

108TH CONGRESS  
1ST SESSION

# H. R. 2358

To amend the Internal Revenue Code of 1986 to encourage the timely development of a more cost effective United States commercial space transportation industry, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2003

Mr. CALVERT (for himself, Mr. ORTIZ, Mr. SENSENBRENNER, Mr. CUNNINGHAM, Mr. SANDLIN, Mr. BARTLETT of Maryland, Mrs. CAPPS, Mr. WELDON of Florida, Mr. PAUL, Mr. FOLEY, Mr. HINOJOSA, Mr. LUCAS of Oklahoma, Mr. BARTON of Texas, Mr. DOOLITTLE, and Mr. BURGESS) introduced the following bill; which was referred to the Committee on Ways and Means

---

## A BILL

To amend the Internal Revenue Code of 1986 to encourage the timely development of a more cost effective United States commercial space transportation industry, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Invest in Space Now Act of 2003”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Purposes.

Sec. 4. Definitions.

Sec. 5. Credit for purchase of space transportation vehicle provider stock.

Sec. 6. United States commercial space transportation vehicle authorization.

1 **SEC. 2. FINDINGS.**

2 The Congress hereby finds that:

3 (1) The United States commercial space trans-  
4 portation industry is an essential part of the na-  
5 tional economy.

6 (2) Opportunities for United States commercial  
7 providers are growing as international markets ex-  
8 pand.

9 (3) The development of the United States com-  
10 mercial space transportation industry is consistent  
11 with the national security needs and foreign policy  
12 interests of the United States.

13 (4) United States trading partners have been  
14 able to lower their commercial space transportation  
15 prices aggressively either through direct cash pay-  
16 ments for commercially targeted product develop-  
17 ment or with indirect benefits derived from non-  
18 market economy status.

19 (5) Because United States incentives for space  
20 transportation development have historically focused  
21 on civil and military rather than commercial use,  
22 United States space transportation costs have re-

1       mained comparatively high, and United States space  
2       transportation technology has not been commercially  
3       focused.

4               (6) As a result, the United States share of the  
5       world commercial market for space transportation  
6       has decreased from nearly 100 percent 20 years ago  
7       to approximately 47 percent in 1998.

8               (7) In order to avoid undue reliance on foreign  
9       space transportation services, the United States  
10       must strive to have sufficient domestic capacity as  
11       well as the highest quality and the lowest cost per  
12       service provided.

13              (8) A successful high quality, lower cost United  
14       States commercial space transportation industry  
15       should also lead to substantial United States tax-  
16       payer savings through collateral lower United States  
17       Government costs for its space access requirements.

18              (9) Opening the commercial opportunities of  
19       space to the American aerospace industry must be a  
20       high priority of the United States Government as we  
21       begin the 21st century.

22              (10) Opening space and maintaining United  
23       States leadership in the world market does not re-  
24       quire massive Government intrusion, but enough  
25       Government support on an incremental and timely

1 basis to enable the more cost effective United States  
2 private sector to build lower cost space transpor-  
3 tation vehicles.

4 (11) Private sector companies across the United  
5 States are already attempting to develop a variety of  
6 lower cost space transportation vehicles, but lack of  
7 sufficient private financing, particularly in the early  
8 stages of development, has proven to be a major ob-  
9 stance, an obstacle our trading partners have re-  
10 moved by providing direct access to government  
11 funding.

12 (12) Given the strengths and creativity of pri-  
13 vate industry in the United States, a more effective  
14 alternative to the approach of our trading partners  
15 is for the United States Government to provide lim-  
16 ited incentives industry wide to assist qualifying  
17 United States private sector companies obtain other-  
18 wise unavailable private equity financing for the crit-  
19 ical development stages of a project, while at the  
20 same time keeping Government involvement at a  
21 minimum.

