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Senate

The Senate met at 12 noon and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear Father, You replenish our diminished strength with a fresh flow of energy and resiliency. The tightly wound springs of tension within us are released and unwind until there is a profound peace inside. We relinquish our worries to You and our anxiety drains away. We take courage because You have taken hold of us. Now we know that courage is fear that has said its prayers. We spread out before You the challenges of the week ahead and see them in the proper perspective of Your power. We dedicate ourselves to do things Your way under Your sway. And now, we are filled with Your joy which is so much more than happiness. We press on to the work of this week with enthusiasm. It's great to be alive! In the Name of our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

Mr. KYL. Thank you, Mr. President.

SCHEDULE

Mr. KYL. Mr. President, for the benefit of all Members, I would like to announce that there will be a period of morning business today until 2 p.m. Following morning business, the motion to proceed to the Internet tax bill will be the pending business. Members are encouraged to come to the floor to discuss the important issue of Internet tax.

At 3:30 p.m., under the previous order, the Senate will resume consideration of the so-called Vacancies Act for debate only until 5:30 p.m. Following that debate, the Senate will proceed to a cloture vote on the vacancies bill. Therefore, the first vote of today's session will occur at 5:30 p.m. Following that vote, the Senate may consider any other legislative or executive items cleared for action. Members are reminded that second-degree amendments to the vacancies bill must be filed by 4:30 p.m. today.

Mr. President, I now ask unanimous consent that Senators FEINSTEIN and KYL control the time during morning business from 12:45 until 1:30 p.m.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KYL. I thank my colleagues for their attention.

Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KYL). Without objection, it is so ordered. The Senator from New Mexico is recognized.

PRIVILEGE OF THE FLOOR

Mr. BINGAMAN. Mr. President, I ask unanimous consent that floor privileges be granted to Dr. Ken Whang, of the staff of the Joint Economic Committee, during morning business today.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 2 p.m. with Senators permitted to speak for up to 5 minutes each.

ORDER OF PROCEDURE

Mr. BINGAMAN. Mr. President, I ask unanimous consent that I be allowed to speak for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

R&D TAX CREDIT

Mr. BINGAMAN. Mr. President, both the House and the Senate are working on what is likely to be a final tax bill for this Congress. As we go about considering tax bills, I hope my colleagues on both sides of the aisle will be thinking about the long-term economic effects of the legislation.

Let me start, of course, by making a distinction that should be obvious to all of us who work around here. That is the distinction between tax bills that are paid for and tax bills that are not paid for and that instead obtain the revenue for the tax cuts from the surplus that we anticipate.

I agree with the President that if we do a tax bill this year—and I hope we are able to do a tax bill—that we will pay for the tax bill, that we take whatever revenue is required to make those cuts in taxes, and that we will find revenue in the current budget with which to do that.

I do not think the American people want us to go ahead and begin to spend an anticipated surplus which we have not even realized as yet. Unfortunately, some of the tax proposals—particularly the one passed by the House on Saturday—have that very major defect.

But let me get back to the primary subject of my comments, which is that if we pass tax legislation we need to be thinking about the long-term economic effects of such legislation. Will such bills enhance our economy by promoting sound investments and sustained future economic growth? Or, instead, will they threaten our projected budget surplus and Social Security without

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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really doing anything for the future economic well-being of the country?

I raise these questions because there is one crucial element of our Tax Code, more than any other provision in the code, that is directed at our future economic growth. In all the discussions of taxes that have occurred over the past few months, that provision appears to have been given very short shrift. I am referring to the research and experimentation tax credit, commonly called the R&D tax credit, which is slated for yet another minimal, temporary extension, the way tax bills seem to be evolving here today.

As I am sure most of my colleagues are well aware, investment in research and development is the single largest contributing factor to our past, present and future economic growth. In an economy that is increasingly knowledge-based and increasingly globalized, it is also an important factor in the competitiveness of American industry. Research leads to improved productivity, economic growth, better jobs and new technologies—technologies that have spawned entire new industries and revolutionized the way people do business around the world. But our research tax policy has not been keeping pace with today's economic realities.

Research investment is of greater and greater importance to American industry. But the on-again-off-again research credit is becoming less and less certain. It was allowed to expire for the ninth time this past June, and is slated for a renewal for less than 2 years.

