

108TH CONGRESS
2D SESSION

S. 2103

To amend the Internal Revenue Code of 1986 to limit the deduction for charitable contributions of patents and similar property.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2004

Mr. ROBERTS (for himself and Mr. BROWNBACK) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to limit the deduction for charitable contributions of patents and similar property.

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. LIMITATION OF DEDUCTION FOR CHARITABLE**
4 **CONTRIBUTIONS OF PATENTS AND SIMILAR**
5 **PROPERTY.**

6 (a) IN GENERAL.—Subparagraph (B) of section
7 170(e)(1) of the Internal Revenue Code of 1986 (relating
8 to certain contributions of capital gain property) is amend-
9 ed by striking “or” at the end of clause (i), by inserting

1 “or” at the end of clause (ii), and by inserting after clause
 2 (ii) the following new clause:

3 “(iii) except as provided in paragraph
 4 (7), of any patent, copyright, trademark,
 5 trade name, trade secret, know-how, soft-
 6 ware, or similar property,”.

7 (b) SPECIAL RULE.—Section 170(e) of such Code is
 8 amended by adding at the end the following new para-
 9 graph:

10 “(7) SPECIAL RULE FOR CERTAIN CONTRIBU-
 11 TIONS OF PATENTS, COPYRIGHTS, ETC.—

12 “(A) EXCEPTION FOR CONTRIBUTIONS TO
 13 QUALIFIED RESEARCH ORGANIZATIONS.—Sub-
 14 paragraph (B) of paragraph (1) shall not apply
 15 to any qualified contribution to a qualified re-
 16 search organization.

17 “(B) QUALIFIED RESEARCH ORGANIZA-
 18 TION DEFINED.—For purposes of this para-
 19 graph, the term ‘qualified research organiza-
 20 tion’ means an organization that applies its ex-
 21 pertise to the scientific and commercial develop-
 22 ment of qualified contributions and is described
 23 in clause (iii), (iv), or (vi) of subsection
 24 (b)(1)(A) or subparagraph (A), (B), or (C) of
 25 section 41(e)(6).

1 “(C) QUALIFIED CONTRIBUTION DE-
2 FINED.—For purposes of this paragraph, a con-
3 tribution of property described in paragraph
4 (1)(B)(iii) shall be treated as a qualified con-
5 tribution only if—

6 “(i) such contribution is a gift of all
7 right, title, and interest in and to property
8 described in clause (iii) of paragraph
9 (1)(B),

10 “(ii) the donor and donee of any cash
11 or cash equivalent in connection with such
12 contribution agree to limit the use of such
13 cash or cash equivalent to costs of patent
14 prosecution or maintenance and the sci-
15 entific and commercial development of
16 qualified donations in general, and

17 “(iii) under regulations prescribed by
18 the Secretary, the donor of the qualified
19 contribution discloses both the contribution
20 described in clause (i) and a complete de-
21 scription of the terms of any restricted
22 cash or cash equivalents grant described in
23 clause (ii) on its income tax return for the
24 taxable year during which such contribu-
25 tion is made.”.

1 (c) QUALIFIED APPRAISAL REQUIRED.—

2 (1) IN GENERAL.—The Secretary of the Treas-
3 ury shall prescribe regulations or other guidance
4 under section 170(a)(1) of the Internal Revenue
5 Code of 1986 requiring the donor of property de-
6 scribed in section 170(e)(1)(B)(iii) of such Code to
7 obtain one or more qualified appraisals of the fair
8 market value of such property by a qualified ap-
9 praiser or appraisers.

10 (2) QUALIFIED APPRAISER.—For purposes of
11 paragraph (1), the term “qualified appraiser” means
12 an appraiser who has valuation credentials and expe-
13 rience in appraising such property, who is not an
14 employee of the donor or donee, and who satisfies
15 any professional valuation education and qualifica-
16 tion requirements that are prescribed by the Sec-
17 retary.

18 (3) QUALIFIED APPRAISAL.—For purposes of
19 paragraph (1), the term “qualified appraisal” means
20 an appraisal that satisfies the requirements (without
21 regard to any value limitation) for a qualified ap-
22 praisal under section 170(a)(1) of such Code (as in
23 effect on the date of the enactment of this Act), with
24 the following modifications:

1 (A) The valuation methodologies to be
2 used shall be those prescribed by the Secretary.

3 (B) The appraisal shall take into account
4 the competitive patent environment and remain-
5 ing life of a donated patent.

6 (C) The valuation of property described in
7 section 170(e)(7) of such Code shall take into
8 account the potential use of such property by
9 any qualified donee, including the value to be
10 generated through further technology develop-
11 ment and commercialization by the donee and
12 potential licensees of the property.

13 (D) If the value of the property exceeds
14 \$5,000,000, a second appraisal prepared by a
15 qualified appraiser independently selected by a
16 professional organization designated by the Sec-
17 retary shall be required.

18 (E) The donee shall acknowledge receipt of
19 the appraisal summary required to be filed by
20 the donor.

21 (F) The amount of any cash or cash equiv-
22 alent grant described in section 170(e)(7)(C)(ii)
23 of such Code and a complete description of the
24 terms of any such grant shall be fully described
25 in the information returns of the donee organi-

1 zation for the taxable year of receipt and subse-
2 quent taxable years, as required by the Sec-
3 retary.

4 (d) ANTI-ABUSE RULES.—The Secretary may pre-
5 scribe such regulations or other guidance as may be nec-
6 essary or appropriate to prevent the avoidance of the pur-
7 poses of paragraphs (1)(B)(iii) and (7) of section 170(e)
8 of such Code (as added by this section), including pre-
9 venting—

10 (1) the circumvention of the reduction of the
11 deduction under such section by embedding or bun-
12 dling the patent or similar property as part of a
13 charitable contribution of property that includes the
14 patent or similar property,

15 (2) the manipulation of the basis of the prop-
16 erty to increase the amount of the charitable deduc-
17 tion through the use of related persons, pass-thru
18 entities, or other intermediaries, or through the use
19 of any provision of law or regulation (including the
20 consolidated return regulations), and

21 (3) a donor from changing the form of the pat-
22 ent or similar property to property of a form for
23 which different deduction rules would apply.

24 (e) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided by para-
2 graph (2), the amendments made by this section
3 shall apply to contributions made after the date of
4 the enactment of this Act.

5 (2) APPRAISALS.—Subsection (c) shall apply to
6 contributions made after the date of adoption of reg-
7 ulations, or date of issuance of guidance, required by
8 subsection (c), whichever is earlier.

○