22 **SEC. 3. PURPOSES.**

23 The purposes of this Act are—

24 (1) to ensure availability of otherwise unavail-  
25 able private sector equity financing for United

1 States private sector development of commercial  
2 space transportation vehicles which will have trans-  
3 portation costs significantly below current levels; and

4 (2) as a result—

5 (A) to avoid undue reliance on foreign  
6 space transportation services;

7 (B) to reduce substantially United States  
8 Government space transportation expenditures;

9 (C) to increase the international competi-  
10 tiveness of the United States space industry;

11 (D) to encourage the growth of space-re-  
12 lated commerce in the United States and inter-  
13 nationally; and

14 (E) to open the space frontier to the  
15 American people.

16 **SEC. 4. DEFINITIONS.**

17 In this Act:

18 (1) SECRETARY.—The term “Secretary” means  
19 the Secretary of Transportation.

20 (2) SPACE LAUNCH SITE.—The term “space  
21 launch site” means a location from which a launch  
22 or landing takes place and includes all facilities lo-  
23 cated on, or components of, a launch or landing site,  
24 whether real or personal property, which are nec-  
25 essary to conduct a launch, whether on land, sea,

1 in the Earth’s atmosphere, or beyond the Earth’s  
2 atmosphere.

3 (3) SPACE TRANSPORTATION VEHICLE.—The  
4 term “space transportation vehicle” includes all  
5 types of vehicles, whether now in existence, devel-  
6 oped in the future, or currently under design, devel-  
7 opment, construction, reconstruction, or recondi-  
8 tioning, which are constructed in the United States  
9 by a United States commercial provider and owned  
10 by the commercial provider, for the purpose of oper-  
11 ating in, or transporting a payload to, from, or with-  
12 in, outer space, or in suborbital trajectory.

13 (4) SUBORBITAL TRAJECTORY.—The term  
14 “suborbital trajectory” means a trajectory that has  
15 a significant phase of flight during which the vehicle  
16 generates neither thrust nor significant aerodynamic  
17 nor aerostatic lift and which occurs in some part  
18 above 150,000 feet above mean sea level.

19 (5) STATE.—The term “State” means any  
20 State in the United States, the District of Columbia,  
21 the Commonwealth of Puerto Rico, the Virgin Is-  
22 lands, Guam, American Samoa, the Commonwealth  
23 of the Northern Mariana Islands, and any other  
24 commonwealth, territory, or possession of the United  
25 States.

1 (6) UNITED STATES COMMERCIAL PROVIDER.—

2 The term “United States commercial provider”  
3 means a commercial provider organized under the  
4 laws of the United States or of a State as a corpora-  
5 tion or a Limited Liability Company (LLC).

6 (7) UNITED STATES COMMERCIAL SPACE

7 TRANSPORTATION VEHICLE PROVIDER.—The term  
8 “United States commercial space transportation ve-  
9 hicle provider” means a United States commercial  
10 provider engaged in designing, developing, and pro-  
11 ducing commercial space transportation vehicles.

12 (8) UNITED STATES COMMERCIAL SPACE

13 TRANSPORTATION VEHICLE INDUSTRY.—The term  
14 “United States commercial space transportation ve-  
15 hicle industry” means the collection of United States  
16 commercial space transportation vehicle providers.

17 (9) SPACE TRANSPORTATION COSTS SIGNIFI-

18 CANTLY BELOW CURRENT LEVELS.—The term  
19 “space transportation costs significantly below cur-  
20 rent levels” means at the time of application, for  
21 that market segment for which, or in which, the  
22 space transportation vehicle is designed, developed,  
23 produced, maintained, or operated, the cost of pro-  
24 ducing, maintaining, and operating the vehicle is 50  
25 percent of the then space transportation costs in

1 that market segment as estimated by the Secretary.  
2 If no market exists for the transportation proposed  
3 at the time of application, the 50 percent require-  
4 ment of the preceding sentence shall be treated as  
5 being met if the vehicle has a reasonable possibility  
6 of creating the market proposed.

