About BIO

BIO represents 1,000 members in a biotech ecosystem with a central mission: to advance public policy that supports a wide range of companies and academic research centers that are working to apply biology and technology in the energy, agriculture, manufacturing, and health sectors to improve the lives of people and the health of the planet. BIO is committed to speaking up for the millions of families around the globe who depend upon our success. We will drive a revolution that aims to cure patients, protect our climate, and nourish humanity.

Summary of BIO Tax Priorities

1) Restore the R&D deduction that was replaced by 5-year amortization in the 2017 Tax Cuts and Jobs Act;

2) Reform Section 382, which can unintentionally limit a startup's use of its Net Operating Losses (NOLs) as a result of accepting investment;

3) Advance improvements to the payroll tax credit (such as extending the eligibility period);

4) Allow small biotechs to unlock a portion of their NOLs to provide an immediate infusion of much-needed capital during these challenging economic times;

5) Encourage investment in small biotechs through tax incentives such as expanding section 1202 (the investor capital gains exemption) and creating R&D partnerships;

6) Encourage Domestic Advanced Manufacturing and Pandemic Preparedness; and

7) Provide Incentives to Encourage the Development of Clean Energy Sources through Biotechnology.

Tax Policies to Promote Innovation in the Biotechnology Industry

R&D Amortization: Restore the R&D deduction that was replaced by a 5-year amortization in the 2017 Tax Cuts and Jobs Act (TCJA)

Understanding the implications of R&D amortization on investment is crucial, particularly in lengthy, risky, and costly biotech projects. R&D amortization threatens to stifle innovative discoveries before they are even launched.

Amortization harms biotech startups.

- Amortization disincentivizes federal research grant programs.
    - Recipients of federal grants such as the **Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR)** are generally early-stage companies. They are just transitioning their promising technology from an academic research institution to a company to start the development process.
    - Federal grants, like SBIR/STTR, are often the first major investment the company has received, and virtually all of it is devoted to R&D expenditures. They are considered taxable income. Previously, individuals could use immediate expensing to offset any grant related tax liability.
    - Amortization forces many early-stage companies to pay large, upfront tax bills with funds they reserved for research as they do not have a product to sell on the market.
- Amortization disincentives collaborative research partnerships.
    - Small-to-medium companies may also feel the harmful impacts of the provision even though they don't yet have a product on the market.
    - Small biotechs often depend on partnerships with larger companies to help fund their research. Payments received under these collaboration agreements may be treated as taxable income.
    - These growing companies may also face a new tax liability without the ability to offset this income with the historical R&D deduction.

Accordingly, BIO urges immediate action to restore the R&D deduction. **BIO supports the "American Innovation and R&D Competitiveness Act of 2023" (H.R. 2673) led by Representatives Ron Estes (R-KS) and John Larson (D-CT) and the "American Innovation and Jobs Act" (S. 866) led by Senators Todd Young (R-IN) and Maggie Hassan (D-NH).**

Tax Policies to Promote Innovation in the Biotechnology Industry

Reform Section 382, which can unintentionally limit a startup's use of its Net Operating Losses (NOLs) as a result of accepting investment

Tax rules relating to the treatment of losses can unintentionally punish start-ups for investing in the growth of their companies. The rules, in Section 382 of the tax code, were written in the mid-1980s with the intent of preventing loss trafficking, or the strategy of companies acquiring failing firms with enormous losses on their books for the sole purpose of using the tax losses to offset other unrelated income.

While we recognize the importance of preventing abusive loss trafficking, the excessive application of these rules has created an impediment for start-ups that depend on investment capital and often accumulate net operating losses (NOLs) due to substantial R&D expenditures and rapid hiring.

Under Section 382, accepting these critical equity investments can limit a start-up's ability to utilize its NOLs in the future by causing a so-called "ownership change." Thus, Section 382 discourages investment in innovation and works at cross purposes with tax policy that generally seeks to encourage R&D, such as the R&D credit.

BIO strongly supports the "American Innovation Act" which would preserve the NOLs of small companies while in their start-up stage.

Tax Policies to Promote Innovation in the Biotechnology Industry

Advance Improvements to the R&D Payroll Tax Credit

Under current law, companies with less than $5 million in annual gross receipts in their first five years of operation can utilize up to $500,000 in R&D credits annually toward their payroll taxes. The original law, passed in the Protecting Americans from Tax Hikes (PATH) Act in 2015, allowed for a $250,000 credit. The increase to $500,000 under the Inflation Reduction Act (IRA) served as an acknowledgement from Congress of the incredible potential of this credit in supporting high-tech small businesses.

