

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4212

To stimulate the research and development of biotechnologies.

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IN THE HOUSE OF REPRESENTATIVES

APRIL 14, 1994

Mr. BLUTE (for himself and Ms. ESHOO) introduced the following bill; which  
was referred to the Committee on Ways and Means

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## A BILL

To stimulate the research and development of  
biotechnologies.

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 “Biotechnology Stimu-  
5 lus Act of 1994”.

6 **SEC. 2. BIOTECHNOLOGY RESEARCH CREDIT IMPROVE-**  
7 **MENT.**

8 (a) ALTERNATIVE CREDIT CALCULATION BASED ON  
9 AGGREGATE RESEARCH EXPENSES.—

1           (1) IN GENERAL.—Subsection (a) of section 41  
2           of the Internal Revenue Code of 1986 (relating to  
3           general rule) is amended to read as follows:

4           “(a) GENERAL RULE.—For purposes of section 38,  
5           the research credit determined under this section for the  
6           taxable year shall be an amount equal to 1 of the following  
7           amounts (as elected by the taxpayer for the taxable year):

8           “(1) 25 PERCENT OF INCREASED RESEARCH  
9           EXPENSES.—The sum of—

10           “(A) 25 percent of the excess (if any) of—

11           “(i) the qualified biotechnology (as de-  
12           fined in section 2(f) of the Biotechnology  
13           Competitiveness Act of 1994) research ex-  
14           penses, over

15           “(ii) the base amount, and

16           “(B) 25 percent of the basic research pay-  
17           ments, determined under subsection (e)(1)(A).

18           “(2) 5 PERCENT OF AGGREGATE BIO-  
19           TECHNOLOGY RESEARCH EXPENSES.—The sum of—

20           “(A) 5 percent of the qualified research ex-  
21           penses, determined by substituting ‘100 per-  
22           cent’ for ‘65 percent’ in subsection (b)(3)(A),  
23           and

24           “(B) 5 percent of the basic research pay-  
25           ments, determined under subsection (e)(2).”.

1 (2) CONFORMING AMENDMENTS.—

2 (A) Paragraph (1) of section 41(e) of such  
3 Code (relating to basic research credit) is  
4 amended—

5 (i) by striking “subsection (a)(2)” and  
6 inserting “subsection (a)(1)(B)”, and

7 (ii) by striking “subsection (a)(1)”  
8 and inserting “subsection (a)(1)(A)”.

9 (B) Subparagraph (C) of section 41(e)(7)  
10 of such Code (relating to definitions and special  
11 rules) is amended—

12 (i) by striking “INCREMENTAL” in the  
13 subparagraph caption and inserting  
14 “OTHER”,

15 (ii) by striking “subsection (a)(1)”  
16 and inserting “paragraph (1)(A) or (2)(A)  
17 of subsection (a)”,

18 (iii) by striking “subsection (a)(2)”  
19 and inserting “paragraph (1)(B) or (2)(B)  
20 of such subsection”,

21 (iv) by striking “subsection (a)(1)(A)”  
22 and inserting “paragraph (1)(A)(i) or  
23 (2)(A) of such subsection”, and

1 (v) by striking “subsection (a)(1)(B)”  
2 and inserting “paragraph (1)(A)(ii) of  
3 such subsection”.

4 (C) Subparagraph (A) of section  
5 280C(c)(2) of such Code (relating to disallow-  
6 ance of deduction for expenses for which re-  
7 search credit taken) is amended by striking  
8 “section 41(a)(1)” and inserting “paragraph  
9 (1)(A) or (2)(A) of section 41(a)”.

10 (3) EFFECTIVE DATE.—The amendments made  
11 by this subsection shall apply to taxable years begin-  
12 ning after the date of the enactment of this Act.

13 (b) PERMANENT EXTENSION OF CREDIT.—

14 (1) IN GENERAL.—Section 41 of such Code is  
15 amended by striking subsection (h) (relating to ter-  
16 mination).

17 (2) CONFORMING AMENDMENT.—Paragraph (1)  
18 of section 28(b) of such Code (relating to qualified  
19 clinical testing expenses) is amended by striking sub-  
20 paragraph (D).

