

118TH CONGRESS  
1ST SESSION

# S. 314

To amend the Internal Revenue Code of 1986 to permanently allow a tax deduction at the time an investment in qualified property is made, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2023

Mr. CRUZ introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to permanently allow a tax deduction at the time an investment in qualified property is made, 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 “Cost Recovery and Ex-  
5 pending Acceleration to Transform the Economy and  
6 Jumpstart Opportunities for Businesses and Startups  
7 Act” or the “CREATE JOBS Act”.

1 **SEC. 2. PERMANENT FULL EXPENSING FOR QUALIFIED**  
 2 **PROPERTY.**

3 (a) IN GENERAL.—Paragraph (6) of section 168(k)  
 4 of the Internal Revenue Code of 1986 is amended to read  
 5 as follows:

6 “(6) APPLICABLE PERCENTAGE.—For purposes  
 7 of this subsection, the term ‘applicable percentage’  
 8 means, in the case of property placed in service (or,  
 9 in the case of a specified plant described in para-  
 10 graph (5), a plant which is planted or grafted) after  
 11 September 27, 2017, 100 percent.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) Section 168(k) of the Internal Revenue  
 14 Code of 1986 is amended—

15 (A) in paragraph (2)—

16 (i) in subparagraph (A)—

17 (I) in clause (i)(V), by inserting  
 18 “and” at the end,

19 (II) in clause (ii), by striking  
 20 “clause (ii) of subparagraph (E),  
 21 and” and inserting “clause (i) of sub-  
 22 paragraph (E).”, and

23 (III) by striking clause (iii),

24 (ii) in subparagraph (B)—

25 (I) in clause (i)—

1 (aa) by striking subclauses  
2 (II) and (III), and

3 (bb) by redesignating sub-  
4 clauses (IV) through (VI) as sub-  
5 clauses (II) through (IV), respec-  
6 tively,

7 (II) by striking clause (ii), and

8 (III) by redesignating clauses  
9 (iii) and (iv) as clauses (ii) and (iii),  
10 respectively,

11 (iii) in subparagraph (C)—

12 (I) in clause (i), by striking “and  
13 subclauses (II) and (III) of subpara-  
14 graph (B)(i)”, and

15 (II) in clause (ii), by striking  
16 “subparagraph (B)(iii)” and inserting  
17 “subparagraph (B)(ii)”, and

18 (iv) in subparagraph (E)—

19 (I) by striking clause (i), and

20 (II) by redesignating clauses (ii)  
21 and (iii) as clauses (i) and (ii), respec-  
22 tively, and

23 (B) in paragraph (5)(A), by striking  
24 “planted before January 1, 2027, or is grafted  
25 before such date to a plant that has already

1           been planted,” and inserting “planted or graft-  
2           ed”.

3           (2) Section 460(c)(6)(B) of such Code is  
4           amended by striking “which” and all that follows  
5           through the period and inserting “which has a recov-  
6           ery period of 7 years or less.”.

7           (c) EFFECTIVE DATE.—The amendments made by  
8           this section shall take effect as if included in section  
9           13201 of Public Law 115–97.

10   **SEC. 3. NEUTRAL COST RECOVERY DEPRECIATION ADJUST-**  
11                           **MENT FOR RESIDENTIAL RENTAL PROPERTY**  
12                           **AND NONRESIDENTIAL REAL PROPERTY.**

13           (a) IN GENERAL.—Section 168 of the Internal Rev-  
14           enue Code of 1986 is amended by adding at the end there-  
15           of the following new subsection:

16           “(n) NEUTRAL COST RECOVERY DEPRECIATION AD-  
17           JUSTMENT FOR RESIDENTIAL RENTAL PROPERTY AND  
18           NONRESIDENTIAL REAL PROPERTY.—

19                   “(1) IN GENERAL.—In the case of any applica-  
20           ble property, the deduction under this section with  
21           respect to such property for any taxable year after  
22           the taxable year during which the property is placed  
23           in service shall be—

1           “(A) the amount determined under this  
2 section for such taxable year without regard to  
3 this subsection, multiplied by

4           “(B) the applicable neutral cost recovery  
5 ratio for such taxable year.

