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116TH CONGRESS
2D SESSION

H. R. 7837

To provide a payroll tax credit for certain employee dependent care expenses paid by employers.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2020

Mr. LAMB (for himself, Ms. SÁNCHEZ, and Mr. FITZPATRICK) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To provide a payroll tax credit for certain employee dependent care expenses paid by employers.

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 "Supporting American Families, Employers, Kids and Jobs Act" or as the "SAFE Kids and Jobs Act".

SEC. 2. PAYROLL CREDIT FOR CERTAIN EMPLOYEE DEPENDENT CARE EXPENSES PAID BY EMPLOYERS.

(a) IN GENERAL.—In the case of an employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to 30 percent of the qualified employee dependent care expenses paid by such employer with respect to such calendar quarter.

(b) LIMITATIONS AND REFUNDABILITY.—

(1) DOLLAR LIMITATION PER EMPLOYEE.—The qualified employee dependent care expenses which may be taken into account under subsection (a) with respect to any employee for any calendar quarter shall not exceed $2,500.

(2) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the applicable employment taxes for such calendar quarter (reduced by any credits allowed under subsections (e) and (f) of section 3111 of such Code, sections 7001 and 7003 of the Families First Coronavirus Response Act, section 2301 of the CARES Act, and section 4 of this Act, for such quarter) on the wages paid with respect to the em-

ployment of all the employees of the employer for such calendar quarter.

(3) REFUNDABILITY OF EXCESS CREDIT.—

(A) IN GENERAL.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of the Internal Revenue Code of 1986.

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

(4) COORDINATION WITH GOVERNMENT GRANTS.—The qualified employee dependent care expenses taken into account under this section by any employer shall be reduced by any amounts provided by any Federal, State, or local government for purposes of making or reimbursing such expenses.

(c) QUALIFIED EMPLOYEE DEPENDENT CARE EXPENSES.—For purposes of this section—

(1) IN GENERAL.—The term "qualified employee dependent care expenses" means any amount paid to or for the benefit of an employee in the employment of the employer if—

(A) such amount is dependent care assistance (as defined in section 129(e)(1) of the Internal Revenue Code of 1986); and

(B) the employer elects (at such time and in such manner as the Secretary may provide) to treat such amount as a qualified employee dependent care expense.

(2) EXCLUSION OF AMOUNTS PAID THROUGH SALARY REDUCTION ARRANGEMENTS.—Such term shall not include any amount paid at the election of the employee under a salary reduction arrangement.

(d) SPECIAL RULES; OTHER DEFINITIONS.—

(1) APPLICATION OF CERTAIN NON-DISCRIMINATION RULES.—No credit shall be allowed under this section to any employer for any calendar quarter if qualified employee dependent care expenses are provided by such employer to employees for such calendar quarter in a manner which discriminates in favor of highly compensated individuals (within the meaning of section 125) as to eligibility for, or the amount of, such benefit expenses.

(2) DENIAL OF DOUBLE BENEFIT.—For purposes of chapter 1 of such Code, no deduction or credit (other than the credit allowed under this section) shall be allowed for so much of qualified employee dependent care expenses as is equal to the credit allowed under this section.

(3) THIRD-PARTY PAYORS.—Any credit allowed under this section shall be treated as a credit described in section 3511(d)(2) of such Code.

(4) APPLICABLE EMPLOYMENT TAXES.—For purposes of this section, the term ''applicable employment taxes'' means the following:

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

(B) So much of the taxes imposed under section 3221(a) of such Code as are attributable to the rate in effect under section 3111(a) of such Code.

(5) SECRETARY.—For purposes of this section, the term ''Secretary'' means the Secretary of the Treasury or the Secretary's delegate.

(6) CERTAIN TERMS.—

(A) IN GENERAL.—Any term used in this section which is also used in chapter 21 or 22 of such Code shall have the same meaning as when used in such chapter (as the case may be).

(B) CERTAIN PROVISIONS NOT TAKEN INTO ACCOUNT EXCEPT FOR PURPOSES OF LIMITING CREDIT TO EMPLOYMENT TAXES.—For purposes of subparagraph (A) (other than with respect to subsection (b)(2)), section 3121(b) of such Code shall be applied without regard to paragraphs (1), (5), (6), (7), (8), (10), (13), (18), (19), and (22) thereof (except with respect to services performed in a penal institution by an inmate thereof) and section 3231(e)(1) shall be applied without regard to the sentence that begins ''Such term does not include remuneration''.

(e) CERTAIN GOVERNMENTAL EMPLOYERS.—

(1) IN GENERAL.—The credit under this section shall not be allowed to the Federal Government or any agency or instrumentality thereof.

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

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

(g) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including regulations or other guidance—

(1) to allow the advance payment of the credit determined under subsection (a), subject to the limitations provided in this section, based on such information as the Secretary shall require;

(2) to provide for the reconciliation of such advance payment with the amount of the credit at the time of filing the return of tax for the applicable quarter or taxable year;

(3) for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a); and

(4) with respect to the application of the credit to third-party payors (including professional employer organizations, certified professional employer organizations, or agents under section 3504 of such Code), including to allow such payors to submit documentation necessary to substantiate eligibility for,

and the amount of, the credit allowed under this section.

(h) APPLICATION OF SECTION.—This section shall apply only to qualified employee dependent care expenses paid after the date of the enactment of this Act and before January 1, 2021.

(i) TRANSFERS TO CERTAIN TRUST FUNDS.—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) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–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.