

111TH CONGRESS
1ST SESSION

H. R. 717

To amend the Internal Revenue Code of 1986 to provide incentives to improve America's research competitiveness, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2009

Ms. EDDIE BERNICE JOHNSON of Texas (for herself and Mr. MCGOVERN) 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 incentives to improve America's research competitiveness, 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 "Research and Develop-
5 ment Tax Credit Act of 2009".

6 **SEC. 2. SIMPLIFICATION OF RESEARCH AND DEVELOP-**
7 **MENT CREDIT.**

8 (a) SIMPLIFIED CREDIT FOR QUALIFIED RESEARCH
9 EXPENSES.—

1 (1) IN GENERAL.—Subsection (a) of section 41
2 of the Internal Revenue Code of 1986 (relating to
3 credit for increasing research activities) is amended
4 to read as follows:

5 “(a) DETERMINATION OF CREDIT.—

6 “(1) IN GENERAL.—For purposes of section 38,
7 the research credit determined under this section for
8 the taxable year shall be equal to 20 percent of so
9 much of the qualified research expenses for such
10 taxable year as exceeds 50 percent of the average
11 qualified research expenses for the 3 taxable years
12 preceding the taxable year for which the credit is
13 being determined.

14 “(2) SPECIAL RULE IN CASE OF NO QUALIFIED
15 RESEARCH EXPENSES IN ANY OF 3 PRECEDING TAX-
16 ABLE YEARS.—

17 “(A) TAXPAYERS TO WHICH PARAGRAPH
18 APPLIES.—The credit under this section shall
19 be determined under this paragraph if the tax-
20 payer has no qualified research expenses in at
21 least 1 of the 3 taxable years preceding the tax-
22 able year for which the credit is being deter-
23 mined.

24 “(B) CREDIT RATE.—The credit deter-
25 mined under this paragraph shall be equal to

1 10 percent of the qualified research expenses
2 for the taxable year.”.

3 (2) CONFORMING AMENDMENT.—Section 41 of
4 such Code is amended by striking subsection (c).

5 (b) UNIFORM REIMBURSEMENT RATES FOR ALL
6 CONTRACT RESEARCH EXPENSES OTHER THAN
7 AMOUNTS PAID FOR BASIC RESEARCH.—

8 (1) IN GENERAL.—Section 41(b)(3) of the In-
9 ternal Revenue Code of 1986 (relating to contract
10 research expenses) is amended—

11 (A) by striking “65 percent” and inserting
12 “80 percent”, and

13 (B) by striking subparagraphs (C) and
14 (D).

15 (2) BASIC RESEARCH PAYMENTS.—Section
16 41(b) of such Code is amended by redesignating
17 paragraph (4) as paragraph (5) and by inserting
18 after paragraph (3) the following new paragraph:

19 “(4) BASIC RESEARCH PAYMENTS.—

20 “(A) IN GENERAL.—In the case of basic
21 research payments by the taxpayer, paragraph
22 (3)(A) shall be applied by substituting ‘100 per-
23 cent’ for ‘80 percent’.

24 “(B) BASIC RESEARCH PAYMENTS DE-
25 FINED.—For purposes of this paragraph—

1 “(i) IN GENERAL.—The term ‘basic
2 research payment’ means, with respect to
3 any taxable year, any amount paid in cash
4 during such taxable year by a corporation
5 to any qualified organization for basic re-
6 search but only if—

7 “(I) such payment is pursuant to
8 a written agreement between such cor-
9 poration and such qualified organiza-
10 tion, and

11 “(II) such basic research is to be
12 performed by such qualified organiza-
13 tion.

14 “(ii) EXCEPTION TO REQUIREMENT
15 THAT RESEARCH BE PERFORMED BY THE
16 ORGANIZATION.—In the case of a qualified
17 organization described in clause (iii) or (iv)
18 of subparagraph (C), subclause (II) of
19 clause (i) shall not apply.

