

116TH CONGRESS
1ST SESSION

S. 2738

To amend the Internal Revenue Code of 1986 to provide a tax credit for angel investors in start-up businesses, to provide a credit for wages paid by start-up businesses to their first employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 30, 2019

Mr. WYDEN 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 provide a tax credit for angel investors in start-up businesses, to provide a credit for wages paid by start-up businesses to their first employees, 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. SHORT TITLE.**

4 This Act may be cited as the “Providing Real Oppor-
5 tunities for Growth to Rising Entrepreneurs for Sustained
6 Success (PROGRESS) Act”.

1 **SEC. 2. ANGEL INVESTOR TAX CREDIT.**

2 (a) IN GENERAL.—Subpart D of part IV of sub-
3 chapter A of chapter 1 of the Internal Revenue Code of
4 1986 is amended by adding at the end the following new
5 section:

6 **“SEC. 45T. ANGEL INVESTOR TAX CREDIT.**

7 “(a) GENERAL RULE.—For purposes of section 38,
8 the angel investor credit determined under this section for
9 any taxable year is an amount equal to the sum of the
10 credit amounts determined for the taxable year for all
11 qualified investments of the taxpayer.

12 “(b) CREDIT AMOUNT.—For purposes of this sec-
13 tion—

14 “(1) IN GENERAL.—The term ‘credit amount’
15 means, with respect to any qualified investment in a
16 qualifying business entity, the lesser of—

17 “(A) 10 percent of the amount of the
18 qualified investment determined under sub-
19 section (c)(3) for the taxable year, or

20 “(B) an amount equal to—

21 “(i) 50 percent of such qualified in-
22 vestment, reduced (but not below zero) by

23 “(ii) the amount of the credit deter-
24 mined under this section with respect to
25 such qualified investment of the taxpayer
26 for all preceding taxable years.

1 “(2) OVERALL DOLLAR LIMITATION.—

2 “(A) IN GENERAL.—The credit amount de-
3 termined under paragraph (1) with respect to
4 any qualified investment of a taxpayer in a
5 qualifying business entity for any taxable year
6 shall not exceed the lesser of—

7 “(i) \$10,000 (as increased for the tax-
8 able year by the cost-of-living adjustment
9 under subsection (e)(2)), or

10 “(ii) an amount equal to—

11 “(I) an amount equal to 5 times
12 the amount under clause (i) for the
13 taxable year, reduced (but not below
14 zero) by

15 “(II) the amount of the credit
16 determined under this section with re-
17 spect to such qualified investment of
18 the taxpayer for all preceding taxable
19 years.

20 “(B) NO CREDIT AMOUNT BY REASON OF
21 COST-OF-LIVING ADJUSTMENT AFTER OVERALL
22 LIMIT FIRST REACHED.—No credit amount
23 shall be determined under this section with re-
24 spect to any qualified investment of a taxpayer
25 in a qualifying business entity for any taxable

year after the first taxable year for which the amount determined under subclause (II) of subparagraph (A)(ii) equals or exceeds the amount determined under subclause (I) of such subparagraph.

“(3) REDUCTION IN CREDIT AMOUNT WHERE
LOAN RATE EXCEEDS PRIME RATE.—

“(A) IN GENERAL.—If—

“(i) the rate of interest (expressed as an annual percentage rate) on a qualified investment which is a qualifying loan, exceeds

“(ii) the bank prime rate as of the first day of the month in which the loan is entered into (or such other time as the Secretary may specify),

then each of the amounts determined under subparagraphs (A) and (B)(i) of paragraph (1) shall be reduced (but not below zero) by the amount which bears the same ratio to such amount as the number of full percentage points by which such rate of interest exceeds such bank prime rate bears to 25.

“(B) SPECIAL RULES WHERE QUALIFYING
LOANS TREATED AS PART OF SINGLE INVEST-

MENT.—If 1 or more qualifying loans to which subparagraph (A) applies are treated as part of a single qualified investment under subsection (c)(1), then, for purposes of this subsection—

“(i) the credit amount under paragraph (1) for such single qualified investment shall be the sum of such credit amounts computed separately for each such qualifying loan and such credit amount computed for all other qualified investments treated as part of such single qualified investment, and

“(ii) the limitation under paragraph (2) shall be applied to such sum.

“(C) RULES RELATING TO INTEREST RATES.—

“(i) ANNUAL PERCENTAGE RATE.—
The Secretary shall prescribe guidance or regulations for the calculation of the annual percentage rate of interest on a loan for purposes of subparagraph (A)(i), including rules which provide for—

“(I) the calculation of the annual percentage rate in cases where there is a variable rate of interest,

1 “(II) the recalculation of the an-
 2 nual percentage rate where the terms
 3 of the loan are modified after the loan
 4 is entered into, and

5 “(III) the proper taking into ac-
 6 count of lump sum payments, orienta-
 7 tion and application fees, closing fees,
 8 invoice discounting fees, and any
 9 other loan fees.

