

Union Calendar No. 745

115TH CONGRESS
2D SESSION

H. R. 6756

[Report No. 115-957]

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

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

SEPTEMBER 24, 2018

Additional sponsors: Mrs. BLACKBURN, Mr. MITCHELL, and Mr. ESTES of Kansas

SEPTEMBER 24, 2018

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on September 10, 2018]

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”.*

6 **SEC. 2. SIMPLIFICATION AND EXPANSION OF DEDUCTION**
7 **FOR START-UP AND ORGANIZATIONAL EX-**
8 **PENDITURES.**

9 *(a) IN GENERAL.—Section 195 of the Internal Revenue*
10 *Code of 1986 is amended by redesignating subsections (c)*
11 *and (d) as subsections (d) and (e), respectively, and by*
12 *striking all that precedes subsection (d) (as so redesignated)*
13 *and inserting the following:*

14 **“SEC. 195. START-UP AND ORGANIZATIONAL EXPENDI-**
15 **TURES.**

16 *“(a) CAPITALIZATION OF EXPENDITURES.—Except as*
17 *otherwise provided in this section, no deduction shall be al-*
18 *lowed for start-up or organizational expenditures.*

19 *“(b) ELECTION TO DEDUCT.—*

20 *“(1) IN GENERAL.—If a taxpayer elects the ap-*
21 *plication of this subsection with respect to any active*
22 *trade or business—*

23 *“(A) the taxpayer shall be allowed a deduc-*
24 *tion for the taxable year in which such active*

1 *trade or business begins in an amount equal to*
2 *the lesser of—*

3 “(i) *the aggregate amount of start-up*
4 *and organizational expenditures paid or in-*
5 *curring in connection with such active trade*
6 *or business, or*

7 “(ii) *\$20,000, reduced (but not below*
8 *zero) by the amount by which such aggre-*
9 *gate amount exceeds \$120,000, and*

10 “(B) *the remainder of such start-up and or-*
11 *ganizational expenditures shall be charged to*
12 *capital account and allowed as an amortization*
13 *deduction determined by amortizing such ex-*
14 *penditures ratably over the 180-month period be-*
15 *ginning with the month in which the active*
16 *trade or business begins.*

17 “(2) *APPLICATION TO ORGANIZATIONAL EXPEND-*
18 *ITURES.—In the case of organizational expenditures*
19 *with respect to any corporation or partnership, the*
20 *active trade or business referred to in paragraph (1)*
21 *means the first active trade or business carried on by*
22 *such corporation or partnership.*

23 “(3) *INFLATION ADJUSTMENT.—In the case of*
24 *any taxable year beginning after December 31, 2019,*
25 *the \$20,000 and \$120,000 amounts in paragraph*

1 (1)(A)(ii) shall each be increased by an amount equal
2 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 year
6 in which the taxable year begins, determined by
7 substituting ‘calendar year 2018’ for ‘calendar
8 year 2016’ in subparagraph (A)(ii) 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 “(c) ALLOWANCE OF DEDUCTION UPON LIQUIDATION
13 OR DISPOSITION.—

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

22 “(2) DISPOSITION OF TRADE OR BUSINESS.—If
23 any trade or business is completely disposed of or dis-
24 continued by the taxpayer, any start-up expenditures
25 paid or incurred in connection with such trade or

1 *business which were not allowed as a deduction by*
2 *reason of this section (and not taken into account in*
3 *connection with a liquidation to which paragraph (1)*
4 *applies) may be deducted to the extent allowable*
5 *under section 165. For purposes of this paragraph, in*
6 *the case of any deduction allowed under subsection*
7 *(b)(1) with respect to both start-up and organiza-*
8 *tional expenditures, the amount treated as so allowed*
9 *with respect to start-up expenditures shall bear the*
10 *same ratio to such deduction as the start-up expendi-*
11 *tures taken into account in determining such deduc-*
12 *tion bears to the aggregate of the start-up and organi-*
13 *zational expenditures so taken into account.”.*

14 (b) *ORGANIZATIONAL EXPENDITURES.—Section*
15 *195(d) of such Code, as redesignated by subsection (a), is*
16 *amended by adding at the end the following new para-*
17 *graphs:*

18 *“(3) ORGANIZATIONAL EXPENDITURES.—The*
19 *term ‘organizational expenditures’ means any expend-*
20 *iture which—*

21 *“(A) is incident to the creation of a cor-*
22 *poration or a partnership,*

23 *“(B) is chargeable to capital account, and*

24 *“(C) is of a character which, if expended in-*
25 *cident to the creation of a corporation or a part-*

1 nership having an ascertainable life, would be
2 amortizable over such life.

