To amend the Internal Revenue Code of 1986 to provide for advance refunds of certain net operating losses and research expenditures relating to COVID–19, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2020

Mr. PHILLIPS (for himself and Mrs. WALORSKI) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide for advance refunds of certain net operating losses and research expenditures relating to COVID–19, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Innovation and Growth Now by Investing in Tomorrow’s Enterprises Act” or the “IGNITE American Innovation Act”.

SEC. 2. ADVANCE REFUNDS OF NET OPERATING LOSSES

FOR C CORPORATION TAXPAYERS.

(a) In General.—

(1) Net operating loss carryovers.—Section 172 of the Internal Revenue Code of 1986 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following:

“(g) Advance Refund for C Corporations Relating to Certain Carryovers Arising During 2015 Through 2021.—

“(1) In General.—

“(A) Election.—A taxpayer to whom this paragraph applies may elect an advance refund of net operating loss carryovers in the amounts and manner determined under subparagraphs (B) and (C).

“(B) Net operating loss carryovers arising during 2015 through 2021.—The advance refund determined under this subparagraph is an amount elected by the taxpayer in lieu of an election with respect to a net operating loss carryback under subsection (b)(1)(D), in the amount equal to—
“(i) the rate set forth in section 11
(as in effect on the date of the enactment
of this paragraph), multiplied by
“(ii) any net operating loss carryovers
that arose—
“(I) in a taxable year beginning
on or after January 1, 2015, and be-
fore January 1, 2020, or
“(II) in a taxable year beginning
on or after January 1, 2019, and be-
fore January 1, 2022.
“(C) COVID–19 RESEARCH EXPENDI-
tURES FOR 2020 AND 2021.—The advance re-
fund under this subparagraph is the amount of
the advance refund with respect to the portion
of any net operating loss attributable to and
arising from qualified COVID–19 research ex-
penditures that are paid or incurred on or after
February 15, 2020 and before January 1,
2022, that is equal to 200 percent of the
amount otherwise taken into account under
paragraph (1)(B)(ii). A net operating loss shall
be treated as arising from qualified COVID–19
research expenditures to the extent that such
expenses are paid or incurred by the taxpayer.
“(2) QUALIFIED COVID–19 RESEARCH EXPENDITURES.—For purposes of this subsection, the term ‘qualified COVID–19 research expenditures’ means expenditures paid or incurred in connection with the research and development of products regulated by the Food and Drug Administration (including biologics, drugs, and devices) that are intended to be used in the diagnosis, prevention and treatment of coronavirus disease 2019 (COVID–19), and such other similar expenditures as prescribed by the Secretary in regulations.

“(3) TAXPAYER DESCRIBED.—For purposes of paragraph (1), this subsection applies to a taxpayer if—

“(A) the taxpayer is a C corporation,

“(B) the average number of full-time employees (as determined for purposes of determining whether an employer is an applicable large employer for purposes of section 4980H(c)(2) of the Internal Revenue Code of 1986) employed by the taxpayer during calendar year 2019 or 2020, whichever is greater, is greater than five and did not exceed 1,500,
“(C) the taxpayer has complied to date with filing of all forms or return requirements under section 3102, 3111, 3301, and 3402 with respect to calendar years 2019 and 2020.

“(4) Special rules.—For purposes of this subsection—

“(A) Certain contributions of capital not taken into account in determining ownership change under section 382.—For purposes of determining whether an ownership change has occurred with respect to the loss corporation under section 382(g) in computing the amount of any advance refund under this section, a transfer of stock in exchange for a capital contribution to such loss corporation shall not be taken into account if—

“(i) the value of the stock transferred is commensurate with the amount of capital being contributed, and

“(ii) such exchange is not part of a plan to redeem other shareholders.

“(B) Aggregate limitation.—The aggregate amount of net operating loss or net operating loss carryover for which an advance re-
fund is elected pursuant to this subsection shall not exceed $100,000,000.

“(C) REDUCTION OF NET OPERATING LOSS.—The net operating losses of the taxpayer determined under subsection (c) shall be reduced by the amount of any net operating loss or net operating loss carryover for which an advance refund is elected pursuant to this subsection, including the amount of any net operating loss to which paragraph (1)(C) applies.

“(D) AGGREGATION RULE.—All corporations treated as a single employer under subsection (a) of section 52 or subsection (m) or (o) under section 414 shall be treated as a single taxpayer for purposes of this section.

“(5) REGULATIONS AND GUIDANCE.—The Secretary shall issue such regulations and other guidance as may be necessary to carry out the purposes of this section, including regulations and other guidance to carry out the purposes of this subsection—

“(A) to allow for the making of an election for the application of this subsection in such manner as the Secretary may by regulations prescribe,
“(B) to allow the payment of the advance refund in accordance with section 6429 based on such information as the Secretary shall require,

“(C) to allow advance refunds permitted under this subsection to be claimed on such forms as the Secretary shall prescribe, and

“(D) to provide for the application of this subsection to taxpayers that file consolidated returns.

“(6) ADVANCE REFUND.—See section 6429 for rules for claiming the advance refund.”.

(2) CONFORMING AMENDMENT.—Section 172(c) of such Code is amended by inserting before the period at the end the following: “and with the reduction required by subsection (g)”.

