

Calendar No. 341112TH CONGRESS
2^D SESSION**S. 2237**

To provide a temporary income tax credit for increased payroll and extend bonus depreciation for an additional year, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 26, 2012

Mr. REID introduced the following bill; which was read the first time

MARCH 27, 2012

Read the second time and placed on the calendar

A BILL

To provide a temporary income tax credit for increased payroll and extend bonus depreciation for an additional year, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Jobs
5 and Tax Relief Act”.

1 **SEC. 2. TEMPORARY TAX CREDIT FOR INCREASED PAY-**
2 **ROLL.**

3 (a) **IN GENERAL.**—In the case of a qualified employer
4 who elects the application of this section, there shall be
5 allowed as a credit against the tax imposed by chapter
6 1 of the Internal Revenue Code of 1986 for the taxable
7 year which includes December 31, 2012, an amount equal
8 to 10 percent of the excess (if any) of—

9 (1) the sum of the wages and compensation
10 paid by such qualified employer for qualified services
11 during calendar year 2012, over

12 (2) the sum of such wages and compensation
13 paid during calendar year 2011.

14 (b) **LIMITATION.**—The amount of the excess taken
15 into account under subsection (a) with respect to any
16 qualified employer shall not exceed \$5,000,000.

17 (c) **WAGES AND COMPENSATION.**—For purposes of
18 this section—

19 (1) **WAGES.**—The term “wages” has the mean-
20 ing given such term under section 3121 of the Inter-
21 nal Revenue Code of 1986 for purposes of the tax
22 imposed by section 3111(a) of such Code.

23 (2) **COMPENSATION.**—The term “compensa-
24 tion” has the meaning given such term under section
25 3231 of such Code for purposes of the portion of the
26 tax imposed by section 3221(a) of such Code that

1 corresponds to the tax imposed by section 3111(a)
2 of such Code.

3 (3) APPLICATION OF CONTRIBUTION AND BEN-
4 EFIT BASE TO CALENDAR YEAR 2011.—For purposes
5 of determining wages and compensation under sub-
6 section (a)(2), the contribution and benefit base as
7 determined under section 230 of the Social Security
8 Act shall be such amount as in effect for calendar
9 year 2012.

10 (4) SPECIAL RULE WHEN NO WAGES OR COM-
11 PENSATION IN 2011.—In any case in which the sum
12 of the wages and compensation paid by a qualified
13 employer for qualified services during calendar year
14 2011 is zero, then the amount taken into account
15 under subsection (a)(2) shall be 80 percent of the
16 amount taken into account under subsection (a)(1).

17 (5) COORDINATION WITH OTHER EMPLOYMENT
18 CREDITS.—The amount of the excess taken into ac-
19 count under subsection (a) shall be reduced by the
20 sum of all other Federal tax credits determined with
21 respect to wages or compensation paid in calendar
22 year 2012.

23 (d) OTHER DEFINITIONS.—

24 (1) QUALIFIED EMPLOYER.—For purposes of
25 this section—

1 (A) IN GENERAL.—The term “qualified
2 employer” has the meaning given such term
3 under section 3111(d)(2) of the Internal Rev-
4 enue Code of 1986, determined by substituting
5 “section 101 of the Higher Education Act of
6 1965” for “section 101(b) of the Higher Edu-
7 cation Act of 1965” in subparagraph (B) there-
8 of.

9 (B) AGGREGATION RULES.—Rules similar
10 to the rules of sections 414(b), 414(c), 414(m),
11 and 414(o) of such Code shall apply to deter-
12 mine when multiple entities shall be treated as
13 a single employer, and rules with respect to
14 predecessor and successor employers may be
15 applied, in such manner as may be prescribed
16 by the Secretary of the Treasury or the Sec-
17 retary’s designee (in this section referred to as
18 the “Secretary”).

19 (2) QUALIFIED SERVICES.—The term “qualified
20 services” means services performed by an individual
21 who is not described in section 51(i)(1) of such Code
22 (applied by substituting “qualified employer” for
23 “taxpayer” each place it appears)—

24 (A) in a trade or business of the qualified
25 employer, or

1 (B) in the case of a qualified employer ex-
2 empt from tax under section 501(a) of such
3 Code, in furtherance of the activities related to
4 the purpose or function constituting the basis of
5 the employer's exemption under section 501 of
6 such Code.

7 (e) APPLICATION OF CERTAIN RULES.—Rules simi-
8 lar to the rules of sections 280C(a) and 6501(m) of the
9 Internal Revenue Code of 1986 shall apply with respect
10 to the credit determined under this section.