3 “(4) *APPLICATION TO CERTAIN DISREGARDED*
4 *ENTITIES.—In the case of any entity with a single*
5 *owner that is disregarded as an entity separate from*
6 *its owner, this section shall be applied in the same*
7 *manner as if such entity were a corporation.”.*

8 (c) *ELECTION.—Section 195(e)(2) of such Code, as re-*
9 *designated by subsection (a), is amended to read as follows:*

10 “(2) *PARTNERSHIPS AND S CORPORATIONS.—In*
11 *the case of any partnership or S corporation, the elec-*
12 *tion under subsection (b) shall be made (and this sec-*
13 *tion shall be applied) at the entity level.”.*

14 (d) *CONFORMING AMENDMENTS.—*

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

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

21 (C) *Section 312(n)(3) of such Code is amended*
22 *by striking “Sections 173 and 248” and inserting*
23 *“Sections 173 and 195”.*

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

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

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

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

7 (H) Section 852(b)(2)(C) of such Code is amend-
8 ed by striking “(except section 248)”.

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

11 (J) Section 1363(b) of such Code is amended by
12 adding “and” at the end of paragraph (2), by strik-
13 ing paragraph (3), and by redesignating paragraph
14 (4) as paragraph (3).

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

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

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

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

1 (B) *The item relating to section 709 in the table*
2 *of sections for part I of subchapter K of chapter 1 of*
3 *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 amend-*
5 *ed by striking “section 195(c)(1)(A)” and inserting*
6 *“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 this*
11 *section shall apply to expenditures paid or incurred in con-*
12 *nection with active trades or businesses which begin in tax-*
13 *able 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.—Sec-*
18 *tion 382(d) of the Internal Revenue Code of 1986 is amend-*
19 *ed by adding at the end the following new paragraph:*

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

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

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

6 “(B) *START-UP PERIOD TAXABLE YEAR.*—

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

10 *“(i) begins before the close of the 3-year*
11 *period beginning on the date on which any*
12 *trade or business of such corporation begins*
13 *as an active trade or business (as deter-*
14 *mined under section 195(d)(2) without re-*
15 *gard to subparagraph (B) thereof), and*

16 *“(ii) ends after September 10, 2018.*

17 “(C) *NET START-UP LOSS.*—

18 *“(i) IN GENERAL.—The term ‘net*
19 *start-up loss’ means, with respect to any*
20 *trade or business referred to in subpara-*
21 *graph (B)(i) for any start-up period taxable*
22 *year, the amount which bears the same*
23 *ratio (but not greater than 1) to the net op-*
24 *erating loss carryforward which arose in*
25 *such start-up period taxable year as—*

1 “(I) *the net operating loss (if any)*
2 *which would have been determined for*
3 *such start-up period taxable year if*
4 *only items of income, gain, deduction,*
5 *and loss properly allocable to such*
6 *trade or business were taken into ac-*
7 *count, bears to*

8 “(II) *the amount of the net oper-*
9 *ating loss determined for such start-up*
10 *period taxable year.*

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

24 “(D) *APPLICATION TO NET OPERATING LOSS*
25 *ARISING IN YEAR OF OWNERSHIP CHANGE.—Sub-*

1 *paragraph (A) shall apply to any net operating*
2 *loss described in paragraph (1)(B) in the same*
3 *manner as such subparagraph applies to net op-*
4 *erating loss carryforwards described in para-*
5 *graph (1)(A), but by only taking into account*
6 *the amount of such net operating loss (and the*
7 *amount of the net start-up loss) which is allo-*
8 *cable under paragraph (1)(B) to the period de-*
9 *scribed in such paragraph. Proper adjustment in*
10 *the allocation of the net start-up loss under the*
11 *preceding sentence shall be made in the case of*
12 *a taxable year to which subparagraph (C)(ii)*
13 *applies.*