Unfortunately, the current size restrictions leave many start-ups unable to access the benefits of the payroll R&D credit. A typical biotech start-up will still be relatively early in the development process – and years away from realizing revenue from a product on the market – when the five-year and $5 million gross receipts limits kick in to deny them the benefit from the payroll R&D credit.

BIO supports the "Furthering Our Recovery with American Research and Development (FORWARD) Act" which would allow a broader range of companies to utilize this critical capital conserving tool. The FORWARD Act would expand eligibility for the credit to companies less than 8 years old with up to $20 million in gross receipts and increase the credit amount to $1 million. Finally, a new de minimis threshold would delay the start of the 8-year window until gross receipts exceed $25,000, meaning that small amounts of gross receipts, like interest on a savings account, would not trigger the 8-year period.

Tax Policies to Promote Innovation in the Biotechnology Industry

Allow small biotechs to unlock a portion of their Net Operating Losses to provide an immediate infusion of much-needed capital during these challenging economic times.

NOLs can represent substantial tax benefits typically realized over an extended period as tax credits or deductions against future profits. Allowing biotechs to receive the value of a portion of their NOLs upfront will provide a critical cash infusion, enabling them to invest in R&D, advance cutting-edge technologies, and hire skilled scientists. This influx of capital would help accelerate biotech development timelines and enhance their ability to bring innovative therapies and solutions to patients sooner.

Furthermore, by enabling small biotech firms to monetize their NOLs, biotechs would enhance their financial attractiveness to potential investors. Biotech companies that had converted NOLs could demonstrate a more robust financial position and increase their liquidity, which would reduce the financial uncertainty for investors.

Finally, because NOLs represent a deferred tax asset, this upfront payment effectively amounts to a loan from the government as companies forgo the tax benefit of the NOLs/credits when they become profitable, thus repaying the amount through income taxes paid. *Accordingly, for example, legislation that would allow small biotechs (500 employees or under) to receive an advance refund of up to $25 million of a combination of NOLs, R&D Credits, and Orphan Drug Credits has been unofficially scored at just $730 million over 10 years.*

By allowing these companies to monetize their NOLs upfront, the policy mitigates some of the financial risks associated with early-stage R&D activities. It provides a safety net that incentivizes companies to undertake more ambitious projects, explore novel approaches, and tackle complex medical challenges.

BIO supports the "IGNITE American Innovation Act" which would allow companies to access up to $25 million in NOL carryforwards.

Tax Policies to Promote Innovation in the Biotechnology Industry

Encourage investment in small biotechs through tax incentives such as expanding Section 1202 (the investor capital gains exemption) and creating R&D partnerships

Section 1202.

As investment in the biotech industry is high-risk and long-term, the economics must work for people to invest in start-ups and early-stage innovators. Without a tax structure that encourages this activity, our innovators and entrepreneurs will be disadvantaged at a time when the rest of the world is doing everything possible to compete with our leadership.

Congress recognized this when it made permanent the 100% exemption of gains on investments in Qualified Small Business Stock (QSBS) in the PATH Act of 2015. We believe Section 1202 has the potential to be one of the most powerful federal policies for encouraging an expansion of entrepreneurship across the country, and that Congress should build on this success by simplifying and expanding QSBS so it can encourage more investment in start-ups across the country.

Proposal: Congress should raise the maximum gross assets threshold for Qualified Small Businesses (QSBs). The existing gross assets test in Section 1202 limits the universe of QSBs to companies with gross assets below $50 million. The high costs of innovative research, valuable intellectual property and successive rounds of financing, often push growing innovators over the $50 million gross assets limit and thus out of the QSBs definition. Raising the gross assets threshold to $100 million, and indexing the threshold to inflation, would drive investment to capital-intensive small businesses conducting groundbreaking research and creating high-quality jobs across the country.

R&D Partnerships.

Before the 1986 Tax Reform Act, innovative R&D was often conducted through so-called “R&D Limited Partnerships,” in which individual investors financed R&D projects through entities that were taxed as pass-throughs. These individual investors could then offset other income with the losses and tax credits generated by the R&D project. However, enacting the passive activity loss (PAL) rules under Section 469 of the tax code significantly restricted the ability of losses and credits to flow from project to investor.

Proposal: Allow R&D Limited Partnerships, enabling investors to receive a more immediate return on their investment, despite the long and risky timeline usually associated with groundbreaking research. This would incentivize them to invest at an earlier stage, when the capital is most needed, this stimulating capital formation for growing innovative businesses and speeding the development of groundbreaking technologies.