20 “(C) QUALIFIED ORGANIZATION.—For
21 purposes of this paragraph, the term ‘qualified
22 organization’ means any of the following orga-
23 nizations:

24 “(i) EDUCATIONAL INSTITUTIONS.—
25 Any educational organization which—

1 “(I) is an institution of higher
2 education (within the meaning of sec-
3 tion 3304(f)), and

4 “(II) is described in section
5 170(b)(1)(A)(ii).

6 “(ii) CERTAIN SCIENTIFIC RESEARCH
7 ORGANIZATIONS.—Any organization not
8 described in clause (i) which—

9 “(I) is described in section
10 501(c)(3) and is exempt from tax
11 under section 501(a),

12 “(II) is organized and operated
13 primarily to conduct scientific re-
14 search, and

15 “(III) is not a private founda-
16 tion.

17 “(iii) SCIENTIFIC TAX-EXEMPT ORGA-
18 NIZATIONS.—Any organization which—

19 “(I) is described in section
20 501(c)(3) (other than a private foun-
21 dation) or section 501(c)(6),

22 “(II) is exempt from tax under
23 section 501(a),

24 “(III) is organized and operated
25 primarily to promote scientific re-

1 search by qualified organizations de-
2 scribed in clause (i) pursuant to writ-
3 ten research agreements, and

4 “(IV) currently expends substan-
5 tially all of its funds or substantially
6 all of the basic research payments re-
7 ceived by it for grants to, or contracts
8 for basic research with, an organiza-
9 tion described in clause (i).

10 “(iv) CERTAIN GRANT ORGANIZA-
11 TIONS.—Any organization not described in
12 clause (ii) or (iii) which—

13 “(I) is described in section
14 501(c)(3) and is exempt from tax
15 under section 501(a) (other than a
16 private foundation),

17 “(II) is established and main-
18 tained by an organization established
19 before July 10, 1981, which meets the
20 requirements of subclause (I),

21 “(III) is organized and operated
22 exclusively for the purpose of making
23 grants to organizations described in
24 clause (i) pursuant to written research

1 agreements for purposes of basic re-
2 search, and

3 “(IV) makes an election, rev-
4 ocable only with the consent of the
5 Secretary, to be treated as a private
6 foundation for purposes of this title
7 (other than section 4940, relating to
8 excise tax based on investment in-
9 come).

10 “(D) DEFINITIONS AND SPECIAL RULES.—

11 For purposes of this paragraph—

12 “(i) BASIC RESEARCH.—The term
13 ‘basic research’ means any original inves-
14 tigation for the advancement of scientific
15 knowledge not having a specific commercial
16 objective, except that such term shall not
17 include—

18 “(I) basic research conducted
19 outside of the United States, and

20 “(II) basic research in the social
21 sciences, arts, or humanities.

22 “(ii) TRADE OR BUSINESS QUALIFICA-
23 TION.—For purposes of applying para-
24 graph (1) to this paragraph, any basic re-
25 search payments shall be treated as an

1 amount paid in carrying on a trade or
2 business of the taxpayer in the taxable
3 year in which it is paid (without regard to
4 the provisions of paragraph (3)(B)).

5 “(iii) CERTAIN CORPORATIONS NOT
6 ELIGIBLE.—The term ‘corporation’ shall
7 not include—

8 “(I) an S corporation,

9 “(II) a personal holding company
10 (as defined in section 542), or

11 “(III) a service organization (as
12 defined in section 414(m)(3)).”.

13 (3) CONFORMING AMENDMENTS.—

14 (A) Section 41 of such Code is amended by
15 striking subsection (e).

16 (B) Section 41(f) of such Code is amended
17 by striking paragraph (6).

18 (c) PERMANENT EXTENSION OF CREDIT.—

19 (1) IN GENERAL.—Section 41 of the Internal
20 Revenue Code of 1986 is amended by striking sub-
21 section (h).

22 (2) CONFORMING AMENDMENT.—Paragraph (1)
23 of section 45C(b) of such Code is amended by strik-
24 ing subparagraph (D).