6           “(2) APPLICABLE NEUTRAL COST RECOVERY  
7 RATIO.—For purposes of paragraph (1), the applica-  
8 ble neutral cost recovery ratio for the applicable  
9 property for any taxable year is the number deter-  
10 mined by—

11           “(A) dividing—

12           “(i) the gross domestic product  
13 deflator for the calendar quarter ending in  
14 such taxable year which corresponds to the  
15 calendar quarter during which the property  
16 was placed in service by the taxpayer, by

17           “(ii) the gross domestic product  
18 deflator for the calendar quarter during  
19 which the property was placed in service by  
20 the taxpayer, and

21           “(B) then multiplying the number deter-  
22 mined under subparagraph (A) by the number  
23 equal to 1.03 to the nth power where ‘n’ is the  
24 number of full years in the period beginning on  
25 the 1st day of the calendar quarter during

1           which the property was placed in service by the  
2           taxpayer and ending on the day before the be-  
3           ginning of the corresponding calendar quarter  
4           ending during such taxable year.

5           The applicable neutral cost recovery ratio shall never  
6           be less than 1. The applicable neutral cost recovery  
7           ratio shall be rounded to the nearest  $\frac{1}{1000}$ .

8           “(3) SPECIAL RULE FOR EXISTING PROP-  
9           ERTY.—In the case of any applicable property which  
10          is placed in service before the date of enactment of  
11          this subsection, subparagraphs (A)(ii) and (B) of  
12          paragraph (2) shall be applied by substituting ‘cal-  
13          endar quarter which includes the date of enactment  
14          of this subsection’ for ‘calendar quarter during  
15          which the property was placed in service by the tax-  
16          payer’ each place it appears.

17          “(4) GROSS DOMESTIC PRODUCT DEFLATOR.—  
18          For purposes of paragraph (2), the gross domestic  
19          product deflator for any calendar quarter is the im-  
20          plicit price deflator for the gross domestic product  
21          for such quarter (as shown in the first revision  
22          thereof).

23          “(5) ELECTION NOT TO HAVE SUBSECTION  
24          APPLY.—This subsection shall not apply to any ap-  
25          plicable property if the taxpayer elects not to have

1 this subsection apply to such property. Such an elec-  
 2 tion, once made, shall be irrevocable.

3 “(6) ADDITIONAL DEDUCTION NOT TO AFFECT  
 4 BASIS OR RECAPTURE.—

5 “(A) IN GENERAL.—The additional  
 6 amount determined under this section by reason  
 7 of this subsection shall not be taken into ac-  
 8 count in determining the adjusted basis of any  
 9 applicable property or of any interest in a pass-  
 10 thru entity which holds such property and shall  
 11 not be treated as a deduction for depreciation  
 12 for purposes of sections 1245 and 1250.

13 “(B) PASS-THRU ENTITY DEFINED.—For  
 14 purposes of subparagraph (A), the term ‘pass-  
 15 thru entity’ means—

16 “(i) a regulated investment company,

17 “(ii) a real estate investment trust,

18 “(iii) an S corporation,

19 “(iv) a partnership,

20 “(v) an estate or trust, and

21 “(vi) a common trust fund.

22 “(7) APPLICABLE PROPERTY.—For purposes of  
 23 this subsection, the term ‘applicable property’ means  
 24 residential rental property or nonresidential real

1 property (as such terms are defined in subsection  
2 (e)(2)).”.

3 (b) MINIMUM TAX TREATMENT.—Paragraph (1) of  
4 section 56(a) of the Internal Revenue Code of 1986 is  
5 amended by adding at the end thereof the following new  
6 subparagraph:

7 “(E) USE OF NEUTRAL COST RECOVERY  
8 RATIO.—In the case of property to which sec-  
9 tion 168(n) applies, the deduction allowable  
10 under this paragraph with respect to such prop-  
11 erty for any taxable year (after the taxable year  
12 during which the property is placed in service)  
13 shall be—

14 “(i) the amount so allowable for such  
15 taxable year without regard to this sub-  
16 paragraph, multiplied by

17 “(ii) the applicable neutral cost recov-  
18 ery ratio for such taxable year (as deter-  
19 mined under section 168(n)).

