ‘high technology research small business pass-thru entity’ means any domestic pass-thru entity for any taxable year if—

“(i) either—

“(I) more than 75 percent of the entity’s expenditures (including salaries, rent and overhead) for such taxable year are paid or incurred in connection with qualified research (within the meaning of section 41(d)(1)(B), taking into account paragraphs (3) and (4) of section 41(d)) that involves a process of experimentation conducted by the entity, or

1 “(II) more than 50 percent of
2 the entity’s expenditures for such tax-
3 able year constitute qualified research
4 expenses (as defined in section 41(b),
5 but determined without regard to the
6 phrase ‘65 percent of’ in paragraph
7 (3)(A) thereof),

8 “(ii) such entity is a small business
9 (within the meaning of section
10 41(b)(3)(D)(iii), applied by substituting
11 ‘250’ for ‘500’ in subclause (I) thereof),
12 and

13 “(iii) at no time during the taxable
14 year does the entity have aggregate gross
15 assets in excess of \$150,000,000.

16 “(F) PROVISIONS RELATED TO AGGRE-
17 GATE GROSS ASSETS LIMITATION.—For pur-
18 poses of this paragraph—

19 “(i) IN GENERAL.—Except as other-
20 wise provided in this subparagraph, the
21 term ‘aggregate gross assets’ has the
22 meaning given such term in section
23 1202(d)(2).

24 “(ii) EXCEPTION FOR CERTAIN IN-
25 TANGIBLES.—Any section 197 intangible

(as defined in section 197(d) and determined without regard to section 197(e)) which is used directly in connection with the research referred to in subparagraph (E)(i) shall not be taken into account in determining aggregate gross assets.

“(iii) EXCEPTION FOR CERTAIN FOLLOW-ON INVESTMENTS.—Cash from a sale of equity interests shall not be taken into account in determining aggregate gross assets if—

“(I) the aggregate gross assets of such entity (determined immediately after such sale and without regard to this clause) do not exceed the sum of \$150,000,000, plus 25 percent of the aggregate gross assets of such entity (determined immediately before such sale and without regard to this clause), and

“(II) the aggregate gross assets of such entity (determined immediately before such sale and without regard to this clause) do not exceed \$150,000,000.

1 Sales of equity interests which are part of
2 the same plan or arrangement, or which
3 are carried out with the principal purpose
4 of increasing the amount of cash to which
5 this clause applies (determined without re-
6 gard to this sentence), shall be treated as
7 a single sale for purposes of this clause.

8 “(iv) INFLATION ADJUSTMENT.—In
9 the case of any taxable year beginning
10 after 2015, the \$150,000,000 amount in
11 subparagraph (E)(iii) and subclauses (I)
12 and (II) of clause (iii) shall each be in-
13 creased by an amount equal to—

14 “(I) such dollar amount, multi-
15 plied by

16 “(II) the cost of living adjust-
17 ment determined under section 1(f)(3)
18 for the calendar year in which the tax-
19 able year begins determined by sub-
20 stituting ‘calendar year 2014’ for ‘cal-
21 endar year 1992’ in subparagraph (B)
22 thereof.

23 Any increase determined under the pre-
24 ceding sentence shall be rounded to the
25 nearest \$100,000.

1 “(G) CAPITAL EXPENDITURES TAKEN INTO
2 ACCOUNT FOR EXPENDITURES TEST.—An ex-
3 penditure shall not fail to be taken into account
4 under subparagraph (E)(i) merely because such
5 expenditure is chargeable to capital account.

6 “(H) PASS-THRU ENTITY.—For purposes
7 of this paragraph, the term ‘pass-thru entity’
8 means any partnership, S corporation, or other
9 entity identified by the Secretary as a pass-thru
10 entity for purposes of this paragraph.

11 “(I) AGGREGATION RULES.—

12 “(i) IN GENERAL.—All persons treat-
13 ed as a single employer under subsection
14 (a) or (b) of section 52, or subsection (m)
15 or (o) of section 414, shall be treated as a
16 single entity for purposes of subparagraphs
17 (E) and (F)(iii).

18 “(ii) LIMITATION WHERE ENTITY
19 WOULD NOT QUALIFY.—No entity shall be
20 treated as a high technology research small
21 business pass-thru entity unless such enti-
22 ty qualifies as such both with and without
23 the application of clause (i).

24 “(J) ACTIVITIES NOT ENGAGED IN FOR
25 PROFIT AND ECONOMIC SUBSTANCE RULES.—

1 Section 183 and the economic substance rules
 2 of section 7701(o) shall not apply to disallow
 3 the losses, deductions, and credits of a high
 4 technology research small business pass-thru
 5 entity solely as a result of losses incurred by
 6 such entity.”.

7 (b) MATERIAL PARTICIPATION NOT REQUIRED.—
 8 Paragraph (5) of section 469(c) of the Internal Revenue
 9 Code of 1986, as redesignated by subsection (a), is amend-
 10 ed by striking “and (3)” in the heading and text and in-
 11 serting “, (3), and (4)”.

12 (c) CERTAIN RESEARCH-RELATED DEDUCTIONS AND
 13 CREDITS OF HIGH TECHNOLOGY RESEARCH SMALL
 14 BUSINESS PASS-THRU ENTITIES ALLOWED FOR PUR-
 15 POSES OF DETERMINING ALTERNATIVE MINIMUM TAX.—

16 (1) DEDUCTION FOR RESEARCH AND EXPERI-
 17 MENTAL EXPENDITURES.—Paragraph (2) of section
 18 56(b) of the Internal Revenue Code of 1986 is
 19 amended by adding at the end the following new
 20 subparagraph:

21 “(E) EXCEPTION FOR HIGH TECHNOLOGY
 22 RESEARCH SMALL BUSINESS PASS-THRU ENTI-
 23 TIES.—In the case of a high technology re-
 24 search small business pass-thru entity (as de-
 25 fined in section 469(c)(4)), this paragraph shall

1 not apply to any amount allowable as a deduc-
 2 tion under section 174(a).”.

3 (2) ALLOWANCE OF CERTAIN RESEARCH-RE-
 4 LATED CREDITS.—Subparagraph (B) of section
 5 38(c)(4) of such Code is amended by redesignating
 6 clauses (ii) through (ix) as clauses (iii) through (x),
 7 respectively, and by inserting after clause (i) the fol-
 8 lowing new clause:

9 “(ii) the credits of an individual tax-
 10 payer determined under sections 41 and
 11 48D to the extent attributable to a high
 12 technology research small business pass-
 13 thru entity (as defined in section
 14 469(c)(4)),”.

15 (d) EXCEPTION TO LIMITATION ON PASS-THRU OF
 16 RESEARCH CREDIT.—Subsection (g) of section 41 of such
 17 Code is amended by adding at the end the following:
 18 “Paragraphs (2) and (4) shall not apply with respect to
 19 any high technology research small business pass-thru en-
 20 tity (as defined in section 469(c)(4)).”.

21 (e) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to losses and credits arising in tax-
 23 able years beginning on or after the date of the enactment
 24 of this Act.

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