BIO supports “the Infectious Disease Therapies Research and Innovation Act” which would allow R&D Partnership Structures for investments in specified medical research small business pass-through entities. We believe a broader application of this legislation to support the widespread applications of the biotechnology industry would unlock significant investment in the industry and hasten the timeline to bring exciting advancements to market.

Tax Policies to Promote Innovation in the Biotechnology Industry

Encourage Domestic Advanced Manufacturing and Pandemic Preparedness

Domestic advanced manufacturing is a critical part of bolstering the global supply chain. A robust advanced manufacturing sector ensures better domestic oversight of quality control, flexibility in responding to changes in demand, and more technologically advanced facilities at potentially lower costs. New advanced manufacturing technologies can speed up the entry of new treatments to market and improve production processes, leading to less waste and environmental impacts.

It is also a high-growth, high-wage sector that provides jobs of all levels across the country. The biotech industry operates over 1,000 plants in the production of human-use medicines across 45 states and Puerto Rico, paying wages on average more than $117,000. Incentives to grow and maintain the domestic advanced manufacturing sector, such as tax credits, workforce development initiatives and physical infrastructure improvements, can help bolster the advanced manufacturing sector and support small high-tech businesses.

BIO supports tax credits for investment in advanced manufacturing equipment and a reduced tax rate on income from domestic production of specific medical products.

BIO also supports several bills which aim to spur investment in and development of medical countermeasures to protect Americans from future threats. These include:

- **The "American Made Medicine Act" which lowers the tax rate on domestic manufacturing and sales of active pharmaceutical ingredients and medical countermeasures and implements an advanced medical manufacturing equipment credit of 30% over 10 years for investments in advanced manufacturing equipment or machinery used in the US to manufacture drugs, medical devices, and biological products;**
- **The "Start-up for Cures Act" would allow start-ups with less than $1 million in gross receipts engaged in research toward medical countermeasures to monetize unused tax credit; and**
- **The "More Cures Act" which would provide startups with an enhanced credit of 14% for qualified research expenses toward medical countermeasures.**

Finally, BIO supports grants and credits for hiring, training, or retraining employees to adapt to the advanced manufacturing sector, and incentives such as creating a targeted biopharma manufacturing group eligible for the Work Opportunity Tax Credit would help offset the high cost of the highly-educated and well-trained workforce.

Tax Policies to Promote Innovation in the Biotechnology Industry

Provide Clean Energy Incentives to Encourage the Development of Clean Energy Sources through Biotechnology

BIO estimates that more than 1.66 million U.S. workers -- in biofuels, renewable chemicals and polymers, industrial biotechnology and agriculture -- contribute $205 billion to the U.S. economy. Since these direct jobs create additional employment and economic opportunities, the U.S. biobased economy has an overall impact of $505 billion and 4.63 million well-paying jobs. The United States generates 58 percent of the direct value in the $355 billion global biobased economy. To retain a competitive edge, the United States must support continued investment in fields such as but not limited to sustainable aviation fuels, biofuels, and advanced energy projects. Availability of tax incentives is critical as our companies make significant investments to create new agricultural supply chains, build infrastructure, and develop innovative technologies. The biobased economy is reaching a tipping point. Federal policy must adapt to keep pace. As the U.S. looks to address the climate crisis, the biotechnology industry will play a key role. With that, BIO continues to support tax incentives such as:

- **Extension of Second-Generation Biofuel Tax Credit (Section 13202/26 USC 40).**
- **Sustainable Aviation Fuel Credit (Section 13203/26 USC 40B).** Provides a tax credit for the sale or use of that achieves a lifecycle greenhouse gas emissions reduction of at least 50% compared to petroleum-based jet fuel.
- **Clean Fuel Production Credit (Section 13704:/26 USC 45Z).** Provides a production tax credit for domestic production of clean transportation fuels, including sustainable aviation fuels.
- **Advanced Energy Project Credit (Section 13501:/26 USC 48C).** Provides a tax credit for investments in advanced energy projects. Eligible recipients include:
    - A project that: (1) re-equips, expands, or establishes an industrial or manufacturing facility for the production or recycling of a range of clean energy equipment and vehicles;
    - (2) re-equips an industrial or manufacturing facility with equipment designed to reduce greenhouse gas emissions by at least 20 percent; or
    - (3) re-equips, expands, or establishes an industrial facility for the processing, refining, or recycling critical materials.

BIO also supports additional tax incentives that would further support the development of clean energy alternatives, including:

- Biodiesel and Renewable Diesel blenders credits
- Extension of the begin construction date for section 45Q,
- Direct pay option for 45Q credits.
- Investment credit for Alternative Fuel Refueling Infrastructure

BIO urges long-term extensions or permanent provisions for clean energy through biotechnology.