

110TH CONGRESS  
1ST SESSION

# H. R. 3264

To amend the Internal Revenue Code of 1986 to modernize the tax treatment of biomedical research corporations.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2007

Ms. SCHWARTZ (for herself, Mr. BRADY of Texas, Mr. NEAL of Massachusetts, and Mr. HERGER) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to modernize the tax treatment of biomedical research corporations.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “American Life Sciences Competitiveness Act of 2007”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-  
7 wise expressly provided, whenever in this Act an amend-  
8 ment or repeal is expressed in terms of an amendment  
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-  
 2 sion of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—The table of contents is  
 4 as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROVISIONS RELATING TO CORPORATE TAX  
 INCENTIVES

Sec. 101. Modify change of ownership rules.

Sec. 102. Research credit expansion.

Sec. 103. Orphan drug credit expansion.

Sec. 104. Countermeasures and pandemic flu research incentives.

TITLE II—PROVISIONS RELATING TO INVESTOR TAX INCENTIVES

Sec. 201. Capital gains rollover.

Sec. 202. Equity credit for incubational firms.

5 **TITLE I—PROVISIONS RELATING**  
 6 **TO CORPORATE TAX INCEN-**  
 7 **TIVES**

8 **SEC. 101. MODIFY CHANGE OF OWNERSHIP RULES.**

9 (a) IN GENERAL.—Subsection (l) of section 382 is  
 10 amended by adding at the end the following new para-  
 11 graph:

12 “(9) CERTAIN FINANCING TRANSACTIONS OF  
 13 BIOMEDICAL RESEARCH CORPORATIONS.—

14 “(A) GENERAL RULE.—In the case of a  
 15 biomedical research corporation, any owner  
 16 shift involving a 5-percent shareholder which  
 17 occurs as the result of a qualified investment or  
 18 qualified transaction during the testing period  
 19 shall be treated for purposes of this section

1 (other than this paragraph) as occurring before  
2 the testing period.

3 “(B) BIOMEDICAL RESEARCH CORPORA-  
4 TION.—For purposes of this paragraph, the  
5 term ‘biomedical research corporation’ means,  
6 with respect to any qualified investment, any  
7 domestic corporation subject to tax under this  
8 subchapter which is not in bankruptcy and  
9 which, as of the time of the closing on such in-  
10 vestment—

11 “(i) holds the rights to a drug or bio-  
12 logic for which an investigational new drug  
13 application is in effect under section 505  
14 of the Federal Food, Drug, and Cosmetic  
15 Act, or holds the rights to a device for  
16 which an investigational device exemption  
17 is approved under section 520(g) of such  
18 Act, and

19 “(ii) certifies that, as of the time of  
20 such closing, the drug, biologic, or device  
21 is, or in the 6 month period beginning 3  
22 months before such closing has been,  
23 under study pursuant to an investigational  
24 use exemption under section 505(i) or sec-

1           tion 520(g) of the Federal Food, Drug,  
2           and Cosmetic Act.

3           “(C) QUALIFIED INVESTMENT.—For pur-  
4           poses of this paragraph, the term ‘qualified in-  
5           vestment’ means any acquisition of stock by a  
6           shareholder (who after such acquisition is a less  
7           than 50 percent shareholder) in a biomedical  
8           research corporation if such stock is acquired at  
9           its original issue (directly or through an under-  
10          writer) solely in exchange for cash.

11          “(D) QUALIFIED TRANSACTION.—For pur-  
12          poses of this paragraph, the term ‘qualified  
13          transaction’ means any acquisition of stock in a  
14          biomedical research corporation if such stock is  
15          acquired as part of a merger or acquisition by  
16          another biomedical research corporation that is  
17          a loss corporation. If the acquiring loss corpora-  
18          tion is a member of a controlled group of cor-  
19          porations under section 1563(a), the group  
20          must be a loss group.

