

115TH CONGRESS  
2D SESSION

# H. R. 6756

To amend the Internal Revenue Code of 1986 to promote new business innovation, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 10, 2018

Mr. BUCHANAN (for himself, Mr. BRADY of Texas, Mr. SAM JOHNSON of Texas, Mr. NUNES, Mr. REICHERT, Mr. ROSKAM, Mr. SMITH of Nebraska, Ms. JENKINS of Kansas, Mr. PAULSEN, Mr. MARCHANT, Mrs. BLACK, Mr. REED, Mr. RENACCI, Mr. KELLY of Pennsylvania, Mrs. NOEM, Mr. HOLDING, Mr. SMITH of Missouri, Mr. RICE of South Carolina, Mr. SCHWEIKERT, Mrs. WALORSKI, Mr. CURBELO of Florida, Mr. BISHOP of Michigan, Mr. LAHOOD, and Mr. WENSTRUP) 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 promote new business innovation, 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. SHORT TITLE.**

4 This Act may be cited as the “American Innovation  
5 Act of 2018”.

1 **SEC. 2. SIMPLIFICATION AND EXPANSION OF DEDUCTION**  
2 **FOR START-UP AND ORGANIZATIONAL EX-**  
3 **PENDITURES.**

4 (a) IN GENERAL.—Section 195 of the Internal Rev-  
5 enue Code of 1986 is amended by redesignating sub-  
6 sections (c) and (d) as subsections (d) and (e), respec-  
7 tively, and by striking all that precedes subsection (d) (as  
8 so redesignated) and inserting the following:

9 **“SEC. 195. START-UP AND ORGANIZATIONAL EXPENDI-**  
10 **TURES.**

11 “(a) CAPITALIZATION OF EXPENDITURES.—Except  
12 as otherwise provided in this section, no deduction shall  
13 be allowed for start-up or organizational expenditures.

14 “(b) ELECTION TO DEDUCT.—

15 “(1) IN GENERAL.—If a taxpayer elects the ap-  
16 plication of this subsection with respect to any active  
17 trade or business—

18 “(A) the taxpayer shall be allowed a deduc-  
19 tion for the taxable year in which such active  
20 trade or business begins in an amount equal to  
21 the lesser of—

22 “(i) the aggregate amount of start-up  
23 and organizational expenditures paid or in-  
24 curred in connection with such active trade  
25 or business, or

1                   “(ii) \$20,000, reduced (but not below  
2                   zero) by the amount by which such aggre-  
3                   gate amount exceeds \$120,000, and

4                   “(B) the remainder of such start-up and  
5                   organizational expenditures shall be charged to  
6                   capital account and allowed as an amortization  
7                   deduction determined by amortizing such ex-  
8                   penditures ratably over the 180-month period  
9                   beginning with the month in which the active  
10                  trade or business begins.

11                  “(2) APPLICATION TO ORGANIZATIONAL EX-  
12                  PENDITURES.—In the case of organizational expend-  
13                  itures with respect to any corporation or partner-  
14                  ship, the active trade or business referred to in para-  
15                  graph (1) means the first active trade or business  
16                  carried on by such corporation or partnership.

17                  “(3) INFLATION ADJUSTMENT.—In the case of  
18                  any taxable year beginning after December 31,  
19                  2019, the \$20,000 and \$120,000 amounts in para-  
20                  graph (1)(A)(ii) shall each be increased by an  
21                  amount equal to—

22                         “(A) such dollar amount, multiplied by

23                         “(B) the cost-of-living adjustment deter-  
24                         mined under section 1(f)(3) for the calendar  
25                         year in which the taxable year begins, deter-

1           mined by substituting ‘calendar year 2018’ for  
2           ‘calendar year 2016’ in subparagraph (A)(ii)  
3           thereof.

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

7           “(c) ALLOWANCE OF DEDUCTION UPON LIQUIDA-  
8           TION OR DISPOSITION.—

9           “(1) LIQUIDATION OF PARTNERSHIP OR COR-  
10          PORATION.—If any partnership or corporation is  
11          completely liquidated by the taxpayer, any start-up  
12          or organizational expenditures paid or incurred in  
13          connection with such partnership or corporation  
14          which were not allowed as a deduction by reason of  
15          this section may be deducted to the extent allowable  
16          under section 165.

