The Furthering Our Recovery With American Research & Development (FORWARD) Act

The COVID-19 crisis has highlighted critical vulnerabilities in the US economy, many of which are due to under-investment in research, workforce training, and domestic supply chains. Now more than ever, we depend on American startups and companies to make investments in search of new vaccines, manufacturing processes, and technologies. Supporting these innovative companies through the tax code—particularly during an economic downturn—is a crucial part of weathering the current crisis and rebuilding a stronger, more resilient economy.

Context: Tax Support for R&D Builds Economic Resilience

- The R&D tax credit benefits companies that invest in the development of new products, cures, and technologies. This federal incentive accelerates the manufacturing of drugs, vaccines, and countermeasures that are in short supply today.

- Domestic investment in new technology, manufacturing, and infrastructure protects the economy from sudden disruptions in the global supply chain. Firms that invest in R&D are better equipped to respond to urgent national needs for products and services.

Problem: The U.S. Ranks 26th in Tax Support for R&D

- The US ranks 26th among OECD members, and 32nd among all countries, for R&D tax support. The US ranks 8th among OECD countries for federal R&D spending as a share of GDP (OECD 2018 rankings).

- Many of America's newest and most innovative firms are unable to access the existing R&D tax credit. The Innovators Job Creation Act, authored by Sens. Roberts and Coons and enacted in 2015, made the R&D credit more accessible to early-stage startups—but further steps are needed to increase impact.

Solution: The FORWARD Act

- Improves access to the credit for startups and small- and medium-sized businesses. Firms with up to $20 million in gross receipts will be eligible to use the credit to reduce their payroll tax obligation during a span of 8 years—up from current thresholds of $5 million and 5 years. A new de minimis threshold delays the start of the 8-year window until gross receipts exceed $25,000.

- Strengthens the economy by incentivizing American manufacturing. The R&D credit is increased for companies that generate the majority of their gross receipts from manufacturing their products in the United States. The Regular Research and Alternative Simplified Credit expands incrementally to 25% and 17.5%, respectively.

- Targets specific activities that enhance economic productivity by spreading knowledge and work opportunities to the U.S. workforce. The full R&D credit is expanded to cover R&D-related worker training costs. For R&D performed in collaboration with industry consortia, academic institutions, federal laboratories, and other entities, the credit rate is increased by one quarter (to 25% and 17.5% for the Regular Research and Alternative Simplified Credits, respectively).

- Activates the R&D credit by providing outreach, education, and training for businesses with limited accounting expertise, to be provided by the SBA and the IRS.

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Title I: Expand cash flow for startups and small and medium-sized enterprises (SMEs) by allowing greater access to the R&D credit, even in the absence of taxable income.

1. Broaden the definition of "qualified small business" in the determination of eligibility to claim the credit against payroll tax liability[1].
   a. Raise the gross receipts[2] limit[3] from $5m to $20m.
   b. Raise the age limit[4] for firms from 5 years to 8 years. Similarly increase the number of years the payroll credit can be used[5].
   c. Add a de minimis exception of $25,000 (gross receipts) to the "clock" that starts the above age limit[6].
2. Increase the maximum value that can be claimed using the payroll provision from $250,000 to $1m[7].

Title II: Enhance support for research and innovation associated with high-value outcomes.

1. Expand the Section 41 definition of "qualified research expenditures[8]" to include the cost (specifically, the wages) associated with training employees to perform "qualified services."
2. Increase the credit rate[9] for high-benefit activities, including:
   a. Research performed in collaboration with universities, federal government laboratories, non-profit research institutes, industry consortia, or other businesses. To qualify for this increase, each collaborating entity must contribute no less than one half of its pro rata share of the project's total research work hours.
   b. Research investment by manufacturers for whom most of their manufacturing operations take place in the United States. The domestic manufacturing rate will be calculated as the ratio of domestic production receipts to gross receipts. The increased credit will apply incrementally for domestic manufacturing brackets starting at 50%, 60%, 70%, 80%, and 90%[10].

Title III: Authorize the Small Business Administration to spend $2m per year in collaboration with the Internal Revenue Service to educate business owners on tax incentives for research. In addition to public trainings, online tutorials, and private consultations, this effort should support the publication of concise, plain-language explanations of the relevant tax code[11].

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[1] In IRC Section 41, the payroll tax election is described under subsection (h). "Small business" is defined in 41(h)(3).

[2] Gross receipts shall be determined under the rules of Section 448(c)(3) (without regard to subparagraph (A)). The bill excludes from the definition of gross receipts any grants or non-shareholder contributions to the capital of a corporation, even if covered under one of the two exceptions in 118(b).

[3] 41(h)(3)(i)(I)

[4] 41(h)(3)(i)(II)

[5] 41(h)(4)(B)(ii)

[6] 41(h)(3)(A)(i)(II)

[7] 41(h)(4)(B)(i)

[8] 41(b)

[9] The RRC (41(a)(1)) and the ASC (41(c)(4)) would each be increased by the same fraction to 25% to 17.5%, respectively.

[10] See S.1293, 115th for details.

[11] Similar to S.3291, the Support Small Business R&D Act of 2020 (116th) with the addition of a specified funding level.