21          “(E) STOCK ISSUED IN EXCHANGE FOR  
22          CONVERTIBLE DEBT.—For purposes of this  
23          paragraph, stock issued by a biomedical re-  
24          search corporation in exchange for its convert-  
25          ible debt (or stock deemed under this section to

1 be so issued) shall be treated as stock acquired  
2 by the debt holder at its original issue and sole-  
3 ly in exchange for cash if the debt holder pre-  
4 viously acquired the convertible debt at its  
5 original issue and solely in exchange for cash.  
6 In the case of an acquisition of stock in ex-  
7 change for convertible debt, the requirements of  
8 this paragraph shall be applied separately as of  
9 the time of closing on the investment in con-  
10 vertible debt, and as of the time of actual con-  
11 version (or deemed conversion under this sec-  
12 tion) of the convertible debt for stock.

13 “(F) BIOMEDICAL RESEARCH CORPORA-  
14 TION MUST MEET 3-YEAR EXPENDITURE AND  
15 CONTINUITY OF BUSINESS TESTS WITH RE-  
16 SPECT TO ANY QUALIFIED INVESTMENT.—

17 “(i) IN GENERAL.—This paragraph  
18 shall not apply to a qualified investment or  
19 transaction in a biomedical research cor-  
20 poration unless such corporation meets the  
21 expenditure test for each year of the meas-  
22 uring period and the continuity of business  
23 test.

24 “(ii) MEASURING PERIOD.—For pur-  
25 poses of this subparagraph, the term

1 ‘measuring period’ means, with respect to  
2 any qualified investment or transaction,  
3 the taxable year of the biomedical research  
4 corporation in which the closing on the in-  
5 vestment occurs, and the 2 preceding tax-  
6 able years.

7 “(iii) EXPENDITURE TEST.—A bio-  
8 medical research corporation meets the ex-  
9 penditure test of this subparagraph for a  
10 taxable year if at least 35 percent of its ex-  
11 penditures for the taxable year (including,  
12 for purposes of this clause, payments in re-  
13 demption of its stock) are expenditures de-  
14 scribed in section 41(b) or clinical and pre-  
15 clinical expenses.

16 “(iv) CONTINUITY OF BUSINESS  
17 TEST.—A biomedical research corporation  
18 meets the continuity of business test if, at  
19 all times during the 2-year period following  
20 a qualified investment or transaction, such  
21 corporation continues the business enter-  
22 prise of such corporation.

23 “(G) EFFECT OF CORPORATE REDEMP-  
24 TIONS ON QUALIFIED INVESTMENTS.—Rules  
25 similar to the rules of section 1202(c)(3) shall

1 apply to qualified investments under this para-  
2 graph except that ‘stock acquired in a qualified  
3 investment’ shall be substituted for ‘qualified  
4 small business stock’ each place it appears  
5 therein.

6 “(H) EFFECT OF OTHER TRANSACTIONS  
7 BETWEEN BIOMEDICAL RESEARCH CORPORA-  
8 TIONS AND INVESTORS MAKING QUALIFIED IN-  
9 VESTMENTS.—

10 “(i) IN GENERAL.—If, during the 2-  
11 year period beginning 1 year before any  
12 qualified investment, the biomedical re-  
13 search corporation engages in another  
14 transaction with a member of its qualified  
15 investment group and such biomedical re-  
16 search corporation receives any consider-  
17 ation other than cash in such transaction,  
18 there shall be a presumption that stock re-  
19 ceived in the otherwise qualified investment  
20 transaction was not received solely in ex-  
21 change for cash.

22 “(ii) QUALIFIED INVESTMENT  
23 GROUP.—For purposes of this subpara-  
24 graph, the term ‘qualified investment  
25 group’ means, with respect to any qualified

1 investment, one or more persons who re-  
2 ceive stock issued in exchange for the  
3 qualified investment, and any person re-  
4 lated to such persons within the meaning  
5 of section 267(b) or section 707(b).