Research is being done by large and small businesses in a growing variety of different industries. The way that the credit is currently structured, some companies derive incentive value from it, but others, even though they may be making identical research investments, do not get value.

Research is also being done increasingly in partnerships. Without partnerships between industry and Federal laboratories, we would never have created the Internet. Without collaborations between independent industry and universities, we would never have biotech. Without alliances among large and small firms, and in broad-based research consortia, we would not be seeing the efficiency gains in our manufacturing base that have been bridging the benefits of technological advances to every corner of our economy. But the research credit, as it is currently structured, does little, if anything, to encourage these partnerships.

Research is changing. It is important to American business. Its importance to American business is growing. Yet, our policy is stuck in an outdated status quo.

We have an R&D tax credit that is complicated and difficult for many companies—especially small companies—to use. We have an R&D tax credit that offers almost no incentive—less than three cents per additional dollar of research investment—for many of our, historically, most innovative research-intensive companies. We have an R&D tax credit that does nothing to encourage the interchange of ideas between industry and our great universities, Federal laboratories and other companies. We have an R&D tax credit that cannot even be relied upon as an incentive that will last for more than 1 or 2 years at a time. So the obvious question is: What kind of a commitment is this to America's economic future?

The U.S. Senate has an opportunity, as we consider tax legislation in the remaining days of this Congress, to move beyond this sorry status quo. Improvements to our research tax policy could not come at a more critical time—while our economy and our Federal finances are in good order but as we look with some anxiety toward prospects for continued prosperity.

I introduced legislation this summer—Senate bill 2268—to improve the research credit. As the ranking member of the Joint Economic Committee, I then organized a workshop in conjunction with the Senate Science and Technology Caucus on the topic of R&D tax credits. That workshop received the views of a broad range of experts from government, industry and universities who have studied the problems of the current R&D tax credit, and have proposed changes to make it more effective.

Invitations to attend the workshop on the tax issues were sent to legislative assistants from every Member in the Senate. As a result of that workshop, and the input that I have received from other experts in research groups and small businesses, I have developed an improved research and development tax credit proposal that adds to Senate bill 2268 provisions that will make the bill even more effective in stimulating partnerships through public-benefit research consortia, and that will provide small, high-tech businesses with tax credits for patent filing so that small businesses can more effectively defend their inventions, both here and abroad.

Mr. President, I ask unanimous consent that the text of this new proposal be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1.)

Mr. BINGAMAN. Some of my colleagues will undoubtedly be concerned about the cost of improving and making permanent the R&D tax credit, even though improvements like those in S. 2268 are long overdue. But I think there is an even more important cost to consider. What will it cost us if we don't improve the R&D tax credit?

Limiting an extension of the R&D tax credit to 20 months, as has been proposed in some of the legislation working its way through Congress, just because of the budgetary scoring consequences, and with full knowledge that we will be back in 20 months with another temporary extension that will also be limited by scoring considerations, is a false economy. The long-term revenue cost to the Treasury of ten one-year extensions of the credit, or five two-year extensions, or one ten-year extension are all the same. We are kidding ourselves if we think we were really saving any money by continuing with these piecemeal, temporary extensions. In fact, this scoring-driven strategy of repeated short-term extensions is worse than a fiscal parlor-trick. It is irresponsible public policy. Why? Because the unpredictable, on-off nature of the short-term extensions keeps America from fully realizing the long-term investments that a R&D tax credit should produce. Thus, we are failing to maximize the public benefits of the tax credit, we are reducing the degree to which it can stimulate research and invigorate our economy, and we are losing future tax revenues that would come from R&D-driven economic growth.

Our current policy, of piecemeal extension of an archaic, decreasingly effective tax structure, has gone on for 17 years now—a little longer than I have served in the Senate—and I am not the first to propose that we take a better approach. My colleague, the senior Senator from New Mexico, has proposed similar improvements to the R&D tax credit. Improving and making permanent the R&D tax credit should be a bipartisan cause. When the Senate considers tax legislation, I look forward to working on this issue with all of my colleagues who care about our economic future, and I urge the members of this body to treat research and development as an urgent priority in our upcoming deliberations.

EXHIBIT 1

SEC. 1. PERMANENT EXTENSION OF RESEARCH CREDIT.

(a) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking subsection (h).