(b) ADVANCE REFUND OF RESEARCH CREDITS AND ORPHAN DRUG CREDITS FOR C CORPORATION TAXPAYERS.—Section 39 of such Code is amended by adding at the end the following:

“(e) ADVANCE REFUND OF RESEARCH AND ORPHAN DRUG CREDITS.—

“(1) IN GENERAL.—A taxpayer that is a C corporation may elect an advance refund of the portion
of any unused business credit carryforward under
section 39 that—

“(A) is attributable to the credit deter-
dined under section 41 or the credit deter-
dined under section 45C, and

“(B) is an unused business credit
carryforward carried to a taxable year begin-
ing on or after January 1, 2020, and before
January 1, 2022, and that arose in taxable
years beginning after January 1, 2015.

“(2) LIMITATION.—The amount elected under
paragraph (1) for a taxable year may not exceed the
excess of $25,000,000 reduced by the amount elect-
ed for the taxable year as an advance refund of net
operating loss carryovers under section 172(g).

“(3) INAPPLICABILITY OF SECTIONS 38(c) AND
383(a).—For purposes of this subsection, the
amount of any advance refund shall be computed
without respect to the limitations under sections
38(c) and 383(a).

“(4) REGULATIONS AND GUIDANCE.—The Sec-
retary shall issue such regulations and other guid-
ance as may be necessary—
“(A) to allow for the making of an election under paragraph (1) in such manner as the Secretary may by regulations prescribe,

“(B) to allow the advance refund under this subsection and section 6429 based on such information as the Secretary shall require, and

“(C) to allow advance refunds under this section to be claimed on such forms as the Secretary shall prescribe.”.

(c) Advance Refund of Certain Net Operating Losses, Research Credit, and Orphan Drug Credit.—

(1) In general.—Subchapter B of chapter 65 of such Code is amended by inserting after section 6428 the following new section:

“SEC. 6429. ADVANCE REFUND OF CERTAIN NET OPERATING LOSSES, RESEARCH CREDIT, AND ORPHAN DRUG CREDIT.

“(a) In general.—In the case of a C corporation, the advance refund sum may be claimed by the taxpayer as follows:

“(1) Payroll taxes.—First, by reducing deposits or payments of—

“(A) the applicable employment taxes imposed under sections 3101(a), 3101(b),
3111(a), and 3111(b) (reduced by any credits allowed under subsections (e) and (f) of section 3111, sections 7001 and 7003 of the Families First Coronavirus Response Act and section 2301 of the Coronavirus, Aid, Relief, and Economic Security Act) on the wages paid with respect to the employment of all the employees of the taxpayer for a calendar quarter, and

“(B) the withholding taxes required to be paid by an employer pursuant to section 3403, with the balance of the advance refund payable to the taxpayer.

“(2) Advance refundability of excess losses.—Second, any remaining amount to be refunded to the taxpayer after the application of paragraph (1) shall be treated as an overpayment and shall be refunded in a manner similar to that prescribed in subsection 2301(b)(3) of the Coronavirus, Aid, Relief, and Economic Security Act.

“(b) Advance refund sum.—For purposes of subsection (a), the term ‘advance refund sum’ means the sum of—

“(1) the amount elected by the taxpayer as an advance refund of net operating loss carryovers under section 172(g), and
“(2) the amount of any unused business credit carryforward elected under section 39(e) that is attributable to the research credit determined under section 41 or the orphan drug credit determined under section 45C.

“(e) Recapture.—

“(1) In General.—The Secretary shall, by regulations, provide for recapturing the benefit of any advance refund allowable under this section if there is a sale or full or partial liquidation of the corporation during the recapture period. The recapture amount shall not exceed the lesser of—

“(A) the amount of any proceeds or distributions received by shareholders of the corporation attributable to such sale or liquidation, or

“(B) the amount that the advance refund exceeds the aggregate amount spent by the corporation on payroll, research expenses, and property, plant and equipment during the recapture period.

“(2) Recapture Period.—For purposes of paragraph (1), the term ‘recapture period’ means the two-year period beginning on the date of the advance refund.”.
(2) **Transfers to Federal Old-Age and Survivors Insurance Trust Fund.**—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401), the Federal Hospital Insurance Trust Fund established under section 1817(a) of the Social Security Act (42 U.S.C. 1395i(a)), and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 14231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection).

Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

(3) **Clerical amendment.**—The table of sections for subchapter B of chapter 65 of such Code is amended by inserting after the item relating to section 6428 the following new item:

"Sec. 6429. Advance refund of certain net operating losses, research credit, and orphan drug credit."
(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2019.

SEC. 3. ENHANCED RESEARCH CREDIT FOR COVID–19 EXPENDITURES.

(a) In General.—Section 41 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“(i) Enhanced Credit for COVID–19 Research Expenditures.—

“(1) In General.—For purposes of determining the amount of qualified research expenses under subsection (b) for the taxable year, the amount of any qualified COVID–19 research expenditures paid or incurred by a taxpayer on or after February 15, 2020, and before January 1, 2022, shall be equal to 200 percent of the amount paid or incurred.

“(2) Qualified COVID–19 Research Expenditures.—The term ‘qualified COVID–19 research expenditures’ has the meaning given such term by section 172(g)(2).”.

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(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after December 31, 2019.