

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 6756  
OFFERED BY MR. BRADY OF TEXAS**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “American Innovation  
3 Act of 2018”.

**4 SEC. 2. SIMPLIFICATION AND EXPANSION OF DEDUCTION  
5 FOR START-UP AND ORGANIZATIONAL EX-  
6 PENDITURES.**

7 (a) IN GENERAL.—Section 195 of the Internal Rev-  
8 enue Code of 1986 is amended by redesignating sub-  
9 sections (c) and (d) as subsections (d) and (e), respec-  
10 tively, and by striking all that precedes subsection (d) (as  
11 so redesignated) and inserting the following:

**12 “SEC. 195. START-UP AND ORGANIZATIONAL EXPENDI-  
13 TURES.**

14 “(a) CAPITALIZATION OF EXPENDITURES.—Except  
15 as otherwise provided in this section, no deduction shall  
16 be allowed for start-up or organizational expenditures.

17 “(b) ELECTION TO DEDUCT.—

1           “(1) IN GENERAL.—If a taxpayer elects the ap-  
2           plication of this subsection with respect to any active  
3           trade or business—

4                   “(A) the taxpayer shall be allowed a deduc-  
5                   tion for the taxable year in which such active  
6                   trade or business begins in an amount equal to  
7                   the lesser of—

8                           “(i) the aggregate amount of start-up  
9                           and organizational expenditures paid or in-  
10                          curred in connection with such active trade  
11                          or business, or

12                           “(ii) \$20,000, reduced (but not below  
13                          zero) by the amount by which such aggre-  
14                          gate amount exceeds \$120,000, and

15                          “(B) the remainder of such start-up and  
16                          organizational expenditures shall be charged to  
17                          capital account and allowed as an amortization  
18                          deduction determined by amortizing such ex-  
19                          penditures ratably over the 180-month period  
20                          beginning with the month in which the active  
21                          trade or business begins.

22           “(2) APPLICATION TO ORGANIZATIONAL EX-  
23           PENDITURES.—In the case of organizational expend-  
24           itures with respect to any corporation or partner-  
25           ship, the active trade or business referred to in para-

1 graph (1) means the first active trade or business  
2 carried on by such corporation or partnership.

3 “(3) INFLATION ADJUSTMENT.—In the case of  
4 any taxable year beginning after December 31,  
5 2019, the \$20,000 and \$120,000 amounts in para-  
6 graph (1)(A)(ii) shall each be increased by an  
7 amount equal to—

8 “(A) such dollar amount, multiplied by

9 “(B) the cost-of-living adjustment deter-  
10 mined under section 1(f)(3) for the calendar  
11 year in which the taxable year begins, deter-  
12 mined by substituting ‘calendar year 2018’ for  
13 ‘calendar year 2016’ in subparagraph (A)(ii)  
14 thereof.

15 If any amount as increased under the preceding sen-  
16 tence is not a multiple of \$1,000, such amount shall  
17 be rounded to the nearest multiple of \$1,000.

18 “(c) ALLOWANCE OF DEDUCTION UPON LIQUIDA-  
19 TION OR DISPOSITION.—

20 “(1) LIQUIDATION OF PARTNERSHIP OR COR-  
21 PORATION.—If any partnership or corporation is  
22 completely liquidated by the taxpayer, any start-up  
23 or organizational expenditures paid or incurred in  
24 connection with such partnership or corporation  
25 which were not allowed as a deduction by reason of

1       this section may be deducted to the extent allowable  
2       under section 165.

3               “(2) DISPOSITION OF TRADE OR BUSINESS.—If  
4       any trade or business is completely disposed of or  
5       discontinued by the taxpayer, any start-up expendi-  
6       tures paid or incurred in connection with such trade  
7       or business which were not allowed as a deduction  
8       by reason of this section (and not taken into account  
9       in connection with a liquidation to which paragraph  
10      (1) applies) may be deducted to the extent allowable  
11      under section 165. For purposes of this paragraph,  
12      in the case of any deduction allowed under sub-  
13      section (b)(1) with respect to both start-up and or-  
14      ganizational expenditures, the amount treated as so  
15      allowed with respect to start-up expenditures shall  
16      bear the same ratio to such deduction as the start-  
17      up expenditures taken into account in determining  
18      such deduction bears to the aggregate of the start-  
19      up and organizational expenditures so taken into ac-  
20      count.”.

