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2D SESSION

S. 3793

To amend the CARES Act to modify the employee retention tax credit to secure the paychecks and benefits of workers, to provide a refundable credit against payroll taxes for the operating costs of employers, to amend the Internal Revenue Code of 1986 to provide a small business rebate, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 21, 2020

Mr. WARNER (for himself, Mr. SANDERS, Mr. JONES, Mr. BLUMENTHAL, Ms. KLOBUCHAR, Ms. WARREN, Mrs. FEINSTEIN, Mr. REED, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the CARES Act to modify the employee retention tax credit to secure the paychecks and benefits of workers, to provide a refundable credit against payroll taxes for the operating costs of employers, to amend the Internal Revenue Code of 1986 to provide a small business rebate, and for other purposes.

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, ETC.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Paycheck Security Act”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title, etc.

TITLE I—EMPLOYER CREDITS

Sec. 101. Paycheck security credit.
 Sec. 102. Credit for employer operating expenses.
 Sec. 103. Advance payments of credits.
 Sec. 104. Administration.
 Sec. 105. Public disclosure.
 Sec. 106. Employee notification.

TITLE II—SMALL BUSINESS REBATE

Sec. 201. Small business rebate.

TITLE III—OTHER PROVISIONS

Sec. 301. Additional appropriations for Department of Treasury.
 Sec. 302. GAO report.

3 **TITLE I—EMPLOYER CREDITS**

4 **SEC. 101. PAYCHECK SECURITY CREDIT.**

5 (a) AMOUNT OF CREDIT.—Section 2301(a) of the
 6 CARES Act is amended—

7 (1) by striking “In the case of” and inserting
 8 the following:

9 “(1) ALLOWANCE OF CREDIT.—In the case of”,

10 (2) by striking “an amount equal to 50 per-
 11 cent” and inserting “an amount equal to the sum
 12 of—

13 “(A) 100 percent”,

14 (3) by striking the period at the end and insert-
 15 ing “, plus

16 “(B) in the case of an eligible employer for
 17 which the average number of full-time employ-

1 ees (within the meaning of section 4980H of
2 the Internal Revenue Code of 1986) employed
3 by such eligible employer during 2019 was not
4 greater than 100, 50 percent of all other wages
5 with respect to each employee of such employer
6 for the calendar quarter.”, and

7 (4) by adding at the end the following new
8 paragraph:

9 “(2) PHASEOUT.—In the case of an eligible em-
10 ployer for which the gross receipts for the calendar
11 quarter exceed 80 percent of gross receipts for the
12 same calendar quarter in the prior year, the amount
13 of credit allowed under paragraph (1) (determined
14 without regard to this paragraph) shall be reduced
15 (but not below zero) by an amount that bears the
16 same ratio to such amount of credit as—

17 “(A) the excess of—

18 “(i) 85 percent, over

19 “(ii) the percentage by which the tax-
20 payer’s gross receipts for the calendar
21 quarter exceed the taxpayer’s gross re-
22 ceipts for the same calendar quarter in the
23 prior year, bears to

24 “(B) 5 percent.”.

1 (b) MODIFICATION OF LIMITATION.—Section
2 2301(b)(1) of the CARES Act is amended by striking “for
3 all calendar quarters shall not exceed \$10,000” and insert-
4 ing “shall not exceed—

5 “(A) \$22,500 for any calendar quarter, or
6 “(B) \$90,000 for all calendar quarters.”.

7 (c) DEFINITION OF ELIGIBLE EMPLOYER.—Section
8 2301(c)(2) of the CARES Act is amended to read as fol-
9 lows:

10 “(2) ELIGIBLE EMPLOYER.—

11 “(A) IN GENERAL.—The term ‘eligible em-
12 ployer’ means any employer—

13 “(i) which was carrying on a trade or
14 business during calendar year 2020,

15 “(ii) which meets the requirements of
16 subparagraph (B),

17 “(iii) with respect to any calendar
18 quarter, for which the gross receipts (with-
19 in the meaning of section 448(c) of the In-
20 ternal Revenue Code of 1986) for the cal-
21 endar quarter are less than 85 percent of
22 gross receipts for the same calendar quar-
23 ter in the prior year.

1 “(B) REQUIREMENTS.—An employer
2 meets the requirements of this subparagraph if
3 such employer—

4 “(i) did not have gross receipts for the
5 last taxable year ending in 2019 of more
6 than \$1,000,000,000, and

7 “(ii) did not have on hand on March
8 1, 2020, cash and cash equivalents of more
9 than an amount equal to 150 percent of
10 the wages paid by the employer during cal-
11 endar year 2019.

12 “(C) TAX-EXEMPT ORGANIZATIONS.—In
13 the case of an organization which is described
14 in section 501(c) of the Internal Revenue Code
15 of 1986 and exempt from tax under section
16 501(a) of such Code—

17 “(i) subparagraph (A)(i) shall apply
18 to all operations of such organization, and

19 “(ii) any reference in this section to
20 gross receipts shall be treated as a ref-
21 erence to gross receipts within the meaning
22 of section 6033 of such Code.

23 “(D) EXCEPTIONS.—The term ‘eligible
24 employer’ shall not include—

1 “(i) any employer that is a debtor in
2 a case under chapter 7 of title 11, United
3 States Code, during the calendar quarter,
4 or

5 “(ii) any covered entity (as defined in
6 section 4019).”.