7 **SEC. 5. CREDIT FOR PURCHASE OF SPACE TRANSPOR-**  
8 **TATION VEHICLE PROVIDER STOCK.**

9 (a) IN GENERAL.—Part IV of subchapter A of chap-  
10 ter 1 of the Internal Revenue Code of 1986 (relating to  
11 credits against tax) is amended by adding at the end the  
12 following new subpart:

13 **“Subpart H—Space Transportation Credit**

14 **“SEC. 54. CREDIT FOR PURCHASE OF SPACE TRANSPOR-**  
15 **TATION VEHICLE PROVIDER STOCK.**

16 “(a) ALLOWANCE OF CREDIT.—

17 “(1) IN GENERAL.—There shall be allowed as a  
18 credit against the tax imposed by this chapter for  
19 the taxable year an amount equal to the applicable  
20 percentage of the aggregate amount paid by the tax-  
21 payer during the taxable year for the purchase of  
22 qualified space transportation vehicle provider stock.

23 “(2) APPLICABLE PERCENTAGE.—For purposes  
24 of paragraph (1), the applicable percentage is the

1 percentage determined in accordance with the fol-  
 2 lowing table:

<b>“For taxable years beginning in calendar year—</b>	<b>The applicable percentage is—</b>
2004, 2005, and 2006 .....	50
2007 .....	40
2008 .....	35
2009 .....	30
2010 and 2011 .....	20
2012 and thereafter .....	0.

3 “(b) MAXIMUM CREDIT.—

4 “(1) LIMITATION FOR EACH PROVIDER.—

5 “(A) LARGE CAPITALIZATION PRO-  
 6 VIDERS.—The credit allowed under this section  
 7 with respect to the stock of each large capital-  
 8 ization space transportation vehicle provider  
 9 purchased during a calendar year shall not ex-  
 10 ceed—

- 11 “(i) \$50,000,000 for 2004,
- 12 “(ii) \$100,000,000 for 2005,
- 13 “(iii) \$125,000,000 for 2006,
- 14 “(iv) \$175,000,000 for 2007,
- 15 “(v) \$200,000,000 for 2008,
- 16 “(vi) \$50,000,000 for 2009, and
- 17 “(vii) \$0 for 2010 and 2011.

18 “(B) SMALL CAPITALIZATION PRO-  
 19 VIDERS.—The credit allowed under this section  
 20 with respect to the stock of each small capital-  
 21 ization space transportation vehicle provider

1 purchased during a calendar year shall not ex-  
2 ceed—

3 “(i) \$35,000,000 for 2004,

4 “(ii) \$40,000,000 for 2005,

5 “(iii) \$45,000,000 for 2006,

6 “(iv) \$50,000,000 for each of 2007

7 and 2008,

8 “(v) \$40,000,000 for 2009, and

9 “(vi) \$35,000,000 for each of 2010

10 and 2011.

11 “(2) AGGREGATE LIMIT.—The aggregate credit  
12 allowed under this section with respect to the stock  
13 of all space transportation vehicle providers pur-  
14 chased during a calendar year shall not exceed—

15 “(A) \$395,000,000 for 2004,

16 “(B) \$580,000,000 for 2005,

17 “(C) \$690,000,000 for 2006,

18 “(D) \$875,000,000 for 2007,

19 “(E) \$950,000,000 for 2008,

20 “(F) \$430,000,000 for 2009,

21 “(G) \$245,000,000 for 2010, and

22 “(H) \$245,000,000 for 2011.

23 “(c) QUALIFIED SPACE TRANSPORTATION VEHICLE  
24 PROVIDER STOCK.—For purposes of this section—

1           “(1) IN GENERAL.—The term ‘qualified space  
2 transportation vehicle provider stock’ means any  
3 common stock in a C corporation or any membership  
4 unit in a State-registered limited liability company  
5 (LLC) if—

6                   “(A) as of the date of issuance, such cor-  
7 poration is a qualified space transportation ve-  
8 hicle provider,

9                   “(B) such stock is acquired by the tax-  
10 payer at its original issue (directly or through  
11 an underwriter) in exchange for money or other  
12 property (not including stock), and

13                   “(C) the proceeds of such issue are used  
14 by such issuer during the 36-month period be-  
15 ginning on the date of issuance in substantial  
16 compliance with the issuer’s projected usage  
17 submitted to the Secretary of Transportation  
18 under section 6 of the Invest in Space Now Act  
19 of 2003 with its application for authorization.

