

115TH CONGRESS  
2D SESSION

# H. R. 6756

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2018

Received; read twice and referred to the Committee on Finance

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “American Innovation  
3 Act of 2018”.

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

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

12 **“SEC. 195. START-UP AND ORGANIZATIONAL EXPENDI-**  
13 **TURES.**

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

17 “(b) ELECTION TO DEDUCT.—

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

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

25 “(i) the aggregate amount of start-up  
26 and organizational expenditures paid or in-

1 curred in connection with such active trade  
2 or business, or

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

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

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

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

24 “(A) such dollar amount, multiplied by

1           “(B) the cost-of-living adjustment deter-  
2           mined under section 1(f)(3) for the calendar  
3           year in which the taxable year begins, deter-  
4           mined by substituting ‘calendar year 2018’ for  
5           ‘calendar year 2016’ in subparagraph (A)(ii)  
6           thereof.

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

10          “(c) ALLOWANCE OF DEDUCTION UPON LIQUIDA-  
11          TION OR DISPOSITION.—

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

20           “(2) DISPOSITION OF TRADE OR BUSINESS.—If  
21           any trade or business is completely disposed of or  
22           discontinued by the taxpayer, any start-up expendi-  
23           tures paid or incurred in connection with such trade  
24           or business which were not allowed as a deduction  
25           by reason of this section (and not taken into account

1 in connection with a liquidation to which paragraph  
2 (1) applies) may be deducted to the extent allowable  
3 under section 165. For purposes of this paragraph,  
4 in the case of any deduction allowed under sub-  
5 section (b)(1) with respect to both start-up and or-  
6 ganizational expenditures, the amount treated as so  
7 allowed with respect to start-up expenditures shall  
8 bear the same ratio to such deduction as the start-  
9 up expenditures taken into account in determining  
10 such deduction bears to the aggregate of the start-  
11 up and organizational expenditures so taken into ac-  
12 count.”.

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

17 “(3) ORGANIZATIONAL EXPENDITURES.—The  
18 term ‘organizational expenditures’ means any ex-  
19 penditure which—

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

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

23 “(C) is of a character which, if expended  
24 incident to the creation of a corporation or a

1 partnership having an ascertainable life, would  
2 be 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  
9 redesignated by subsection (a), is amended to read as fol-  
10 lows:

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

15 (d) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

13 (J) Section 1363(b) of such Code is amended  
14 by adding “and” at the end of paragraph (2), by  
15 striking paragraph (3), and by redesignating para-  
16 graph (4) as paragraph (3).

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

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

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

24 “No deduction shall be allowed under this chapter to  
25 a partnership or to any partner of the partnership for any

1 amounts paid or incurred to promote the sale of (or to  
2 sell) an interest in the partnership.”.

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

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

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

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

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

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

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

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

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

1           “(A) IN GENERAL.—In the case of any net  
2 operating loss carryforward described in para-  
3 graph (1)(A) which arose in a start-up period  
4 taxable year, the amount of such net operating  
5 loss carryforward otherwise taken into account  
6 under such paragraph shall be reduced by the  
7 net start-up loss determined with respect to the  
8 trade or business referred to in subparagraph  
9 (B)(i) for such start-up period taxable year.

10           “(B) START-UP PERIOD TAXABLE YEAR.—  
11 The term ‘start-up period taxable year’ means  
12 any taxable year of the old loss corporation  
13 which—

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

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

22           “(C) NET START-UP LOSS.—

23           “(i) IN GENERAL.—The term ‘net  
24 start-up loss’ means, with respect to any  
25 trade or business referred to in subpara-

1 graph (B)(i) for any start-up period tax-  
2 able year, the amount which bears the  
3 same ratio (but not greater than 1) to the  
4 net operating loss carryforward which  
5 arose in such start-up period taxable year  
6 as—

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

14 “(II) the amount of the net oper-  
15 ating loss determined for such start-  
16 up period taxable year.

17 “(ii) SPECIAL RULE FOR LAST TAX-  
18 ABLE YEAR IN START-UP PERIOD.—In the  
19 case of any start-up period taxable year  
20 which ends after the close of the 3-year pe-  
21 riod described in subparagraph (B)(i) with  
22 respect to any trade or business, the net  
23 start-up loss with respect to such trade or  
24 business for such start-up period taxable  
25 year shall be the same proportion of such

1           loss (determined without regard to this  
2           clause) as the proportion of such start-up  
3           period taxable year which is on or before  
4           the last day of such period.

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

20          “(E) APPLICATION TO TAXABLE YEARS  
21          WHICH ARE START-UP PERIOD TAXABLE YEARS  
22          WITH RESPECT TO MORE THAN 1 TRADE OR  
23          BUSINESS.—In the case of any net operating  
24          loss carryforward which arose in a taxable year

1           which is a start-up period taxable year with re-  
2           spect to more than 1 trade or business—

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

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

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

16                  “(G) CERTAIN TITLE 11 OR SIMILAR  
17                  CASES.—

18                   “(i) MULTIPLE OWNERSHIP  
19                   CHANGES.—In the case of a 2nd ownership  
20                   change to which subsection (l)(5)(D) ap-  
21                   plies, this paragraph shall not apply for  
22                   purposes of determining the pre-change  
23                   loss with respect to such 2nd ownership  
24                   change.

1                   “(ii) CERTAIN INSOLVENCY TRANS-  
2                   ACTIONS.—If subsection (l)(6) applies for  
3                   purposes of determining the value of the  
4                   old loss corporation under subsection (e),  
5                   this paragraph shall not apply.

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

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

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

22                  “(e) EXCEPTION FOR START-UP EXCESS CREDITS.—  
23                  “(1) IN GENERAL.—In the case of any unused  
24                  general business credit of the corporation under sec-  
25                  tion 39 which arose in a start-up period taxable

1 year, the amount of such unused general business  
2 credit otherwise taken into account under subsection  
3 (a)(2)(A) shall be reduced by the start-up excess  
4 credit determined with respect to any trade or busi-  
5 ness referred to in section 382(d)(4)(B)(i) for such  
6 start-up period taxable year.

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

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

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

1           “(B) the amount of the general business  
2           credit determined for such start-up period tax-  
3           able year.

4           “(4) APPLICATION OF CERTAIN RULES.—Rules  
5           similar to the rules of subparagraphs (C)(ii), (D),  
6           (E), and (F) of section 382(d)(4) shall apply for  
7           purposes of this subsection.

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

14          (c) EFFECTIVE DATE.—The amendments made by  
15          this section shall apply to taxable years ending after Sep-  
16          tember 10, 2018.

17       **SEC. 4. BUDGETARY EFFECTS.**

18          (a) STATUTORY PAYGO SCORECARDS.—The budg-  
19          etary effects of this Act shall not be entered on either  
20          PAYGO scorecard maintained pursuant to section 4(d) of  
21          the Statutory Pay-As-You-Go Act of 2010.

22          (b) SENATE PAYGO SCORECARDS.—The budgetary  
23          effects of this Act shall not be entered on any PAYGO

- 1 scorecard maintained for purposes of section 4106 of H.
- 2 Con. Res. 71 (115th Congress).

Passed the House of Representatives September 27,  
2018.

Attest:

KAREN L. HAAS,

*Clerk.*