21 **SEC. 3. VARIABLE CAPITAL GAINS.**

22 (a) IN GENERAL.—Part I of subchapter P of chapter  
23 1 of the Internal Revenue Code of 1986 (relating to treat-  
24 ment of capital gains) is amended by adding at the end  
25 thereof the following new section:

1 **“SEC. 1202. BIOTECHNOLOGY VARIABLE CAPITAL GAINS**  
2 **DEDUCTION.**

3 “(a) DEDUCTION ALLOWED.—If for any taxable year  
4 a taxpayer other than a biotechnology (as defined in sec-  
5 tion 2(f) of the Biotechnology Competitiveness Act of  
6 1994) corporation has a net capital gain, there shall be  
7 allowed as a deduction from gross income an amount equal  
8 to the sum of—

9 “(1) 100 percent of the qualified 10-year net  
10 capital gain,

11 “(2) 90 percent of the qualified 9-year net cap-  
12 ital gain,

13 “(3) 80 percent of the qualified 8-year net cap-  
14 ital gain,

15 “(4) 70 percent of the qualified 7-year net cap-  
16 ital gain,

17 “(5) 60 percent of the qualified 6-year net cap-  
18 ital gain,

19 “(6) 50 percent of the qualified 5-year net cap-  
20 ital gain,

21 “(7) 40 percent of the qualified 4-year net cap-  
22 ital gain,

23 “(8) 30 percent of the qualified 3-year net cap-  
24 ital gain,

25 “(9) 20 percent of the qualified 2-year net cap-  
26 ital gain, plus

1           “(10) 10 percent of the qualified 1-year net  
2 capital gain.

3           “(b) QUALIFIED NET CAPITAL GAIN.—For purposes  
4 of subsection (a)—

5           “(1) QUALIFIED 10-YEAR NET CAPITAL GAIN.—  
6 The term ‘qualified 10-year net capital gain’ means  
7 the amount of net long-term capital gain which  
8 would be computed for the taxable year if only cap-  
9 ital assets held by the taxpayer for at least 10 years  
10 at the time of the sale or exchange were taken into  
11 account. Such term shall not exceed the amount of  
12 the net capital gain for such taxable year.

13           “(2) QUALIFIED 9-YEAR NET CAPITAL GAIN.—  
14 The term ‘qualified 9-year net capital gain’ means  
15 the amount of net long-term capital gain which  
16 would be computed for the taxable year if only cap-  
17 ital assets held by the taxpayer for at least 9 years  
18 but less than 10 years at the time of the sale or ex-  
19 change were taken into account. Such term shall not  
20 exceed the amount of the net capital gain for such  
21 taxable year reduced by the amount of the qualified  
22 10-year net capital gain.

23           “(3) OTHER DEFINITIONS.—The amount of the  
24 qualified 8-year net capital gain, 7-year net capital  
25 gain, 6-year net capital gain, 5-year net capital gain,

1 4-year net capital gain, 3-year net capital gain,  
2 qualified 2-year net capital gain, and qualified 1-  
3 year net capital gain shall be determined under the  
4 principles of paragraphs (1) and (2).

5 “(c) ESTATE AND TRUSTS.—In the case of an estate  
6 or trust, the deduction shall be computed by excluding the  
7 portion (if any) of the gains for the taxable year from sales  
8 or exchanges of capital assets which, under sections 652  
9 and 662 (relating to inclusions of amounts in gross income  
10 of beneficiaries of trusts), is includible by the income bene-  
11 ficiaries as gain derived from the sale or exchange of cap-  
12 ital assets.”.

13 (b) TREATMENT OF COLLECTIBLES.—

14 (1) IN GENERAL.—Section 1222 of such Code  
15 is amended by inserting after paragraph (11) the  
16 following new paragraph:

17 “(12) SPECIAL RULE FOR COLLECTIBLES.—

18 “(A) IN GENERAL.—Any gain or loss from  
19 the sale or exchange of a collectible shall be  
20 treated as a short-term capital gain or loss (as  
21 the case may be), without regard to the period  
22 such asset was held. The preceding sentence  
23 shall apply only to the extent the gain or loss  
24 is taken into account in computing taxable in-  
25 come.