11 (f) TREATMENT OF CREDIT.—For purposes of the
12 Internal Revenue Code of 1986—

13 (1) TAXABLE EMPLOYERS.—

14 (A) IN GENERAL.—The credit allowed
15 under subsection (a) with respect to qualified
16 services described in subsection (d)(2)(A) for
17 any taxable year shall be added to the current
18 year business credit under section 38(b) of such
19 Code for such taxable year and shall be treated
20 as a credit allowed under subpart D of part IV
21 of subchapter A of chapter 1 of such Code.

22 (B) LIMITATION ON CARRYBACKS.—No
23 portion of the unused business credit under sec-
24 tion 38 of such Code for any taxable year which
25 is attributable to an increase in the current

1 year business credit by reason of subparagraph
2 (A) may be carried to a taxable year beginning
3 before the date of the enactment of this section.

4 (2) TAX-EXEMPT EMPLOYERS.—

5 (A) IN GENERAL.—The credit allowed
6 under subsection (a) with respect to qualified
7 services described in subsection (d)(2)(B) for
8 any taxable year—

9 (i) shall be treated as a credit allowed
10 under subpart C of part IV of subchapter
11 A of chapter 1 of such Code, and

12 (ii) shall be added to the credits de-
13 scribed in subparagraph (A) of section
14 6211(b)(4) of such Code.

15 (B) CONFORMING AMENDMENT.—Section
16 1324(b)(2) of title 31, United States Code, is
17 amended by inserting “or due under section 2
18 of the Small Business Jobs and Tax Relief Act”
19 after “the Housing Assistance Tax Act of
20 2008”.

21 (g) TREATMENT OF POSSESSIONS.—

22 (1) PAYMENTS TO POSSESSIONS.—

23 (A) MIRROR CODE POSSESSIONS.—The
24 Secretary shall pay to each possession of the
25 United States with a mirror code tax system

1 amounts equal to the loss to that possession by
2 reason of the application of subsections (a)
3 through (f). Such amounts shall be determined
4 by the Secretary based on information provided
5 by the government of the respective possession
6 of the United States.

7 (B) OTHER POSSESSIONS.—The Secretary
8 shall pay to each possession of the United
9 States which does not have a mirror code tax
10 system the amount estimated by the Secretary
11 as being equal to the loss to that possession
12 that would have occurred by reason of the ap-
13 plication of subsections (a) through (f) if a mir-
14 ror code tax system had been in effect in such
15 possession. The preceding sentence shall not
16 apply with respect to any possession of the
17 United States unless such possession establishes
18 to the satisfaction of the Secretary that the pos-
19 session has implemented (or, at the discretion
20 of the Secretary, will implement) an income tax
21 benefit which is substantially equivalent to the
22 income tax credit allowed under such sub-
23 sections.

24 (2) COORDINATION WITH CREDIT ALLOWED
25 AGAINST UNITED STATES INCOME TAXES.—No in-

1 crease in the credit determined under section 38(b)
2 of the Internal Revenue Code of 1986 against
3 United States income taxes for any taxable year de-
4 termined by reason of subsection (f)(1)(A) shall be
5 taken into account with respect to any person—

6 (A) to whom a credit is allowed against
7 taxes imposed by the possession by reason of
8 this section for such taxable year, or

9 (B) who is eligible for a payment under a
10 plan described in paragraph (1)(B) with respect
11 to such taxable year.

12 (3) DEFINITIONS AND SPECIAL RULES.—

13 (A) POSSESSION OF THE UNITED
14 STATES.—For purposes of this subsection, the
15 term “possession of the United States” includes
16 American Samoa, Guam, the Commonwealth of
17 the Northern Mariana Islands, the Common-
18 wealth of Puerto Rico, and the United States
19 Virgin Islands.

20 (B) MIRROR CODE TAX SYSTEM.—For pur-
21 poses of this subsection, the term “mirror code
22 tax system” means, with respect to any posses-
23 sion of the United States, the income tax sys-
24 tem of such possession if the income tax liabil-
25 ity of the residents of such possession under

1 such system is determined by reference to the
2 income tax laws of the United States as if such
3 possession were the United States.

4 (C) TREATMENT OF PAYMENTS.—For pur-
5 poses of section 1324(b)(2) of title 31, United
6 States Code, the payments under this sub-
7 section shall be treated in the same manner as
8 a refund due from credit provisions described in
9 such section.

10 (h) REGULATIONS.—The Secretary shall prescribe
11 such regulations or guidance as are necessary to carry out
12 the provisions of this section.