6 “(iii) REGULATIONS.—The Secretary  
7 may promulgate regulations exempting  
8 from this subparagraph transactions which  
9 are customary in the bioscience research  
10 industry and are of minor value relative to  
11 the amount of the qualified investment.  
12 The Secretary may issue such regulations  
13 as may be appropriate to achieve the pur-  
14 poses of this paragraph to prevent abuse  
15 and to provide for treatment of biomedical  
16 research corporations under sections 383  
17 and 384 that is consistent with the pur-  
18 poses of this paragraph.”.

19 (b) EFFECTIVE DATE.—The amendment made by  
20 this section shall apply to taxable years beginning after  
21 December 31, 2007.

22 **SEC. 102. RESEARCH CREDIT EXPANSION.**

23 (a) CONTRACT RESEARCH EXPENSES.—Subpara-  
24 graph (D) of section 41(b)(3) (relating to contract re-  
25 search expenses) is amended—

1           (1) in the heading by inserting “BIOMEDICAL  
2 RESEARCH CORPORATIONS,” after “ELIGIBLE SMALL  
3 BUSINESSES,”, and

4           (2) in clause (i) by redesignating subclauses  
5 (II) and (III) as subclauses (III) and (IV) respec-  
6 tively, and by inserting after subclause (I) the fol-  
7 lowing new subclause:

8                           “(II) a biomedical research cor-  
9                           poration (as defined in section  
10                           382(l)(9)(B)),”.

11       (b) BASIC RESEARCH EXPENSES OF QUALIFYING  
12 BIOMEDICAL RESEARCH CORPORATION.—Section  
13 41(e)(3) is amended to read as follows:

14           “(3) QUALIFIED ORGANIZATION BASE PERIOD  
15 AMOUNT.—For purposes of this subsection—

16                   “(A) IN GENERAL.—The term ‘qualified  
17 organization base period amount’ means an  
18 amount equal to the sum of—

19                           “(i) the minimum basic research  
20 amount, plus

21                           “(ii) the maintenance-of-effort  
22 amount.

23                   “(B) BIOMEDICAL RESEARCH CORPORA-  
24 TION.—In the case of a biomedical research

1 corporation, the qualified organization base pe-  
2 riod amount is zero.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to taxable years beginning after  
5 December 31, 2007.

6 **SEC. 103. ORPHAN DRUG CREDIT EXPANSION.**

7 (a) IN GENERAL.—Subclause (I) of section  
8 45C(b)(2)(A)(ii) is amended to read as follows:

9 “(I) after the date that the application is  
10 filed for designation under section 526 of such  
11 Act, and”.

12 (b) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to amounts paid or incurred in tax-  
14 able years beginning after December 31, 2007.

15 **SEC. 104. COUNTERMEASURES AND PANDEMIC FLU RE-**  
16 **SEARCH INCENTIVES.**

17 (a) TAX CREDIT TO FUND COUNTERMEASURE RE-  
18 SEARCH.—

19 (1) IN GENERAL.—Subpart D of part IV of  
20 subchapter A of chapter 1 (relating to business re-  
21 lated credits) is amended by adding at the end the  
22 following new section:

1 **“SEC. 450. CREDIT FOR MEDICAL RESEARCH RELATED TO**  
2 **DEVELOPING COUNTERMEASURES.**

3 “(a) GENERAL RULE.—For purposes of section 38,  
4 in the case of a biomedical research corporation, the coun-  
5 termeasures research credit determined under this section  
6 for the taxable year is an amount equal to 20 percent of  
7 the eligible countermeasures research expenses for the tax-  
8 able year.