7 (d) DETERMINATION OF QUALIFIED WAGES.—

8 (1) IN GENERAL.—Section 2301(c)(3) of the
9 CARES Act is amended to read as follows:

10 “(3) QUALIFIED WAGES.—

11 “(A) IN GENERAL.—The term ‘qualified
12 wages’ means wages paid with respect to any
13 period during the calendar quarter in which an
14 employee is not providing services. Such term
15 shall not include any wages taken into account
16 under section 7001 or section 7003 of the Fam-
17 ilies First Coronavirus Response Act.

18 “(B) LIMITATION.—Qualified wages paid
19 or incurred by an eligible employer with respect
20 to an employee for any period described in sub-
21 paragraph (A) may not exceed the greater of—

22 “(i) \$600 per week, or

23 “(ii) the amount such employee would
24 have been paid (including tips which would
25 have been deemed to be paid by the em-

1 ployer under section 3121(q)) for working
2 an equivalent duration during the 30 days
3 immediately preceding such period.”.

4 (2) HEALTH PLAN EXPENSES.—Section
5 2301(e)(5) of such Act is amended to read as fol-
6 lows:

7 “(5) WAGES.—

8 “(A) IN GENERAL.—The term ‘wages’
9 means wages (as defined in section 3121(a) of
10 the Internal Revenue Code of 1986) and com-
11 pensation (as defined in section 3231(e) of such
12 Code).

13 “(B) ALLOWANCE FOR CERTAIN HEALTH
14 PLAN EXPENSES.—

15 “(i) IN GENERAL.—Such term shall
16 include amounts paid or incurred by the el-
17 igible employer to provide and maintain a
18 group health plan (as defined in section
19 5000(b)(1) of the Internal Revenue Code
20 of 1986), but only to the extent that such
21 amounts are excluded from the gross in-
22 come of employees by reason of section
23 106(a) of such Code.

24 “(ii) ALLOCATION RULES.—For pur-
25 poses of this section, amounts treated as

1 wages under clause (i) shall be treated as
2 paid with respect to any employee (and
3 with respect to any period) to the extent
4 that such amounts are properly allocable to
5 such employee (and to such period) in such
6 manner as the Secretary may prescribe.
7 Except as otherwise provided by the Sec-
8 retary, such allocation shall be treated as
9 properly made if made on the basis of
10 being pro rata among periods of cov-
11 erage.”.

12 (e) CERTAIN GOVERNMENTAL EMPLOYEES ELIGIBLE
13 FOR CREDIT.—

14 (1) IN GENERAL.—Section 2301(f) of the
15 CARES Act is amended to read as follows:

16 “(f) CERTAIN GOVERNMENTAL EMPLOYERS.—

17 “(1) IN GENERAL.—The credit under this sec-
18 tion shall not be allowed to the Federal Government
19 or any agency or instrumentality thereof.

20 “(2) EXCEPTION.—Paragraph (1) shall not
21 apply to any organization described in section
22 501(c)(1) of the Internal Revenue Code of 1986 and
23 exempt from tax under section 501(a) of such Code.

24 “(3) SPECIAL RULES.—In the case of any State
25 government, Indian tribal government, or any agen-

1 cy, instrumentality, or political subdivision of the
2 foregoing—

3 “(A) clauses (i) of subsection (c)(2)(A)
4 shall apply to all operations of such entity, and

5 “(B) clauses (ii) and (iii) of subsection
6 (c)(2)(A) shall not apply.”.

7 (2) COORDINATION WITH APPLICATION OF CER-
8 TAIN DEFINITIONS.—

9 (A) IN GENERAL.—Section 2301(c)(5)(A)
10 of the CARES Act, as amended by the pre-
11 ceding provisions of this Act, is amended by
12 adding at the end the following: “For purposes
13 of the preceding sentence (other than for pur-
14 poses of subsection (b)(2)), wages as defined in
15 section 3121(a) of the Internal Revenue Code
16 of 1986 shall be determined without regard to
17 paragraphs (1), (5), (6), (7), (8), (10), (13),
18 (18), (19), and (22) of section 3212(b) of such
19 Code (except with respect to services performed
20 in a penal institution by an inmate thereof).”.

21 (B) CONFORMING AMENDMENTS.—Sec-
22 tions 2301(c)(6) of the CARES Act is amended
23 by striking “Any term” and inserting “Except
24 as otherwise provided in this section, any
25 term”.

1 (f) COORDINATION WITH PAYCHECK PROTECTION
2 PROGRAM.—

3 (1) AMENDMENT TO PAYCHECK PROTECTION
4 PROGRAM.—Section 1106(a)(8) of the Cares Act is
5 amended by inserting “, except that such costs shall
6 not include qualified wages taken into account in de-
7 termining the credit allowed under section 2301 of
8 this Act” before the period at the end.

9 (2) AMENDMENTS TO EMPLOYEE RETENTION
10 TAX CREDIT.—

11 (A) IN GENERAL.—Section 2301(g) of the
12 CARES Act is amended to read as follows:

13 “(g) ELECTION TO NOT TAKE CERTAIN WAGES
14 INTO ACCOUNT.—

15 “(1) IN GENERAL.—This section shall not apply
16 to qualified wages paid by an eligible employer with
17 respect to which such employer makes an election
18 (at such time and in such manner as the Secretary
19 may prescribe) to have this section not apply to such
20 wages.

21 “(2) COORDINATION WITH PAYCHECK PROTEC-
22 TION PROGRAM.—The Secretary, in consultation
23 with the Administrator of the Small Business Ad-
24 ministration, shall issue guidance providing that
25 payroll costs paid or incurred during the covered pe-

1 riod shall not fail to be treated as qualified wages
2 under this section by reason of an election under
3 paragraph (1) to the extent that a covered loan of
4 the eligible employer is not forgiven by reason of a
5 decision under section 1106(g). Terms used in the
6 preceding sentence which are also used in section
7 1106 shall have the same meaning as when used in
8 such section.”.

