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113TH CONGRESS
1ST SESSION

S. 193

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

JANUARY 31, 2013

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Startup Innovation Credit Act of 2013''.

SEC. 2. TREATMENT OF RESEARCH CREDIT FOR CERTAIN STARTUP COMPANIES.

(a) IN GENERAL.—

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

''(i) TREATMENT OF CREDIT TO QUALIFIED SMALL BUSINESSES.—

''(1) IN GENERAL.—At the election of a qualified small business, the payroll tax credit portion of the credit determined under subsection (a) shall be treated as a credit allowed under section 3111(f) (and not under this section).

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

''(3) QUALIFIED SMALL BUSINESS.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified small business' means, with respect to any taxable year—

''(i) a corporation, partnership, or S corporation if—

''(I) the gross receipts (as determined under subsection (c)(7)) of

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

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

''(ii) any person not described in subparagraph (A) if clauses (i) and (ii) of subparagraph (A) applied to such person, determined—

''(I) by substituting 'person' for 'entity' each place it appears, and

''(II) in the case of an individual, by only taking into account the aggregate gross receipts received by such individual in carrying on trades or businesses of such individual.

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

''(4) ELECTION.—

''(A) IN GENERAL.—In the case of a partnership or S corporation, an election under this subsection shall be made at the entity level.

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

''(C) LIMITATION.—A taxpayer may not make an election under this subsection if such taxpayer has made an election under this subsection for 5 or more preceding taxable years.

''(5) AGGREGATION RULES.—For purposes of determining the $250,000 limitation under paragraph (2) and determining gross receipts under paragraph (3), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

''(6) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

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

''(B) regulations to minimize compliance and recordkeeping burdens under this subsection 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

against the tax imposed by subsection (a) on wages paid with respect to the employment of all employees of the qualified small business for days in an applicable calendar quarter an amount equal to the payroll tax credit portion of the research credit determined under section 41(a).

''(2) CARRYOVER OF UNUSED CREDIT.—In any case in which the payroll tax credit portion of the research credit determined under section 41(a) exceeds the tax imposed under subsection (a) for an applicable calendar quarter—

''(A) the succeeding calendar quarter shall be treated as an applicable calendar quarter, and

''(B) the amount of credit allowed under paragraph (1) shall be reduced by the amount of credit allowed under such paragraph for all preceding applicable calendar quarters.

''(3) ALLOCATION OF CREDIT FOR CONTROLLED GROUPS, ETC.—In determining the amount of the credit under this subsection—

''(A) all persons treated as a single taxpayer under section 41 shall be treated as a single taxpayer under this section, and

''(B) the credit (if any) allowable by this section to each such member shall be its proportionate share of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, giving rise to the credit allowable under section 41.

''(4) DEFINITIONS.—For purposes of this subsection—

''(A) APPLICABLE CALENDAR QUARTER.—The term 'applicable calendar quarter' means—

''(i) the first calendar quarter following the date on which the qualified small business files a return under section 6012 for the taxable year for which the payroll tax credit portion of the research credit under section 41(a) is determined, and

''(ii) any succeeding calendar quarter treated as an applicable calendar quarter under paragraph (2)(A).

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

"(B) OTHER TERMS.—Any term used in this subsection which is also used in section 41 shall have the meaning given such term under section 41.".

(2) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) amounts equal to the reduction in revenues to the Treasury by reason of the amendments made by paragraph (1). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund had such amendments not been enacted.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2012.

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