20           “(2) QUALIFIED SPACE TRANSPORTATION VEHI-  
21 CLE PROVIDER.—The term ‘qualified space transpor-  
22 tation vehicle provider’ means any United States  
23 commercial space transportation vehicle provider (as  
24 defined in section 4 of the Invest in Space Now Act

1 of 2003) for which an authorization is in effect  
2 under section 6 of such Act.

3 “(3) CAPITALIZATION STATUS OF QUALIFIED  
4 PROVIDERS.—For purposes of applying the limits  
5 under subsection (b)—

6 “(A) DESIGNATION.—The Secretary shall,  
7 using the guidelines developed under subpara-  
8 graph (B), designate each qualified space trans-  
9 portation vehicle provider as a large capitaliza-  
10 tion space transportation vehicle provider or a  
11 small capitalization space transportation vehicle  
12 provider.

13 “(B) GUIDELINES.—The Secretary of  
14 Transportation shall, not later than 6 months  
15 after the date of the enactment of the Invest in  
16 Space Now Act of 2003, publish guidelines  
17 under which qualified space transportation vehi-  
18 cle providers are classified into large capitaliza-  
19 tion providers and small capitalization pro-  
20 viders. The guidelines shall be based on factors  
21 particular to the space transportation industry,  
22 including—

23 “(i) the capital requirements nec-  
24 essary to support the type of provider the  
25 taxpayer is or is trying to become,

1                   “(ii) the payload size of space trans-  
2                   portation vehicles developed or used by the  
3                   taxpayer,

4                   “(iii) the markets in which the tax-  
5                   payer is participating, and

6                   “(iv) whether human spaceflight is in-  
7                   cluded.

8           “(d) RECAPTURE OF CREDIT.—If—

9                   “(1) the taxpayer fails to hold qualified space  
10                  transportation vehicle provider stock for the 3-year  
11                  period beginning on the date such stock was pur-  
12                  chased by the taxpayer, or

13                  “(2) during such 3-year period, the issuer of  
14                  such stock ceases to meet the requirements of sec-  
15                  tion 6 of the Invest in Space Now Act of 2003,

16                  then notwithstanding any other provision of this subtitle,  
17                  the tax imposed by this chapter on the taxpayer for the  
18                  taxable year beginning in the calendar year in which such  
19                  cessation occurred shall be increased by the amount of  
20                  credit allowed under subsection (a) to the taxpayer with  
21                  respect to such stock.

22           “(e) SPECIAL RULES.—For purposes of this sec-  
23           tion—

1           “(1) CERTAIN PURCHASES BY CORPORATION OF  
2           ITS OWN STOCK.—Rules similar to the rules of sec-  
3           tion 1202(c)(3) shall apply.

4           “(2) RELATED PERSONS.—

5                   “(A) IN GENERAL.—Except as provided in  
6                   subparagraph (B), for purposes of subsection  
7                   (b) the taxpayer and any person related to the  
8                   taxpayer shall be treated as one person.

9                   “(B) EXCEPTION.—A taxpayer may elect  
10                  to treat not more than one other person who is  
11                  related to such taxpayer as unrelated for pur-  
12                  poses of this section. A person treated as unre-  
13                  lated to the taxpayer under the previous sen-  
14                  tence shall not be the same capitalization status  
15                  (determined under subsection (c)(3) as the tax-  
16                  payer.

