

116TH CONGRESS  
2D SESSION

# S. 4214

To provide a payroll tax credit for certain expenses associated with protecting employees from COVID–19.

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IN THE SENATE OF THE UNITED STATES

JULY 20, 2020

Mr. PORTMAN introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To provide a payroll tax credit for certain expenses associated with protecting employees from COVID–19.

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. HEALTHY WORKPLACE TAX CREDIT.**

4 (a) IN GENERAL.—In the case of an employer, there  
5 shall be allowed as a credit against applicable employment  
6 taxes for each calendar quarter an amount equal to 50  
7 percent of the sum of—

8 (1) the qualified employee protection expenses  
9 paid or incurred by the employer during such cal-  
10 endar quarter, and

1           (2) the qualified workplace reconfiguration ex-  
 2           penses paid or incurred by the employer during such  
 3           calendar quarter.

4           (b) LIMITATIONS AND REFUNDABILITY.—

5           (1) OVERALL DOLLAR LIMITATION ON CRED-  
 6           IT.—

7                   (A) IN GENERAL.—The amount of the  
 8                   credit allowed under subsection (a) with respect  
 9                   to any employer for any calendar quarter shall  
 10                  not exceed the excess (if any) of—

11                           (i) the applicable dollar limit with re-  
 12                           spect to such employer for such calendar  
 13                           quarter, over

14                           (ii) the aggregate credits allowed  
 15                           under subsection (a) with respect to such  
 16                           employer for all preceding calendar quar-  
 17                           ters.

18                   (B) APPLICABLE DOLLAR LIMIT.—The  
 19                   term “applicable dollar limit” means, with re-  
 20                   spect to any employer for any calendar quarter,  
 21                   the sum of—

22                           (i) \$1,000, multiplied by so much of  
 23                           the average number of full-time employees  
 24                           (as determined for purposes of determining  
 25                           whether an employer is an applicable large

1 employer for purposes of section  
 2 4980H(c)(2) of the Internal Revenue Code  
 3 of 1986, except that an individual shall not  
 4 be taken into account as an employee for  
 5 any period during which substantially all of  
 6 the services provided by such individual as  
 7 an employee are provided outside the  
 8 United States) employed by such employer  
 9 during such calendar quarter as does not  
 10 exceed 500, plus

11 (ii) \$750, multiplied by so much of  
 12 such average number of full-time employ-  
 13 ees as exceeds 500 but does not exceed  
 14 1,000, plus

15 (iii) \$500, multiplied by so much of  
 16 such average number of full-time employ-  
 17 ees as exceeds 1,000.

18 (2) CREDIT LIMITED TO EMPLOYMENT  
 19 TAXES.—The credit allowed by subsection (a) with  
 20 respect to any calendar quarter shall not exceed the  
 21 applicable employment taxes (reduced by any credits  
 22 allowed under subsections (e) and (f) of section  
 23 3111 of the Internal Revenue Code of 1986, sections  
 24 7001 and 7003 of the Families First Coronavirus  
 25 Response Act, and section 2301 of the CARES Act)

on the wages paid with respect to the employment of all the employees of the employer for such calendar quarter.

(3) REFUNDABILITY OF EXCESS CREDIT.—

(A) IN GENERAL.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of the Internal Revenue Code of 1986.

(B) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any amounts due to the employer under this paragraph shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(c) QUALIFIED EMPLOYEE PROTECTION EXPENSES.—For purposes of this section, the term “qualified employee protection expenses” means amounts (other than any qualified workplace reconfiguration expense) paid or incurred by the employer for—

(1) testing employees of the employer for COVID–19 (including on a periodic basis),

1           (2) equipment to protect employees of the em-  
2     ployer from contracting COVID–19, including  
3     masks, gloves, and disinfectants, and

4           (3) cleaning products or services (whether pro-  
5     vided by an employee of the taxpayer or a cleaning  
6     service provider) related to preventing the spread of  
7     COVID–19.

8     (d) QUALIFIED WORKPLACE RECONFIGURATION EX-  
9     PENSES.—For purposes of this section—

10           (1) IN GENERAL.—The term “qualified work-  
11     place reconfiguration expenses” means amounts paid  
12     or incurred by the employer to design and recon-  
13     figure retail space, work areas, break areas, or other  
14     areas that employees or customers regularly use in  
15     the ordinary course of the employer’s trade or busi-  
16     ness if such design and reconfiguration—

17                 (A) has a primary purpose of preventing  
18     the spread of COVID–19,

19                 (B) is with respect to an area that is lo-  
20     cated in the United States and that is leased or  
21     owned by the employer,

22                 (C) is consistent with the ordinary use of  
23     the property immediately before the reconfig-  
24     uration,

(D) is commensurate with the risks faced by the employees or customers or is consistent with recommendations made by the Centers for Disease Control and Prevention or the Occupational Safety and Health Administration,

(E) is completed pursuant to a reconfiguration plan and no comparable reconfiguration plan was in place before March 13, 2020, and

(F) is completed before January 1, 2021.

