

116TH CONGRESS
2D SESSION

H. R. 8656

To amend the Internal Revenue Code of 1986 to provide emergency savings accounts for small businesses.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 23, 2020

Mr. CLOUD (for himself, Mr. WEBER of Texas, Mr. GOHMERT, and Mr. KING of Iowa) 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 emergency savings accounts for small businesses.

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 “Small Business Emer-
5 gency Savings Accounts Act of 2020”.

6 **SEC. 2. DEDUCTION FOR CONTRIBUTIONS TO SMALL BUSI-**
7 **NESS EMERGENCY SAVINGS ACCOUNTS.**

8 (a) IN GENERAL.—Part VI of subchapter B of chap-
9 ter 1 of the Internal Revenue Code of 1986 (relating to

1 itemized deductions for individuals and corporations) is
 2 amended by adding at the end the following new section:

3 **“SEC. 200. SMALL BUSINESS EMERGENCY SAVINGS AC-**
 4 **COUNTS.**

5 “(a) DEDUCTION ALLOWED.—In the case of a eligi-
 6 ble business, there shall be allowed as a deduction for the
 7 taxable year an amount equal to the aggregate amount
 8 paid during such taxable year by such business to a small
 9 business emergency savings account of such business.

10 “(b) LIMITATION.—The amount allowed as a deduc-
 11 tion under subsection (a) to any business for any taxable
 12 year shall not exceed the lesser of—

13 “(1) 25 percent of the wages (as defined in sec-
 14 tion 3121(a)) paid by the eligible business during
 15 such taxable year, or

16 “(2) the greater of—

17 “(A) zero, or

18 “(B) the maximum amount which when
 19 added to the balance of such account (as deter-
 20 mined at the end of such taxable year but with-
 21 out regard to contributions made during such
 22 taxable year) would not result in such balance
 23 (as so determined) to exceed 150 percent of
 24 wages (as defined in section 3121(a)) paid by
 25 the eligible business during such taxable year.

1 “(c) ELIGIBLE BUSINESS.—For purposes of this sec-
2 tion, the term ‘eligible business’ means any person if—

3 “(1) such person carries on any trade or busi-
4 ness in the United States (other than the trade or
5 business of being an employee), and

6 “(2) the average number of full-time employees
7 (as determined for purposes of determining whether
8 an employer is an applicable large employer for pur-
9 poses of section 4980H(c)(2)) employed by such em-
10 ployer during the taxable year does not exceed 500.

11 “(d) SMALL BUSINESS EMERGENCY SAVINGS AC-
12 COUNT.—For purposes of this section—

13 “(1) IN GENERAL.—The term ‘small business
14 emergency savings account’ means a trust created or
15 organized in the United States as a small business
16 emergency savings account exclusively for the pur-
17 pose of paying the qualified disaster and public
18 health emergency expenses of the account bene-
19 ficiary, but only if the written governing instrument
20 creating the trust meets the following requirements:

21 “(A) Except in the case of a rollover con-
22 tribution described in subsection (f)(5), no con-
23 tribution will be accepted unless it is in cash.

24 “(B) The trustee is a bank (as defined in
25 section 408(n)), an insurance company (as de-

1 fined in section 816), or another person who
 2 demonstrates to the satisfaction of the Sec-
 3 retary that the manner in which such person
 4 will administer the trust will be consistent with
 5 the requirements of this section.

6 “(C) No part of the trust assets will be in-
 7 vested in life insurance contracts.

8 “(D) The assets of the trust will not be
 9 commingled with other property except in a
 10 common trust fund or common investment
 11 fund.

12 “(E) The interest of account beneficiary in
 13 the balance in the account is nonforfeitable.

14 “(2) QUALIFIED DISASTER AND PUBLIC
 15 HEALTH EMERGENCY EXPENSES.—The term ‘quali-
 16 fied disaster and public health emergency expenses’
 17 means—

18 “(A) disaster loss replacement expenses,

19 “(B) disaster recovery operations expenses,

20 and

21 “(C) public health emergency expenses.

