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MARK WALKER, CHAIRMAN

RSC THE REPUBLICAN STUDY COMMITTEE

H.R. 6756 – American Innovation Act of 2018 (Rep. Buchanan, R-FL)

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FLOOR SCHEDULE:

Scheduled for consideration on September 27, 2018 under a rule.

TOPLINE SUMMARY:

H.R. 6756, the American Innovation Act of 2018, would consolidate and increase the deductions available to businesses for start-up and organizational expenditures and allow certain tax attributes attributable to a corporation's start-up period to be used after an ownership change without regard to certain existing tax law limitations.

The Committee Report for the bill can be found here.

COST:

According to a revenue estimate analysis from the Joint Committee on Taxation (JCT) the bill would decrease federal revenues $5.416 billion over the FY 2019 – 2028 period. JCT's estimate does not take into account macroeconomic effects of the legislation.

According to a Congressional Budget Office estimate, the bill would increase deficits by the same amount over the next ten years.

CONSERVATIVE VIEWS:

Conservatives may be pleased the bill would reduce the tax burden on startup businesses.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Start-Up and Organizational Expenditures

Under current tax law, the Internal Revenue Code (IRC) allows a business to deduct up $5,000 of start-up expenditures and $5,000 organizational expenditures accumulated during the taxable year in which the business begins. These are separate deductions under current law. A start-up expenditure is an amount paid or incurred in connection with investigating the creation or acquisition of an existing business, creating a business, or any activity engaged in for profit and for the production of income before the day on which the business begins. An organizational expenditure is an amount paid which is incident to the creation of the corporation, is chargeable to capital account, is of a character which, if expended incident to the creation of a corporation having a limited life, would be amortizable over such life (i.e., the cost of actually creating the business entity). The size of each of these deductions is reduced by the amount that the total of applicable expenditure exceeds $50,000. Any deduction left over may be applied ratably over a 15-year period or capitalized (to increase the taxpayer's basis in the business) and recovered upon disposition of the company within the 15-year window.

Effective for tax years after 2018, the bill would combine the two deductions into a single deduction worth up to $20,000 of start-up and organizational expenses accumulated in the in the business's first taxable year. This maximum deduction would be adjusted for inflation using Chained Consumer Price Index for All Urban Consumers (Chained-CPI). Additionally, the bill would increase the threshold above which the deduction would be reduced to $120,000. This threshold would be adjusted for inflation using Chained-CPI.

If a pass-through business is liquidated prior to the conclusion of the 15-year period, any remaining unamortized amounts can be deducted, but only to the extent allowed pursuant to general loss-deduction rules under Section 165 of the IRC. If a business is disposed of or discontinued prior to the conclusion of the 15-year period, any remaining unamortized amounts attributable to start-up expenditures can be deducted, but only to the extent allowed pursuant to general loss-deduction rules under Section 165 of the IRC. The bill would not allow a partnership or to any partner of the partnership to deduct amounts paid or incurred to promote the sale of (or to sell) an interest in the partnership.

Carryover Net Operating Losses and Tax Credits after Ownership Change

Section 382 of the IRC allows – to a limited extent – corporations that have had a change in ownership to utilize losses attributable to prior to the ownership change to offset income attributable to after the change. A corporation changes ownership when one or more owners of the company that own at least five percent of a company's stock increase their collective ownership stake by more than 50 percent of the company's stock within a three-year period.

The maximum amount of losses that can be carried forward in a single year pursuant to Section 382 is equal to the value of the business, multiplied by the long-term tax-exempt rate (presently, about three percent). If the limitation established under Section 382 is higher than the income of a newly owned corporation in a year that a corporation utilizes some pre-ownership change losses to offset the income, the next post-change year's 382 limitation is raised by the excess. These rules apply only to newly-owned corporations that carry on the existing business enterprise.

Under Section 383 of the IRC, a similar limitation framework applies to newly owned corporations that attempt to utilize unused general business credits, alternative minimum tax credits, foreign tax credits, and net capital losses attributable to a prior to the ownership change.

Generally, the bill would exclude from the limitations established in Sections 382 and 383 pre-ownership change net operating loss carryforwards, net operating losses, general business credit carryforwards, and general business credits of a start-up business. Therefore, startup businesses would be able to take better advantage of tax attributes attributable to a pre-ownership change period. Generally, these tax attributes are considered start-up so long as they occur in the first three years of the corporation.

OUTSIDE GROUPS

Support for HR 6756, specifically

- Advanced Medical Technology Association (AdvaMed)
- Biotechnology Innovation Organization
- National Venture Capital Association

Support Tax Reform 2.0

- Coalition Letter: 56 Conservative & Activists Urge House Passage of Tax Reform 2.0 Legislation
- Americans for Tax Reform
- Associated Builders and Contractors
- Citizens Against Government Waste
- Club for Growth
- Heritage Foundation
- National Electrical Contractors Association
- National Taxpayers Union
- Tax Foundation
- US Chamber of Commerce

Opposition for Tax Reform 2.0

- Institute on Taxation and Economic Policy
- The Progressive Pulse
- Prosperity Now

COMMITTEE ACTION:

H.R. 6756 was introduced on September 10, 2018, and was referred to the House Ways and Means Committee. The Committee held a mark-up session on September 13, 2018, and the bill was ordered to be reported with an amendment in the nature of a substitute by voice vote.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

"Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 1 of the Constitution of the United States."