17                  “(C) RELATED PERSONS.—For purposes  
18                  of this paragraph, a person is a related person  
19                  to another person if—

20                          “(i) the relationship between such per-  
21                          sons would result in a disallowance of  
22                          losses under section 267 or 707(b), or

23                          “(ii) such persons are members of the  
24                          same controlled group of corporations (as  
25                          defined in section 1563(a), except that

1                   ‘more than 50 percent’ shall be substituted  
2                   for ‘at least 80 percent’ each place it ap-  
3                   pears therein).

4           “(f) BASIS ADJUSTMENTS.—For purposes of this  
5 subtitle, if a credit is allowed under this section for the  
6 purchase of any stock—

7                   “(1) the increase in the basis of such stock  
8                   which would (but for this subsection) result from  
9                   such purchase shall be reduced by the amount of the  
10                  credit so allowed, and

11                  “(2) the basis of such stock shall be increased  
12                  by the amount of the increase under subsection (d).

13           “(g) APPLICATION WITH OTHER CREDITS.—The  
14 credit allowed under subsection (a) for any taxable year  
15 shall not exceed the excess of—

16                  “(1) the sum of the regular tax liability (as de-  
17                  fined in section 26(b)) plus the tax imposed by sec-  
18                  tion 55, over

19                  “(2) the sum of the credits allowable under this  
20                  part (other than subpart C thereof, relating to re-  
21                  fundable credits).”

22           (b) CONFORMING AMENDMENT.—Subsection (a) of  
23 section 1016 of such Code is amended by striking “and”  
24 at the end of paragraph (27), by striking the period at

1 the end of paragraph (28) and inserting “; and”, and by  
2 adding at the end the following new paragraph:

3 “(29) to the extent provided in section 54(f), in  
4 the case of amounts with respect to which a credit  
5 has been allowed under section 54 or a recapture  
6 imposed under section 54(d).”.

7 (c) CLERICAL AMENDMENT.—The table of subparts  
8 for part IV is amended by adding at the end the following  
9 new item:

“Subpart H. Space transportation credit.”.

10 (d) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to amounts paid after December  
12 31, 2003.

13 **SEC. 6. UNITED STATES COMMERCIAL SPACE TRANSPOR-**  
14 **TATION VEHICLE AUTHORIZATION.**

15 (a) UNITED STATES COMMERCIAL SPACE TRANS-  
16 PORTATION VEHICLE INDUSTRY AUTHORIZATION PRO-  
17 GRAM.—

18 (1) ESTABLISHMENT OF PROGRAM.—There  
19 shall be a United States Commercial Space Trans-  
20 portation Vehicle Industry Authorization Program to  
21 provide authorization for tax credit qualification  
22 under section 54 of the Internal Revenue Code of  
23 1986 to multiple United States commercial space  
24 transportation vehicle providers developing vehicles

1 with space transportation costs significantly below  
2 current levels.

3 (2) ADMINISTRATION OF PROGRAM.—The pro-  
4 gram shall be carried out by the Secretary of Trans-  
5 portation under a streamlined application process  
6 pursuant to the terms of this section and any regu-  
7 lations that may be promulgated hereunder, in con-  
8 sultation with other United States Government offi-  
9 cials, and private sector representatives, as nec-  
10 essary, to ensure fair, effective, and timely program  
11 administration and streamlined authorization.

12 (3) SCOPE OF PROGRAM.—

13 (A) TEMPORARY GOVERNMENT SUP-  
14 PORT.—The United States Commercial Space  
15 Transportation Vehicle Industry Authorization  
16 Program is intended to provide eligibility for  
17 tax credits under section 54 of the Internal  
18 Revenue Code of 1986 to investors to support  
19 financing of qualified commercial space trans-  
20 portation vehicle development ventures during  
21 their startup phases.

22 (B) EXCLUSION OF SPACE LAUNCH  
23 SITES.—The program does not provide author-  
24 ization pertaining to the construction, recon-

1 construction, or reconditioning of space launch  
2 sites.