22 “(3) DISASTER LOSS REPLACEMENT EX-
 23 PENSES.—The term ‘disaster loss replacement ex-
 24 penses’ means any expense paid or incurred in the
 25 ordinary course of a trade or business of the eligible

1 business to replace or repair casualty losses totaling
2 \$3,000 or more resulting from a federally declared
3 disaster.

4 “(4) DISASTER RECOVERY OPERATIONS EX-
5 PENSES.—The term ‘disaster recovery operations ex-
6 penses’ means the following amounts if paid or in-
7 curred in the ordinary course of a trade or business
8 of the eligible business while the declaration with re-
9 spect to a federally declared disaster is in effect:

10 “(A) Wages (as defined in section 3121(a))
11 and taxes imposed under section 3111.

12 “(B) Unemployment insurance contribu-
13 tions.

14 “(C) Health care costs.

15 “(D) Rent, lease, or mortgage costs, in-
16 cluding property taxes.

17 “(E) Utilities.

18 “(5) PUBLIC HEALTH EMERGENCY EX-
19 PENSES.—The term ‘public health emergency ex-
20 penses’ means amounts described in subparagraphs
21 (A) through (E) of paragraph (4) if paid or incurred
22 in the ordinary course of a trade or business of the
23 eligible business while a public health emergency
24 declaration is in effect.

1 “(6) FEDERALLY DECLARED DISASTER.—The
2 term ‘federally declared disaster’ has the meaning
3 given such term by section 165(i)(5).

4 “(7) PUBLIC HEALTH EMERGENCY DECLARA-
5 TION.—The term ‘public health emergency declara-
6 tion’ means any declaration of a public health emer-
7 gency by the Secretary of Health and Human Serv-
8 ices under section 319 of the Public Health Service
9 Act (42 U.S.C. 247d).

10 “(8) ACCOUNT BENEFICIARY.—The term ‘ac-
11 count beneficiary’ means the eligible business on
12 whose behalf the small business emergency savings
13 account was established.

14 “(e) TREATMENT OF ACCOUNT.—

15 “(1) IN GENERAL.—A small business emer-
16 gency savings account is exempt from taxation under
17 this subtitle unless such account has ceased to be a
18 small business emergency savings account. Notwith-
19 standing the preceding sentence, any such account is
20 subject to the taxes imposed by section 511 (relating
21 to imposition of tax on unrelated business income of
22 charitable, etc. organizations).

23 “(2) ACCOUNT TERMINATIONS.—Rules similar
24 to the rules of paragraphs (2) and (4) of section
25 408(e) shall apply to small business emergency sav-

ings accounts, and any amount treated as distributed under such rules shall be treated as not used to pay qualified disaster and public health emergency expenses.

“(f) TAX TREATMENT OF DISTRIBUTIONS.—

“(1) AMOUNTS USED FOR QUALIFIED DISASTER AND PUBLIC HEALTH EMERGENCY EXPENSES.—Any amount paid or distributed out of a small business emergency savings account which is used exclusively to pay qualified disaster and public health emergency expenses of any account beneficiary shall not be includible in gross income.

“(2) INCLUSION OF AMOUNTS NOT USED FOR QUALIFIED DISASTER AND PUBLIC HEALTH EMERGENCY EXPENSES.—Any amount paid or distributed out of a small business emergency savings account which is not used exclusively to pay the qualified disaster and public health emergency expenses of the account beneficiary shall be included in the gross income of such beneficiary.

“(3) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—

“(A) IN GENERAL.—If any excess contribution is contributed for a taxable year to any small business emergency savings account

1 of an eligible business, paragraph (2) shall not
2 apply to distributions from the small business
3 emergency savings accounts of such eligible
4 business (to the extent such distributions do not
5 exceed the aggregate excess contributions to all
6 such accounts of such eligible business for such
7 year) if—

8 “(i) such distribution is received by
9 the eligible business on or before the last
10 day prescribed by law (including extensions
11 of time) for filing such eligible business’s
12 return for such taxable year, and

13 “(ii) such distribution is accompanied
14 by the amount of net income attributable
15 to such excess contribution.