1           “(B) TREATMENT OF CERTAIN SALES OF  
2 INTEREST IN PARTNERSHIP, ETC.—For pur-  
3 poses of subparagraph (A), any gain from the  
4 sale or exchange of an interest in a partnership,  
5 S corporation, or trust which is attributable to  
6 unrealized appreciation in the value of collect-  
7 ibles held by such entity shall be treated as gain  
8 from the sale or exchange of a collectible. Rules  
9 similar to the rules of section 751(f) shall apply  
10 for purposes of the preceding sentence.

11           “(C) COLLECTIBLE.—For purposes of this  
12 paragraph, the term ‘collectible’ means any cap-  
13 ital asset which is a collectible (as defined in  
14 section 408(m) without regard to paragraph (3)  
15 thereof).”.

16           (2) CHARITABLE DEDUCTION NOT AF-  
17 FECTED.—

18           (A) Paragraph (1) of section 170(e) of  
19 such Code is amended by adding at the end  
20 thereof the following new sentence: “For pur-  
21 poses of this paragraph, section 1222 shall be  
22 applied without regard to paragraph (12) there-  
23 of (relating to special rule for collectibles).”.

24           (B) Clause (iv) of section 170(b)(1)(C) of  
25 such Code is amended by inserting before the

1 period at the end thereof the following: “and  
2 section 1222 shall be applied without regard to  
3 paragraph (12) thereof (relating to special rule  
4 for collectibles)”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) Section 1 of such Code is amended by strik-  
7 ing subsection (h).

8 (2) Subsection (a) of section 62 of such Code  
9 is amended by inserting after paragraph (13) the  
10 following new paragraph:

11 “(14) LONG-TERM CAPITAL GAINS.—In the case  
12 of a taxpayer other than a corporation, the deduc-  
13 tion allowed by section 1202.”.

14 (d) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to taxable years beginning after  
16 the date of the enactment of this Act.

17 **SEC. 4. CAPITAL GAINS EXCLUSION FOR BIOTECHNOLOGY**  
18 **STARTUP BUSINESS STOCK.**

19 (a) TAXPAYERS OTHER THAN CORPORATIONS.—  
20 Part I of subchapter P of chapter 1 of the Internal Reve-  
21 nue Code of 1986 (relating to treatment of capital gains)  
22 is amended by adding at the end the following new section:

1 **“SEC. 1203. DEDUCTION FOR CAPITAL GAINS ON CERTAIN**  
2 **BIOTECHNOLOGY BUSINESS STOCK HELD**  
3 **FOR MORE THAN 2 YEARS.**

4 “(a) GENERAL RULE.—If for any taxable year a tax-  
5 payer other than a corporation has a qualified business  
6 net capital gain, there shall be allowed as a deduction from  
7 gross income an amount equal to 50 percent of the quali-  
8 fied business net capital gain.

9 “(b) QUALIFIED BUSINESS NET CAPITAL GAIN.—  
10 For purposes of this section—

11 “(1) IN GENERAL.—The term ‘qualified busi-  
12 ness net capital gain’ means the lesser of—

13 “(A) the net capital gain for the taxable  
14 year, or

15 “(B) the net capital gain for the taxable  
16 year determined by taking into account only  
17 gain or loss from qualified business stock with  
18 a holding period of at least 2 years at the time  
19 of the disposition.

20 “(2) QUALIFIED BUSINESS STOCK.—

21 “(A) IN GENERAL.—The term ‘qualified  
22 business stock’ means biotechnology (as defined  
23 in section 2(f) of the Biotechnology Competi-  
24 tiveness Act of 1994) business stock which—

1           “(i) is first acquired (whether directly  
2           or through an underwriter) from the issuer  
3           by the taxpayer, and

4           “(ii) is not issued in redemption of (or  
5           otherwise exchanged for) stock.

6           “(B) EXCEPTION FOR PERSONAL SERVICE  
7           CORPORATIONS.—The term ‘qualified business  
8           stock’ does not include stock issued by a per-  
9           sonal service corporation (within the meaning of  
10          section 269A(b)(1)).

