

112TH CONGRESS  
1ST SESSION

# S. 1375

To amend the Internal Revenue Code of 1986 to provide that corporate tax benefits based upon stock option compensation expenses be consistent with accounting expenses shown in corporate financial statements for such compensation.

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## IN THE SENATE OF THE UNITED STATES

JULY 14, 2011

Mr. LEVIN (for himself and Mr. BROWN of Ohio) 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 that corporate tax benefits based upon stock option compensation expenses be consistent with accounting expenses shown in corporate financial statements for such compensation.

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 “Ending Excessive Cor-  
5 porate Deductions for Stock Options Act”.

1 **SEC. 2. CONSISTENT TREATMENT OF STOCK OPTIONS BY**  
2 **CORPORATIONS.**

3 (a) CONSISTENT TREATMENT FOR WAGE DEDUC-  
4 TION.—

5 (1) IN GENERAL.—Section 83(h) of the Internal  
6 Revenue Code of 1986 (relating to deduction of em-  
7 ployer) is amended—

8 (A) by striking “In the case of” and in-  
9 serting:

10 “(1) IN GENERAL.—In the case of”, and

11 (B) by adding at the end the following new  
12 paragraph:

13 “(2) STOCK OPTIONS.—In the case of property  
14 transferred to a person in connection with a stock  
15 option, any deduction related to such stock option  
16 shall be allowed only under section 162(q) and para-  
17 graph (1) shall not apply.”.

18 (2) TREATMENT OF COMPENSATION PAID WITH  
19 STOCK OPTIONS.—Section 162 of such Code (relat-  
20 ing to trade or business expenses) is amended by re-  
21 designating subsection (q) as subsection (r) and by  
22 inserting after subsection (p) the following new sub-  
23 section:

24 “(q) TREATMENT OF COMPENSATION PAID WITH  
25 STOCK OPTIONS.—

1           “(1) IN GENERAL.—In the case of compensa-  
2           tion for personal services that is paid with stock op-  
3           tions, the deduction under subsection (a)(1) shall  
4           not exceed the amount the taxpayer has treated as  
5           compensation cost with respect to such stock options  
6           for the purpose of ascertaining income, profit, or  
7           loss in a report or statement to shareholders, part-  
8           ners, or other proprietors (or to beneficiaries), and  
9           shall be taken into account in the same period that  
10          such compensation cost is recognized for such pur-  
11          pose.

12           “(2) SPECIAL RULES FOR CONTROLLED  
13          GROUPS.—The Secretary may prescribe rules for the  
14          application of paragraph (1) in cases where the  
15          stock option is granted by—

16                   “(A) a parent or subsidiary corporation  
17                   (within the meaning of section 424) of the tax-  
18                   payer, or

19                   “(B) another corporation.”.

20          (b) CONSISTENT TREATMENT FOR RESEARCH TAX  
21          CREDIT.—Section 41(b)(2)(D) of the Internal Revenue  
22          Code of 1986 (defining wages for purposes of credit for  
23          increasing research expenses) is amended by inserting at  
24          the end the following new clause:

1                   “(iv) SPECIAL RULE FOR STOCK OP-  
2                   TIONS.—The amount which may be treated  
3                   as wages for any taxable year in connec-  
4                   tion with the issuance of a stock option  
5                   shall not exceed the amount allowed for  
6                   such taxable year as a compensation de-  
7                   duction under section 162(q) with respect  
8                   to such stock option.”.

9           (c) APPLICATION OF AMENDMENTS.—The amend-  
10          ments made by this section shall apply to stock options  
11          exercised after the date of the enactment of this Act, ex-  
12          cept that—

13               (1) such amendments shall not apply to stock  
14          options that were granted before such date and that  
15          vested in taxable periods beginning on or before  
16          June 15, 2005,

17               (2) for stock options that were granted before  
18          such date of enactment and vested during taxable  
19          periods beginning after June 15, 2005, and ending  
20          before such date of enactment, a deduction under  
21          section 162(q) of the Internal Revenue Code of 1986  
22          (as added by subsection (a)(2)) shall be allowed in  
23          the first taxable period of the taxpayer that ends  
24          after such date of enactment,

1           (3) for public entities reporting as small busi-  
2           ness issuers and for non-public entities required to  
3           file public reports of financial condition, paragraphs  
4           (1) and (2) shall be applied by substituting “Decem-  
5           ber 15, 2005” for “June 15, 2005”, and

6           (4) no deduction shall be allowed under section  
7           83(h) or section 162(q) of such Code with respect to  
8           any stock option the vesting date of which is  
9           changed to accelerate the time at which the option  
10          may be exercised in order to avoid the applicability  
11          of such amendments.

12 **SEC. 3. APPLICATION OF EXECUTIVE PAY DEDUCTION**  
13 **LIMIT.**

14          (a) IN GENERAL.—Subparagraph (D) of section  
15 162(m)(4) of the Internal Revenue Code of 1986 (defining  
16 applicable employee remuneration) is amended to read as  
17 follows:

18                   “(D) STOCK OPTION COMPENSATION.—  
19           The term ‘applicable employee remuneration’  
20           shall include any compensation deducted under  
21           subsection (q), and such compensation shall not  
22           qualify as performance-based compensation  
23           under subparagraph (C).”.

1       (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to stock options exercised or grant-  
3 ed after the date of the enactment of this Act.

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