

113TH CONGRESS
2D SESSION

S. 2139

To amend the Internal Revenue Code of 1986 to extend the exclusion for small business stock, to provide incentives for small business high technology research investment, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2014

Mr. MENENDEZ (for himself and Mr. TOOMEY) 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 extend the exclusion for small business stock, to provide incentives for small business high technology research investment, and for other purposes.

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. PERMANENT FULL EXCLUSION APPLICABLE TO**
4 **QUALIFIED SMALL BUSINESS STOCK.**

5 (a) IN GENERAL.—Paragraph (4) of section 1202(a)
6 of the Internal Revenue Code of 1986 is amended—

7 (1) by striking “and before January 1, 2014”,

8 and

1 (2) by striking “CERTAIN PERIODS IN 2010,
2 2011, 2012, AND 2013” in the heading and inserting
3 “CERTAIN PERIODS AFTER 2009”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) The heading for section 1202 of the Inter-
6 nal Revenue Code of 1986 is amended by striking
7 “**PARTIAL**”.

8 (2) The item relating to section 1202 in the
9 table of sections for part I of subchapter P of chap-
10 ter 1 of such Code is amended by striking “Partial
11 exclusion” and inserting “Exclusion”.

12 (3) Section 1223(13) of such Code is amended
13 by striking “1202(a)(2),”.

14 (c) INCREASE IN GROSS ASSET THRESHOLD.—

15 (1) IN GENERAL.—Paragraph (1) of section
16 1202(d) of the Internal Revenue Code of 1986 is
17 amended by striking “\$50,000,000” each place it
18 appears and inserting “\$150,000,000”.

19 (2) ADJUSTMENT FOR INFLATION.—Subsection
20 (d) of section 1202 of such Code is amended by add-
21 ing at the end the following new paragraph:

22 “(4) ADJUSTMENT FOR INFLATION.—In the
23 case of any taxable year beginning after December
24 31, 2014, the \$150,000,000 amount in subpara-

1 graphs (A) and (B) of paragraph (1) shall be in-
 2 creased by an amount equal to—

3 “(A) such dollar amount, multiplied by

4 “(B) the cost-of-living adjustment deter-
 5 mined under section 1(f)(3) for the calendar
 6 year in which the taxable year begins, by sub-
 7 stituting ‘calendar year 2013’ for ‘calendar year
 8 1992’ in subparagraph (B) thereof.

9 If any amount as increased under the preceding sen-
 10 tence is not a multiple of \$1,000, such amount shall
 11 be rounded to the nearest multiple of \$1,000.”.

12 (d) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to stock acquired after December
 14 31, 2013.

15 **SEC. 2. EXCEPTION FROM PASSIVE LOSS RULES FOR IN-**
 16 **VESTMENTS IN HIGH TECHNOLOGY RE-**
 17 **SEARCH SMALL BUSINESS PASS-THRU ENTI-**
 18 **TIES.**

19 (a) IN GENERAL.—Subsection (c) of section 469 of
 20 the Internal Revenue Code of 1986 is amended by redesign-
 21 ating paragraphs (4) through (7) as paragraphs (5)
 22 through (8), respectively, and by inserting after paragraph
 23 (3) the following new paragraph:

24 “(4) HIGH TECHNOLOGY RESEARCH ACTIVI-
 25 TIES.—

1 “(A) IN GENERAL.—The term ‘passive ac-
2 tivity’ shall not include any qualified research
3 activity of the taxpayer carried on by a high
4 technology research small business pass-thru
5 entity.

6 “(B) TREATMENT OF LOSSES AND DEDUC-
7 TIONS.—

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

16 “(ii) LIMITATION.—Clause (i) shall
17 apply to losses and deductions of a tax-
18 payer relating to a high technology small
19 business pass-thru entity for a taxable year
20 only to the extent that the aggregate losses
21 and deductions of the taxpayer relating to
22 qualified research activities of such entity
23 for such taxable year do not exceed the
24 portion of the taxpayer’s adjusted basis in
25 the taxpayer’s ownership interest in such

1 entity that is attributable to money or
2 other property contributed—

3 “(I) in exchange for such owner-
4 ship interest, and

5 “(II) specifically for use in con-
6 nection with qualified research activi-
7 ties.