25 (d) CONFORMING AMENDMENTS.—

1 (1) Section 41 of the Internal Revenue Code of
2 1986 is amended by redesignating subsections (d),
3 (f), and (g) as subsections (c), (d), and (e), respec-
4 tively.

5 (2) Paragraphs (2)(A) and (5) (as redesignated
6 by subsection (b)(2)) of section 41(b) of such Code
7 are each amended by striking “subsection (f)(1)”
8 and inserting “subsection (d)(1)”.

9 (3) Sections 45C(d)(3), 45G(e)(2), and
10 936(h)(5)(C)(i)(IV)(c) of such Code are each
11 amended by striking “section 41(f)” and inserting
12 “section 41(d)”.

13 (4) Section 54(l)(3)(A) of such Code is amend-
14 ed by striking “section 41(g)” and inserting “section
15 41(e)”.

16 (5) Section 170(e)(4)(B)(i) of such Code is
17 amended by striking “subparagraph (A) or subpara-
18 graph (B) of section 41(e)(6)” and inserting “clause
19 (i) or (ii) of section 41(b)(4)(C)”.

20 (6) Sections 197(f)(1)(C), 197(f)(9)(C)(i)(II),
21 and 280C(b)(3) of such Code are each amended by
22 striking “section 41(f)(1)” and inserting “section
23 41(d)(1)”.

1 (7) Section 280C(b)(3) of such Code is amend-
2 ed by striking “section 41(f)(5)” and inserting “sec-
3 tion 41(d)(5)”.

4 (8) Section 280C(b)(3) of such Code is amend-
5 ed by striking “section 41(f)(1)(B)” and inserting
6 “section 41(d)(1)(B)”.

7 (9) Section 280C(c)(1) of such Code is amend-
8 ed by striking “section 41(e)(2)” and inserting “sec-
9 tion 41(b)(4)(B)”.

10 (10) Section 280C(c)(2)(A) of such Code is
11 amended by striking “section 41(a)(1)” and insert-
12 ing “section 41(a)”.

13 (11) Sections 936(j)(5)(D) and 965(c)(2)(C)(i)
14 of such Code are each amended by striking “section
15 41(f)(3)” and inserting “section 41(d)(3)”.

16 (e) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 the date of the enactment of this Act.

19 (f) STUDY OF COMPLIANCE WITH SUBSTANTIATION
20 REQUIREMENTS.—The Secretary of the Treasury or his
21 delegate shall, not later than 1 year after the date of the
22 enactment of this Act, conduct a study of taxpayer compli-
23 ance with the substantiation requirements for claiming the
24 credit allowed under section 41 of the Internal Revenue
25 Code of 1986, including a study of—

1 (1) whether taxpayers maintain adequate record
2 keeping to determine eligibility for, and correct
3 amount of, the credit,

4 (2) the impact of failure to comply with such
5 requirements on the oversight and enforcement re-
6 sponsibilities of the Internal Revenue Service, and

7 (3) the burdens imposed on other taxpayers by
8 failure to comply with such requirements.

9 The Secretary shall report the results of such study to
10 the Committee on Ways and Means of the House of Rep-
11 resentatives and the Committee on Finance of the Senate,
12 including any recommendations for administrative or leg-
13 islative actions which could be taken to improve compli-
14 ance with such requirements.

15 **SEC. 3. TAX CREDIT FOR INVESTMENTS IN SMALL TECH-**
16 **NOLOGY INNOVATION COMPANIES.**

17 (a) IN GENERAL.—Subpart D of part IV of sub-
18 chapter A of chapter 1 of the Internal Revenue Code of
19 1986 is amended by adding at the end the following new
20 section:

21 **“SEC. 45R. RESEARCH INVESTMENT TAX CREDIT.**

22 “(a) ALLOWANCE OF CREDIT.—

23 “(1) IN GENERAL.—For purposes of section 38,
24 in the case of a taxpayer who holds a qualified eq-
25 uity investment on a credit allowance date of such

1 investment which occurs during the taxable year, the
2 research investment tax credit determined under this
3 section for such taxable year is an amount equal to
4 the 5 percent of the amount paid to the qualified re-
5 search entity for such investment at its original
6 issue.