17          “(2) DISPOSITION OF TRADE OR BUSINESS.—If  
18          any trade or business is completely disposed of or  
19          discontinued by the taxpayer, any start-up expendi-  
20          tures paid or incurred in connection with such trade  
21          or business which were not allowed as a deduction  
22          by reason of this section (and not taken into account  
23          in connection with a liquidation to which paragraph  
24          (1) applies) may be deducted to the extent allowable  
25          under section 165. For purposes of this paragraph,

1 in the case of any deduction allowed under sub-  
2 section (b)(1) with respect to both start-up and or-  
3 ganizational expenditures, the amount treated as so  
4 allowed with respect to start-up expenditures shall  
5 bear the same ratio to such deduction as the start-  
6 up expenditures taken into account in determining  
7 such deduction bears to the aggregate of the start-  
8 up and organizational expenditures so taken into ac-  
9 count.”.

10 (b) ORGANIZATIONAL EXPENDITURES.—Section  
11 195(d) of such Code, as redesignated by subsection (a),  
12 is amended by adding at the end the following new para-  
13 graph:

14 “(3) ORGANIZATIONAL EXPENDITURES.—The  
15 term ‘organizational expenditures’ means any ex-  
16 penditure which—

17 “(A) is incident to the creation of a cor-  
18 poration or a partnership,

19 “(B) is chargeable to capital account, and

20 “(C) is of a character which, if expended  
21 incident to the creation of a corporation or a  
22 partnership having an ascertainable life, would  
23 be amortizable over such life.

24 “(4) APPLICATION TO CERTAIN DISREGARDED  
25 ENTITIES.—In the case of any entity with a single

1 owner that is disregarded as an entity separate from  
2 its owner, this section shall be applied in the same  
3 manner as if such entity were a corporation.”.

4 (c) ELECTION.—Section 195(e)(2) of such Code, as  
5 redesignated by subsection (a), is amended to read as fol-  
6 lows:

7 “(2) PARTNERSHIPS AND S CORPORATIONS.—In  
8 the case of any partnership or S corporation, the  
9 election under subsection (b) shall be made (and this  
10 section shall be applied) at the entity level.”.

11 (d) CONFORMING AMENDMENTS.—

12 (1)(A) Part VIII of subchapter B of chapter 1  
13 is amended by striking section 248 of such Code  
14 (and by striking the item relating to such section in  
15 the table of sections of such part).

16 (B) Section 170(b)(2)(D)(ii) of such Code is  
17 amended by striking “(except section 248)”.

18 (C) Section 312(n)(3) of such Code is amended  
19 by striking “Sections 173 and 248” and inserting  
20 “Sections 173 and 195”.

21 (D) Section 535(b)(3) of such Code is amended  
22 by striking “(except section 248)”.

23 (E) Section 545(b)(3) of such Code is amended  
24 by striking “(except section 248)”.

1 (F) Section 545(b)(4) of such Code is amended  
2 by striking “(except section 248)”.

3 (G) Section 834(c)(7) of such Code is amended  
4 by striking “(except section 248)”.

5 (H) Section 852(b)(2)(C) of such Code is  
6 amended by striking “(except section 248)”.

7 (I) Section 857(b)(2)(A) of such Code is  
8 amended by striking “(except section 248)”.

9 (J) Section 1363(b) of such Code is amended  
10 by adding “and” at the end of paragraph (2), by  
11 striking paragraph (3), and by redesignating para-  
12 graph (4) as paragraph (3).

13 (K) Section 1375(b)(1)(B)(i) of such Code is  
14 amended by striking “(other than the deduction al-  
15 lowed by section 248, relating to organization ex-  
16 penditures)”.

17 (2)(A) Section 709 of such Code is amended to  
18 read as follows:

19 **“SEC. 709. TREATMENT OF SYNDICATION FEES.**

20 “No deduction shall be allowed under this chapter to  
21 a partnership or to any partner of the partnership for any  
22 amounts paid or incurred to promote the sale of (or to  
23 sell) an interest in the partnership.”.

1 (B) The item relating to section 709 in the  
 2 table of sections for part I of subchapter K of chap-  
 3 ter 1 of such Code is amended to read as follows:

“Sec. 709. Treatment of syndication fees.”.