8 For purposes of the preceding sentence,
9 the taxpayer’s basis shall not include any
10 portion of such basis which is attributable
11 to an increase in a partner’s share of the
12 liabilities of a partnership that is consid-
13 ered under section 752(a) as a contribution
14 of money.

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

21 “(D) QUALIFIED RESEARCH ACTIVITY.—
22 For purposes of this paragraph, the term
23 ‘qualified research activity’ means any activity
24 constituting qualified research (within the
25 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

“(II) more than 50 percent of the entity’s expenditures for such taxable year constitute qualified research expenses (as defined in section 41(b), but determined without regard to the

1 phrase ‘65 percent of’ in paragraph
2 (3)(A) thereof),

3 “(ii) such entity is a small business
4 (within the meaning of section
5 41(b)(3)(D)(iii), applied by substituting
6 ‘250’ for ‘500’ in subclause (I) thereof),
7 and

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

11 “(F) PROVISIONS RELATED TO AGGRE-
12 GATE GROSS ASSETS LIMITATION.—For pur-
13 poses of this paragraph—

14 “(i) IN GENERAL.—Except as other-
15 wise provided in this subparagraph, the
16 term ‘aggregate gross assets’ has the
17 meaning given such term in section
18 1202(d)(2).

19 “(ii) EXCEPTION FOR CERTAIN IN-
20 TANGIBLES.—Any section 197 intangible
21 (as defined in section 197(d) and deter-
22 mined without regard to section 197(e))
23 which is used directly in connection with
24 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.

Sales of equity interests which are part of the same plan or arrangement, or which are carried out with the principal purpose of increasing the amount of cash to which

1 this clause applies (determined without re-
 2 gard to this sentence), shall be treated as
 3 a single sale for purposes of this clause.

4 “(iv) INFLATION ADJUSTMENT.—In
 5 the case of any taxable year beginning
 6 after 2014, the \$150,000,000 amount in
 7 subparagraph (E)(iii) and subclauses (I)
 8 and (II) of clause (iii) shall each be in-
 9 creased by an amount equal to—

10 “(I) such dollar amount, multi-
 11 plied by

12 “(II) the cost of living adjust-
 13 ment determined under section 1(f)(3)
 14 for the calendar year in which the tax-
 15 able year begins determined by sub-
 16 stituting ‘calendar year 2013’ for ‘cal-
 17 endar year 1992’ in subparagraph (B)
 18 thereof.

19 Any increase determined under the pre-
 20 ceding sentence shall be rounded to the
 21 nearest \$100,000.

22 “(G) CAPITAL EXPENDITURES TAKEN INTO
 23 ACCOUNT FOR EXPENDITURES TEST.—An ex-
 24 penditure shall not fail to be taken into account

1 under subparagraph (E)(i) merely because such
2 expenditure is chargeable to capital account.

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

8 “(I) AGGREGATION RULES.—

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

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

21 “(J) ACTIVITIES NOT ENGAGED IN FOR
22 PROFIT AND ECONOMIC SUBSTANCE RULES.—
23 Section 183 and the economic substance rules
24 of section 7701(o) shall not apply to disallow
25 the losses, deductions, and credits of a high

1 technology research small business pass-thru
 2 entity solely as a result of losses incurred by
 3 such entity.”.

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

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

13 (1) DEDUCTION FOR RESEARCH AND EXPERI-
 14 MENTAL EXPENDITURES.—Paragraph (2) of section
 15 56(b) of the Internal Revenue Code of 1986 is
 16 amended by adding at the end the following new
 17 subparagraph:

18 “(E) EXCEPTION FOR HIGH TECHNOLOGY
 19 RESEARCH SMALL BUSINESS PASS-THRU ENTI-
 20 TIES.—In the case of a high technology re-
 21 search small business pass-thru entity (as de-
 22 fined in section 469(c)(4)), this paragraph shall
 23 not apply to any amount allowable as a deduc-
 24 tion under section 174(a).”.

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

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

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

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

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