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

21 “(i) this paragraph shall be applied
22 separately with respect to each such trade or
23 business, and

1 “(i) *the aggregate reductions under*
2 *subparagraph (A) shall not exceed such net*
3 *operating loss carryforward.*

4 “(F) *CONTINUITY OF BUSINESS REQUIRE-*
5 *MENT.—If the new loss corporation does not con-*
6 *tinue the trade or business referred to in sub-*
7 *paragraph (B)(i) at all times during the 2-year*
8 *period beginning on the change date, this para-*
9 *graph shall not apply with respect to such trade*
10 *or business.*

11 “(G) *CERTAIN TITLE 11 OR SIMILAR*
12 *CASES.—*

13 “(i) *MULTIPLE OWNERSHIP*
14 *CHANGES.—In the case of a 2nd ownership*
15 *change to which subsection (l)(5)(D) ap-*
16 *plies, this paragraph shall not apply for*
17 *purposes of determining the pre-change loss*
18 *with respect to such 2nd ownership change.*

19 “(ii) *CERTAIN INSOLVENCY TRANS-*
20 *ACTIONS.—If subsection (l)(6) applies for*
21 *purposes of determining the value of the old*
22 *loss corporation under subsection (e), this*
23 *paragraph shall not apply.*

24 “(H) *NOT APPLICABLE TO DISALLOWED IN-*
25 *TEREST.—This paragraph shall not apply for*

1 *purposes of applying the rules of paragraph (1)*
2 *to the carryover of disallowed interest under*
3 *paragraph (3).*

4 “(I) *TRANSITION RULE.*—*This paragraph*
5 *shall not apply with respect to any trade or*
6 *business if the date on which such trade or busi-*
7 *ness begins as an active trade or business (as de-*
8 *termined under section 195(d)(2) without regard*
9 *to subparagraph (B) thereof) is on or before Sep-*
10 *tember 10, 2018.”.*

11 (b) *APPLICATION TO EXCESS CREDITS.*—*Section 383*
12 *of such Code is amended by redesignating subsection (e) as*
13 *subsection (f) and by inserting after subsection (d) the fol-*
14 *lowing new subsection:*

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

16 “(1) *IN GENERAL.*—*In the case of any unused*
17 *general business credit of the corporation under sec-*
18 *tion 39 which arose in a start-up period taxable year,*
19 *the amount of such unused general business credit*
20 *otherwise taken into account under subsection*
21 *(a)(2)(A) shall be reduced by the start-up excess credit*
22 *determined with respect to any trade or business re-*
23 *ferred to in section 382(d)(4)(B)(i) for such start-up*
24 *period taxable year.*

1 “(2) *START-UP PERIOD TAXABLE YEAR.*—For
2 purposes of this subsection, the term ‘start-up period
3 taxable year’ has the meaning given such term in sec-
4 tion 382(d)(4)(B).

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

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

17 “(B) the amount of the general business
18 credit determined for such start-up period tax-
19 able year.

20 “(4) *APPLICATION OF CERTAIN RULES.*—Rules
21 similar to the rules of subparagraphs (C)(ii), (D),
22 (E), and (F) of section 382(d)(4) shall apply for pur-
23 poses of this subsection.

24 “(5) *TRANSITION RULE.*—This subsection shall
25 not apply with respect to any trade or business if the

1 *date on which such trade or business begins as an ac-*
2 *tive trade or business (as determined under section*
3 *195(d)(2) without regard to subparagraph (B) there-*
4 *of) is on or before September 10, 2018.”.*

5 *(c) EFFECTIVE DATE.—The amendments made by this*
6 *section shall apply to taxable years ending after September*
7 *10, 2018.*

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H. R. 6756

[Report No. 115-9571]

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