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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “CARES Windfall for
the Wealthiest Repeal Act”.

S. 3640
SEC. 2. LIMITATION ON EXCESS BUSINESS LOSSES OF NON-CORPORATE TAXPAYERS RESTORED AND MADE PERMANENT.

(a) In General.—Section 461(l)(1) of the Internal Revenue Code of 1986 is amended to read as follows:

“(1) LIMITATION.—In the case of taxable year of a taxpayer other than a corporation beginning after December 31, 2017, any excess business loss of the taxpayer for the taxable year shall not be allowed.”.

(b) Conforming Amendment.—Section 461 of such Code is amended by striking subsection (j).

(c) Effective Date.—The amendments made by this section shall take effect as if included in section 2304(a) of the Coronavirus Aid, Relief, and Economic Security Act.

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

(a) Two-Year Carryback of Losses Arising in Certain Periods.—

(1) In General.—Section 172(b)(1)(D)(i) of the Internal Revenue Code of 1986 is amended—

(A) by striking “arising in a taxable year beginning after December 31, 2017, and ending before January 1, 2021” and inserting “arising
in the first taxable year beginning after August 31, 2019”, and

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

(2) CONFORMING AMENDMENTS.—

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

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

(i) by striking subclause (II), and

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

(b) CARRYBACK ONLY ALLOWED FOR SMALL BUSI-
NESS.—

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

3
(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.”.
(c) Disallowed for Certain Taxpayers.—Section 172(b)(1)(D) of such Code, as amended by the preceding provisions of this Act, is amended by adding at the end the following new clauses:

“(vii) Carryback disallowed for certain taxpayers.—Clause (i) shall not apply with respect to any loss arising in a taxable year in which—

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

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

“(viii) Specified corporation.—For purposes of clause (vii)—

“(I) In general.—The term ‘specified corporation’ means, with respect to any taxable year, a corporation the aggregate distributions (including redemptions) of which during all taxable years ending after December 31, 2017, exceed the sum of appli-
cable stock issued by such corporation and 5 percent of the fair market value of the stock of such corporation as of the last day of the taxable year.

“(II) APPLICABLE STOCK ISSUED.—The term ‘applicable stock issued’ means, with respect to any corporation, the aggregate value of stock issued by the corporation during all taxable years ending after December 31, 2017, in exchange for money or property other than stock in such corporation.

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

“(ix) RELATED PERSON.—For purposes of clause (vii), a person is a related person to a taxpayer if the related person bears a relationship to the taxpayer specified in section 267(b) or section 707(b)(1).”.
(d) ADVANCE CARRYBACK OF ESTIMATED NET OPERATING LOSSES ARISING IN 2020.—

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

(2) APPLICATION.—The application filed under paragraph (1) shall set forth in such detail and with such supporting data and explanation as the Secretary may require an estimate of the taxpayer’s net operating loss that will arise in such taxable year.

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

(4) ALLOWANCE OF ADJUSTMENTS.—Not later than 30 days after the date on which an application for an advance carryback adjustment is filed under paragraph (1), the Secretary shall dispose of such
application under rules similar to the rules of section 6411 of the Internal Revenue Code of 1986.

(5) Reduction of net operating loss for application year.—The amount of any net operating loss (determined without regard to this paragraph) of the taxpayer for any taxable year from which an advance carryback adjustment is made under this subsection shall be reduced (but not below zero) by the amount of estimated net operating loss taken into account in determining an advance carryback adjustment of the taxpayer under this subsection.

(6) Recapture.—The taxpayer’s tax imposed by chapter 1 for such taxable year shall be increased by the excess (if any) of—

(A) the reduction in tax for all prior taxable years by reason of an advance carryback adjustment under this subsection, over

(B) the reduction in tax for all prior taxable years by reason of a net operating loss finally arising in the taxable year to which the application under this subsection relates.

(7) Denial of double benefit.—The Secretary shall provide such rules or guidance as is necessary for coordination of the application of this sec-
tion with the provision of section 6164 of the Internal Revenue Code of 1986.

(8) REFERENCES TO SECRETARY.—Any reference to the Secretary of the Treasury in this subsection shall be treated as including a reference to the Secretary’s delegate.

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