

March 6, 2023

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Chair Ron Wyden
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Ranking Richard Neal
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Ranking Mike Crapo
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Dear Chairmen Smith and Wyden and Ranking Members Neal and Crapo:

We are writing to urge you to address an urgent issue that has a potentially devastating economic impact on scientific innovation in the United States, our global competitiveness, and the small businesses leading this research throughout the country due to a new tax that is being applied to the March 15th and April 15th business tax filing deadline. Specifically, we request that you immediately defer the Internal Revenue Code section 174 amortization requirement of the research and experimental expenditures to stop this enormous tax from being imposed on businesses who have no way to pay the tax.

The 2017 Tax Cuts and Jobs Act (TCJA) included legislation requiring taxpayers to capitalize a broad definition of “Research and Experimentation” (R&E) expenditures and depreciate them over five years, starting with the 2022 tax year. This tax change impacts scientific research across both small and large companies but is particularly devastating for small businesses developing scientific innovations that will incur tax bills on 2022 income that previously would have been offset by their R&E expenditures. It means companies will have to **pay taxes on 90% of the funds used to support their “R&E”** (similar to “R&D”) expenses in 2022. For LLCs, this tax burden may pass through to the owner(s), who may then have a substantial tax burden on hundreds of thousands of dollars of unexpected “income”, without any means of paying this tax. This could bankrupt many businesses providing critical research for patients and society.

The Small Business Innovation Research / Small Business Technology Transfer (SBIR/STTR) awardees, in particular, could be hurt the most as they will be forced to come up with cash to pay taxes on federal grants received, which was never budgeted for or included anywhere in the grant application. A typical Phase I SBIR/STTR grant is for \$250,000, representing the first significant income for a new business, often spun out of or in collaboration with an academic institution. With almost all of the \$250,000 being spent on R&E costs, prior to 2022, there would be no tax liability since the income of \$250,000 would be offset by the \$250,000 of R&E expenses. However, this new tax means in the 2022 tax year, a business can only deduct 10% of the R&E costs (for the first year, only 10% depreciation is allowed), so they will have to pay taxes on 90% of the grant income, or \$225,000. This will force the researchers to pay taxes for \$225,000 of “income” that was never actually received.

The purpose of the SBIR/STTR program is to stimulate technological innovation, meet federal research and development (R&D) needs, and increase commercialization to transition R&D into impact. The ~5,000 small businesses who received over \$3 billion in SBIR/STTR funds in 2022

are among some of the most innovative firms in our nation and all of them will be impacted by this unfair tax. Moreover, this new tax will not only harm these current SBIR/STTR awardees but will strongly disincentivize future innovative companies and entrepreneurs from applying for these funds or even entering the field of private sector scientific research. Many other businesses receiving other federal grants and investments from private foundations and VC funds will also fall under this new IRS definition of R&E.

In short, this new tax will harm entrepreneurs and businesses, cause financial turmoil and potential bankruptcy, and oppress innovation in America now and for years to come. Therefore, we respectfully request that you move quickly to defer the Internal Revenue Code (IRC) section 174 amortization requirement of the R&E expenditures. Given the rapidly approaching tax deadlines in March and April, your urgent attention to this matter is appreciated. Should you have any questions please contact Liz Powell, Esq., MPH at lpowell@G2Gconsulting.com or Eva Garland, Ph.D. at eva@evagarland.com.

Sincerely,

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