3 (C) EXCLUSION OF NONRELATED ACTIVITIES.—The program does not provide author-  
4 zation for any corporation unless its business  
5 plan provides that the main core mission of the  
6 corporation is the construction, reconstruction,  
7 reconditioning, sale, or distribution of any prod-  
8 uct which is integral to the design, develop-  
9 ment, construction, reconstruction, or recondi-  
10 tioning of a space transportation vehicle as de-  
11 scribed in subsection (b).

12 (4) NONDISCLOSURE OF CONFIDENTIAL MATE-  
13 RIALS.—Materials that are submitted by a United  
14 States commercial space transportation vehicle pro-  
15 vider to the Secretary in connection with an applica-  
16 tion submitted under the United States Commercial  
17 Space Transportation Vehicle Authorization Pro-  
18 gram and deemed by the commercial provider to be  
19 confidential, and that contain trade secrets or pro-  
20 prietary commercial, financial, or technical informa-  
21 tion of a kind not customarily disclosed to the pub-  
22 lic, shall not be disclosed by the Secretary to persons  
23 other than Government officers or employees not-  
24 withstanding any other provision of law.  
25

1           (5) CONSULTATION.—The Secretary shall con-  
2           sult to the extent deemed necessary for effective im-  
3           plementation of this Act with appropriate Federal  
4           agencies and congressional and space transportation  
5           industry representatives.

6           (6) PROGRAM MANAGEMENT.—The Secretary  
7           shall manage the authorization program consistent  
8           with the purposes of this Act.

9           (b) AUTHORIZATION OF VEHICLE PROVIDERS.—

10           (1) AUTHORIZATION BASED ON REASONABLE  
11           POSSIBILITY OF SUCCESS.—

12           (A) IN GENERAL.—The Secretary shall au-  
13           thorize vehicle providers who demonstrate by  
14           the submission of technical and financial infor-  
15           mation that they have a reasonable possibility  
16           of developing, operating, and maintaining a  
17           space transportation vehicle or vehicles with  
18           space transportation costs significantly below  
19           current levels.

20           (B) RESPONSE BY SECRETARY.— Author-  
21           ization by the Secretary is deemed granted un-  
22           less within 120 days of application submission  
23           the Secretary determines that the provider has  
24           no reasonable possibility of significantly low-  
25           ering space transportation costs.

1           (2) POSSIBLE COMMERCIAL VIABILITY AND  
2 CAPITAL REQUIREMENT TO QUALIFY STOCK FOR  
3 CREDIT.—To demonstrate possible commercial via-  
4 bility the United States commercial space transpor-  
5 tation vehicle provider must raise \$5,000,000 of eq-  
6 uity investment during the year of application in  
7 order to qualify its stock investors for credit under  
8 this Act. Equity raised in order to meet commercial  
9 viability tests is eligible for credit once authorization  
10 has been completed. The United States commercial  
11 space transportation vehicle provider may qualify ad-  
12 ditional stock for investor credit up to the maximum,  
13 as provided, in section 54(b) of the Internal Revenue  
14 Code of 1986, as added by section 5 of this Act.

15           (3) ANNUAL VERIFICATION OF SUBSTANTIAL  
16 COMPLIANCE.—

17           (A) IN GENERAL.—Once authorized, a ve-  
18 hicle provider must submit to the Secretary  
19 each year a certified audit opinion letter  
20 verifying its use of funds in substantial compli-  
21 ance with its application.

22           (B) CONSEQUENCE OF FAILURES.—

23           (i) Failure to submit a certified audit  
24 opinion letter verifying substantial compli-

1                   ance with its application will result in de-  
2                   authorization of the vehicle provider.

3                   (ii) Failure to use funds received after  
4                   authorization for the development of a  
5                   space transportation vehicle or vehicles  
6                   with the goal to reduce space transpor-  
7                   tation costs significantly below current lev-  
8                   els will result in deauthorization. Failure  
9                   to achieve success will not result in de-  
10                  authorization.

○