4 (3) Section 1202(e)(2)(A) of such Code is  
 5 amended by striking “section 195(c)(1)(A)” and in-  
 6 serting “section 195(d)(1)(A)”.

7 (4) The item relating to section 195 in the table  
 8 of contents of part VI of subchapter B of chapter 1  
 9 of such Code is amended to read as follows:

“Sec. 195. Start-up and organizational expenditures.”.

10 (e) EFFECTIVE DATE.—The amendments made by  
 11 this section shall apply to expenditures paid or incurred  
 12 in connection with active trades or businesses which begin  
 13 in taxable years beginning after December 31, 2018.

14 **SEC. 3. PRESERVATION OF START-UP NET OPERATING**  
 15 **LOSSES AND TAX CREDITS AFTER OWNER-**  
 16 **SHIP CHANGE.**

17 (a) APPLICATION TO NET OPERATING LOSSES.—  
 18 Section 382(d) of the Internal Revenue Code of 1986 is  
 19 amended by adding at the end the following new para-  
 20 graph:

21 “(4) EXCEPTION FOR START-UP LOSSES.—

22 “(A) IN GENERAL.—In the case of any net  
 23 operating loss carryforward described in para-  
 24 graph (1)(A) which arose in a start-up period



1 taxable year, the amount of such net operating  
2 loss carryforward otherwise taken into account  
3 under such paragraph shall be reduced by the  
4 net start-up loss determined with respect to the  
5 trade or business referred to in subparagraph  
6 (B)(i) for such start-up period taxable year.

7 “(B) START-UP PERIOD TAXABLE YEAR.—

8 The term ‘start-up period taxable year’ means  
9 any taxable year of the old loss corporation  
10 which—

11 “(i) begins before the close of the 3-  
12 year period beginning on the date on which  
13 any trade or business of such corporation  
14 begins as an active trade or business (as  
15 determined under section 195(d)(2) with-  
16 out regard to subparagraph (B) thereof),  
17 and

18 “(ii) ends after September 10, 2018.

19 “(C) NET START-UP LOSS.—

20 “(i) IN GENERAL.—The term ‘net  
21 start-up loss’ means, with respect to any  
22 trade or business referred to in subpara-  
23 graph (B)(i) for any start-up period tax-  
24 able year, the amount which bears the  
25 same ratio (but not greater than one) to

1 the net operating loss carryforward which  
2 arose in such start-up period taxable year  
3 as—

4 “(I) the net operating loss (if  
5 any) which would have been deter-  
6 mined for such start-up period taxable  
7 year if only items of income, gain, de-  
8 duction, and loss properly allocable to  
9 such trade or business were taken into  
10 account, bears to

11 “(II) the amount of the net oper-  
12 ating loss determined for such start-  
13 up period taxable year.

14 “(ii) SPECIAL RULE FOR LAST TAX-  
15 ABLE YEAR IN START-UP PERIOD.—In the  
16 case of any start-up period taxable year  
17 which ends after the close of the 3-year pe-  
18 riod described in subparagraph (B)(i) with  
19 respect to any trade or business, the net  
20 start-up loss with respect to such trade or  
21 business for such start-up period taxable  
22 year shall be the same proportion of such  
23 loss (determined without regard to this  
24 clause) as the proportion of such start-up

1           period taxable year which is on or before  
2           the last day of such period.

3           “(D) APPLICATION TO NET OPERATING  
4           LOSS ARISING IN YEAR OF OWNERSHIP  
5           CHANGE.—Subparagraph (A) shall apply to any  
6           net operating loss described in paragraph  
7           (1)(B) in the same manner as such subpara-  
8           graph applies to net operating loss carryfor-  
9           wards described in paragraph (1)(A), but by  
10          only taking into account the amount of such net  
11          operating loss (and the amount of the net start-  
12          up loss) which is allocable under paragraph  
13          (1)(B) to the period described in such para-  
14          graph. Proper adjustment in the allocation of  
15          the net start-up loss under the preceding sen-  
16          tence shall be made in the case of a taxable  
17          year to which subparagraph (C)(ii) applies.

