

AMENDMENT

OFFERED BY MR. NEAL OF MASSACHUSETTS

Add at the end the following:

1 **SEC. 3. TREATMENT OF RESEARCH CREDIT FOR CERTAIN**
2 **STARTUP COMPANIES.**

3 (a) IN GENERAL.—

4 (1) IN GENERAL.—Section 41 of the Internal
5 Revenue Code of 1986, as amended by section 2 of
6 this Act, is amended by adding at the end the fol-
7 lowing new subsection:

8 “(h) TREATMENT OF CREDIT TO QUALIFIED SMALL
9 BUSINESSES.—

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

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

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

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

6 “(i) a corporation, partnership, or S
7 corporation if—

8 “(I) the gross receipts (as deter-
9 mined under subsection (c)(7)) of
10 such entity for the taxable year is less
11 than \$5,000,000, and

12 “(II) such entity did not have
13 gross receipts (as so determined) for
14 any period preceding the 5-taxable-
15 year period ending with such taxable
16 year, and

17 “(ii) any person not described in sub-
18 paragraph (A) if clauses (i) and (ii) of sub-
19 paragraph (A) applied to such person, de-
20 termined—

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

23 “(II) in the case of an individual,
24 by only taking into account the aggre-
25 gate gross receipts received by such

1 individual in carrying on trades or
2 businesses of such individual.

3 “(B) LIMITATION.—Such term shall not
4 include an organization which is exempt from
5 taxation under section 501.

6 “(4) ELECTION.—

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

10 “(B) REVOCATION.—An election under
11 this subsection may not be revoked without the
12 consent of the Secretary.

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

17 “(5) AGGREGATION RULES.—For purposes of
18 determining the \$250,000 limitation under para-
19 graph (2) and determining gross receipts under
20 paragraph (3), all members of the same controlled
21 group of corporations (within the meaning of section
22 267(f)) and all persons under common control (with-
23 in the meaning of section 52(b) but determined by
24 treating an interest of more than 50 percent as a
25 controlling interest) shall be treated as 1 person.

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

4 “(A) regulations to prevent the avoidance
5 of the purposes of paragraph (3) through the
6 use of successor companies or other means,

7 “(B) regulations to minimize compliance
8 and record-keeping burdens under this sub-
9 section for start-up companies, and

10 “(C) regulations for recapturing the ben-
11 efit of credits determined under section 3111(f)
12 in cases where there is a subsequent adjustment
13 to the payroll tax credit portion of the credit
14 determined under subsection (a), including re-
15 quiring amended returns in the cases where
16 there is such an adjustment.”.

17 (2) CONFORMING AMENDMENT.—Section
18 280C(c) of the Internal Revenue Code of 1986 is
19 amended by adding at the end the following new
20 paragraph:

21 “(5) TREATMENT OF QUALIFIED SMALL BUSI-
22 NESS CREDIT.—For purposes of determining the
23 amount of any credit under section 41(a) under this
24 subsection, any election under section 41(h) shall be
25 disregarded.”.

1 (b) CREDIT ALLOWED AGAINST FICA TAXES.—

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

5 “(f) CREDIT FOR RESEARCH EXPENDITURES OF
6 QUALIFIED SMALL BUSINESSES.—

7 “(1) IN GENERAL.—In the case of a qualified
8 small business which has made an election under
9 section 41(h), there shall be allowed as a credit
10 against the tax imposed by subsection (a) on wages
11 paid with respect to the employment of all employees
12 of the qualified small business for days in an appli-
13 cable calendar quarter an amount equal to the pay-
14 roll tax credit portion of the research credit deter-
15 mined under section 41(a).

16 “(2) CARRYOVER OF UNUSED CREDIT.—In any
17 case in which the payroll tax credit portion of the re-
18 search credit determined under section 41(a) exceeds
19 the tax imposed under subsection (a) for an applica-
20 ble calendar quarter—

21 “(A) the succeeding calendar quarter shall
22 be treated as an applicable calendar quarter,
23 and

24 “(B) the amount of credit allowed under
25 paragraph (1) shall be reduced by the amount

1 of credit allowed under such paragraph for all
2 preceding applicable calendar quarters.