11          “(c) ESTATES AND TRUSTS.—In the case of an estate  
12          or trust, the deduction under subsection (a) shall be com-  
13          puted by excluding the portion (if any) of the gains for  
14          the taxable year from sales or exchanges of capital assets  
15          which, under sections 652 and 662 (relating to inclusions  
16          of amounts in gross income of beneficiaries of trusts), is  
17          includible by the income beneficiaries as gain derived from  
18          the sale or exchange of capital assets.”.

19          (b) CORPORATIONS.—Section 1201 of such Code (re-  
20          lating to alternative tax for corporations) is amended by  
21          redesignating subsection (b) as subsection (c) and by in-  
22          serting after subsection (a) the following new subsection:

23          “(b) DEDUCTION FOR GAIN ON QUALIFIED BUSI-  
24          NESS STOCK.—

1           “(1) IN GENERAL.—If for any taxable year a  
2 corporation has a qualified business net capital gain,  
3 there shall be allowed as a deduction from gross in-  
4 come an amount equal to 50 percent of the qualified  
5 business net capital gain.

6           “(2) QUALIFIED BUSINESS NET CAPITAL  
7 GAIN.—For purposes of this subsection, the term  
8 ‘qualified business net capital gain’ has the meaning  
9 given such term in section 1203(b).”.

10       (c) CONFORMING AMENDMENTS.—

11           (1) Subsection (a) of section 1201 of such Code  
12 is amended by inserting after “net capital gain”  
13 each place it appears the following: “(other than  
14 qualified business net capital gain (within the mean-  
15 ing of section 1203(b))”.

16           (2) Subsection (a) of section 62 of such Code  
17 is amended by adding at the end the following new  
18 paragraph:

19           “(15) QUALIFIED BUSINESS STOCK CAPITAL  
20 GAINS.—The deduction allowed by section 1203.”.

21           (3)(A) The heading for section 1201 of such  
22 Code is amended to read as follows:

1 **“SEC. 1201. ALTERNATIVE TAX FOR BIOTECHNOLOGY COR-**  
2 **PORATIONS; DEDUCTION FOR GAIN ON**  
3 **QUALIFIED BUSINESS STOCK.”.**

4 (B) The item relating to section 1201 in the  
5 table of sections for part I of subchapter P of chap-  
6 ter 1 of such Code is amended to read as follows:

“Sec. 1201. Alternative tax for biotechnology corporations; deduc-  
tion for gain on qualified business stock.”.

7 (4) The table of sections for part I of sub-  
8 chapter P of chapter 1 of such Code is amended by  
9 adding at the end the following new item:

“Sec. 1203. Deduction for capital gains on certain business stock  
held for more than 2 years.”.

10 (d) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to stock issued after the date of  
12 the enactment of this Act.

13 **SEC. 5. INDEXING OF CERTAIN CAPITAL ASSETS.**

14 (a) IN GENERAL.—Part II of subchapter O of chap-  
15 ter 1 of the Internal Revenue Code of 1986 (relating to  
16 basis rules of general application) is amended by inserting  
17 after section 1021 the following new section:

18 **“SEC. 1022. INDEXING OF CERTAIN ASSETS FOR PURPOSES**  
19 **OF DETERMINING GAIN OR LOSS.**

20 “(a) GENERAL RULE.—

21 “(1) INDEXED BASIS SUBSTITUTED FOR AD-  
22 JUSTED BASIS.—Except as provided in paragraph  
23 (2), if an indexed asset which has been held for

1 more than 1 year is sold or otherwise disposed of,  
2 for purposes of this title the indexed basis of the  
3 asset shall be substituted for its adjusted basis.

4 “(2) EXCEPTION FOR DEPRECIATION, ETC.—

5 The deduction for depreciation, depletion, and amor-  
6 tization shall be determined without regard to the  
7 application of paragraph (1) to the taxpayer or any  
8 other person.