9 “(b) ELIGIBLE COUNTERMEASURES RESEARCH EX-  
10 PENSES.—For purposes of this section—

11 “(1) ELIGIBLE COUNTERMEASURES RESEARCH  
12 EXPENSES.—

13 “(A) IN GENERAL.—Except as otherwise  
14 provided in this paragraph, the term ‘eligible  
15 countermeasures research expenses’ means  
16 amounts paid or incurred by the taxpayer dur-  
17 ing the taxable year for research, including pre-  
18 clinical research and animal model development,  
19 which would be described in subsection (b) of  
20 section 41 if such subsection were applied with  
21 the modifications set forth in subparagraph (B)  
22 of this paragraph and that the Secretary of  
23 Health and Human Services determines has  
24 significant potential to lead to the development  
25 of a covered countermeasure.

1           “(B) MODIFICATIONS; INCREASED INCEN-  
2 TIVE FOR CONTRACT RESEARCH PAYMENTS.—  
3 For purposes of subparagraph (A), subsection  
4 (b) of section 41 shall be applied—

5           “(i) by substituting ‘eligible counter-  
6 measures research’ for ‘qualified research’  
7 each place it appears in paragraphs (2)  
8 and (3) of such subsection, and

9           “(ii) by substituting ‘100 percent’ for  
10 ‘65 percent’ in paragraph (3)(A) of such  
11 subsection.

12           “(C) EXCLUSION FOR AMOUNTS FUNDED  
13 BY GRANTS, ETC.—The term ‘eligible counter-  
14 measures research expenses’ shall not include  
15 any amount to the extent such amount is fund-  
16 ed by any grant, contract, or otherwise by an-  
17 other person (or any governmental entity).

18           “(2) COVERED COUNTERMEASURE.—The term  
19 ‘covered countermeasure’ has the meaning given  
20 such term in division C of the Department of De-  
21 fense, Emergency Supplemental Appropriations to  
22 Address Hurricanes in the Gulf of Mexico, and Pan-  
23 demic Influenza Act, 2006.

24           “(c) COORDINATION WITH CREDIT FOR INCREASING  
25 RESEARCH EXPENDITURES.—

1           “(1) IN GENERAL.—Except as provided in para-  
2           graph (2), any eligible countermeasures research ex-  
3           penses for a taxable year shall not be taken into ac-  
4           count for purposes of determining the credit allow-  
5           able under section 41 for such taxable year.

6           “(2) EXPENSES INCLUDED IN DETERMINING  
7           BASE PERIOD RESEARCH EXPENSES.—Any eligible  
8           countermeasures research expenses for any taxable  
9           year which are qualified research expenses (within  
10          the meaning of section 41(b)) shall be taken into ac-  
11          count in determining base period research expenses  
12          for purposes of applying section 41 to subsequent  
13          taxable years.

14          “(d) COORDINATION WITH CREDIT FOR CLINICAL  
15          TESTING EXPENSES FOR CERTAIN DRUGS FOR RARE  
16          DISEASES.—Any eligible countermeasures research ex-  
17          pense for a taxable year shall not be taken into account  
18          for purposes of determining the credit allowable under sec-  
19          tion 45C for such taxable year.

20          “(e) CERTAIN RULES MADE APPLICABLE.—Rules  
21          similar to the rules of paragraphs (1) and (2) of section  
22          41(f) shall apply for purposes of this section.”.

23                 (2) INCLUSION IN GENERAL BUSINESS CRED-  
24                 IT.—Section 38(b) is amended by striking “plus” at  
25                 the end of paragraph (30), by striking the period at

1 the end of paragraph (31) and inserting “, and”,  
2 and by adding at the end the following new para-  
3 graph:

4 “(32) the countermeasures research credit de-  
5 termined under section 45O.”.

6 (3) DENIAL OF DOUBLE BENEFIT.—Section  
7 280C is amended by adding at the end the following  
8 new subsection:

9 “(f) CREDIT FOR ELIGIBLE COUNTERMEASURES RE-  
10 SEARCH EXPENSES.—

11 “(1) IN GENERAL.—No deduction shall be al-  
12 lowed for that portion of the eligible counter-  
13 measures research expenses (as defined in section  
14 45O(b)) otherwise allowable as a deduction for the  
15 taxable year which is equal to the amount of the  
16 credit determined for such taxable year under sec-  
17 tion 45O(a).