9 (B) CONFORMING AMENDMENT.—Section
10 2301 of the CARES Act is amended by striking
11 subsection (j).

12 (g) DENIAL OF DOUBLE BENEFIT.—Section 2301(h)
13 of the CARES Act is amended—

14 (1) by striking paragraphs (1) and (2) and in-
15 serting the following:

16 “(1) DENIAL OF DOUBLE BENEFIT.—Any
17 wages taken into account in determining the credit
18 allowed under this section shall not be taken into ac-
19 count as wages for purposes of sections 45A, 45B,
20 45P, 45S, 51, and 1396 of the Internal Revenue
21 Code of 1986.”, and

22 (2) by redesignating paragraph (3) as para-
23 graph (2).

24 (h) RECAPTURE AND ADVANCEMENT OF CREDIT.—
25 Section 2301 of the CARES Act is amended by redesi-

1 nating subsections (l) and (m) as subsections (o) and (p),
2 respectively, and by inserting after subsection (k) the fol-
3 lowing:

4 “(l) RECAPTURE.—

5 “(1) IN GENERAL.—In any case in which an eli-
6 gible employer which has been allowed a credit
7 under this section for any calendar quarter takes
8 any action described in paragraph (2) during the 1-
9 year period beginning on the day after the end of
10 such calendar quarter, the tax imposed by chapter
11 21 or 22 of the Internal Revenue Code of 1986
12 (whichever is applicable) for the calendar quarter in
13 which such action occurs shall be increased by the
14 amount of the credit so allowed.

15 “(2) ACTIONS DESCRIBED.—The following ac-
16 tions are described in this paragraph:

17 “(A) RETURNS OF CAPITAL.—The eligible
18 employer purchases its own stock or otherwise
19 distributes capital (including through a divi-
20 dend).

21 “(B) LABOR NEGOTIATIONS.—The eligible
22 employer—

23 “(i) abrogates a collective bargaining
24 agreement, or

1 “(ii) does not remain neutral in any
2 union organizing effort.

3 “(C) PAYROLL.—The eligible employer
4 pays any officer or employee a salary in an
5 amount that is greater than 50 times the me-
6 dian salary of employees during the period last-
7 ing one year after the end of the calendar quar-
8 ter in which credit is claimed.

9 “(3) LIMITATION.—The amount of tax imposed
10 under paragraph (1) with respect to any calendar
11 quarter for all actions described in paragraph (2)
12 shall not exceed the amount allowed as a credit
13 under this section with respect to such calendar
14 quarter.

15 “(m) COORDINATION WITH ADVANCE REFUNDS OF
16 CREDIT.—

17 “(1) IN GENERAL.—The amount of credit
18 which would (but for this subsection) be allowed
19 under this section shall be reduced (but not below
20 zero) by the aggregate refunds and credits made or
21 allowed to the taxpayer under section 103 of the
22 Paycheck Security Act by reason of this section. Any
23 failure to so reduce the credit shall be treated as
24 arising out of a mathematical or clerical error and

1 assessed according to section 6213(b)(1) of the In-
2 ternal Revenue Code of 1986.

3 “(2) EXCESS ADVANCE PAYMENTS.—If the ad-
4 vance payments to a taxpayer under section 103 of
5 the Paycheck Security Act by reason of this section
6 for a calendar quarter exceed the credit allowed by
7 this section (determined without regard to para-
8 graph (1)), the tax imposed by chapter 21 or 22 of
9 the Internal Revenue Code of 1986 (whichever is ap-
10 plicable) for the calendar quarter shall be increased
11 by the amount of such excess.”.

12 (i) REGULATIONS AND GUIDANCE.—Section 2301(o)
13 of the CARES Act, as redesignated by subsection (h), is
14 amended—

15 (1) by striking paragraphs (1), (2), and (3),
16 and inserting the following:

17 “(1) to require employers allowed a credit
18 under this section to report information relevant to
19 actions described in subsection (l)(2),”.

20 (2) by redesignating paragraphs (4) and (5) as
21 paragraphs (2) and (3), respectively, and

22 (3) in paragraph (3), as so redesignated, by
23 striking “subparagraphs (A)(ii) and (B) of sub-
24 section (c)(2)” and inserting “subsections (a)(2) and
25 (c)(2)(A)(iv)”.

1 (j) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to wages paid in calendar quarters
3 beginning after the date of the enactment of this Act.

4 **SEC. 102. CREDIT FOR EMPLOYER OPERATING EXPENSES.**

5 (a) IN GENERAL.—

6 (1) ALLOWANCE OF CREDIT.—In the case of an
7 eligible employer, there shall be allowed as a credit
8 against applicable employment taxes for each cal-
9 endar quarter an amount equal to the lesser of—

10 (A) 5 percent of the qualifying gross re-
11 cepts of the eligible employer, or

12 (B) \$500,000.

13 (2) PHASEOUT.—In the case of an eligible em-
14 ployer for which the gross receipts for the calendar
15 quarter exceed 80 percent of gross receipts for the
16 same calendar quarter in the prior year, the amount
17 of determined under paragraph (1)(A) (determined
18 without regard to this paragraph) shall be reduced
19 (but not below zero) by an amount that bears the
20 same ratio to such amount as—

21 (A) the excess of—

22 (i) 85 percent, over

23 (ii) the percentage by which the tax-
24 payer's gross receipts for the calendar
25 quarter exceed the taxpayer's gross re-

1 ceipts for the same calendar quarter in the
2 prior year, bears to

3 (B) 5 percent.

