

116TH CONGRESS
2D SESSION

S. 3640

To amend the Internal Revenue Code of 1986 to allow certain taxpayers a 2-year carryback of net operating losses and to restore and make permanent the limitation on excess business losses of non-corporate taxpayers.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2020

Mr. WHITEHOUSE (for himself, Mr. BROWN, Mr. LEAHY, Mr. SANDERS, Mr. UDALL, Mr. BLUMENTHAL, Mr. DURBIN, Mr. MARKEY, Mr. VAN HOLLEN, Mr. KING, Ms. WARREN, Ms. HARRIS, Mr. CARPER, Ms. KLOBUCHAR, Mr. COONS, Mr. REED, Mr. MURPHY, Mrs. GILLIBRAND, Mr. BOOKER, Ms. BALDWIN, Ms. SMITH, Ms. HIRONO, Mr. SCHATZ, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow certain taxpayers a 2-year carryback of net operating losses and to restore and make permanent the limitation on excess business losses of non-corporate taxpayers.

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 “CARES Windfall for
5 the Wealthiest Repeal Act”.

1 **SEC. 2. LIMITATION ON EXCESS BUSINESS LOSSES OF NON-**
 2 **CORPORATE TAXPAYERS RESTORED AND**
 3 **MADE PERMANENT.**

4 (a) IN GENERAL.—Section 461(l)(1) of the Internal
 5 Revenue Code of 1986 is amended to read as follows:

6 “(1) LIMITATION.—In the case of taxable year
 7 of a taxpayer other than a corporation beginning
 8 after December 31, 2017, any excess business loss
 9 of the taxpayer for the taxable year shall not be al-
 10 lowed.”.

11 (b) CONFORMING AMENDMENT.—Section 461 of
 12 such Code is amended by striking subsection (j).

13 (c) EFFECTIVE DATE.—The amendments made by
 14 this section shall take effect as if included in section
 15 2304(a) of the Coronavirus Aid, Relief, and Economic Se-
 16 curity Act.

17 **SEC. 3. CERTAIN TAXPAYERS ALLOWED 2-YEAR**
 18 **CARRYBACK OF NET OPERATING LOSSES**
 19 **ARISING IN CERTAIN PERIODS.**

20 (a) TWO-YEAR CARRYBACK OF LOSSES ARISING IN
 21 CERTAIN PERIODS.—

22 (1) IN GENERAL.—Section 172(b)(1)(D)(i) of
 23 the Internal Revenue Code of 1986 is amended—

24 (A) by striking “arising in a taxable year
 25 beginning after December 31, 2017, and ending
 26 before January 1, 2021” and inserting “arising

1 in the first taxable year beginning after August
 2 31, 2019”, and

3 (B) by striking “5 taxable years” in sub-
 4 clause (I) and inserting “2 taxable years”.

5 (2) CONFORMING AMENDMENTS.—

6 (A) The heading for section 172(b)(1)(D)
 7 of such Code is amended by striking “2018,
 8 2019, AND 2020” and inserting “CERTAIN PERI-
 9 ODS”.

10 (B) Section 172(b)(1)(D)(v) of such Code
 11 is amended—

12 (i) by striking subclause (II), and

13 (ii) by striking “SPECIAL RULES” and
 14 all that follows through “If the 5-year
 15 carryback period” and inserting the fol-
 16 lowing: “SPECIAL RULE FOR ELECTION
 17 UNDER PARAGRAPH (3) TO EXCLUDE SEC-
 18 TION 965 YEARS.—If the 2-year carryback
 19 period”.

20 (b) CARRYBACK ONLY ALLOWED FOR SMALL BUSI-
 21 NESSES.—

22 (1) IN GENERAL.—Section 172(b)(1)(D)(i) of
 23 such Code is amended by striking “net operating
 24 loss arising” and inserting “net operating loss of an
 25 eligible small business arising”.

(2) ELIGIBLE SMALL BUSINESS.—Section 172(b)(1)(D) of such Code is amended by adding at the end the following new clause:

“(vi) ELIGIBLE SMALL BUSINESS.—
For purposes of clause (i), the term ‘eligible small business’ means a corporation or partnership which—

“(I) meets the gross receipts test of section 448(c) (applied by substituting ‘\$15,000,000’ for ‘\$25,000,000’ each place it appears) for the taxable year in which the loss arose (or, in the case of a sole proprietorship, which would meet such test if such proprietorship were a corporation), and

“(II) elects the application of this subparagraph.

Any election under subclause (II) shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the return for the taxpayer’s the taxable year in which the loss arose. Any such election, once made, shall be irrevocable.”.