7 “(2) CREDIT ALLOWANCE DATE.—For purposes
8 of paragraph (1), the term ‘credit allowance date’
9 means, with respect to any qualified equity invest-
10 ment—

11 “(A) the date on which such investment is
12 initially made, and

13 “(B) each of the 4 anniversary dates of
14 such date thereafter.

15 “(b) QUALIFIED EQUITY INVESTMENT.—For pur-
16 poses of this section—

17 “(1) IN GENERAL.—The term ‘qualified equity
18 investment’ means any equity investment in a quali-
19 fied research entity if—

20 “(A) such investment is acquired by the
21 taxpayer at its original issue (directly or
22 through an underwriter) solely in exchange for
23 cash,

1 “(B) substantially all of such cash is used
2 by the qualified research entity to make quali-
3 fied research investments, and

4 “(C) such investment is designated for
5 purposes of this section by the qualified re-
6 search entity.

7 Such term shall not include any equity investment
8 issued by a qualified research entity more than 5
9 years after the date that such entity receives an allo-
10 cation under subsection (e). Any allocation not used
11 within such 5-year period may be reallocated by the
12 Secretary under subsection (e).

13 “(2) LIMITATION.—The maximum amount of
14 equity investments issued by a qualified research en-
15 tity which may be designated under paragraph
16 (1)(C) by such entity shall not exceed the portion of
17 the limitation amount allocated under subsection (f)
18 to such entity.

19 “(3) SAFE HARBOR FOR DETERMINING USE OF
20 CASH.—The requirement of paragraph (1)(B) shall
21 be treated as met if at least 85 percent of the aggre-
22 gate gross assets of the qualified research entity are
23 invested in qualified research investments.

24 “(4) TREATMENT OF SUBSEQUENT PUR-
25 CHASERS.—The term ‘qualified research investment’

1 includes any equity investment which would (but for
2 paragraph (1)(A)) be a qualified equity investment
3 in the hands of the taxpayer if such investment was
4 a qualified equity investment in the hands of a prior
5 holder.

6 “(5) REDEMPTIONS.—A rule similar to the rule
7 of section 1202(e)(3) shall apply for purposes of this
8 subsection.

9 “(6) EQUITY INVESTMENT.—The term ‘equity
10 investment’ means—

11 “(A) any stock (other than nonqualified
12 preferred stock as defined in section 351(g)(2))
13 in an entity which is a corporation, and

14 “(B) any capital interest in an entity
15 which is a partnership.

16 “(c) QUALIFIED RESEARCH ENTITY.—For purposes
17 of this section, the term ‘qualified research entity’ means
18 any domestic corporation or partnership if—

19 “(1) the primary mission of the entity is serv-
20 ing, or providing investment capital for, qualifying
21 small business innovation companies,

22 “(2) the entity maintains accountability to engi-
23 neers, scientists, and other research-related profes-
24 sionals through their representation on any gov-

1 erning board of the entity or on any advisory board
2 to the entity, and

3 “(3) the entity is certified by the Secretary for
4 purposes of this section as being a qualified research
5 entity.

6 “(d) QUALIFIED RESEARCH INVESTMENTS.—For
7 purposes of this section—

8 “(1) IN GENERAL.—The term ‘qualified re-
9 search investment’ means—

10 “(A) any capital or equity investment in,
11 or loan to, any qualifying small business inno-
12 vation company, which when added to any other
13 such investment in or loan to such company
14 taken into account for purposes of this section
15 for any taxable year does not exceed
16 \$10,000,000, and

17 “(B) the purchase from another qualified
18 research entity of any loan made by such entity
19 which is a qualified research investment.

20 “(2) QUALIFYING SMALL BUSINESS INNOVA-
21 TION COMPANY.—

22 “(A) IN GENERAL.—For purposes of para-
23 graph (1), the term ‘qualifying small business
24 innovation company’ means, with respect to any
25 taxable year, any corporation (including a non-

1 profit corporation) or partnership if for such
2 year—

3 “(i) the gross receipts of such entity
4 do not exceed \$10,000,000,

5 “(ii) the aggregate gross assets of
6 such entity do not exceed \$25,000,000,
7 and

8 “(iii) at least 50 percent of the gross
9 expenditures of such entity would qualify
10 as research or experimental expenditures
11 under section 174.