9 “(b) INDEXED ASSET.—

10 “(1) IN GENERAL.—For purposes of this sec-  
11 tion, the term ‘indexed asset’ means—

12 “(A) stock in a corporation, and

13 “(B) tangible property (or any interest  
14 therein), which is a capital asset or property  
15 used in the trade or business (as defined in sec-  
16 tion 1231(b)).

17 “(2) CERTAIN PROPERTY EXCLUDED.—For  
18 purposes of this section, the term ‘indexed asset’  
19 does not include stock in a foreign corporation.

20 “(c) INDEXED BASIS.—For purposes of this section:

21 “(1) INDEXED BASIS.—The indexed basis for  
22 any asset is—

23 “(A) the adjusted basis of the asset, multi-  
24 plied by

25 “(B) the applicable inflation ratio.

1           “(2) APPLICABLE INFLATION RATIO.—The ap-  
2           plicable inflation ratio for any asset is the percent-  
3           age arrived at by dividing—

4                   “(A) the gross national product deflator  
5                   the calendar quarter in which the disposition  
6                   takes place, by

7                   “(B) the gross national product deflator  
8                   for the calendar quarter in which the asset was  
9                   acquired by the taxpayer (or, if later, the cal-  
10                  endar quarter ending December 31, 1991).

11          The applicable inflation ratio shall not be taken into  
12          account unless it is greater than 1. The applicable  
13          inflation ratio for any asset shall be rounded to the  
14          nearest one-tenth of 1 percent.

15           “(3) GROSS NATIONAL PRODUCT DEFLATOR.—  
16          The gross national product deflator for any calendar  
17          quarter is the implicit price deflator for the gross  
18          national product for such quarter (as shown in the  
19          first revision thereof).

20          “(d) SPECIAL RULES.—For purposes of this section:

21           “(1) TREATMENT AS SEPARATE ASSET.—In the  
22          case of any asset, the following shall be treated as  
23          a separate asset:

24                   “(A) a substantial improvement to prop-  
25                  erty,

1           “(B) in the case of stock of a corporation,  
2           a substantial contribution to capital, and

3           “(C) any other portion of an asset to the  
4           extent that separate treatment of such portion  
5           is appropriate to carry out the purposes of this  
6           section.

7           “(2) ASSETS WHICH ARE NOT INDEXED ASSETS  
8           THROUGHOUT HOLDING PERIOD.—

9           “(A) IN GENERAL.—The applicable infla-  
10          tion ratio shall be appropriately reduced for cal-  
11          endar months at any time during which the  
12          asset was not an indexed asset.

13          “(B) CERTAIN SHORT SALES.—For pur-  
14          poses of applying subparagraph (A), an asset  
15          shall be treated as not an indexed asset for any  
16          short sale period during which the taxpayer or  
17          the taxpayer’s spouse sells short property sub-  
18          stantially identical to the asset. For purposes of  
19          the preceding sentence, the short sale period be-  
20          gins on the day after the substantially identical  
21          property is sold and ends on the closing date  
22          for the sale.

23          “(3) ACQUISITION DATE WHERE THERE HAS  
24          BEEN PRIOR APPLICATION OF SUBSECTION (a)(1)  
25          WITH RESPECT TO THE TAXPAYER.—If there has

1       been a prior application of subsection (a)(1) to an  
2       asset while such asset was held by the taxpayer, the  
3       date of acquisition of such asset by the taxpayer  
4       shall be treated as not earlier than the date of the  
5       most recent such prior application.

6       “(e) CERTAIN CONDUIT ENTITIES.—

7               “(1) REGULATED INVESTMENT COMPANIES;  
8       REAL ESTATE INVESTMENT TRUSTS; COMMON TRUST  
9       FUNDS.—

10               “(A) IN GENERAL.—Stock in a qualified  
11       investment entity shall be an indexed asset for  
12       any calendar month in the same ratio as the  
13       fair market value of the assets held by such en-  
14       tity at the close of such month which are in-  
15       dexed assets bears to the fair market value of  
16       all assets of such entity at the close of such  
17       month.

18               “(B) RATIO OF 90 PERCENT OR MORE.—If  
19       the ratio for any calendar month determined  
20       under subparagraph (A) would (but for this  
21       subparagraph) be 90 percent or more, such  
22       ratio for such month shall be 100 percent.