18 “(2) CERTAIN RULES TO APPLY.—Rules similar  
19 to the rules of paragraphs (2), (3), and (4) of sub-  
20 section (c) shall apply for purposes of this sub-  
21 section.”.

22 (4) DEDUCTION FOR UNUSED PORTION OF  
23 CREDIT.—Section 196(c) is amended by striking  
24 “and” at the end of paragraph (12), by striking the  
25 period at the end of paragraph (13) and inserting “,

1 and”, and by adding at the end the following new  
2 paragraph:

3 “(14) the countermeasures research credit de-  
4 termined under section 450(a).”.

5 (5) TECHNICAL AMENDMENT.—The table of  
6 sections for subpart D of part IV of subchapter A  
7 of chapter 1 is amended by adding at the end the  
8 following new item:

“Sec. 450. Credit for medical research related to developing countermeasures.”.

9 (b) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to taxable years beginning after  
11 December 31, 2007.

12 **TITLE II—PROVISIONS RELAT-**  
13 **ING TO INVESTOR TAX INCEN-**  
14 **TIVES**

15 **SEC. 201. CAPITAL GAINS ROLLOVER.**

16 (a) IN GENERAL.—

17 (1) Section 1045(a) is amended by inserting  
18 “or biomedical research corporation stock” after  
19 “qualified small business stock” each place it ap-  
20 pears herein.

21 (2) Section 1045(b) is amended by redesignig-  
22 nating paragraphs (2), (3), (4), and (5) as para-  
23 graphs (3), (4), (5), and (6), respectively, and by in-  
24 serting after paragraph (1) the following new para-  
25 graph:

1           “(2) BIOMEDICAL RESEARCH CORPORATION.—

2           The term ‘biomedical research corporation’ has the  
3           meaning given to such term in section 382(l)(9)(B)  
4           and has gross assets that do not exceed  
5           \$250,000,000 and agrees to submit such reports to  
6           the Secretary and to shareholders as the Secretary  
7           may require to carry out the purposes of this sec-  
8           tion. An entity meets the gross assets test of the  
9           preceding sentence if the average annual gross as-  
10          sets of such entity for the 3-taxable-year period end-  
11          ing with the taxable year prior to the taxable year  
12          in which the sale of qualified small business stock  
13          does not exceed \$250,000,000. For purposes of the  
14          preceding sentence, rules similar to the rules of  
15          paragraphs (2) and (3) of section 448(c) (other than  
16          paragraph (3)(C) thereof) shall apply.”.

17          (b) CONFORMING AMENDMENTS.—

18                 (1) The heading for section 1045 is amended by  
19                 inserting “**OR BIOMEDICAL RESEARCH**” after  
20                 “**SMALL BUSINESS**” each time it appears.

21                 (2) The item relating to section 1045 in the  
22                 table of sections for part III of subchapter O of  
23                 chapter 1 is amended by inserting “or biomedical re-  
24                 search” after “small business” each time it appears.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2007.

4 **SEC. 202. EQUITY CREDIT FOR INCUBATIONAL FIRMS.**

5 (a) IN GENERAL.—Subpart D of part IV of sub-  
6 chapter A of chapter 1 (as amended by this Act) is amend-  
7 ed by inserting after section 45O the following new sec-  
8 tion:

9 **“SEC. 45P. INCUBATIONAL EQUITY TAX CREDIT.**

10 “(a) ALLOWANCE OF CREDIT.—

11 “(1) GENERAL RULE.—For purposes of section  
12 38, in the case of a taxpayer who makes a qualified  
13 incubational equity investment during the taxable  
14 year, the incubational equity tax credit determined  
15 under this section for such taxable year is an  
16 amount equal to the applicable percentage of the  
17 amount paid to the qualified incubational company  
18 solely in exchange for its stock at original issue.