4 (b) LIMITATIONS AND REFUNDABILITY.—

5 (1) CREDIT LIMITED TO EMPLOYMENT
6 TAXES.—The credit allowed under subsection (a)
7 with respect to any calendar quarter shall not exceed
8 the applicable employment taxes (reduced by any
9 credits allowed under subsections (e) and (f) of sec-
10 tion 3111 of the Internal Revenue Code of 1986,
11 sections 7001 and 7003 of the Families First
12 Coronavirus Response Act, and section 2301 of the
13 CARES Act) on the wages paid with respect to the
14 employment of all the employees of the eligible em-
15 ployer for such calendar quarter.

16 (2) REFUNDABILITY OF EXCESS CREDIT.—

17 (A) IN GENERAL.—If the amount of the
18 credit under subsection (a) (determined without
19 regard to paragraph (1)) exceeds the limitation
20 of paragraph (1) for any calendar quarter, such
21 excess shall be treated as an overpayment that
22 shall be refunded under sections 6402(a) and
23 6413(b) of the Internal Revenue Code of 1986.

24 (B) TREATMENT OF PAYMENTS.—For pur-
25 poses of section 1324 of title 31, United States

1 Code, any amounts due to the employer under
2 this paragraph shall be treated in the same
3 manner as a refund due from a credit provision
4 referred to in subsection (b)(2) of such section.

5 (c) DEFINITIONS.—For purposes of this section—

6 (1) APPLICABLE EMPLOYMENT TAXES.—The
7 term “applicable employment taxes” means the fol-
8 lowing:

9 (A) The taxes imposed under section
10 3111(a) of the Internal Revenue Code of 1986.

11 (B) So much of the taxes imposed under
12 section 3221(a) of such Code as are attrib-
13 utable to the rate in effect under section
14 3111(a) of such Code.

15 (2) ELIGIBLE EMPLOYER.—The term “eligible
16 employer” means an employer which—

17 (A) is an eligible employer (as defined in
18 section 2301(c)(2) of the CARES Act, deter-
19 mined without regard to subparagraph (A)(ii)
20 thereof), and

21 (B) with respect to any calendar quarter,
22 meets the gross receipts test of section 448(c)
23 (determined by substituting “\$41,500,000” for
24 “\$25,000,000” in paragraph (1) thereof) for

1 the taxable year that includes the first day of
2 the calendar quarter.

3 For purposes of subparagraph (B), in the case of
4 any taxpayer which is not a corporation or a part-
5 nership, the gross receipts test of section 448(c)
6 shall be applied in the same manner as if such tax-
7 payer were a corporation or partnership.

8 (3) QUALIFYING GROSS RECEIPTS.—The term
9 “qualifying gross receipts” means the aggregate
10 gross receipts of the eligible employer for the last
11 taxable year ending before the date of the enactment
12 of this Act.

13 (4) GROSS RECEIPTS.—

14 (A) IN GENERAL.—The term “gross re-
15 ceipts” has the meaning given such term under
16 section 448(c) of the Internal Revenue Code of
17 1986.

18 (B) TAX-EXEMPT ORGANIZATIONS.—In the
19 case of an organization which is described in
20 section 501(c) of the Internal Revenue Code of
21 1986 and exempt from tax under section 501(a)
22 of such Code, any reference in this section to
23 gross receipts shall be treated as a reference to
24 gross receipts within the meaning of section
25 6033 of the Internal Revenue Code of 1986.

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

4 (d) OTHER RULES.—For purposes of this section—

5 (1) AGGREGATION RULE.—All persons treated
6 as a single employer under subsection (a) or (b) of
7 section 52 of the Internal Revenue Code of 1986, or
8 subsection (m) or (o) of section 414 of such Code,
9 shall be treated as one employer.

10 (2) CERTAIN GOVERNMENTAL EMPLOYERS.—

11 This credit shall not apply to the Government of the
12 United States, the government of any State or polit-
13 ical subdivision thereof, or any agency or instrumen-
14 tality of any of the foregoing.

15 (3) ELECTION NOT TO HAVE SECTION APPLY.—

16 This section shall not apply with respect to any eligi-
17 ble employer for any calendar quarter if such em-
18 ployer elects (at such time and in such manner as
19 the Secretary may prescribe) not to have this section
20 apply.

21 (4) THIRD-PARTY PAYORS.—Any credit allowed
22 under this section shall be treated as a credit de-
23 scribed in section 3511(d)(2) of such Code.

24 (e) TRANSFERS TO FEDERAL OLD-AGE AND SUR-
25 VIVORS INSURANCE TRUST FUND.—There are hereby ap-

1 appropriated to the Federal Old-Age and Survivors Insur-
2 ance Trust Fund and the Federal Disability Insurance
3 Trust Fund established under section 201 of the Social
4 Security Act (42 U.S.C. 401) and the Social Security
5 Equivalent Benefit Account established under section
6 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C.
7 14 231n-1(a)) amounts equal to the reduction in revenues
8 to the Treasury by reason of this section (without regard
9 to this subsection). Amounts appropriated by the pre-
10 ceding sentence shall be transferred from the general fund
11 at such times and in such manner as to replicate to the
12 extent possible the transfers which would have occurred
13 to such Trust Fund or Account had this section not been
14 enacted.