23               “(C) RATIO OF 10 PERCENT OR LESS.—If  
24       the ratio for any calendar month determined  
25       under subparagraph (A) would (but for this

1           subparagraph) be 10 percent or less, such ratio  
2           for such month shall be zero.

3           “(D) VALUATION OF ASSETS IN CASE OF  
4           REAL ESTATE INVESTMENT TRUSTS.—Nothing  
5           in this paragraph shall require a real estate in-  
6           vestment trust to value its assets more fre-  
7           quently than once each 36 months (except  
8           where such trust ceases to exist). The ratio  
9           under subparagraph (A) for any calendar  
10          month for which there is no valuation shall be  
11          the trustee’s good faith judgment as to such  
12          valuation.

13          “(E) QUALIFIED INVESTMENT ENTITY.—  
14          For purposes of this paragraph, the term  
15          ‘qualified investment entity’ means—

16                 “(i) a regulated investment company  
17                 (within the meaning of section 851),

18                 “(ii) a real estate investment trust  
19                 (within the meaning of section 856), and

20                 “(iii) a common trust fund (within the  
21                 meaning of section 584).

22          “(2) PARTNERSHIPS.—In the case of a partner-  
23          ship, the adjustment made under subsection (a) at  
24          the partnership level shall be passed through to the  
25          partners.

1 “(f) DISPOSITIONS BETWEEN RELATED PERSONS.—

2 “(1) IN GENERAL.—This section shall not apply  
3 to any sale or other disposition of property between  
4 related persons except to the extent that the basis  
5 of such property in the hands of the transferee is a  
6 substituted basis.

7 “(2) RELATED PERSONS DEFINED.—For pur-  
8 poses of this section, the term ‘related persons’  
9 means—

10 “(A) persons bearing a relationship set  
11 forth in section 267(b), and

12 “(B) persons treated as single employer  
13 under subsection (b) or (c) of section 414.

14 “(g) TRANSFERS TO INCREASE INDEXING ADJUST-  
15 MENT.—If any person transfers cash, debt, or any other  
16 property to another person and the principal purpose of  
17 such transfer is to secure or increase an adjustment under  
18 subsection (a), the Secretary may disallow part or all of  
19 such adjustment or increase.

20 “(h) DEFINITION OF STOCK.—For purposes of this  
21 section, the term ‘stock in a corporation’ includes any in-  
22 terest in a common trust fund (as defined in section  
23 584(a)).

1 “(i) REGULATIONS.—The Secretary shall prescribe  
2 such regulations as may be necessary or appropriate to  
3 carry out the purposes of this section.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) Subsection (f) of section 312 of such Code  
6 is amended by adding at the end the following new  
7 paragraph:

8 “(3) EFFECT ON EARNINGS AND PROFITS OF  
9 INDEXED BASIS.—

“For substitution of indexed basis for adjusted  
basis in the case of the disposition of certain assets,  
see section 1022(a)(1).”.

10 (2) The table of sections for part II of sub-  
11 chapter O of chapter 1 of such Code is amended by  
12 inserting after the item relating to section 1021 the  
13 following new item:

“Sec. 1022. Indexing of certain assets for purposes of determining  
gain or loss.”.

14 (c) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to dispositions after the date of  
16 the enactment of this Act.

17 **SEC. 6. SENSE OF CONGRESS REGARDING EFFECT OF CER-**  
18 **TAIN NEW ACCOUNTING STANDARDS ON BIO-**  
19 **TECHNOLOGY BUSINESSES.**

20 It is the sense of the Congress that—

21 (1) the accounting standards proposed by the  
22 Financial Accounting Standards Board will have

1 grave economic consequences, particularly for bio-  
2 technology businesses in new-growth sectors, which  
3 rely heavily on entrepreneurship; and

4 (2) the Financial Accounting Standards Board  
5 should not change the accounting rules in effect on  
6 the date of the enactment of this Act under Ac-  
7 counting Principles Board Decision 25 by requiring  
8 that biotechnology businesses deduct the value of  
9 stock options from their profits.

○

HR 4212 IH—2