20 This subparagraph shall not apply to any prop-  
21 erty with respect to which there is an election  
22 in effect not to have section 168(n) apply.”.

23 (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to property placed in service be-



1 fore, on, or after the date of the enactment of this Act,  
 2 with respect to taxable years ending on or after such date.

3 **SEC. 4. ELIMINATION OF AMORTIZATION OF RESEARCH**  
 4 **AND EXPERIMENTAL EXPENDITURES.**

5 (a) IN GENERAL.—Section 174 of the Internal Rev-  
 6 enue Code of 1986 is amended to read as follows:

7 **“SEC. 174. RESEARCH AND EXPERIMENTAL EXPENDITURES.**

8 **“(a) TREATMENT AS EXPENSES.—**

9 **“(1) IN GENERAL.—**A taxpayer may treat re-  
 10 search or experimental expenditures which are paid  
 11 or incurred by him during the taxable year in con-  
 12 nection with his trade or business as expenses which  
 13 are not chargeable to capital account. The expendi-  
 14 tures so treated shall be allowed as a deduction.

15 **“(2) WHEN METHOD MAY BE ADOPTED.—**

16 **“(A) WITHOUT CONSENT.—**A taxpayer  
 17 may, without the consent of the Secretary,  
 18 adopt the method provided in this subsection  
 19 for his first taxable year for which expenditures  
 20 described in paragraph (1) are paid or incurred.

21 **“(B) WITH CONSENT.—**A taxpayer may,  
 22 with the consent of the Secretary, adopt at any  
 23 time the method provided in this subsection.

24 **“(3) SCOPE.—**The method adopted under this  
 25 subsection shall apply to all expenditures described

1 in paragraph (1). The method adopted shall be ad-  
2 hered to in computing taxable income for the taxable  
3 year and for all subsequent taxable years unless,  
4 with the approval of the Secretary, a change to a  
5 different method is authorized with respect to part  
6 or all of such expenditures.

7 “(b) AMORTIZATION OF CERTAIN RESEARCH AND  
8 EXPERIMENTAL EXPENDITURES.—

9 “(1) IN GENERAL.—At the election of the tax-  
10 payer, made in accordance with regulations pre-  
11 scribed by the Secretary, research or experimental  
12 expenditures which are—

13 “(A) paid or incurred by the taxpayer in  
14 connection with his trade or business,

15 “(B) not treated as expenses under sub-  
16 section (a), and

17 “(C) chargeable to capital account but not  
18 chargeable to property of a character which is  
19 subject to the allowance under section 167 (re-  
20 lating to allowance for depreciation, etc.) or sec-  
21 tion 611 (relating to allowance for depletion),

22 may be treated as deferred expenses. In computing  
23 taxable income, such deferred expenses shall be al-  
24 lowed as a deduction ratably over such period of not  
25 less than 60 months as may be selected by the tax-

1 payer (beginning with the month in which the tax-  
2 payer first realizes benefits from such expenditures).  
3 Such deferred expenses are expenditures properly  
4 chargeable to capital account for purposes of section  
5 1016(a)(1) (relating to adjustments to basis of prop-  
6 erty).

7 “(2) TIME FOR AND SCOPE OF ELECTION.—The  
8 election provided by paragraph (1) may be made for  
9 any taxable year, but only if made not later than the  
10 time prescribed by law for filing the return for such  
11 taxable year (including extensions thereof). The  
12 method so elected, and the period selected by the  
13 taxpayer, shall be adhered to in computing taxable  
14 income for the taxable year for which the election is  
15 made and for all subsequent taxable years unless,  
16 with the approval of the Secretary, a change to a  
17 different method (or to a different period) is author-  
18 ized with respect to part or all of such expenditures.  
19 The election shall not apply to any expenditure paid  
20 or incurred during any taxable year before the tax-  
21 able year for which the taxpayer makes the election.

22 “(c) LAND AND OTHER PROPERTY.—This section  
23 shall not apply to any expenditure for the acquisition or  
24 improvement of land, or for the acquisition or improve-  
25 ment of property to be used in connection with the re-

1 search or experimentation and of a character which is sub-  
2 ject to the allowance under section 167 (relating to allow-  
3 ance for depreciation, etc.) or section 611 (relating to al-  
4 lowance for depletion); but for purposes of this section al-  
5 lowances under section 167, and allowances under section  
6 611, shall be considered as expenditures.