19 “(2) APPLICABLE PERCENTAGE.—For purposes  
20 of paragraph (1), the applicable percentage is 20  
21 percent.

22 “(b) QUALIFIED INCUBATIONAL EQUITY INVEST-  
23 MENT.—For purposes of this section—

1           “(1) IN GENERAL.—The term ‘qualified incuba-  
2           tional equity investment’ means any equity invest-  
3           ment in a qualified incubational company if—

4                   “(A) such investment (not exceeding  
5                   \$500,000 per taxable year) is acquired by the  
6                   taxpayer at its original issue (directly or  
7                   through an underwriter) solely in exchange for  
8                   cash,

9                   “(B) not less than 1/2 of such cash is used  
10                  by the qualified incubational company with re-  
11                  spect to qualifying research under section 41,  
12                  and

13                  “(C) such investment is designated for  
14                  purposes of this section by the qualified incuba-  
15                  tional company.

16           Such term shall not include any equity investment  
17           issued by a qualified incubational company more  
18           than 5 years after the date that such company re-  
19           ceives an allocation under subsection (d). Any alloca-  
20           tion not used within such 5-year period may be re-  
21           allocated by the Secretary under subsection (d).

22           “(2) LIMITATION.—The maximum amount of  
23           equity investments issued by a qualified incubational  
24           company which may be designated under paragraph  
25           (1)(C) by such company shall not exceed the portion

1 of the limitation amount allocated under subsection  
2 (f) to such company.

3 “(3) TREATMENT OF SUBSEQUENT PUR-  
4 CHASERS.—The term ‘qualified equity investment’  
5 includes any equity investment which would (but for  
6 paragraph (1)(A)) be a qualified equity investment  
7 in the hands of the taxpayer if such investment was  
8 a qualified equity investment in the hands of a prior  
9 holder.

10 “(4) REDEMPTIONS.—A rule similar to the rule  
11 of section 1202(e)(3) shall apply for purposes of this  
12 subsection.

13 “(5) EQUITY INVESTMENT.—The term ‘equity  
14 investment’ means any stock (other than non-  
15 qualified preferred stock as defined in section  
16 351(g)(2)) in an entity which is a corporation.

17 “(c) QUALIFIED INCUBATIONAL COMPANY.—For  
18 purposes of this section—

19 “(1) IN GENERAL.—The term ‘qualified incuba-  
20 tional company’ means any domestic biomedical re-  
21 search corporation (as defined in section  
22 382(l)(9)(B)) subject to tax under subchapter C of  
23 this chapter, that has 25 employees or less and gross  
24 assets of less than \$25,000,000.

1           “(2) GROSS ASSETS TEST.—For purpose of  
2 paragraph (1), rules similar to the rules of section  
3 1244(d)(3) shall apply, determined by substituting  
4 ‘\$25,000,000’ for ‘\$500,000,000’ in subparagraph  
5 (A) thereof.

6           “(d) NATIONAL LIMITATION ON AMOUNT OF INVEST-  
7 MENTS DESIGNATED.—

8           “(1) IN GENERAL.—There is an incubational  
9 equity tax credit limitation of \$500,000,000 for each  
10 taxable year.

11           “(2) ALLOCATION OF LIMITATION.—The limita-  
12 tion under paragraph (1) shall be allocated by the  
13 Secretary among qualified incubational companies  
14 selected by the Secretary. In making allocations  
15 under the preceding sentence, the Secretary shall  
16 give priority to the extent to which it is reasonably  
17 anticipated that a qualified incubational company  
18 would have insufficient taxable income and tax liabil-  
19 ity to utilize the section 41 research tax credit.

20           “(3) CARRYOVER OF UNUSED LIMITATION.—If  
21 the qualified incubational equity tax credit limitation  
22 for any taxable year exceeds the aggregate amount  
23 allocated under paragraph (2) for such year, such  
24 limitation for the succeeding taxable year shall be in-  
25 creased by the amount of such excess.