15 (f) TREATMENT OF DEPOSITS.—The Secretary shall
16 waive any penalty under section 6656 of the Internal Rev-
17 enue Code of 1986 for any failure to make a deposit of
18 any applicable employment taxes if the Secretary deter-
19 mines that such failure was due to the reasonable anticipa-
20 tion of the credit allowed under this section.

21 (g) RECAPTURE.—

22 (1) IN GENERAL.—In any case in which an eli-
23 gible employer which has been allowed a credit
24 under this section for any calendar quarter takes
25 any action described in section 2301(l)(2) of the

1 CARES Act during the 1-year period beginning on
2 the day after the end of such calendar quarter, the
3 tax imposed by chapter 21 or 22 of the Internal
4 Revenue Code of 1986 (whichever is applicable) for
5 the calendar quarter in which such action occurs
6 shall be increased by the amount of the credit so al-
7 lowed.

8 (2) LIMITATION.—The amount of tax imposed
9 under paragraph (1) with respect to any calendar
10 quarter for all actions described in section
11 2301(1)(2) of the CARES Act shall not exceed the
12 amount allowed as a credit under this section with
13 respect to such calendar quarter.

14 (h) COORDINATION WITH ADVANCE REFUNDS OF
15 CREDIT.—The amount of credit which would (but for this
16 subsection) be allowed under this section shall be reduced
17 (but not below zero) by the aggregate refunds and credits
18 made or allowed to the taxpayer under section 103 by rea-
19 son of this section. Any failure to so reduce the credit shall
20 be treated as arising out of a mathematical or clerical
21 error and assessed according to section 6213(b)(1) of the
22 Internal Revenue Code of 1986.

23 (i) CREDIT TREATED AS INCOME.—For purposes of
24 the Internal Revenue Code of 1986, the amount allowed
25 as a credit under this section for any calendar quarter

1 shall be included in income of the employer for the taxable
2 year that includes the last day of the calendar quarter.

3 (j) REGULATIONS AND GUIDANCE.—The Secretary
4 shall issue such forms, instructions, regulations, and guid-
5 ance as are necessary—

6 (1) to require employers allowed a credit under
7 this section to report information relevant to actions
8 described in subsection (g)(1),

9 (2) with respect to the application of the credit
10 under subsection (a) to third party payors (including
11 professional employer organizations, certified profes-
12 sional employer organizations, or agents under sec-
13 tion 3504 of the Internal Revenue Code of 1986),
14 including regulations or guidance allowing such
15 payors to submit documentation necessary to sub-
16 stantiate the eligible employer status of employers
17 that use such payors, and

18 (3) for application of subsections (a)(2) in the
19 case of any employer which was not carrying on a
20 trade or business for all or part of the same cal-
21 endar quarter in the prior year.

22 (k) APPLICATION.—This section shall only apply to
23 calendar quarters beginning after the date of the enact-
24 ment of this Act and before January 1, 2020.

1 **SEC. 103. ADVANCE PAYMENTS OF CREDITS.**

2 (a) IN GENERAL.—The Secretary of the Treasury (or
3 the Secretary’s delegate) shall establish a program under
4 which an employer may elect to receive an advance pay-
5 ment of—

6 (1) the credit allowable under section 2301 of
7 the CARES Act, and

8 (2) the credit allowable under section 102.

9 The employer shall designate the amount of any advance
10 payment made under this section which is made by reason
11 of each credit described in the preceding sentence.

12 (b) LIMITATIONS.—

13 (1) LIMITATION ON AMOUNT OF PAYMENT.—

14 The aggregate amount of advance payments under
15 this section with respect to any calendar quarter
16 shall not exceed the deemed credit amount.

17 (2) LIMITATION ON NUMBER OF ADVANCES.—

18 An employer may not make an election under the
19 program established under subsection (a) with re-
20 spect to more than 2 calendar quarters in any cal-
21 endar year.

22 (c) DEEMED CREDIT AMOUNT.—For purposes of this
23 section—

24 (1) IN GENERAL.—The term “deemed credit
25 amount” means the sum of—

1 (A) the average quarterly wages (as de-
2 fined in section 2301 of the CARES Act) paid
3 by the taxpayer in calendar year 2019, plus

4 (B) 5 percent of the qualifying gross re-
5 cepts (as defined in section 102(e)(3)) of the
6 taxpayer.

7 (2) SPECIAL RULE FOR SEASONAL EMPLOY-
8 ERS.—In the case of any employer who employs sea-
9 sonal workers (as defined in section 45R(d)(5)(B) of
10 the Internal Revenue Code of 1986), the employer
11 may elect to use the wages (as defined in section
12 2301 of the CARES Act) for the calendar quarter
13 in 2019 which corresponds to the calendar quarter
14 to which the election relates in lieu of the amount
15 described in paragraph (1)(A).

16 **SEC. 104. ADMINISTRATION.**

17 (a) PRIORITY.—In carrying out the provisions of sec-
18 tion 2301 of the CARES Act and sections 3 and 4, the
19 Secretary of the Treasury (or the Secretary's delegate)
20 shall prioritize businesses with 100 or fewer employees.

21 (b) AUDITS.—In enforcing the requirements section
22 2301 of the CARES Act and sections 3 and 4, the Sec-
23 retary of the Treasury (or the Secretary's delegate) shall
24 prioritize employers with gross receipts for the last taxable
25 year ending in 2019 of \$1,000,000,000 or more.