(b) CONFORMING AMENDMENT.—Section 45C(b)(1) of the Internal Revenue Code of 1986 is amended by striking subparagraph (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after June 30, 1998.

SEC. 2. IMPROVED ALTERNATIVE INCREMENTAL CREDIT.

(a) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (as amended by section ____1) is amended by adding at the end the following new subsection:

''(h) ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—

''(1) IN GENERAL.—At the election of the taxpayer, the credit under subsection (a)(1) shall be determined under this subsection by taking into account the modifications provided by this subsection.

''(2) DETERMINATION OF BASE AMOUNT.—

''(A) IN GENERAL.—In computing the base amount under subsection (c)—

''(i) notwithstanding subsection (c)(3), the fixed-base percentage shall be equal to 85 percent of the percentage which the aggregate qualified research expenses of the taxpayer for the base period is of the aggregate gross receipts of the taxpayer for the base period, and

''(ii) the minimum base amount under subsection (c)(2) shall not apply.

''(B) START-UP AND SMALL TAXPAYERS.—In computing the base amount under subsection (c), the gross receipts of a taxpayer for any taxable year in the base period shall be treated as at least equal to $1,000,000.

''(C) BASE PERIOD.—For purposes of this subsection, the base period is the 6-taxable year period preceding the taxable year (or, if shorter, the period the taxpayer (and any predecessor) has been in existence).

''(3) QUALIFIED RESEARCH.—

''(A) IN GENERAL.—Notwithstanding subsection (d), the term 'qualified research' means research with respect to which expenditures are treated as research and development costs for the purposes of a report or statement concerning such taxable year—

''(i) to shareholders, partners, or other proprietors, or to beneficiaries, or

''(ii) for credit purposes.

Such term shall not include any research described in subparagraph (F) or (H) of subsection (d)(4).

''(B) FINANCIAL ACCOUNTING STANDARDS.—

''(i) IN GENERAL.—Subparagraph (A) shall only apply to the extent that the treatment of expenditures as research and development costs is consistent with the Statement of Financial Accounting Standards No. 2 Accounting for Research and Development Costs.

''(ii) SIGNIFICANT CHANGES.—If the Secretary determines that there is any significant change in the accounting standards described in clause (i) after the date of enactment of this subsection—

''(I) the Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of such change, and

''(II) such change shall not be taken into account for any taxable year beginning before the date which is 1 year after the date of notice under subclause (I).

''(C) TRANSITION RULE.—At the election of the taxpayer, this paragraph shall not apply in computing the base amount for any taxable year in the base period beginning before January 1, 1999.

''(4) ELECTION.—An election under this subsection shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.''

(b) CONFORMING AMENDMENT.—Section 41(c) of the Internal Revenue Code of 1986 is amended by striking paragraph (4) and redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 3. MODIFICATIONS TO CREDIT FOR BASIC RESEARCH.

(a) ELIMINATION OF INCREMENTAL REQUIREMENT.—

(1) IN GENERAL.—Paragraph (1) of section 41(e) of the Internal Revenue Code of 1986 is amended to read as follows:

''(1) IN GENERAL.—The amount of basic research payments taken into account under subsection (a)(2) shall be determined in accordance with this subsection.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 41(a)(2) of such Code is amended by striking ''determined under subsection (e)(1)(A)'' and inserting ''for the taxable year''.

(B) Section 41(e) of such Code is amended by striking paragraphs (3), (4), and (5) and by redesignating paragraphs (6) and (7) as paragraphs (3) and (4), respectively.

(C) Section 41(e)(4) of such Code (as redesignated) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(D) Clause (i) of section 170(e)(4)(B) of such Code is amended by striking ''section 41(e)(6)'' and inserting ''section 41(e)(3)''.

(b) BASIC RESEARCH.—

(1) SPECIFIC COMMERCIAL OBJECTIVE.—Section 41(e)(4) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new subparagraph:

''(F) SPECIFIC COMMERCIAL OBJECTIVE.—For purposes of subparagraph (A), research shall not be treated as having a specific commercial objective if all results of such research are to be published in such a manner as to be available to the general public prior to their use for a commercial purpose.''

(2) EXCLUSIONS FROM BASIC RESEARCH.—Section 41(e)(4)(A) of the Internal Revenue Code of 1986 (as redesignated by subsection (a)) is amended by striking clause (ii) and inserting the following:

''(ii) basic research in the arts or humanities.''