21      (b) ORGANIZATIONAL EXPENDITURES.—Section  
22      195(d) of such Code, as redesignated by subsection (a),  
23      is amended by adding at the end the following new para-  
24      graph:

1           “(3) ORGANIZATIONAL EXPENDITURES.—The  
2 term ‘organizational expenditures’ means any ex-  
3 penditure which—

4                   “(A) is incident to the creation of a cor-  
5 poration or a partnership,

6                   “(B) is chargeable to capital account, and

7                   “(C) is of a character which, if expended  
8 incident to the creation of a corporation or a  
9 partnership having an ascertainable life, would  
10 be amortizable over such life.

11           “(4) APPLICATION TO CERTAIN DISREGARDED  
12 ENTITIES.—In the case of any entity with a single  
13 owner that is disregarded as an entity separate from  
14 its owner, this section shall be applied in the same  
15 manner as if such entity were a corporation.”.

16           (c) ELECTION.—Section 195(e)(2) of such Code, as  
17 redesignated by subsection (a), is amended to read as fol-  
18 lows:

19                   “(2) PARTNERSHIPS AND S CORPORATIONS.—In  
20 the case of any partnership or S corporation, the  
21 election under subsection (b) shall be made (and this  
22 section shall be applied) at the entity level.”.

23           (d) CONFORMING AMENDMENTS.—

24                   (1)(A) Part VIII of subchapter B of chapter 1  
25 is amended by striking section 248 of such Code

1 (and by striking the item relating to such section in  
2 the table of sections of such part).

3 (B) Section 170(b)(2)(D)(ii) of such Code is  
4 amended by striking “(except section 248)”.

5 (C) Section 312(n)(3) of such Code is amended  
6 by striking “Sections 173 and 248” and inserting  
7 “Sections 173 and 195”.

8 (D) Section 535(b)(3) of such Code is amended  
9 by striking “(except section 248)”.

10 (E) Section 545(b)(3) of such Code is amended  
11 by striking “(except section 248)”.

12 (F) Section 545(b)(4) of such Code is amended  
13 by striking “(except section 248)”.

14 (G) Section 834(c)(7) of such Code is amended  
15 by striking “(except section 248)”.

16 (H) Section 852(b)(2)(C) of such Code is  
17 amended by striking “(except section 248)”.

18 (I) Section 857(b)(2)(A) of such Code is  
19 amended by striking “(except section 248)”.

20 (J) Section 1363(b) of such Code is amended  
21 by adding “and” at the end of paragraph (2), by  
22 striking paragraph (3), and by redesignating para-  
23 graph (4) as paragraph (3).

24 (K) Section 1375(b)(1)(B)(i) of such Code is  
25 amended by striking “(other than the deduction al-

1       lowed by section 248, relating to organization ex-  
2       penditures)”.  
3

4               (2)(A) Section 709 of such Code is amended to  
5       read as follows:

6       **“SEC. 709. TREATMENT OF SYNDICATION FEES.**

7       “No deduction shall be allowed under this chapter to  
8       a partnership or to any partner of the partnership for any  
9       amounts paid or incurred to promote the sale of (or to  
10       sell) an interest in the partnership.”.

11               (B) The item relating to section 709 in the  
12       table of sections for part I of subchapter K of chap-  
13       ter 1 of such Code is amended to read as follows:  
14       “Sec. 709. Treatment of syndication fees.”.

15               (3) Section 1202(e)(2)(A) of such Code is  
16       amended by striking “section 195(c)(1)(A)” and in-  
17       serting “section 195(d)(1)(A)”.

18               (4) The item relating to section 195 in the table  
19       of contents of part VI of subchapter B of chapter 1  
20       of such Code is amended to read as follows:

21       “Sec. 195. Start-up and organizational expenditures.”.