1 **SEC. 105. PUBLIC DISCLOSURE.**

2 (a) **QUARTERLY REPORTS.**—Not later than 60 days
3 after the date of the enactment of this Act, and once every
4 calendar quarter thereafter, the Treasury Inspector Gen-
5 eral for Tax Administration shall make publicly available
6 a report on the provisions of this Act, including—

7 (1) A listing of each eligible employer that was
8 allowed the credit under section 2301 of the CARES
9 Act and the number of employees taken into account
10 in determining the amount of such credit.

11 (2) A listing of each eligible employer that was
12 allowed the credit under section 102.

13 (3) The aggregate amount of advance payments
14 provided to each eligible employer under section 103.

15 (4) The aggregate amount of credits recaptured
16 from each eligible employer under each of the fol-
17 lowing provisions—

18 (A) Section 2301(l) of the CARES Act and
19 section 102(g).

20 (B) Section 2301(m)(2) of the CARES
21 Act.

22 (b) **CONFORMING AMENDMENT.**—Section 6103(l) of
23 the Internal Revenue Code of 1986 is amended by adding
24 at the end the following new paragraph:

25 “(23) **DISCLOSURE OF RETURN INFORMATION**
26 **RELATING TO PAYCHECK SECURITY CREDITS.**—The

1 Treasury Inspector General for Tax Administration
 2 shall disclose to the public taxpayer information re-
 3 quired under section 105 of the Paycheck Security
 4 Act.”.

5 **SEC. 106. EMPLOYEE NOTIFICATION.**

6 (a) IN GENERAL.—Each employer shall post and
 7 keep posted on its website (if any) and in conspicuous
 8 places on the premises of the employer where notices to
 9 employees are customarily posted, a notice, to be prepared
 10 or approved by the Secretary of Labor, of the credits al-
 11 lowed to employers under section 2301 of the CARES Act
 12 and section 102.

13 (b) MODEL NOTICE.—Not later than 7 days after the
 14 date of enactment of this Act, the Secretary of Labor shall
 15 make publicly available a model of notice that meets the
 16 requirements of subsection (a).

17 **TITLE II—SMALL BUSINESS**
 18 **REBATE**

19 **SEC. 201. SMALL BUSINESS REBATE.**

20 (a) IN GENERAL.—Subchapter B of chapter 65 of
 21 subtitle F of the Internal Revenue Code of 1986 is amend-
 22 ed by inserting after section 6428 the following new sec-
 23 tion:

24 **“SEC. 6429. SMALL BUSINESS REBATE.**

25 **“(a) ALLOWANCE OF CREDIT.—**

1 “(1) IN GENERAL.—In the case of a qualifying
2 taxpayer, there shall be allowed as a credit against
3 the tax imposed by subtitle A for the first taxable
4 year beginning in 2020 an amount equal to the less-
5 er of—

6 “(A) 30 percent of qualified gross profits
7 of such qualifying taxpayer for the applicable
8 taxable year, or

9 “(B) \$75,000.

10 “(2) PHASE-OUT FOR INDIVIDUALS.—In the
11 case of a qualifying taxpayer that is a qualified indi-
12 vidual, the amount of the credit determined under
13 paragraph (1) (determined without regard to this
14 paragraph) shall be reduced (but not below zero) by
15 the amount which bears the same ratio to such cred-
16 it (as so determined) as—

17 “(A) the excess of—

18 “(i) the taxpayer’s adjusted gross in-
19 come for the applicable taxable year, over

20 “(ii) \$100,000 (\$200,000 in the case
21 of a joint return), bears to

22 “(B) \$50,000 (\$100,000 in the case of a
23 joint return).

24 “(3) REDUCTION FOR QUALIFIED ORGANIZA-
25 TIONS.—

1 “(A) IN GENERAL.—In the case of a quali-
2 fying taxpayer that is a qualified organization,
3 the amount of the credit determined under
4 paragraph (1) (determined without regard to
5 this paragraph) shall be reduced by the total
6 expenditures of the organization described in
7 section 162(e)(1) (other than expenditures de-
8 scribed in section 6033(e)(1)(B)(ii)).

9 “(B) EXCEPTION.—This paragraph shall
10 not apply to any organization described in sec-
11 tion 501(c)(3).

12 “(b) QUALIFYING TAXPAYER.—For purposes of this
13 section—

14 “(1) IN GENERAL.—The term ‘qualifying tax-
15 payer’ means any taxpayer that is a domestic C cor-
16 poration, a qualified organization, or a qualified in-
17 dividual that meets the gross profits test under
18 paragraph (4) for the applicable taxable year.

19 “(2) QUALIFIED ORGANIZATION.—The term
20 ‘qualified organization’ means any organization
21 which is described in section 501(c) and exempt
22 from tax under section 501(a).

23 “(3) QUALIFIED INDIVIDUAL.—The term ‘quali-
24 fied individual’ means any individual who—

1 “(A) is a United States citizen or resident,
2 and

3 “(B) materially participates (within the
4 meaning of section 469(h)) in one or more
5 trades or businesses (other than any trade or
6 business consisting of the performance of serv-
7 ices by the taxpayer as an employee (within the
8 meaning of section 62(a)(1))).

9 “(4) GROSS PROFITS TEST.—

10 “(A) IN GENERAL.—A taxpayer meets the
11 gross profits test under this section if the quali-
12 fied gross profits of the taxpayer for the appli-
13 cable taxable year are not more than
14 \$1,000,000.

15 “(B) AGGREGATION RULES.—

16 “(i) IN GENERAL.—All qualifying tax-
17 payers that are domestic C corporations or
18 qualified organizations and that are treat-
19 ed as a single employer under subsection
20 (a) or (b) of section 52 or subsection (m)
21 or (o) of section 414 shall be treated as a
22 single person for purposes of subparagraph
23 (A).