12 All persons treated as a single employer under
13 subsection (a) or (b) of section 52 or subsection
14 (m) or (o) of section 414 shall be treated as one
15 person for purposes of this subparagraph.

16 “(B) AGGREGATE GROSS ASSETS.—For
17 purposes of subparagraph (A)(ii), the term ‘ag-
18 gregate gross assets’ shall have meaning given
19 such term by section 1202(d)(2), except such
20 term shall not include intangibles and goodwill.

21 “(e) NATIONAL LIMITATION ON AMOUNT OF INVEST-
22 MENTS DESIGNATED.—

23 “(1) IN GENERAL.—There is a research invest-
24 ment tax credit limitation for each calendar year.

25 Such limitation is—

1 “(A) \$500,000,000 for 2009,

2 “(B) \$750,000,000 for 2010 and 2011,

3 and

4 “(C) \$1,000,000,000 for 2012 and 2013.

5 “(2) ALLOCATION OF LIMITATION.—The limita-
6 tion under paragraph (1) shall be allocated by the
7 Secretary among qualified research entities selected
8 by the Secretary, with not more than \$25,000,000
9 allocated to any 1 qualified research entity in any
10 calendar year. In making allocations under the pre-
11 ceding sentence, the Secretary shall give priority to
12 any entity—

13 “(A) with a record of having successfully
14 provided capital or technical assistance to quali-
15 fying small business innovation companies, or

16 “(B) which intends to satisfy the require-
17 ment under subsection (b)(1)(B) by making
18 qualified research investments in 1 or more
19 companies in which persons unrelated to such
20 entity (within the meaning of section 267(b) or
21 707(b)(1)) hold the majority equity interest,
22 and

23 if more than 1 qualified research entity meets sub-
24 paragraph (A) or (B), the Secretary shall give pri-
25 ority to the entity with the earliest investment. If in-

1 sufficient allocations are available for all qualified
2 applicants in any calendar year, the priorities estab-
3 lished for such applicants without allocations shall
4 be carried over to the succeeding calendar year.

5 “(3) CARRYOVER OF UNUSED LIMITATION.—If
6 the research investment tax credit limitation for any
7 calendar year exceeds the aggregate amount allo-
8 cated under paragraph (2) for such year, such limi-
9 tation for the succeeding calendar year shall be in-
10 creased by the amount of such excess. No amount
11 may be carried under the preceding sentence to any
12 calendar year after 2020.

13 “(f) RECAPTURE OF CREDIT IN CERTAIN CASES.—

14 “(1) IN GENERAL.—If, at any time during the
15 7-year period beginning on the date of the original
16 issue of a qualified equity investment in a qualified
17 research entity, there is a recapture event with re-
18 spect to such investment, then the tax imposed by
19 this chapter for the taxable year in which such event
20 occurs shall be increased by the credit recapture
21 amount.

22 “(2) CREDIT RECAPTURE AMOUNT.—For pur-
23 poses of paragraph (1), the credit recapture amount
24 is an amount equal to the sum of—

1 “(A) the aggregate decrease in the credits
2 allowed to the taxpayer under section 38 for all
3 prior taxable years which would have resulted if
4 no credit had been determined under this sec-
5 tion with respect to such investment, plus

6 “(B) interest at the underpayment rate es-
7 tablished under section 6621 on the amount de-
8 termined under subparagraph (A) for each
9 prior taxable year for the period beginning on
10 the due date for filing the return for the prior
11 taxable year involved.

12 No deduction shall be allowed under this chapter for
13 interest described in subparagraph (B).

14 “(3) RECAPTURE EVENT.—For purposes of
15 paragraph (1), there is a recapture event with re-
16 spect to an equity investment in a qualified research
17 entity if—

18 “(A) such entity ceases to be a qualified
19 research entity,

20 “(B) the proceeds of the investment cease
21 to be used as required of subsection (b)(1)(B),
22 or

23 “(C) such investment is redeemed by such
24 entity.

