

113TH CONGRESS
2^D SESSION

H. R. 4696

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 HOUSE OF REPRESENTATIVES

MAY 21, 2014

Mr. GERLACH (for himself, Mr. KIND, Mr. KELLY of Pennsylvania, and Mr. PETERS of Michigan) 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 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 2014”.

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

3 (a) IN GENERAL.—Section 41 of the Internal Rev-
4 enue Code of 1986 is amended by adding at the end the
5 following new subsection:

6 “(i) TREATMENT OF CREDIT FOR QUALIFIED SMALL
7 BUSINESSES.—

8 “(1) IN GENERAL.—At the election of a quali-
9 fied small business for any taxable year, section
10 3111(f) shall apply to the payroll tax credit portion
11 of the credit otherwise determined under subsection
12 (a) for the taxable year and such portion shall not
13 be treated (other than for purposes of section 280C)
14 as a credit determined under subsection (a).

15 “(2) PAYROLL TAX CREDIT PORTION.—For
16 purposes of this subsection, the payroll tax credit
17 portion of the credit determined under subsection
18 (a) with respect to any qualified small business for
19 any taxable year is the least of—

20 “(A) the amount specified in the election
21 made under this subsection,

22 “(B) the credit determined under sub-
23 section (a) for the taxable year (determined be-
24 fore the application of this subsection), or

25 “(C) in the case of a qualified small busi-
26 ness other than a partnership or S corporation,

1 the amount of the business credit carryforward
2 under section 39 carried from the taxable year
3 (determined before the application of this sub-
4 section to the taxable year).

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

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

10 “(i) a corporation or partnership, if—

11 “(I) the gross receipts (as deter-
12 mined under the rules of section
13 448(c)(3), without regard to subpara-
14 graph (A) thereof) of such entity for
15 the taxable year is less than
16 \$5,000,000, and

17 “(II) such entity did not have
18 gross receipts (as so determined) for
19 any taxable year preceding the 5-tax-
20 able-year period ending with such tax-
21 able year, and

22 “(ii) any person (other than a cor-
23 poration or partnership) who meets the re-
24 quirements of subclauses (I) and (II) of
25 clause (i), determined—

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

3 “(II) by only taking into account
4 the aggregate gross receipts received
5 by such person in carrying on all
6 trades or businesses of such person.

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

10 “(4) ELECTION.—

11 “(A) IN GENERAL.—Any election under
12 this subsection for any taxable year—

13 “(i) shall specify the amount of the
14 credit to which such election applies,

15 “(ii) shall be made on or before the
16 due date (including extensions) of—

17 “(I) in the case of a qualified
18 small business which is a partnership,
19 the return required to be filed under
20 section 6031,

21 “(II) in the case of a qualified
22 small business which is an S corpora-
23 tion, the return required to be filed
24 under section 6037, and

1 “(III) in the case of any other
2 qualified small business, the return of
3 tax for the taxable year, and

4 “(iii) may be revoked only with the
5 consent of the Secretary.

6 “(B) LIMITATIONS.—

7 “(i) AMOUNT.—The amount specified
8 in any election made under this subsection
9 shall not exceed \$250,000.

10 “(ii) NUMBER OF TAXABLE YEARS.—

11 A person may not make an election under
12 this subsection if such person (or any other
13 person treated as a single taxpayer with
14 such person under paragraph (5)(A)) has
15 made an election under this subsection for
16 5 or more preceding taxable years.

17 “(C) SPECIAL RULE FOR PARTNERSHIPS

18 AND S CORPORATIONS.—In the case of a quali-
19 fied small business which is a partnership or S
20 corporation, the election made under this sub-
21 section shall be made at the entity level.

22 “(5) AGGREGATION RULES.—

23 “(A) IN GENERAL.—Except as provided in
24 subparagraph (B), all persons or entities treat-
25 ed as a single taxpayer under subsection (f)(1)

1 shall be treated as a single taxpayer for pur-
2 poses of this subsection.

3 “(B) SPECIAL RULES.—For purposes of
4 this subsection and section 3111(f)—

5 “(i) each of the persons treated as a
6 single taxpayer under subparagraph (A)
7 may separately make the election under
8 paragraph (1) for any taxable year, and

9 “(ii) the \$250,000 amount under
10 paragraph (4)(B)(i) shall be allocated
11 among all persons treated as a single tax-
12 payer under subparagraph (A) in the same
13 manner as under subparagraph (A)(ii) or
14 (B)(ii) of subsection (f)(1), whichever is
15 applicable.

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

19 “(A) regulations to prevent the avoidance
20 of the purposes of the limitations and aggrega-
21 tion rules under this subsection through the use
22 of successor companies or other means,

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

1 “(C) regulations for recapturing the ben-
2 efit of credits determined under section 3111(f)
3 in cases where there is a subsequent adjustment
4 to the payroll tax credit portion of the credit
5 determined under subsection (a), including re-
6 quiring amended income tax returns in the
7 cases where there is such an adjustment.”.

8 (b) CREDIT ALLOWED AGAINST FICA TAXES.—Sec-
9 tion 3111 of such Code is amended by adding at the end
10 the following new subsection:

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

13 “(1) IN GENERAL.—In the case of a taxpayer
14 who has made an election under section 41(i) for a
15 taxable year, there shall be allowed as a credit
16 against the tax imposed by subsection (a) for the
17 first calendar quarter which begins after the date on
18 which the taxpayer files the return specified in sec-
19 tion 41(i)(4)(A)(ii) an amount equal to the payroll
20 tax credit portion determined under section 41(i)(2).

21 “(2) LIMITATION.—The credit allowed by para-
22 graph (1) shall not exceed the tax imposed by sub-
23 section (a) for any calendar quarter on the wages
24 paid with respect to the employment of all individ-
25 uals in the employ of the employer.

1 “(3) CARRYOVER OF UNUSED CREDIT.—If the
2 amount of the credit under paragraph (1) exceeds
3 the limitation of paragraph (2) for any calendar
4 quarter, such excess shall be carried to the suc-
5 ceeding calendar quarter and allowed as a credit
6 under paragraph (1) for such quarter.

7 “(4) DEDUCTION ALLOWED FOR CREDITED
8 AMOUNTS.—The credit allowed under paragraph (1)
9 shall not be taken into account for purposes of de-
10 termining the amount of any deduction allowed
11 under chapter 1 for taxes imposed under subsection
12 (a).”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to credits determined for taxable
15 years beginning after December 31, 2013.

○