

116TH CONGRESS
2D SESSION

S. 4178

To provide for a credit against employment taxes for certain workplace safety expenses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 2, 2020

Ms. SINEMA (for herself and Mr. CRAMER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for a credit against employment taxes for certain workplace safety expenses, 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. TAX CREDIT FOR SAFETY IMPROVEMENTS.**

4 (a) IN GENERAL.—In the case of an eligible em-
5 ployer, there shall be allowed as a credit against applicable
6 employment taxes for each calendar quarter an amount
7 equal to 50 percent of the qualified expenses paid or in-
8 curred by such employer during such calendar quarter.

9 (b) LIMITATIONS AND REFUNDABILITY.—

1 (1) LIMITATION.—The qualified fixed expenses
2 which may be taken into account under subsection
3 (a) by any eligible employer for any calendar quarter
4 shall not exceed—

5 (A) in the case of any calendar quarter be-
6 ginning in 2020, \$500,000, and

7 (B) in the case of any calendar quarter be-
8 ginning after 2020, \$250,000.

9 (2) CREDIT LIMITED TO CERTAIN EMPLOYMENT
10 TAXES.—The credit allowed by subsection (a) with
11 respect to any calendar quarter shall not exceed the
12 applicable employment taxes for such calendar quar-
13 ter (reduced by any credits allowed under sub-
14 sections (e) and (f) of section 3111 of such Code,
15 sections 7001 and 7003 of the Families First
16 Coronavirus Response Act, and section 2301 of the
17 CARES Act, for such quarter) on the wages paid
18 with respect to the employment of all the employees
19 of the eligible employer for such calendar quarter.

20 (3) REFUNDABILITY OF EXCESS CREDIT.—

21 (A) IN GENERAL.—If the amount of the
22 credit under subsection (a) exceeds the limita-
23 tion of paragraph (2) for any calendar quarter,
24 such excess shall be treated as an overpayment
25 that shall be refunded under sections 6402(a)

1 and 6413(b) of the Internal Revenue Code of
2 1986.

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

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

10 (1) APPLICABLE EMPLOYMENT TAXES.—The
11 term “applicable employment taxes” means the fol-
12 lowing:

13 (A) The taxes imposed under section
14 3111(a) of the Internal Revenue Code of 1986.

15 (B) So much of the taxes imposed under
16 section 3221(a) of such Code as are attrib-
17 utable to the rate in effect under section
18 3111(a) of such Code.

19 (2) ELIGIBLE EMPLOYER.—

20 (A) IN GENERAL.—The term “eligible em-
21 ployer” means any employer—

22 (i) which was carrying on a trade or
23 business at any time during calendar quar-
24 ter, and

1 (ii) which has not more than 2,000
2 full-time equivalent employees (within the
3 meaning of section 45R(d)(2) of the Inter-
4 nal Revenue Code of 1986) for the taxable
5 year.

6 (B) TAX-EXEMPT ORGANIZATIONS.—In the
7 case of an organization which is described in
8 section 501(e) of the Internal Revenue Code of
9 1986 and exempt from tax under section 501(a)
10 of such Code, subparagraph (A)(i) shall apply
11 to all operations of such organization.

12 (3) QUALIFIED EXPENSES.—For purposes of
13 this section—

14 (A) IN GENERAL.—The term “qualified ex-
15 penses” means any amount paid or incurred
16 after February 1, 2020, for—

17 (i) qualified equipment and services
18 for the purposes of preventing infection re-
19 lated to SARS-CoV-2, or

20 (ii) the reconfiguration of facilities for
21 such purposes, or

22 (iii) qualified education and training
23 of employees for new business procedures
24 related to preventing COVID-19 trans-
25 mission.

1 (B) QUALIFIED EQUIPMENT AND SERV-
2 ICES.—The term “qualified equipment and
3 services” means—

4 (i) any product or material which—

5 (I) serves as personal protective
6 equipment or as a barrier erected to
7 prevent virus spread between cus-
8 tomers and employees, including
9 plexiglass installed at cashiers and
10 other counters, and partitions to sepa-
11 rate customers,

12 (II) is a disinfectant product reg-
13 istered by the Administrator of the
14 Environmental Protection Agency for
15 which the Administrator of the Envi-
16 ronmental Protection Agency has ap-
17 proved an emerging viral pathogen
18 claim that applies with respect to use
19 against SARS-CoV-2,

20 (III) is a thermometer, or

21 (IV) is approved by the Food and
22 Drug Administration for testing for
23 COVID-19 (including diagnostic test-
24 ing and serology testing to detect
25 antibodies) by the eligible employer, in