25 “(4) SPECIAL RULES.—

1 “(A) TAX BENEFIT RULE.—The tax for
2 the taxable year shall be increased under para-
3 graph (1) only with respect to credits allowed
4 by reason of this section which were used to re-
5 duce tax liability. In the case of credits not so
6 used to reduce tax liability, the carryforwards
7 and carrybacks under section 39 shall be appro-
8 priately adjusted.

9 “(B) NO CREDITS AGAINST TAX.—Any in-
10 crease in tax under this subsection shall not be
11 treated as a tax imposed by this chapter for
12 purposes of determining the amount of any
13 credit under this chapter or for purposes of sec-
14 tion 55.

15 “(g) REGULATIONS.—The Secretary shall prescribe
16 such regulations as may be appropriate to carry out this
17 section, including regulations—

18 “(1) which prevent the abuse of the purposes of
19 this section,

20 “(2) which provide rules for determining wheth-
21 er the requirement of subsection (b)(1)(B) is treated
22 as met,

23 “(3) which impose appropriate reporting re-
24 quirements, and

1 “(4) which apply the provisions of this section
2 to newly formed entities.”.

3 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
4 tion 38(b) of the Internal Revenue Code of 1986 (relating
5 to current year business credit) is amended by striking
6 “plus” at the end of paragraph (34), by striking the period
7 at the end of paragraph (35) and inserting “, plus”, and
8 by adding at the end the following new paragraph:

9 “(36) the credit determined under section
10 45R(a).”.

11 (c) CONFORMING AMENDMENT.—The table of sec-
12 tions for subpart D of part IV of subchapter A of chapter
13 1 of the Internal Revenue Code of 1986 is amended by
14 adding at the end the following new item:

 “Sec. 45R. Research investment tax credit.”.

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to investments made after Decem-
17 ber 31, 2008.

18 **SEC. 4. TAX-EXEMPT FINANCING OF RESEARCH PARK FA-**
19 **CILITIES.**

20 (a) IN GENERAL.—Subsection (a) of section 142 is
21 amended—

22 (1) by striking “or” at the end of paragraph
23 (14),

24 (2) by striking the period at the end of para-
25 graph (15) and inserting “, or”, and

1 (3) by inserting at the end the following new
2 paragraph:

3 “(16) research park facility.”.

4 (b) DEFINITION.—Section 142 is amended by insert-
5 ing at the end the following new subsection:

6 “(n) RESEARCH PARK FACILITY.—For purposes of
7 subsection (a)(16), the term ‘research park facility’ means
8 a facility (including buildings, land, or other structures)
9 which is used in connection with research and experimen-
10 tation (as defined in section 168(i)(11)). For purposes of
11 the preceding sentence, such term includes facilities which
12 are directly related and ancillary to a research park facil-
13 ity (determined without regard to this sentence) if—

14 “(1) such facilities are located on the same site
15 as the research park facility, and

16 “(2) not more than 25 percent of the net pro-
17 ceeds of the issue are used to provide such facili-
18 ties.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply with respect to bonds issued on
21 or after the date of the enactment of this Act.

1 **SEC. 5. CLARIFICATION OF APPLICATION OF PRIVATE AC-**
2 **TIVITY BOND RULES WITH RESPECT TO**
3 **FUNDING OF FEDERAL RESEARCH AGREE-**
4 **MENTS.**

5 Not later than 6 months after the date of the enact-
6 ment of this Act, the Secretary of the Treasury shall pre-
7 scribe guidance identifying the circumstances, if any, in
8 which the rights of the Federal Government granted under
9 chapter 18 of title 35, United States Code (commonly
10 known as the Bayh-Dole Act (Pub. Law No. 96-517))
11 constitute private business use under the private activity
12 bond rules in section 141 of the Internal Revenue Code
13 of 1986.

○