

112TH CONGRESS  
2D SESSION

# S. 3460

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.

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## IN THE SENATE OF THE UNITED STATES

JULY 31, 2012

Mr. COONS (for himself, Mr. ENZI, Mr. SCHUMER, and Mr. RUBIO) 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.

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 2012”.

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

8 (a) IN GENERAL.—

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

4           “(i) TREATMENT OF CREDIT TO QUALIFIED SMALL  
5 BUSINESSES.—

6           “(1) IN GENERAL.—At the election of a quali-  
7 fied small business, the payroll tax credit portion of  
8 the credit determined under subsection (a) shall be  
9 treated as a credit allowed under section 3111(f)  
10 (and not under this section).

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

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

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

21           “(i) a corporation, partnership, or S  
22 corporation if—

23           “(I) the gross receipts (as deter-  
24 mined under subsection (c)(7)) of

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

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

8 “(ii) any person not described in sub-  
9 paragraph (A) if clauses (i) and (ii) of sub-  
10 paragraph (A) applied to such person, de-  
11 termined—

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

14 “(II) in the case of an individual,  
15 by only taking into account the aggre-  
16 gate gross receipts received by such  
17 individual in carrying on trades or  
18 businesses of such individual.

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

22 “(4) ELECTION.—

23 “(A) IN GENERAL.—In the case of a part-  
24 nership or S corporation, an election under this  
25 subsection shall be made at the entity level.

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

4           “(C) LIMITATION.—A taxpayer may not  
5 make an election under this subsection if such  
6 taxpayer has made an election under this sub-  
7 section for 5 or more preceding taxable years.

8           “(5) AGGREGATION RULES.—For purposes of  
9 determining the \$250,000 limitation under para-  
10 graph (2) and determining gross receipts under  
11 paragraph (3), all members of the same controlled  
12 group of corporations (within the meaning of section  
13 267(f)) and all persons under common control (with-  
14 in the meaning of section 52(b) but determined by  
15 treating an interest of more than 50 percent as a  
16 controlling interest) shall be treated as 1 person.

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

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

23           “(B) regulations to minimize compliance  
24 and recordkeeping burdens under this sub-  
25 section for start-up companies, 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 returns in the cases where  
7           there is such an adjustment.”.

8           (2) CONFORMING AMENDMENT.—Section  
9           280C(e) of the Internal Revenue Code of 1986 is  
10          amended by adding at the end the following new  
11          paragraph:

12           “(5) TREATMENT OF QUALIFIED SMALL BUSI-  
13          NESS CREDIT.—For purposes of determining the  
14          amount of any credit under section 41(a) under this  
15          subsection, any election under section 41(i) shall be  
16          disregarded.”.

17          (b) CREDIT ALLOWED AGAINST FICA TAXES.—

18           (1) IN GENERAL.—Section 3111 of the Internal  
19          Revenue Code of 1986 is amended by adding at the  
20          end the following new subsection:

21           “(f) CREDIT FOR RESEARCH EXPENDITURES OF  
22          QUALIFIED SMALL BUSINESSES.—

23           “(1) IN GENERAL.—In the case of a qualified  
24          small business which has made an election under  
25          section 41(i), there shall be allowed as a credit

1 against the tax imposed by subsection (a) on wages  
2 paid with respect to the employment of all employees  
3 of the qualified small business for days in an appli-  
4 cable calendar quarter an amount equal to the pay-  
5 roll tax credit portion of the research credit deter-  
6 mined under section 41(a).

7 “(2) CARRYOVER OF UNUSED CREDIT.—In any  
8 case in which the payroll tax credit portion of the re-  
9 search credit determined under section 41(a) exceeds  
10 the tax imposed under subsection (a) for an applica-  
11 ble calendar quarter—

12 “(A) the succeeding calendar quarter shall  
13 be treated as an applicable calendar quarter,  
14 and

15 “(B) the amount of credit allowed under  
16 paragraph (1) shall be reduced by the amount  
17 of credit allowed under such paragraph for all  
18 preceding applicable calendar quarters.

19 “(3) ALLOCATION OF CREDIT FOR CON-  
20 TROLLED GROUPS, ETC.—In determining the  
21 amount of the credit under this subsection—

22 “(A) all persons treated as a single tax-  
23 payer under section 41 shall be treated as a  
24 single taxpayer under this section, and

1           “(B) the credit (if any) allowable by this  
2 section to each such member shall be its pro-  
3 portionate share of the qualified research ex-  
4 penses, basic research payments, and amounts  
5 paid or incurred to energy research Consor-  
6 tiums, giving rise to the credit allowable under  
7 section 41.

8           “(4) DEFINITIONS.—For purposes of this sub-  
9 section—

10           “(A) APPLICABLE CALENDAR QUARTER.—

11           The term ‘applicable calendar quarter’ means—

12           “(i) the first calendar quarter fol-  
13 lowing the date on which the qualified  
14 small business files a return under section  
15 6012 for the taxable year for which the  
16 payroll tax credit portion of the research  
17 credit under section 41(a) is determined,  
18 and

19           “(ii) any succeeding calendar quarter  
20 treated as an applicable calendar quarter  
21 under paragraph (2)(A).

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

1           “(B) OTHER TERMS.—Any term used in  
2           this subsection which is also used in section 41  
3           shall have the meaning given such term under  
4           section 41.”.

5           (2) TRANSFERS TO FEDERAL OLD-AGE AND  
6           SURVIVORS INSURANCE TRUST FUND.—There are  
7           hereby appropriated to the Federal Old-Age and  
8           Survivors Trust Fund and the Federal Disability In-  
9           surance Trust Fund established under section 201  
10          of the Social Security Act (42 U.S.C. 401) amounts  
11          equal to the reduction in revenues to the Treasury  
12          by reason of the amendments made by paragraph  
13          (1). Amounts appropriated by the preceding sen-  
14          tence shall be transferred from the general fund at  
15          such times and in such manner as to replicate to the  
16          extent possible the transfers which would have oc-  
17          curred to such Trust Fund had such amendments  
18          not been enacted.

19          (c) EFFECTIVE DATE.—The amendments made by  
20          this section shall apply to taxable years beginning after  
21          December 31, 2011.

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