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

6 “(A) all persons treated as a single tax-
7 payer under section 41 shall be treated as a
8 single taxpayer under this section, and

9 “(B) the credit (if any) allowable by this
10 section to each such member shall be its pro-
11 portionate share of the qualified research ex-
12 penses, basic research payments, and amounts
13 paid or incurred to energy research consor-
14 tiums, giving rise to the credit allowable under
15 section 41.

16 “(4) DEFINITIONS.—For purposes of this sub-
17 section—

18 “(A) APPLICABLE CALENDAR QUARTER.—

19 The term ‘applicable calendar quarter’ means—

20 “(i) the first calendar quarter fol-
21 lowing the date on which the qualified
22 small business files a return under section
23 6012 for the taxable year for which the
24 payroll tax credit portion of the research

1 credit under section 41(a) is determined,
2 and

3 “(ii) any succeeding calendar quarter
4 treated as an applicable calendar quarter
5 under paragraph (2)(A).

6 “For purposes of determining the date on
7 which a return is filed, rules similar to the rules
8 of section 6513 shall apply.

9 “(B) OTHER TERMS.—Any term used in
10 this subsection which is also used in section 41
11 shall have the meaning given such term under
12 section 41.”.

13 (2) TRANSFERS TO FEDERAL OLD-AGE AND
14 SURVIVORS INSURANCE TRUST FUND.—There are
15 hereby appropriated to the Federal Old-Age and
16 Survivors Trust Fund and the Federal Disability In-
17 surance Trust Fund established under section 201
18 of the Social Security Act (42 U.S.C. 401) amounts
19 equal to the reduction in revenues to the Treasury
20 by reason of the amendments made by paragraph
21 (1). Amounts appropriated by the preceding sen-
22 tence shall be transferred from the general fund at
23 such times and in such manner as to replicate to the
24 extent possible the transfers which would have oc-

1 curred to such Trust Fund had such amendments
2 not been enacted.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2015.

6 **SEC. 4. RESEARCH CREDIT DISALLOWED IN CASE OF IN-**
7 **VERTED CORPORATIONS.**

8 (a) IN GENERAL.—Section 41 of the Internal Rev-
9 enue Code of 1986, as amended by this Act, is amended
10 by adding at the end the following new subsection:

11 “(i) CREDIT DISALLOWED IN CASE OF INVERTED
12 CORPORATION.—

13 “(1) IN GENERAL.—No credit shall be allowed
14 under subsection (a) with respect to a taxpayer
15 which is, or is a member of an expanded affiliated
16 group which includes, an applicable inverted cor-
17 poration.

18 “(2) APPLICABLE INVERTED CORPORATION.—
19 For purposes of this section, the term ‘applicable in-
20 verted corporation’ means any foreign corporation
21 which—

22 “(A) would be a surrogate foreign corpora-
23 tion under subsection (a)(2) of section 7874 if
24 such subsection were applied by substituting
25 ‘80 percent’ for ‘60 percent’, or

1 “(B) is an inverted domestic corporation.

2 “(3) INVERTED DOMESTIC CORPORATION.—For
3 purposes of this subsection, a foreign corporation
4 shall be treated as an inverted domestic corporation
5 if, pursuant to a plan (or a series of related trans-
6 actions)—

7 “(A) the entity completes after May 8,
8 2014, the direct or indirect acquisition of—

9 “(i) substantially all of the properties
10 held directly or indirectly by a domestic
11 corporation, or

12 “(ii) substantially all of the assets of,
13 or substantially all of the properties consti-
14 tuting a trade or business of, a domestic
15 partnership, and

16 “(B) after the acquisition, either—

17 “(i) more than 50 percent of the stock
18 (by vote or value) of the entity is held—

19 “(I) in the case of an acquisition
20 with respect to a domestic corpora-
21 tion, by former shareholders of the
22 domestic corporation by reason of
23 holding stock in the domestic corpora-
24 tion, or

1 “(II) in the case of an acquisition
2 with respect to a domestic partner-
3 ship, by former partners of the do-
4 mestic partnership by reason of hold-
5 ing a capital or profits interest in the
6 domestic partnership, or

7 “(ii) the management and control of
8 the expanded affiliated group which in-
9 cludes the entity occurs, directly or indi-
10 rectly, primarily within the United States,
11 and such expanded affiliated group has
12 significant domestic business activities.

