

115TH CONGRESS  
1ST SESSION

# H. R. 2297

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.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2017

Mr. MEEHAN (for himself, Mr. KELLY of Pennsylvania, Mr. NEAL, Mr. LARSON of Connecticut, and Mr. KIND) introduced the following bill; which was referred to the Committee on Ways and Means

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## 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. SHORT TITLE.**

4       This Act may be cited as the “Partnerships to Ad-  
5       vance Revolutionary Technology and Novel Entrepre-  
6       neurial Research Act” or the “PARTNER Act”.

1 **SEC. 2. EXCEPTION FROM PASSIVE LOSS RULES FOR IN-**  
2 **VESTMENTS IN HIGH TECHNOLOGY RE-**  
3 **SEARCH SMALL BUSINESS PASS-THRU ENTI-**  
4 **TIES.**

5 (a) IN GENERAL.—Subsection (c) of section 469 of  
6 the Internal Revenue Code of 1986 is amended by redesi-  
7 gnating paragraphs (4) through (7) as paragraphs (5)  
8 through (8), respectively, and by inserting after paragraph  
9 (3) the following new paragraph:

10 “(4) HIGH TECHNOLOGY RESEARCH ACTIVI-  
11 TIES.—

12 “(A) IN GENERAL.—The term ‘passive ac-  
13 tivity’ shall not include any qualified research  
14 activity of the taxpayer carried on by a high  
15 technology research small business pass-thru  
16 entity.

17 “(B) TREATMENT OF LOSSES AND DEDUC-  
18 TIONS.—

19 “(i) IN GENERAL.—Losses or deduc-  
20 tions of a taxpayer in connection with  
21 qualified research activities carried on by a  
22 high technology research small business  
23 pass-thru entity shall not be treated as  
24 losses or deductions, respectively, from a  
25 passive activity except as provided in  
26 clause (ii) and subparagraph (C).

1           “(ii) LIMITATION.—Clause (i) shall  
2           apply to losses and deductions of a tax-  
3           payer in connection with a high technology  
4           small business pass-thru entity for a tax-  
5           able year only to the extent that the aggre-  
6           gate losses and deductions of the taxpayer  
7           in connection with qualified research activi-  
8           ties of such entity for such taxable year do  
9           not exceed the portion of the taxpayer’s  
10          adjusted basis in the taxpayer’s ownership  
11          interest in such entity that is attributable  
12          to money or other property contributed—

13                   “(I) in exchange for such owner-  
14                   ship interest, and

15                   “(II) specifically for use in con-  
16                   nection with qualified research activi-  
17                   ties.

18          For purposes of the preceding sentence,  
19          the taxpayer’s basis shall not include any  
20          portion of such basis which is attributable  
21          to an increase in a partner’s share of the  
22          liabilities of a partnership that is consid-  
23          ered under section 752(a) as a contribution  
24          of money.

1           “(C) TREATMENT OF CARRYOVERS.—Sub-  
2 paragraph (B)(i) shall not apply to the portion  
3 of any loss or deduction that is carried over  
4 under subsection (b) into a taxable year other  
5 than the taxable year in which such loss or de-  
6 duction arose.

7           “(D) QUALIFIED RESEARCH ACTIVITY.—  
8 For purposes of this paragraph, the term  
9 ‘qualified research activity’ means any activity  
10 constituting qualified research (within the  
11 meaning of section 41(d)(1)(B) and taking into  
12 account paragraphs (3) and (4) of section  
13 41(d)) which involves a process of experimen-  
14 tation.

15           “(E) HIGH TECHNOLOGY RESEARCH  
16 SMALL BUSINESS PASS-THRU ENTITY.—For  
17 purposes of this paragraph, the term ‘high tech-  
18 nology research small business pass-thru entity’  
19 means any domestic pass-thru entity for any  
20 taxable year if—

21                   “(i) either—

22                           “(I) more than 75 percent of the  
23 entity’s expenditures (including sala-  
24 ries, rent and overhead) for such tax-  
25 able year are paid or incurred in con-

1           nection with qualified research (within  
2           the meaning of section 41(d)(1)(B),  
3           taking into account paragraphs (3)  
4           and (4) of section 41(d)) that involves  
5           a process of experimentation con-  
6           ducted by the entity, or

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

14                  “(ii) such entity is a small business  
15                  (within the meaning of section  
16                  41(b)(3)(D)(iii), applied by substituting  
17                  ‘250’ for ‘500’ in subclause (I) thereof),  
18                  and

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

22                  “(F) PROVISIONS RELATED TO AGGRE-  
23                  GATE GROSS ASSETS LIMITATION.—For pur-  
24                  poses of this paragraph—

1           “(i) IN GENERAL.—Except as other-  
2           wise provided in this subparagraph, the  
3           term ‘aggregate gross assets’ has the  
4           meaning given such term in section  
5           1202(d)(2).

6           “(ii) EXCEPTION FOR CERTAIN IN-  
7           TANGIBLES.—Any section 197 intangible  
8           (as defined in section 197(d) and deter-  
9           mined without regard to section 197(e))  
10          which is used directly in connection with  
11          the research referred to in subparagraph  
12          (E)(i) shall not be taken into account in  
13          determining aggregate gross assets.