(2) REGULATIONS.—The Secretary shall prescribe such regulations and other guidance as may be necessary or appropriate to carry out the purposes of this subsection, including guidance defining primary purpose and reconfiguration plan.

(e) OTHER DEFINITIONS.—For purposes of this section—

(1) APPLICABLE EMPLOYMENT TAXES.—The term “applicable employment taxes” means the following:

(A) The taxes imposed under section 3111(a) of the Internal Revenue Code of 1986.

(B) So much of the taxes imposed under section 3221(a) of such Code as are attributable to the rate in effect under section 3111(a) of such Code.

1           (2) COVID-19.—Except where the context  
 2           clearly indicates otherwise, any reference in this sec-  
 3           tion to COVID-19 shall be treated as including a  
 4           reference to the virus which causes COVID-19.

5           (3) SECRETARY.—The term “Secretary” means  
 6           the Secretary of the Treasury or the Secretary’s del-  
 7           egate.

8           (4) OTHER TERMS.—Any term used in this sec-  
 9           tion (other than subsection (b)(1)(B)) which is also  
 10          used in chapter 21 or 22 of the Internal Revenue  
 11          Code of 1986 shall have the same meaning as when  
 12          used in such chapter.

13          (f) CERTAIN GOVERNMENTAL EMPLOYERS.—This  
 14          section shall not apply to the Government of the United  
 15          States, the government of any State or political subdivi-  
 16          sion thereof, or any agency or instrumentality of any of  
 17          the foregoing.

18          (g) SPECIAL RULES.—

19               (1) AGGREGATION RULE.—All persons treated  
 20               as a single employer under subsection (a) or (b) of  
 21               section 52 of the Internal Revenue Code of 1986, or  
 22               subsection (m) or (o) of section 414 of such Code,  
 23               shall be treated as one employer for purposes of this  
 24               section.

1           (2) DENIAL OF DOUBLE BENEFIT.—Rules simi-  
2       lar to the rules of section 280C(a) of the Internal  
3       Revenue Code of 1986 shall apply for purposes of  
4       this section.

5           (3) THIRD-PARTY PAYORS.—Any credit allowed  
6       under this section shall be treated as a credit de-  
7       scribed in section 3511(d)(2) of such Code.

8           (4) ELECTION NOT TO HAVE SECTION APPLY.—  
9       This section shall not apply with respect to any em-  
10      ployer for any calendar quarter if such employer  
11      elects (at such time and in such manner as the Sec-  
12      retary may prescribe) not to have this section apply.

13       (h) TRANSFERS TO CERTAIN TRUST FUNDS.—There  
14      are hereby appropriated to the Federal Old-Age and Sur-  
15      vivors Insurance Trust Fund and the Federal Disability  
16      Insurance Trust Fund established under section 201 of  
17      the Social Security Act (42 U.S.C. 401) and the Social  
18      Security Equivalent Benefit Account established under  
19      section 15A(a) of the Railroad Retirement Act of 1974  
20      (45 U.S.C. 14 231n–1(a)) amounts equal to the reduction  
21      in revenues to the Treasury by reason of this section  
22      (without regard to this subsection). Amounts appropriated  
23      by the preceding sentence shall be transferred from the  
24      general fund at such times and in such manner as to rep-  
25      licate to the extent possible the transfers which would have



1 occurred to such Trust Fund or Account had this section  
2 not been enacted.

3 (i) TREATMENT OF DEPOSITS.—The Secretary shall  
4 waive any penalty under section 6656 of the Internal Rev-  
5 enue Code of 1986 for any failure to make a deposit of  
6 any applicable employment taxes if the Secretary deter-  
7 mines that such failure was due to the reasonable anticipa-  
8 tion of the credit allowed under this section.

9 (j) REGULATIONS AND GUIDANCE.—The Secretary  
10 shall prescribe such regulations and other guidance as  
11 may be necessary or appropriate to carry out the purposes  
12 of this section, including—

13 (1) with respect to the application of the credit  
14 under subsection (a) to third-party payors (including  
15 professional employer organizations, certified profes-  
16 sional employer organizations, or agents under sec-  
17 tion 3504 of the Internal Revenue Code of 1986),  
18 regulations or other guidance allowing such payors  
19 to submit documentation necessary to substantiate  
20 the amount of the credit allowed under subsection  
21 (a), and

22 (2) regulations or other guidance to prevent  
23 abusive transactions.

1       (k) APPLICATION.—This section shall only apply to  
2 amounts paid or incurred after March 12, 2020, and be-  
3 fore January 1, 2021.

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