16 Any net income described in clause (ii) shall be
17 included in the gross income of the eligible busi-
18 ness for the taxable year in which it is received.

19 “(B) EXCESS CONTRIBUTION.—For pur-
20 poses of subparagraph (A), the term ‘excess
21 contribution’ means any contribution (other
22 than a rollover contribution described in para-
23 graph (5)) which is not deductible under this
24 section.

1 “(4) ADDITIONAL TAX ON DISTRIBUTIONS NOT
2 USED FOR QUALIFIED DISASTER AND PUBLIC
3 HEALTH EMERGENCY EXPENSES.—

4 “(A) IN GENERAL.—The tax imposed by
5 this chapter on the account beneficiary for any
6 taxable year in which there is a payment or dis-
7 tribution from a small business emergency sav-
8 ings account of such beneficiary which is includ-
9 ible in gross income under paragraph (2) shall
10 be increased by 20 percent of the amount which
11 is so includible.

12 “(B) EXCEPTION FOR DISABILITY OR
13 DEATH.—If the eligible business is an indi-
14 vidual, subparagraph (A) shall not apply if the
15 payment or distribution is made after the ac-
16 count beneficiary becomes disabled within the
17 meaning of section 72(m)(7) or dies.

18 “(5) ROLLOVER CONTRIBUTION.—An amount is
19 described in this paragraph as a rollover contribu-
20 tion if it meets the requirements of subparagraphs
21 (A) and (B).

22 “(A) IN GENERAL.—Paragraph (2) shall
23 not apply to any amount paid or distributed
24 from a small business emergency savings ac-
25 count to the account beneficiary to the extent

1 the amount received is paid into a small busi-
2 ness emergency savings account for the benefit
3 of such beneficiary not later than the 60th day
4 after the day on which the beneficiary receives
5 the payment or distribution.

6 “(B) LIMITATION.—This paragraph shall
7 not apply to any amount described in subpara-
8 graph (A) received by an eligible business from
9 a small business emergency savings account if,
10 at any time during the 1-year period ending on
11 the day of such receipt, such eligible business
12 received any other amount described in sub-
13 paragraph (A) from a small business emergency
14 savings account which was not includible in the
15 small business’s gross income because of the
16 application of this paragraph.

17 “(g) COST-OF-LIVING ADJUSTMENT.—

18 “(1) IN GENERAL.—In the case of any taxable
19 year beginning in a calendar year after 2020, the
20 \$3,000 amount in subsection (d)(3) shall be in-
21 creased by an amount equal to—

22 “(A) such dollar amount, multiplied by

23 “(B) the cost-of-living adjustment deter-
24 mined under section 1(f)(3) for the calendar
25 year in which such taxable year begins deter-

1 mined by substituting ‘calendar year 2019’ for
2 ‘calendar year 2016’ in subparagraph (A)(ii)
3 thereof.

4 “(2) ROUNDING.—If any increase under para-
5 graph (1) is not a multiple of \$50, such increase
6 shall be rounded to the nearest multiple of \$50.

7 “(h) SPECIAL RULES.—

8 “(1) DENIAL OF DEDUCTION TO DEPEND-
9 ENTS.—No deduction shall be allowed under this
10 section to any individual with respect to whom a de-
11 duction under section 151 is allowable to another
12 taxpayer for a taxable year beginning in the cal-
13 endar year in which such individual’s taxable year
14 begins.

15 “(2) TAXABLE YEAR MUST BE FULL TAXABLE
16 YEAR.—Except in the case of a taxable year closed
17 by reason of the death of an individual who is an eli-
18 gible business, no deduction shall be allowed under
19 this section in the case of a taxable year covering a
20 period of less than 12 months.

21 “(3) CERTAIN RULES TO APPLY.—Rules similar
22 to the following rules shall apply for purposes of this
23 section:

24 “(A) Section 219(d)(2) (relating to no de-
25 duction for rollovers).

1 “(B) Section 219(f)(3) (relating to time
2 when contributions deemed made).