13 “(4) EXCEPTION FOR CORPORATIONS WITH
14 SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN
15 COUNTRY OF ORGANIZATION.—A foreign corporation
16 described in paragraph (3) shall not be treated as an
17 inverted domestic corporation if after the acquisition
18 the expanded affiliated group which includes the en-
19 tity has substantial business activities in the foreign
20 country in which or under the law of which the enti-
21 ty is created or organized when compared to the
22 total business activities of such expanded affiliated
23 group. For purposes of applying section
24 7874(a)(2)(B)(iii) and the preceding sentence, the
25 term ‘substantial business activities’ shall have the

1 meaning given such term under Treasury regulations
2 in effect on May 8, 2014, except that the Secretary
3 may issue regulations increasing the threshold per-
4 cent in any of the tests under such regulations for
5 determining if business activities constitute substan-
6 tial business activities for purposes of this para-
7 graph.

8 “(5) MANAGEMENT AND CONTROL.—For pur-
9 poses of paragraph (3)(B)(ii)—

10 “(A) IN GENERAL.—The Secretary of the
11 Treasury shall prescribe regulations for pur-
12 poses of determining cases in which the man-
13 agement and control of an expanded affiliated
14 group is to be treated as occurring, directly or
15 indirectly, primarily within the United States.
16 The regulations prescribed under the preceding
17 sentence shall apply to periods after May 8,
18 2014.

19 “(B) EXECUTIVE OFFICERS AND SENIOR
20 MANAGEMENT.—Such regulations shall provide
21 that the management and control of an ex-
22 panded affiliated group shall be treated as oc-
23 ccurring, directly or indirectly, primarily within
24 the United States if substantially all of the ex-
25 ecutive officers and senior management of the

1 expanded affiliated group who exercise day-to-
2 day responsibility for making decisions involving
3 strategic, financial, and operational policies of
4 the expanded affiliated group are based or pri-
5 marily located within the United States. Indi-
6 viduals who in fact exercise such day-to-day re-
7 sponsibilities shall be treated as executive offi-
8 cers and senior management regardless of their
9 title.

10 “(6) SIGNIFICANT DOMESTIC BUSINESS ACTIVI-
11 TIES.—For purposes of paragraph (3)(B)(ii), an ex-
12 panded affiliated group has significant domestic
13 business activities if at least 25 percent of—

14 “(A) the employees of the group are based
15 in the United States,

16 “(B) the employee compensation incurred
17 by the group is incurred with respect to employ-
18 ees based in the United States,

19 “(C) the assets of the group are located in
20 the United States, or

21 “(D) the income of the group is derived in
22 the United States,

23 determined in the same manner as such determina-
24 tions are made for purposes of determining substan-
25 tial business activities under regulations referred to

1 in paragraph (4) as in effect on May 8, 2014, but
2 applied by treating all references in such regulations
3 to ‘foreign country’ and ‘relevant foreign country’ as
4 references to ‘the United States’. The Secretary of
5 the Treasury may issue regulations decreasing the
6 threshold percent in any of the tests under such reg-
7 ulations for determining if business activities con-
8 stitute significant domestic business activities for
9 purposes of this paragraph.

10 “(c) DEFINITIONS.—For purposes of this section, the
11 terms ‘domestic corporation’, ‘foreign corporation’, and
12 ‘expanded affiliated group’ shall each have the same mean-
13 ing as when used in section 7874.”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 December 31, 2015.