22       (e) **EFFECTIVE DATE.**—The amendments made by  
23       this section shall apply to expenditures paid or incurred  
24       in connection with active trades or businesses which begin  
25       in taxable years beginning after December 31, 2018.

1 **SEC. 3. PRESERVATION OF START-UP NET OPERATING**  
2 **LOSSES AND TAX CREDITS AFTER OWNER-**  
3 **SHIP CHANGE.**

4 (a) APPLICATION TO NET OPERATING LOSSES.—  
5 Section 382(d) of the Internal Revenue Code of 1986 is  
6 amended by adding at the end the following new para-  
7 graph:

8 “(4) EXCEPTION FOR START-UP LOSSES.—

9 “(A) IN GENERAL.—In the case of any net  
10 operating loss carryforward described in para-  
11 graph (1)(A) which arose in a start-up period  
12 taxable year, the amount of such net operating  
13 loss carryforward otherwise taken into account  
14 under such paragraph shall be reduced by the  
15 net start-up loss determined with respect to the  
16 trade or business referred to in subparagraph  
17 (B)(i) for such start-up period taxable year.

18 “(B) START-UP PERIOD TAXABLE YEAR.—  
19 The term ‘start-up period taxable year’ means  
20 any taxable year of the old loss corporation  
21 which—

22 “(i) begins before the close of the 3-  
23 year period beginning on the date on which  
24 any trade or business of such corporation  
25 begins as an active trade or business (as  
26 determined under section 195(d)(2) with-



1 out regard to subparagraph (B) thereof),  
2 and

3 “(ii) ends after September 10, 2018.

4 “(C) NET START-UP LOSS.—

5 “(i) IN GENERAL.—The term ‘net  
6 start-up loss’ means, with respect to any  
7 trade or business referred to in subpara-  
8 graph (B)(i) for any start-up period tax-  
9 able year, the amount which bears the  
10 same ratio (but not greater than 1) to the  
11 net operating loss carryforward which  
12 arose in such start-up period taxable year  
13 as—

14 “(I) the net operating loss (if  
15 any) which would have been deter-  
16 mined for such start-up period taxable  
17 year if only items of income, gain, de-  
18 duction, and loss properly allocable to  
19 such trade or business were taken into  
20 account, bears to

21 “(II) the amount of the net oper-  
22 ating loss determined for such start-  
23 up period taxable year.

24 “(ii) SPECIAL RULE FOR LAST TAX-  
25 ABLE YEAR IN START-UP PERIOD.—In the

1 case of any start-up period taxable year  
2 which ends after the close of the 3-year pe-  
3 riod described in subparagraph (B)(i) with  
4 respect to any trade or business, the net  
5 start-up loss with respect to such trade or  
6 business for such start-up period taxable  
7 year shall be the same proportion of such  
8 loss (determined without regard to this  
9 clause) as the proportion of such start-up  
10 period taxable year which is on or before  
11 the last day of such period.

12 “(D) APPLICATION TO NET OPERATING  
13 LOSS ARISING IN YEAR OF OWNERSHIP  
14 CHANGE.—Subparagraph (A) shall apply to any  
15 net operating loss described in paragraph  
16 (1)(B) in the same manner as such subpara-  
17 graph applies to net operating loss  
18 carryforwards described in paragraph (1)(A),  
19 but by only taking into account the amount of  
20 such net operating loss (and the amount of the  
21 net start-up loss) which is allocable under para-  
22 graph (1)(B) to the period described in such  
23 paragraph. Proper adjustment in the allocation  
24 of the net start-up loss under the preceding

1 sentence shall be made in the case of a taxable  
2 year to which subparagraph (C)(ii) applies.

3 “(E) APPLICATION TO TAXABLE YEARS  
4 WHICH ARE START-UP PERIOD TAXABLE YEARS  
5 WITH RESPECT TO MORE THAN 1 TRADE OR  
6 BUSINESS.—In the case of any net operating  
7 loss carryforward which arose in a taxable year  
8 which is a start-up period taxable year with re-  
9 spect to more than 1 trade or business—

10 “(i) this paragraph shall be applied  
11 separately with respect to each such trade  
12 or business, and

13 “(ii) the aggregate reductions under  
14 subparagraph (A) shall not exceed such net  
15 operating loss carryforward.