14          “(iii) EXCEPTION FOR CERTAIN FOL-  
15          LOW-ON INVESTMENTS.—Cash from a sale  
16          of equity interests shall not be taken into  
17          account in determining aggregate gross as-  
18          sets if—

19                 “(I) the aggregate gross assets of  
20                 such entity (determined immediately  
21                 after such sale and without regard to  
22                 this clause) do not exceed the sum of  
23                 \$150,000,000, plus 25 percent of the  
24                 aggregate gross assets of such entity  
25                 (determined immediately before such

1 sale and without regard to this  
2 clause), and

3 “(II) the aggregate gross assets  
4 of such entity (determined imme-  
5 diately before such sale and without  
6 regard to this clause) do not exceed  
7 \$150,000,000.

8 Sales of equity interests which are part of  
9 the same plan or arrangement, or which  
10 are carried out with the principal purpose  
11 of increasing the amount of cash to which  
12 this clause applies (determined without re-  
13 gard to this sentence), shall be treated as  
14 a single sale for purposes of this clause.

15 “(iv) INFLATION ADJUSTMENT.—In  
16 the case of any taxable year beginning  
17 after 2017, the \$150,000,000 amount in  
18 subparagraph (E)(iii) and subclauses (I)  
19 and (II) of clause (iii) shall each be in-  
20 creased by an amount equal to—

21 “(I) such dollar amount, multi-  
22 plied by

23 “(II) the cost of living adjust-  
24 ment determined under section 1(f)(3)  
25 for the calendar year in which the tax-

1           able year begins determined by sub-  
2           stituting ‘calendar year 2016’ for ‘cal-  
3           endar year 1992’ in subparagraph (B)  
4           thereof.

5           Any increase determined under the pre-  
6           ceding sentence shall be rounded to the  
7           nearest \$100,000.

8           “(G) CAPITAL EXPENDITURES TAKEN INTO  
9           ACCOUNT FOR EXPENDITURES TEST.—An ex-  
10          penditure shall not fail to be taken into account  
11          under subparagraph (E)(i) merely because such  
12          expenditure is chargeable to capital account.

13          “(H) PASS-THRU ENTITY.—For purposes  
14          of this paragraph, the term ‘pass-thru entity’  
15          means any partnership, S corporation, or other  
16          entity identified by the Secretary as a pass-thru  
17          entity for purposes of this paragraph.

18          “(I) AGGREGATION RULES.—

19                 “(i) IN GENERAL.—All persons treat-  
20                 ed as a single employer under subsection  
21                 (a) or (b) of section 52, or subsection (m)  
22                 or (o) of section 414, shall be treated as a  
23                 single entity for purposes of subparagraphs  
24                 (E) and (F)(iii).



1                   “(ii) LIMITATION WHERE ENTITY  
2                   WOULD NOT QUALIFY.—No entity shall be  
3                   treated as a high technology research small  
4                   business pass-thru entity unless such enti-  
5                   ty qualifies as such both with and without  
6                   the application of clause (i).

7                   “(J) ACTIVITIES NOT ENGAGED IN FOR  
8                   PROFIT AND ECONOMIC SUBSTANCE RULES.—  
9                   Section 183 and the economic substance rules  
10                  of section 7701(o) shall not apply to disallow  
11                  the losses, deductions, and credits of a high  
12                  technology research small business pass-thru  
13                  entity solely as a result of losses incurred by  
14                  such entity.”.

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

20                  (c) CERTAIN RESEARCH-RELATED DEDUCTIONS AND  
21                  CREDITS OF HIGH TECHNOLOGY RESEARCH SMALL  
22                  BUSINESS PASS-THRU ENTITIES ALLOWED FOR PUR-  
23                  POSES OF DETERMINING ALTERNATIVE MINIMUM TAX.—

24                          (1) DEDUCTION FOR RESEARCH AND EXPERI-  
25                          MENTAL EXPENDITURES.—Paragraph (2) of section

1 56(b) of the Internal Revenue Code of 1986 is  
2 amended by adding at the end the following new  
3 subparagraph:

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

11 (2) ALLOWANCE OF CERTAIN RESEARCH-RE-  
12 LATED CREDITS.—Subparagraph (B) of section  
13 38(c)(4) of such Code is amended by redesignating  
14 clauses (ii) through (ix) as clauses (iii) through (x),  
15 respectively, and by inserting after clause (i) the fol-  
16 lowing new clause:

17 “(ii) the credit of an individual tax-  
18 payer determined under section 41 to the  
19 extent attributable to a high technology re-  
20 search small business pass-thru entity (as  
21 defined in section 469(c)(4)),”.

22 (d) EXCEPTION TO LIMITATION ON PASS-THRU OF  
23 RESEARCH CREDIT.—Subsection (g) of section 41 of such  
24 Code is amended by adding at the end the following:  
25 “Paragraphs (2) and (4) shall not apply with respect to

1 any high technology research small business pass-thru en-  
2 tity (as defined in section 469(c)(4)).”.

3 (e) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to losses and credits arising in tax-  
5 able years beginning after December 31, 2016.

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