18          “(E) APPLICATION TO TAXABLE YEARS  
19          WHICH ARE START-UP PERIOD TAXABLE YEARS  
20          WITH RESPECT TO MORE THAN 1 TRADE OR  
21          BUSINESS.—In the case of any net operating  
22          loss carryforward which arose in a taxable year  
23          which is a start-up period taxable year with re-  
24          spect to more than 1 trade or business—

1           “(i) this paragraph shall be applied  
2           separately with respect to each such trade  
3           or business, and

4           “(ii) the aggregate reductions under  
5           subparagraph (A) shall not exceed such net  
6           operating loss carryforward.

7           “(F) CONTINUITY OF BUSINESS REQUIRE-  
8           MENT.—If the new loss corporation does not  
9           continue the trade or business referred to in  
10          subparagraph (B)(i) at all times during the 2-  
11          year period beginning on the change date, this  
12          paragraph shall not apply with respect to such  
13          trade or business.

14          “(G) CERTAIN TITLE 11 OR SIMILAR  
15          CASES.—

16                 “(i) MULTIPLE OWNERSHIP  
17                 CHANGES.—In the case of a second owner-  
18                 ship change to which subsection (l)(5)(D)  
19                 applies, this paragraph shall not apply for  
20                 purposes of determining the pre-change  
21                 loss with respect to such second ownership  
22                 change.

23                 “(ii) CERTAIN INSOLVENCY TRANS-  
24                 ACTIONS.—If subsection (l)(6) applies for  
25                 purposes of determining the value of the

1           old loss corporation under subsection (e),  
2           this paragraph shall not apply.

3           “(H) NOT APPLICABLE TO DISALLOWED  
4           INTEREST.—This paragraph shall not apply for  
5           purposes of applying the rules of paragraph (1)  
6           to the carryover of disallowed interest under  
7           paragraph (3).

8           “(I) TRANSITION RULE.—This paragraph  
9           shall not apply with respect to any trade or  
10          business if the date on which such trade or  
11          business begins as an active trade or business  
12          (as determined under section 195(d)(2) without  
13          regard to subparagraph (B) thereof) is on or  
14          before September 10, 2018.”.

15          (b) APPLICATION TO EXCESS CREDITS.—Section 383  
16 of such Code is amended by redesignating subsection (e)  
17 as subsection (f) and by inserting after subsection (d) the  
18 following new subsection:

19          “(e) EXCEPTION FOR START-UP EXCESS CREDITS.—

20                 “(1) IN GENERAL.—In the case of any unused  
21                 general business credit of the corporation under sec-  
22                 tion 39 which arose in a start-up period taxable  
23                 year, the amount of such unused general business  
24                 credit otherwise taken into account under subsection  
25                 (a)(2)(A) shall be reduced by the start-up excess

1 credit determined with respect to any trade or busi-  
2 ness referred to in section 382(d)(4)(B)(i) for such  
3 start-up period taxable year.

4 “(2) START-UP PERIOD TAXABLE YEAR.—For  
5 purposes of this subsection, the term ‘start-up pe-  
6 riod taxable year’ has the meaning given such term  
7 in section 382(d)(4)(B).

8 “(3) START-UP EXCESS CREDIT.—For purposes  
9 of this subsection, the term ‘start-up excess credit’  
10 means, with respect to any trade or business re-  
11 ferred to in section 382(d)(4)(B)(i) for any start-up  
12 period taxable year, the amount which bears the  
13 same ratio to the unused general business credit  
14 which arose in such start-up period taxable year  
15 as—

16 “(A) the amount of the general business  
17 credit which would have been determined for  
18 such start-up period taxable year if only credits  
19 properly allocable to such trade or business  
20 were taken into account, bears to

21 “(B) the amount of the general business  
22 credit determined for such start-up period tax-  
23 able year.

24 “(4) APPLICATION OF CERTAIN RULES.—Rules  
25 similar to the rules of subparagraphs (C)(ii), (D),

1 (E), and (F) of section 382(d)(4) shall apply for  
2 purposes of this subsection.

3 “(5) TRANSITION RULE.—This subsection shall  
4 not apply with respect to any trade or business if  
5 the date on which such trade or business begins as  
6 an active trade or business (as determined under  
7 section 195(d)(2) without regard to subparagraph  
8 (B) thereof) is on or before September 10, 2018.”.

9 (c) EFFECTIVE DATE.—The amendments made by  
10 this subsection shall apply to taxable years ending after  
11 September 10, 2018.

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