13 **SEC. 3. EXTENSION OF ALLOWANCE FOR BONUS DEPRECIA-**
14 **TION FOR CERTAIN BUSINESS ASSETS.**

15 (a) EXTENSION OF 100 PERCENT BONUS DEPRECIA-
16 TION.—

17 (1) IN GENERAL.—Paragraph (5) of section
18 168(k) of the Internal Revenue Code of 1986 is
19 amended—

20 (A) by striking “January 1, 2012” each
21 place it appears and inserting “January 1,
22 2013”, and

23 (B) by striking “January 1, 2013” and in-
24 serting “January 1, 2014”.

25 (2) CONFORMING AMENDMENTS.—

1 (A) The heading for paragraph (5) of sec-
2 tion 168(k) of such Code is amended by strik-
3 ing “PRE-2012 PERIODS” and inserting “PRE-
4 2013 PERIODS”.

5 (B) Clause (ii) of section 460(c)(6)(B) of
6 such Code is amended by striking “January 1,
7 2011 (January 1, 2012” and inserting “Janu-
8 ary 1, 2013 (January 1, 2014”.

9 (3) EFFECTIVE DATES.—

10 (A) IN GENERAL.—Except as provided in
11 subparagraph (B), the amendments made by
12 this section shall apply to property placed in
13 service after December 31, 2011.

14 (B) CONFORMING AMENDMENT.—The
15 amendment made by paragraph (2)(B) shall
16 apply to property placed in service after Decem-
17 ber 31, 2010.

18 (b) EXPANSION OF ELECTION TO ACCELERATE AMT
19 CREDITS IN LIEU OF BONUS DEPRECIATION.—

20 (1) IN GENERAL.—Paragraph (4) of section
21 168(k) of the Internal Revenue Code of 1986 is
22 amended to read as follows:

23 “(4) ELECTION TO ACCELERATE AMT CREDITS
24 IN LIEU OF BONUS DEPRECIATION.—

1 “(A) IN GENERAL.—If a corporation elects
2 to have this paragraph apply for any taxable
3 year—

4 “(i) paragraph (1) shall not apply to
5 any eligible qualified property placed in
6 service by the taxpayer in such taxable
7 year,

8 “(ii) the applicable depreciation meth-
9 od used under this section with respect to
10 such property shall be the straight line
11 method, and

12 “(iii) the limitation imposed by section
13 53(c) for such taxable year shall be in-
14 creased by the bonus depreciation amount
15 which is determined for such taxable year
16 under subparagraph (B).

17 “(B) BONUS DEPRECIATION AMOUNT.—

18 For purposes of this paragraph—

19 “(i) IN GENERAL.—The bonus depre-
20 ciation amount for any taxable year is an
21 amount equal to 20 percent of the excess
22 (if any) of—

23 “(I) the aggregate amount of de-
24 preciation which would be allowed
25 under this section for eligible qualified

1 property placed in service by the tax-
2 payer during such taxable year if
3 paragraph (1) applied to all such
4 property, over

5 “(II) the aggregate amount of
6 depreciation which would be allowed
7 under this section for eligible qualified
8 property placed in service by the tax-
9 payer during such taxable year if
10 paragraph (1) did not apply to any
11 such property.

12 The aggregate amounts determined under
13 subclauses (I) and (II) shall be determined
14 without regard to any election made under
15 subsection (b)(2)(D), (b)(3)(D), or (g)(7)
16 and without regard to subparagraph
17 (A)(ii).

18 “(ii) LIMITATION.—The bonus depre-
19 ciation amount for any taxable year shall
20 not exceed the lesser of—

21 “(I) 50 percent of the minimum
22 tax credit under section 53(b) for the
23 first taxable year ending after Decem-
24 ber 31, 2011, reduced (but not below
25 zero) by the sum of the bonus depre-

1 ciation amounts for all taxable years
2 ending after such date for which an
3 election under this paragraph was
4 made which precede the taxable year
5 for which the determination is made
6 (other than amounts determined with
7 respect to property placed in service
8 by the taxpayer on or before such
9 date), or

10 “(II) the minimum tax credit
11 under section 53(b) for such taxable
12 year determined by taking into ac-
13 count only the adjusted minimum tax
14 for taxable years ending before Janu-
15 ary 1, 2012 (determined by treating
16 credits as allowed on a first-in, first-
17 out basis).

18 “(iii) AGGREGATION RULE.—All cor-
19 porations which are treated as a single em-
20 ployer under section 52(a) shall be treat-
21 ed—

22 “(I) as 1 taxpayer for purposes
23 of this paragraph, and

1 “(II) as having elected the appli-
2 cation of this paragraph if any such
3 corporation so elects.