7 “(d) EXPLORATION EXPENDITURES.—This section  
8 shall not apply to any expenditure paid or incurred for  
9 the purpose of ascertaining the existence, location, extent,  
10 or quality of any deposit of ore or other mineral (including  
11 oil and gas).

12 “(e) ONLY REASONABLE RESEARCH EXPENDITURES  
13 ELIGIBLE.—This section shall apply to a research or ex-  
14 perimental expenditure only to the extent that the amount  
15 thereof is reasonable under the circumstances.

16 “(f) CROSS REFERENCES.—

17 “(1) For adjustments to basis of property for  
18 amounts allowed as deductions as deferred expenses  
19 under subsection (b), see section 1016(a)(14).

20 “(2) For election of 10-year amortization of ex-  
21 penditures allowable as a deduction under subsection  
22 (a), see section 59(e).”

23 (b) CLERICAL AMENDMENT.—The table of sections  
24 for part VI of subchapter B of chapter 1 of such Code

1 is amended by striking the item relating to section 174  
2 and inserting the following new item:

“Sec. 174. Research and experimental expenditures”.

3 (c) CONFORMING AMENDMENTS.—

4 (1) Section 41(d)(1)(A) of such Code is amend-  
5 ed by striking “specified research or experimental  
6 expenditures under section 174” and inserting “ex-  
7 penses under section 174”.

8 (2) Section 280C(c) of such Code is amended to  
9 read as follows:

10 “(c) CREDIT FOR INCREASING RESEARCH ACTIVI-  
11 TIES.—

12 “(1) IN GENERAL.—No deduction shall be al-  
13 lowed for that portion of the qualified research ex-  
14 penses (as defined in section 41(b)) or basic re-  
15 search expenses (as defined in section 41(e)(2)) oth-  
16 erwise allowable as a deduction for the taxable year  
17 which is equal to the amount of the credit deter-  
18 mined for such taxable year under section 41(a).

19 “(2) SIMILAR RULE WHERE TAXPAYER CAP-  
20 ITALIZES RATHER THAN DEDUCTS EXPENSES.—If—

21 “(A) the amount of the credit determined  
22 for the taxable year under section 41(a)(1), ex-  
23 ceeds

24 “(B) the amount allowable as a deduction  
25 for such taxable year for qualified research ex-

1           penses or basic research expenses (determined  
2           without regard to paragraph (1)),  
3           the amount chargeable to capital account for the  
4           taxable year for such expenses shall be reduced by  
5           the amount of such excess.

6           “(3) ELECTION OF REDUCED CREDIT.—

7           “(A) IN GENERAL.—In the case of any  
8           taxable year for which an election is made  
9           under this paragraph—

10           “(i) paragraphs (1) and (2) shall not  
11           apply, and

12           “(ii) the amount of the credit under  
13           section 41(a) shall be the amount deter-  
14           mined under subparagraph (B).

15           “(B) AMOUNT OF REDUCED CREDIT.—The  
16           amount of credit determined under this sub-  
17           paragraph for any taxable year shall be the  
18           amount equal to the excess of—

19           “(i) the amount of credit determined  
20           under section 41(a) without regard to this  
21           paragraph, over

22           “(ii) the product of—

23           “(I) the amount described in  
24           clause (i), and

1                   “(II) the rate of tax under sec-  
2                   tion 11(b).

3                   “(C) ELECTION.—An election under this  
4                   paragraph for any taxable year shall be made  
5                   not later than the time for filing the return of  
6                   tax for such year (including extensions), shall  
7                   be made on such return, and shall be made in  
8                   such manner as the Secretary may prescribe.  
9                   Such an election, once made, shall be irrev-  
10                  ocable.

11                  “(4) CONTROLLED GROUPS.—Paragraph (3) of  
12                  subsection (b) shall apply for purposes of this sub-  
13                  section.”.

14                  (d) EFFECTIVE DATE.—The amendments made by  
15                  this section shall apply to amounts paid or incurred in tax-  
16                  able years beginning after December 31, 2021.

○