1 (c) DISALLOWED FOR CERTAIN TAXPAYERS.—Sec-
 2 tion 172(b)(1)(D) of such Code, as amended by the pre-
 3 ceding provisions of this Act, is amended by adding at the
 4 end the following new clauses:

5 “(vii) CARRYBACK DISALLOWED FOR
 6 CERTAIN TAXPAYERS.—Clause (i) shall not
 7 apply with respect to any loss arising in a
 8 taxable year in which—

9 “(I) the taxpayer (or any related
 10 person) is not allowed a deduction
 11 under this chapter for the taxable
 12 year by reason of section 162(m) or
 13 section 280G, or

14 “(II) the taxpayer (or any related
 15 person) is a specified corporation for
 16 the taxable year.

17 “(viii) SPECIFIED CORPORATION.—
 18 For purposes of clause (vii)—

19 “(I) IN GENERAL.—The term
 20 ‘specified corporation’ means, with re-
 21 spect to any taxable year, a corpora-
 22 tion the aggregate distributions (in-
 23 cluding redemptions) of which during
 24 all taxable years ending after Decem-
 25 ber 31, 2017, exceed the sum of appli-

1 cable stock issued by such corporation
2 and 5 percent of the fair market value
3 of the stock of such corporation as of
4 the last day of the taxable year.

5 “(II) APPLICABLE STOCK
6 ISSUED.—The term ‘applicable stock
7 issued’ means, with respect to any
8 corporation, the aggregate value of
9 stock issued by the corporation during
10 all taxable years ending after Decem-
11 ber 31, 2017, in exchange for money
12 or property other than stock in such
13 corporation.

14 “(III) CERTAIN PREFERRED
15 STOCK DISREGARDED.—For purposes
16 of subclause (I), stock described in
17 section 1504(a)(4), and distributions
18 (including redemptions) with respect
19 to such stock, shall be disregarded.

20 “(ix) RELATED PERSON.—For pur-
21 poses of clause (vii), a person is a related
22 person to a taxpayer if the related person
23 bears a relationship to the taxpayer speci-
24 fied in section 267(b) or section
25 707(b)(1).”.

1 (d) ADVANCE CARRYBACK OF ESTIMATED NET OP-
2 ERATING LOSSES ARISING IN 2020.—

3 (1) IN GENERAL.—In the case of any taxpayer
4 expecting a net operating loss for the first taxable
5 year beginning after August 31, 2019, such taxpayer
6 may file an application with the Secretary of the
7 Treasury for an advance carryback adjustment of
8 the tax for a prior taxable year that would be af-
9 fected, by reason of the amendments made by this
10 section, by so much of such expected net operating
11 loss as does not exceed \$100,000.

12 (2) APPLICATION.—The application filed under
13 paragraph (1) shall set forth in such detail and with
14 such supporting data and explanation as the Sec-
15 retary may require an estimate of the taxpayer's net
16 operating loss that will arise in such taxable year.

17 (3) DUE DATE FOR APPLICATION.—An applica-
18 tion under this subsection may not be filed later
19 than the due date (including extensions of time) of
20 the return for the first taxable year beginning after
21 August 31, 2019.

22 (4) ALLOWANCE OF ADJUSTMENTS.—Not later
23 than 30 days after the date on which an application
24 for an advance carryback adjustment is filed under
25 paragraph (1), the Secretary shall dispose of such

1 application under rules similar to the rules of section
2 6411 of the Internal Revenue Code of 1986.

3 (5) REDUCTION OF NET OPERATING LOSS FOR
4 APPLICATION YEAR.—The amount of any net oper-
5 ating loss (determined without regard to this para-
6 graph) of the taxpayer for any taxable year from
7 which an advance carryback adjustment is made
8 under this subsection shall be reduced (but not
9 below zero) by the amount of estimated net oper-
10 ating loss taken into account in determining an ad-
11 vance carryback adjustment of the taxpayer under
12 this subsection.

13 (6) RECAPTURE.—The taxpayer's tax imposed
14 by chapter 1 for such taxable year shall be increased
15 by the excess (if any) of—

16 (A) the reduction in tax for all prior tax-
17 able years by reason of an advance carryback
18 adjustment under this subsection, over

19 (B) the reduction in tax for all prior tax-
20 able years by reason of a net operating loss fi-
21 nally arising in the taxable year to which the
22 application under this subsection relates.

23 (7) DENIAL OF DOUBLE BENEFIT.—The Sec-
24 retary shall provide such rules or guidance as is nec-
25 essary for coordination of the application of this sec-

1 tion with the provision of section 6164 of the Inter-
2 nal Revenue Code of 1986.

3 (8) REFERENCES TO SECRETARY.—Any ref-
4 erence to the Secretary of the Treasury in this sub-
5 section shall be treated as including a reference to
6 the Secretary's delegate.

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect as if included in the enact-
9 ment of section 2303(b) of the Coronavirus Aid, Relief,
10 and Economic Security Act.

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