1 “(e) RECAPTURE OF CREDIT IN CERTAIN CASES.—

2 “(1) IN GENERAL.—If, at any time during the  
3 4-year period beginning on the date of the original  
4 issue of a qualified incubational equity investment in  
5 a qualified incubational company, there is a recap-  
6 ture event with respect to such investment, then the  
7 tax imposed by this chapter for the taxable year in  
8 which such event occurs shall be increased by the  
9 credit recapture amount.

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

13 “(A) the aggregate decrease in the credits  
14 allowed to the taxpayer under section 38 for all  
15 prior taxable years which would have resulted if  
16 no credit had been determined under this sec-  
17 tion with respect to such investment; plus

18 “(B) interest at the underpayment rate es-  
19 tablished under section 6621 on the amount de-  
20 termined under subparagraph (A) for each  
21 prior taxable year for the period beginning on  
22 the due date for filing the return for the prior  
23 taxable year involved.

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

1           “(3) RECAPTURE EVENT.—For purposes of  
2 paragraph (1), there is a recapture event with re-  
3 spect to a qualified countermeasures equity invest-  
4 ment in a qualified countermeasures company if—

5           “(A) such company ceases to be a qualified  
6 biomedical research corporation (as defined in  
7 section 382(l)(9)(B)), or

8           “(B) such investment is redeemed by such  
9 company.

10          “(4) SPECIAL RULES.—

11           “(A) TAX BENEFIT RULE.—The tax for  
12 the taxable year shall be increased under para-  
13 graph (1) only with respect to credits allowed  
14 by reason of this section which were used to re-  
15 duce tax liability. In the case of credits not so  
16 used to reduce tax liability, the carryforwards  
17 and carrybacks under section 39 shall be appro-  
18 priately adjusted.

19           “(B) NO CREDITS AGAINST TAX.—Any in-  
20 crease in tax under this subsection shall not be  
21 treated as a tax imposed by this chapter for  
22 purposes of determining the amount of any  
23 credit under this chapter or for purposes of sec-  
24 tion 55.

1       “(f) BASIS REDUCTION.—The basis of any qualified  
2 incubational equity investment shall be reduced by the  
3 amount of any credit determined under this section with  
4 respect to such investment. This subsection shall not apply  
5 for purposes of sections 1202, 1400B, and 1400F.

6       “(g) REGULATIONS.—The secretary shall prescribe  
7 such regulations as may be appropriate to carry out this  
8 section, including regulations which—

9               “(1) prevent the abuse of the purposes of this  
10 section,

11               “(2) impose appropriate reporting require-  
12 ments, and

13               “(3) apply the provisions of this section to  
14 newly formed entities.”.

15       (b) CREDIT TO BE PART OF GENERAL BUSINESS  
16 CREDIT.—Section 38(b) (as amended by this Act) is fur-  
17 ther amended by striking “and” at the end of paragraph  
18 (31), by striking the period at the end of paragraph (32)  
19 and inserting “, and”, and by adding at the end the fol-  
20 lowing:

21               “(33) the incubational equity tax credit deter-  
22 mined under section 45N(a).”.

23       (c) DEDUCTION FOR UNUSED PORTION OF CRED-  
24 IT.—Section 196(c) (defining qualified business credits),  
25 as amended by this section, is amended by striking “and”

1 at the end of paragraph (12), by striking the period at  
2 the end of paragraph (13) and inserting “, and”, and by  
3 adding at the end the following new paragraph:

4           “(14) the incubational equity tax credit deter-  
5           mined under section 45P(a).”.

6           (d) CLERICAL AMENDMENT.—The table of sections  
7 for subpart D of part IV of subchapter A of chapter 1  
8 (as amended by this Act) is further amended by adding  
9 after the item relating to section 45O the following new  
10 item:

          “Sec. 45P. Incubational equity tax credit.”.

11           (e) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to taxable years beginning after  
13 December 31, 2007.

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