(c) EXPANSION OF CREDIT TO RESEARCH AT FEDERAL LABORATORIES.—Section 41(e)(3) of the Internal Revenue Code of 1986 (as redesignated by subsection (a)(2)(C) of this section) is amended by adding at the end the following new subparagraph:

''(E) FEDERAL LABORATORIES.—Any organization which is a federal laboratory within the meaning of that term in section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6)).''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 4. CREDIT FOR EXPENSES ATTRIBUTABLE TO CERTAIN COLLABORATIVE RESEARCH CONSORTIA.

(a) CREDIT FOR EXPENSES ATTRIBUTABLE TO CERTAIN COLLABORATIVE RESEARCH CONSORTIA.—Subsection (a) of section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking ''and'' at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting '', and'', and by adding at the end the following new paragraph:

''(3) 20 percent of the amounts paid or incurred during the taxable year (including as contributions) to a qualified research consortium.''

(b) QUALIFIED RESEARCH CONSORTIUM DEFINED.—Subsection (f) of such Code is amended by adding at the end the following new paragraph:

''(6) QUALIFIED RESEARCH CONSORTIUM.—The term 'qualified research consortium' means any organization which—

''(A) either—

''(i) is described in section 501(c)(3) and is exempt from taxation under section 501(a) and is organized and operated primarily to conduct scientific or engineering research; or

''(ii) is organized and operated primarily to conduct scientific or engineering research in the public interest (within the meaning of section 501(c)(3));

''(B) is not a private foundation;

''(C) to which at least 5 unrelated persons paid or incurred (including as contributions), during the calendar year in which the taxable year of the organization begins, amounts to such organization for scientific or engineering research; and

''(D) to which no single person paid or incurred (including as contributions) during such calendar year more than 50 percent of the total amounts received by such organization during such calendar year for scientific or engineering research.

All persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related persons for purposes of subparagraphs (C), and as a single person for purposes of subparagraph (D).''

(c) CONFORMING AMENDMENT.—Paragraph (3) of section 41(b) of such Code is amended by striking subparagraph (C).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 5. IMPROVEMENT TO CREDIT FOR SMALL BUSINESSES.

(a) ASSISTANCE TO SMALL AND START-UP BUSINESSES.—The Secretary of the Treasury or his delegate shall take such actions as are appropriate to—

(1) provide assistance to small and start-up businesses in complying with the requirements of section 41 of the Internal Revenue Code of 1986, and

(2) reduce the costs of such compliance.

(b) REPEAL OF LIMITATION ON CONTRACT RESEARCH EXPENSES PAID OR INCURRED TO SMALL BUSINESSES.—Section 41(b)(3) of the Internal Revenue Code of 1986 (as amended by section 4) is amended by adding at the end the following new subparagraph:

''(C) PAYMENTS TO ELIGIBLE SMALL BUSINESSES.—

''(i) IN GENERAL.—Subparagraph (A) shall be applied by substituting '100 percent' for '65 percent' with respect to amounts paid or incurred by the taxpayer to an eligible small business.

''(ii) ELIGIBLE SMALL BUSINESS.—For purposes of this subparagraph, the term 'eligible small business' means a small business with respect to which the taxpayer does not own (or is not considered as owning within the meaning of section 318) 50 percent or more—

''(I) if the small business is a corporation, of the outstanding stock of the corporation (either by vote or value), and

''(II) if the small business is not a corporation, of the capital or profits interest in the small business.

''(iii) SMALL BUSINESS.—For purposes of this subparagraph—

''(I) IN GENERAL.—The term 'small business' means, with respect to any calendar year, any person if such person employed an average of 500 or fewer employees on business days during either of the 2 preceding calendar years. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the person was in existence throughout the year.

''(II) STARTUPS, CONTROLLED GROUPS, AND PREDECESSORS.—Rules similar to the rules of subparagraphs (B) and (D) of section 220(c)(4) shall apply for purposes of this clause.''

(c) CREDIT FOR PATENT FILING FEES.—Section 41(a) of the Internal Revenue Code of 1986 (as amended by section 4) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following new paragraph:

''(4) 20 percent of the patent filing fees paid by a small business (as defined in subsection (b)(3)(C)(iii)) to the United States or to any foreign government.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KYL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. HUTCHISON). Without objection, it is so ordered.