1 conjunction with a certified
2 diagnostics laboratory or health care
3 provider,
4 (ii) any—
5 (I) contactless point-of-sale sys-
6 tem,
7 (II) new software and technology
8 to assist in maintaining social
9 distancing,
10 (III) application for reporting
11 employee symptom or providing
12 wellness checks, and
13 (IV) property used to enable
14 curbside pickup or delivery services,
15 (iii) hand sanitizer,
16 (iv) any sign related to public health
17 awareness, social distancing, or altered
18 services such as curbside pickups, and
19 (v) services for—
20 (I) cleaning and disinfecting, or
21 (II) testing for COVID-19 by a
22 certified diagnostics laboratory, and
23 (vi) such other equipment or tech-
24 nology as determined by the Secretary, in
25 consultation with the Secretary of Labor,

1 the Secretary of Health and Human Serv-
2 ices, the Director of the Centers for Dis-
3 ease Control and Prevention, the Commis-
4 sioner of the Food and Drug Administra-
5 tion, the Secretary of Veterans Affairs, the
6 Secretary of Defense, and the Secretary of
7 Agriculture, determines is necessary and
8 appropriate for preventing COVID–19 and
9 is recommended as part of the Federal
10 government’s recommendations for safe
11 workplaces.

12 Such term shall not include any equipment
13 which is not for use in the United States or any
14 service which is not conducted in the United
15 States.

16 (C) QUALIFIED EDUCATION AND TRAIN-
17 ING.—The term “qualified education and train-
18 ing” means education or training provided by
19 an accredited training institution, an industry-
20 recognized trade association, or another non-
21 profit entity.

22 (4) SECRETARY.—The term “Secretary” means
23 the Secretary of the Treasury or the Secretary’s del-
24 egate.

1 (d) AGGREGATION RULE.—All persons treated as a
2 single employer under subsection (a) or (b) of section 52
3 of the Internal Revenue Code of 1986, or subsection (m)
4 or (o) of section 414 of such Code, shall be treated as
5 one employer for purposes of this section.

6 (e) DENIAL OF DOUBLE BENEFIT.—For purposes of
7 chapter 1 of such Code, the gross income of any eligible
8 employer, for the taxable year which includes the last day
9 of any calendar quarter with respect to which a credit is
10 allowed under this section, shall be increased by the
11 amount of such credit.

12 (f) ELECTION NOT TO HAVE SECTION APPLY.—This
13 section shall not apply with respect to any eligible em-
14 ployer for any calendar quarter if such employer elects (at
15 such time and in such manner as the Secretary may pre-
16 scribe) not to have this section apply.

17 (g) TRANSFERS TO CERTAIN TRUST FUNDS.—There
18 are hereby appropriated to the Federal Old-Age and Sur-
19 vivors Insurance Trust Fund and the Federal Disability
20 Insurance Trust Fund established under section 201 of
21 the Social Security Act (42 U.S.C. 401) and the Social
22 Security Equivalent Benefit Account established under
23 section 15A(a) of the Railroad Retirement Act of 1974
24 (45 U.S.C. 231n-1(a)) amounts equal to the reduction in
25 revenues to the Treasury by reason of this section (without

1 regard to this subsection). Amounts appropriated by the
2 preceding sentence shall be transferred from the general
3 fund at such times and in such manner as to replicate
4 to the extent possible the transfers which would have oc-
5 curred to such Trust Fund or Account had this section
6 not been enacted.

7 (h) TREATMENT OF DEPOSITS.—The Secretary shall
8 waive any penalty under section 6656 of such Code for
9 any failure to make a deposit of applicable employment
10 taxes if the Secretary determines that such failure was due
11 to the anticipation of the credit allowed under this section.

12 (i) REGULATIONS AND GUIDANCE.—The Secretary
13 shall issue such forms, instructions, regulations, and guid-
14 ance as are necessary—

15 (1) to allow the advance payment of the credit
16 under subsection (a), subject to the limitations pro-
17 vided in this section, based on such information as
18 the Secretary shall require,

19 (2) to provide for the reconciliation of such ad-
20 vance payment with the amount of the credit at the
21 time of filing the return of tax for the applicable
22 quarter or taxable year,

23 (3) with respect to the application of the credit
24 under subsection (a) to third-party payors (including
25 professional employer organizations, certified profes-

1 sional employer organizations, or agents under sec-
2 tion 3504 of the Internal Revenue Code of 1986),
3 including regulations or guidance allowing such
4 payors to submit documentation necessary to sub-
5 stantiate the eligible employer status of employers
6 that use such payors,

7 (4) for recapturing the benefit of credits deter-
8 mined under this section in cases where there is a
9 subsequent adjustment to the credit determined
10 under subsection (a), and

11 (5) for providing the benefit of the credit under
12 subsection (a) to taxpayers who have already filed
13 returns for calendar quarters ending before the date
14 of the enactment of this Act.

15 (j) APPLICATION OF SECTION.—This section shall
16 apply only to qualified fixed expenses paid or accrued in
17 calendar quarters ending on or after February 1, 2020,
18 and beginning before January 1, 2022.

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