4 “(C) ELIGIBLE QUALIFIED PROPERTY.—
5 For purposes of this paragraph, the term ‘eligi-
6 ble qualified property’ means qualified property
7 under paragraph (2), except that in applying
8 paragraph (2) for purposes of this paragraph—

9 “(i) ‘March 31, 2008’ shall be sub-
10 stituted for ‘December 31, 2007’ each
11 place it appears in subparagraph (A) and
12 clauses (i) and (ii) of subparagraph (E)
13 thereof,

14 “(ii) ‘April 1, 2008’ shall be sub-
15 stituted for ‘January 1, 2008’ in subpara-
16 graph (A)(iii)(I) thereof, and

17 “(iii) only adjusted basis attributable
18 to manufacture, construction, or produc-
19 tion—

20 “(I) after March 31, 2008, and
21 before January 1, 2010, and

22 “(II) after December 31, 2010,
23 and before January 1, 2013, shall be
24 taken into account under subpara-
25 graph (B)(ii) thereof.

1 “(D) CREDIT REFUNDABLE.—For pur-
2 poses of section 6401(b), the aggregate increase
3 in the credits allowable under part IV of sub-
4 chapter A for any taxable year resulting from
5 the application of this paragraph shall be treat-
6 ed as allowed under subpart C of such part
7 (and not any other subpart).

8 “(E) OTHER RULES.—

9 “(i) ELECTION.—Any election under
10 this paragraph may be revoked only with
11 the consent of the Secretary.

12 “(ii) PARTNERSHIPS WITH ELECTING
13 PARTNERS.—In the case of a corporation
14 making an election under subparagraph
15 (A) and which is a partner in a partner-
16 ship, for purposes of determining such cor-
17 poration’s distributive share of partnership
18 items under section 702—

19 “(I) paragraph (1) shall not
20 apply to any eligible qualified prop-
21 erty, and

22 “(II) the applicable depreciation
23 method used under this section with
24 respect to such property shall be the
25 straight line method.

1 “(iii) CERTAIN PARTNERSHIPS.—In
2 the case of a partnership in which more
3 than 50 percent of the capital and profits
4 interests are owned (directly or indirectly)
5 at all times during the taxable year by one
6 corporation (or by corporations treated as
7 1 taxpayer under subparagraph (B)(iii)),
8 for purposes of subparagraph (B), each
9 partner shall take into account its distribu-
10 tive share of the amounts determined by
11 the partnership under subclauses (I) and
12 (II) of clause (i) of such subparagraph for
13 the taxable year of the partnership ending
14 with or within the taxable year of the part-
15 ner. The preceding sentence shall apply
16 only to amounts determined with respect to
17 property placed in service after December
18 31, 2011.

19 “(iv) SPECIAL RULE FOR PASSENGER
20 AIRCRAFT.—In the case of any passenger
21 aircraft, the written binding contract limi-
22 tation under paragraph (2)(A)(iii)(I) shall
23 not apply for purposes of subparagraphs
24 (B)(i)(I) and (C).”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by this subsection shall apply to taxable years end-
3 ing after December 31, 2011.

4 (3) TRANSITIONAL RULE.—In the case of a tax-
5 able year beginning before January 1, 2012, and
6 ending after December 31, 2011, the bonus depre-
7 ciation amount determined under paragraph (4) of
8 section 168(k) of the Internal Revenue Code of 1986
9 for such year shall be the sum of—

10 (A) such amount determined under such
11 paragraph as in effect on the date before the
12 date of enactment of this Act—

13 (i) taking into account only property
14 placed in service before January 1, 2012,
15 and

16 (ii) multiplying the limitation under
17 subparagraph (C)(ii) of such paragraph (as
18 so in effect) by a fraction the numerator of
19 which is the number of days in the taxable
20 year before January 1, 2012, and the de-
21 nominator of which is the number of days
22 in the taxable year, and

23 (B) such amount determined under such
24 paragraph as amended by this Act—

- 1 (i) taking into account only property
2 placed in service after December 31, 2011,
3 and
4 (ii) multiplying the limitation under
5 subparagraph (B)(ii) of such paragraph
6 (as so in effect) by a fraction the numer-
7 ator of which is the number of days in the
8 taxable year after December 31, 2011, and
9 the denominator of which is the number of
10 days in the taxable year.

Calendar No. 341

112TH CONGRESS
2^D SESSION

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A BILL

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