24 “(ii) QUALIFYING INDIVIDUALS.—All
25 trades or businesses in which a qualified

1 individual materially participates (within
2 the meaning of section 469(h)) shall be
3 treated as a single trade or business for
4 purposes of subparagraph (A).

5 “(c) QUALIFIED GROSS PROFITS.—For purposes of
6 this section—

7 “(1) IN GENERAL.—Except as otherwise pro-
8 vided in this subsection, the term ‘qualified gross
9 profits’ means the excess of—

10 “(A) the gross receipts of the taxpayer as
11 reported on the return of tax for the applicable
12 taxable year, reduced by

13 “(B) returns and allowances and cost of
14 goods sold as reported on the return of tax for
15 the applicable taxable year.

16 “(2) APPLICATION TO QUALIFIED ORGANIZA-
17 TIONS.—In the case of a qualified organization—

18 “(A) paragraph (1) shall be applied—

19 “(i) by treating the reference to gross
20 receipts as a reference to gross receipts
21 within the meaning of section 6033, and

22 “(ii) without regard to subparagraph
23 (B) thereof, and

24 “(B) in the case of an organization which,
25 for all applicable taxable years, is exempt from

1 filing a return pursuant to section 6033(a) or
2 which is not required to include in such return
3 the information necessary to determine the
4 amount qualified gross receipts, such organiza-
5 tion may submit to the Secretary (in such form
6 and manner as is deemed appropriate by the
7 Secretary) any information required for pur-
8 poses of determining the amount of such gross
9 receipts.

10 For purposes of section 6104, any information sub-
11 mitted by an organization under subparagraph (B)
12 shall be deemed to be information required to be fur-
13 nished by such organization pursuant to section
14 6033.

15 “(3) APPLICATION TO QUALIFIED INDIVID-
16 UALS.—

17 “(A) IN GENERAL.—In the case of a quali-
18 fied individual—

19 “(i) gross receipts, returns and allow-
20 ances, and cost of goods sold taken into
21 account under paragraph (1) shall only in-
22 clude gross receipts from trades or busi-
23 nesses described in subsection (b)(3) in
24 which the qualified individual materially
25 participated, and

1 “(ii) wages received from any such
2 trade or business by the qualified indi-
3 vidual shall not be taken into account
4 under paragraph (1)(A).

5 “(B) TREATMENT OF AMOUNTS FROM
6 PARTNERSHIPS AND S CORPORATIONS.—In the
7 case of any qualified individual who materially
8 participates (within the meaning of section
9 469(h)) in a trade or business of a partnership
10 or S corporation in which such individual is a
11 partner or shareholder, the amount determined
12 under paragraph (1) with respect to such trade
13 or business shall be determined using—

14 “(i) in the case of a partnership, the
15 partner’s distributive share of non-sepa-
16 rately stated income, as reported on the re-
17 turn of tax for the applicable taxable year,
18 and

19 “(ii) in the case of an S corporation,
20 the shareholder’s pro rata share of non-
21 separately stated income, as reported on
22 the return of tax for the applicable taxable
23 year.

24 “(C) TREATMENT OF AMOUNTS FROM
25 FARMING BUSINESSES.—In the case of a quali-

1 fied individual who materially participates
2 (within the meaning of section 469(h)) in a
3 farming business (as defined in section
4 263A(e)(4)), the amount of determined under
5 paragraph (1) shall be the gross income derived
6 from such business, as reported on the return
7 of tax for the applicable taxable year.

8 “(d) APPLICABLE TAXABLE YEAR.—For purposes of
9 this section, the term ‘applicable taxable year’ means—

10 “(1) the first taxable year beginning in 2019,
11 or

12 “(2) in any case in which the qualifying tax-
13 payer did not file a tax return for the taxable year
14 described in paragraph (1), the first taxable year be-
15 ginning in 2018.

16 “(e) TREATMENT OF CREDIT.—

17 “(1) IN GENERAL.—The credit allowed by sub-
18 section (a) shall be treated as allowed by subpart C
19 of part IV of subchapter A of chapter 1.

20 “(2) CREDIT INCLUDED IN GROSS INCOME.—

21 “(A) IN GENERAL.—Except as provided in
22 subparagraph (B), for purposes of subtitle A,
23 the amount of any credit allowed under this
24 section shall be included in gross income.

1 “(B) AMOUNTS NOT TAKEN INTO ACCOUNT
2 FOR PURPOSES OF PREMIUM TAX CREDIT.—

3 “(i) IN GENERAL.—For purposes of
4 determining modified adjusted gross in-
5 come under section 36B(d)(2)(B), adjusted
6 gross income shall not include any amount
7 treated as income by reason of subpara-
8 graph (A).

9 “(ii) EXCEPTION.—Paragraph (1)
10 shall not apply to the extent such reduc-
11 tion results in an amount of household in-
12 come (as defined in section 36B(d)(2)(A))
13 of a taxpayer that is less than 100 percent
14 of the poverty line (as defined in section
15 36B(d)(3)) for a family of the size involved
16 (as determined under the rules of section
17 36B(d)(1)).

18 “(f) COORDINATION WITH ADVANCE REFUNDS AND
19 CREDIT FOR EMPLOYER OPERATING EXPENSES.—

20 “(1) COORDINATION WITH ADVANCE REFUNDS
21 OF CREDIT.—The amount of credit which would (but
22 for this subsection) be allowable under this section
23 shall be reduced (but not below zero) by the aggre-
24 gate refunds and credits made or allowed to the tax-
25 payer under subsection (g). Any failure to so reduce

1 the credit shall be treated as arising out of a mathe-
2 matical or clerical error and assessed according to
3 section 6213(b)(1).