16 “(F) CONTINUITY OF BUSINESS REQUIRE-  
17 MENT.—If the new loss corporation does not  
18 continue the trade or business referred to in  
19 subparagraph (B)(i) at all times during the 2-  
20 year period beginning on the change date, this  
21 paragraph shall not apply with respect to such  
22 trade or business.

23 “(G) CERTAIN TITLE 11 OR SIMILAR  
24 CASES.—

1                   “(i)       MULTIPLE       OWNERSHIP  
2                   CHANGES.—In the case of a 2nd ownership  
3                   change to which subsection (l)(5)(D) ap-  
4                   plies, this paragraph shall not apply for  
5                   purposes of determining the pre-change  
6                   loss with respect to such 2nd ownership  
7                   change.

8                   “(ii)     CERTAIN     INSOLVENCY     TRANS-  
9                   ACTIONS.—If subsection (l)(6) applies for  
10                  purposes of determining the value of the  
11                  old loss corporation under subsection (e),  
12                  this paragraph shall not apply.

13                  “(H)     NOT     APPLICABLE     TO     DISALLOWED  
14                  INTEREST.—This paragraph shall not apply for  
15                  purposes of applying the rules of paragraph (1)  
16                  to the carryover of disallowed interest under  
17                  paragraph (3).

18                  “(I)     TRANSITION     RULE.—This paragraph  
19                  shall not apply with respect to any trade or  
20                  business if the date on which such trade or  
21                  business begins as an active trade or business  
22                  (as determined under section 195(d)(2) without  
23                  regard to subparagraph (B) thereof) is on or  
24                  before September 10, 2018.”.

1 (b) APPLICATION TO EXCESS CREDITS.—Section 383  
2 of such Code is amended by redesignating subsection (e)  
3 as subsection (f) and by inserting after subsection (d) the  
4 following new subsection:

5 “(e) EXCEPTION FOR START-UP EXCESS CREDITS.—

6 “(1) IN GENERAL.—In the case of any unused  
7 general business credit of the corporation under sec-  
8 tion 39 which arose in a start-up period taxable  
9 year, the amount of such unused general business  
10 credit otherwise taken into account under subsection  
11 (a)(2)(A) shall be reduced by the start-up excess  
12 credit determined with respect to any trade or busi-  
13 ness referred to in section 382(d)(4)(B)(i) for such  
14 start-up period taxable year.

15 “(2) START-UP PERIOD TAXABLE YEAR.—For  
16 purposes of this subsection, the term ‘start-up pe-  
17 riod taxable year’ has the meaning given such term  
18 in section 382(d)(4)(B).

19 “(3) START-UP EXCESS CREDIT.—For purposes  
20 of this subsection, the term ‘start-up excess credit’  
21 means, with respect to any trade or business re-  
22 ferred to in section 382(d)(4)(B)(i) for any start-up  
23 period taxable year, the amount which bears the  
24 same ratio to the unused general business credit

1 which arose in such start-up period taxable year  
2 as—

3 “(A) the amount of the general business  
4 credit which would have been determined for  
5 such start-up period taxable year if only credits  
6 properly allocable to such trade or business  
7 were taken into account, bears to

8 “(B) the amount of the general business  
9 credit determined for such start-up period tax-  
10 able year.

11 “(4) APPLICATION OF CERTAIN RULES.—Rules  
12 similar to the rules of subparagraphs (C)(ii), (D),  
13 (E), and (F) of section 382(d)(4) shall apply for  
14 purposes of this subsection.

15 “(5) TRANSITION RULE.—This subsection shall  
16 not apply with respect to any trade or business if  
17 the date on which such trade or business begins as  
18 an active trade or business (as determined under  
19 section 195(d)(2) without regard to subparagraph  
20 (B) thereof) is on or before September 10, 2018.”.

21 (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to taxable years ending after Sep-  
23 tember 10, 2018.