3 “(C) Section 219(f)(5) (relating to em-
4 ployer payments).

5 “(D) Section 408(g) (relating to commu-
6 nity property laws).

7 “(E) Section 408(h) (relating to custodial
8 accounts).

9 “(F) Section 223(f)(7) (relating to transfer
10 of account incident to divorce).

11 “(G) Section 223(f)(8) (relating to treat-
12 ment after death of account beneficiary).

13 “(4) DENIAL OF DOUBLE BENEFIT.—No deduc-
14 tion shall be allowed under this chapter for any
15 qualified disaster and public health emergency ex-
16 penses with respect to which any payment or dis-
17 tribution is excluded from gross income under sub-
18 section (f)(1).

19 “(i) REPORTS.—The Secretary may require the trust-
20 ee of a small business emergency savings account to make
21 such reports regarding such account to the Secretary and
22 to the account beneficiary with respect to contributions,
23 distributions, the return of excess contributions, and such
24 other matters as the Secretary determines appropriate.”.

1 (b) DEDUCTION ALLOWED WHETHER OR NOT INDIVIDUAL
 2 ITEMIZES OTHER DEDUCTIONS.—Section 62(a)
 3 of such Code is amended by inserting after paragraph (21)
 4 the following new paragraph:

5 “(22) SMALL BUSINESS EMERGENCY SAVINGS
 6 ACCOUNTS.—In the case of an individual who is an
 7 eligible business, the deduction allowed by section
 8 200.”.

9 (c) TAX ON EXCESS CONTRIBUTIONS.—Section 4973
 10 of such Code (relating to tax on excess contributions to
 11 certain tax-favored accounts and annuities) is amended—

12 (1) by striking “or” at the end of subsection
 13 (a)(5), by inserting “or” at the end of subsection
 14 (a)(6), and by inserting after subsection (a)(6) the
 15 following new paragraph:

16 “(7) a small business emergency savings ac-
 17 count (within the meaning of section 220(d)),”; and

18 (2) by adding at the end the following new sub-
 19 section:

20 “(i) EXCESS CONTRIBUTIONS TO SMALL BUSINESS
 21 EMERGENCY SAVINGS ACCOUNTS.—For purposes of this
 22 section, in the case of small business emergency savings
 23 accounts (within the meaning of section 220(d)), the term
 24 ‘excess contributions’ means the sum of—

1 “(1) the aggregate amount contributed for the
 2 taxable year to the accounts (other than a rollover
 3 contribution described in section 220(f)(5)) which is
 4 not allowable as a deduction under section 220 for
 5 such year, and

6 “(2) the amount determined under this sub-
 7 section for the preceding taxable year, reduced by
 8 the sum of—

9 “(A) the distributions out of the accounts
 10 which were included in gross income under sec-
 11 tion 220(f)(2), and

12 “(B) the excess (if any) of—

13 “(i) the maximum amount allowable
 14 as a deduction under section 220(b) for
 15 the taxable year, over

16 “(ii) the amount contributed to the
 17 accounts for the taxable year.

18 For purposes of this subsection, any contribu-
 19 tion which is distributed out of the small busi-
 20 ness emergency savings account in a distribu-
 21 tion to which section 220(f)(3) applies shall be
 22 treated as an amount not contributed.”.

23 (d) FAILURE TO PROVIDE REPORTS ON SMALL
 24 BUSINESS EMERGENCY SAVINGS ACCOUNTS.—Section
 25 6693(a)(2) of such Code is amended by redesignating sub-

1 paragraphs (D), (E), and (F) as subparagraphs (E), (F),
2 and (G), respectively, and by inserting after subparagraph
3 (C) the following new subparagraph:

4 “(D) section 220(i) (relating to small busi-
5 ness emergency savings accounts),”.

6 (e) CLERICAL AMENDMENT.—The table of sections
7 for part VI of subchapter B of chapter 1 of such Code
8 is amended by adding at the end the following:

“Sec. 220. Small business emergency savings accounts.”.

9 (f) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years beginning after
11 December 31, 2019.

○