4 “(2) COORDINATION WITH CREDIT FOR EM-
5 PLOYER OPERATING EXPENSES.—The amount of the
6 credit allowed under this section (determined with-
7 out regard to this subsection) shall be reduced (but
8 not below zero) by the amount of any credit allowed
9 under section 102 of the Paycheck Security Act dur-
10 ing the taxable year.

11 “(3) SPECIAL RULE FOR RECAPTURE OF AD-
12 VANCED REFUNDS AND CREDITS.—

13 “(A) IN GENERAL.—In the case of any
14 qualifying taxpayer who received a refund or
15 credit by reason of subsection (g) and who was
16 allowed a credit under section 102 of the Pay-
17 check Security Act for any quarter ending on or
18 before the last day of the taxpayer’s first tax-
19 able year beginning in 2020, the tax imposed by
20 chapter 1 on the taxpayer to whom such refund
21 or credit was made or allowed shall be increased
22 for the taxable year by the lessor of—

23 “(i) the refund or credit made or al-
24 lowed to such taxpayer by reason of sub-
25 section (g), or

1 “(ii) the amount of the credit allowed
2 under section 102 of the Paycheck Secu-
3 rity Act.

4 “(B) APPLICATION TO PARTNERSHIPS AND
5 S CORPORATIONS.—For purposes of applying
6 subparagraph (A), in the case of any partner-
7 ship or S corporation which was allowed a cred-
8 it under section 102 of the Paycheck Security
9 Act, each partner of such partnership shall be
10 treated as having been allowed a credit under
11 such section equal to such partner’s distributive
12 share of such credit and each shareholder of
13 such S corporation shall be treated as having
14 been allowed a credit equal to such share-
15 holder’s pro rata share of such credit.

16 “(C) RETURN REQUIREMENT.—If the tax
17 imposed by chapter 1 for the taxable year is in-
18 creased under this paragraph, the taxpayer
19 shall, notwithstanding section 6012, be required
20 to file a return with respect to the taxes im-
21 posed under subtitle A.

22 “(g) ADVANCE REFUNDS AND CREDITS.—

23 “(1) IN GENERAL.—Any person which was a
24 qualifying taxpayer for such person’s last taxable
25 year ending before January 1, 2020, shall be treated

1 as having made a payment against the tax imposed
2 by chapter 1 for such taxable year in an amount
3 equal to the advance refund amount for such taxable
4 year, regardless of whether such tax would have
5 been imposed on such person.

6 “(2) ADVANCE REFUND AMOUNT.—For pur-
7 poses of paragraph (1), the advance refund amount
8 is the amount that would have been allowed as a
9 credit under this section for such taxable year if this
10 section (other than subsection (f) and this sub-
11 section) had applied to such taxable year.

12 “(3) TIMING OF PAYMENTS.—The Secretary
13 shall, subject to the provisions of this title, refund
14 or credit any overpayment attributable to this sec-
15 tion as rapidly as possible. No refund or credit shall
16 be made or allowed under this subsection after De-
17 cember 31, 2020.

18 “(4) NO INTEREST.—No interest shall be al-
19 lowed on any overpayment attributable to this sec-
20 tion.

21 “(h) REGULATIONS AND GUIDANCE.—The Secretary
22 shall issue such forms, instructions, regulations, and guid-
23 ance as are necessary, including guidance with respect to
24 the application of subsection (f)(3)(B) to partners and
25 partnerships with differing taxable years.”

1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 6211(b)(4)(A) of the Internal Rev-
3 enue Code of 1986 is amended by striking “and
4 6428” and inserting “6428, and 6429”.

5 (2) Paragraph (2) of section 1324(b) of title
6 31, United States Code, is amended by inserting
7 “6429,” after “6428,”.

8 (3) The table of sections for subchapter B of
9 chapter 65 of subtitle F of the Internal Revenue
10 Code of 1986 is amended by inserting after the item
11 relating to section 6428 the following:

“Sec. 6429. Small business rebate.”.

12 **TITLE III—OTHER PROVISIONS**

13 **SEC. 301. ADDITIONAL APPROPRIATIONS FOR DEPART-** 14 **MENT OF TREASURY.**

15 (a) INTERNAL REVENUE SERVICE.—There is author-
16 ized to be appropriated, and there is appropriated, to the
17 Internal Revenue Service \$1,000,000,000, to remain avail-
18 able until expended, to carry out the provisions of, and
19 amendments made by, this Act.

20 (b) TREASURY INSPECTOR GENERAL FOR TAX AD-
21 MINISTRATION.—There is authorized to be appropriated,
22 and there is appropriated, to the Treasury Inspector Gen-
23 eral for Tax Administration \$25,000,000, to remain avail-
24 able until expended, to carry out investigations, audits and
25 other oversight activities with respect to the credits al-

1 lowed under section 2301 of the CARES Act, and sections
2 102 and 201 of this Act, and the provisions of section
3 103 and 105 of this Act, as authorized under the Inspec-
4 tor General Act of 1978 (5 U.S.C. App.).

5 **SEC. 302. GAO REPORT.**

6 Not later than 5 months after the date of enactment
7 of this Act, the Comptroller General of the United States
8 shall issue a report evaluating the effectiveness of the op-
9 erative provisions of and amendments made by this Act.
10 Such report shall include recommendations on extending
11 the applicability of such amendments and provisions and
12 how to transition workers after the expiration of such pro-
13 visions and amendments.

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