10 “(ii) BANK PRIME RATE.—For pur-
 11 poses of subparagraph (A)(ii), the term
 12 ‘bank prime rate’ means the average pre-
 13 dominant prime rate quoted by commercial
 14 banks to large businesses, as determined
 15 by the Board of Governors of the Federal
 16 Reserve System.

17 “(4) SPECIAL RULES FOR PASS-THRU ENTI-
 18 TIES.—For purposes of this subsection, if a qualified
 19 investment in a qualifying business entity is made by
 20 a partnership, trust, S corporation, or other pass-
 21 thru entity, the limitations under this subsection
 22 with respect to the qualified investment shall apply
 23 at the partnership or other entity level and not at
 24 the partner or similar level.

1 “(c) QUALIFIED INVESTMENT.—For purposes of this
2 section—

3 “(1) IN GENERAL.—The term ‘qualified invest-
4 ment’ means, with respect to any qualifying business
5 entity, either of the following of the taxpayer:

6 “(A) The direct or indirect acquisition of
7 stock, or a capital interest, in the entity at its
8 original issue solely in exchange for cash.

9 “(B) A qualifying loan made to the entity.
10 If a taxpayer has or had more than 1 qualified in-
11 vestment in any qualifying business entity for the
12 taxable year or any prior taxable year, all such in-
13 vestments shall be treated as a single qualified in-
14 vestment for purposes of applying this section.

15 “(2) EXCEPTION FOR INVESTMENTS MADE BY
16 QUALIFIED ACTIVE INVESTORS AND RELATED PER-
17 SONS.—Such term shall not include any acquisition
18 or loan made by a taxpayer who, immediately before
19 the acquisition or loan, is a qualified active investor
20 in the qualifying business entity or is related to any
21 qualified active investor.

22 “(3) AMOUNT OF QUALIFIED INVESTMENT.—
23 The amount of a taxpayer’s qualified investment
24 with respect to any qualifying business entity for

any taxable year shall be the monthly average for months ending within the taxable year of—

“(A) the taxpayer’s aggregate unadjusted bases in all stock or interests described in paragraph (1)(A) as of the close of each such month, and

“(B) the aggregate outstanding principal amount of all qualified loans described in paragraph (1)(B) as of the close of each such month.

“(4) SPECIAL RULES FOR TRANSFERS OF QUALIFYING LOANS.—

“(A) IN GENERAL.—If a taxpayer sells, exchanges, or otherwise transfers all or any portion of a qualifying loan which is a qualified investment in a qualifying business entity, such investment shall be treated as a qualified investment in the hands of the transferee (and not of the transferor) for periods after the transfer. This paragraph shall also apply to any subsequent transfer of such interest.

“(B) COORDINATION OF LIMITS.—In applying subsection (b) to any qualifying loan treated as a qualified investment of a transferee under this paragraph—

1 “(i) all credits determined under this
 2 section for any periods before the transfer
 3 with respect to the qualified investment of
 4 any prior holder of such investment shall
 5 be taken into account under paragraphs
 6 (1)(B)(ii) and (2)(A)(ii)(II) of such sub-
 7 section in the same manner as if such
 8 credits were determined for the transferee
 9 for prior taxable years, and

10 “(ii) if only a portion of the qualified
 11 investment was transferred, the amount
 12 taken into account under such paragraphs
 13 by reason of clause (i) shall be ratably re-
 14 duced to reflect only the portion so trans-
 15 ferred.

16 “(d) QUALIFYING BUSINESS ENTITY.—For purposes
 17 of this section—

18 “(1) DEFINITION.—

19 “(A) IN GENERAL.—The term ‘qualifying
 20 business entity’ means, with respect to any
 21 qualified investment, any entity which is en-
 22 gaged in the active conduct of 1 or more trades
 23 or businesses and with respect to which—

24 “(i) the qualified active investor own-
 25 ership requirements of paragraph (2) are

1 met immediately before and after the
2 qualified investment,

3 “(ii) the wage requirements of para-
4 graph (3) are met, and

5 “(iii) the certification requirements of
6 paragraph (4) are met.

7 “(B) ENTITIES UNDER COMMON CON-
8 TROL.—For purposes of this section, all quali-
9 fying business entities treated as a single em-
10 ployer under subsection (a) or (b) of section 52
11 or subsection (m) or (o) of section 414 shall be
12 treated as a single qualifying business entity.

13 “(2) QUALIFIED ACTIVE INVESTOR OWNERSHIP
14 REQUIREMENTS.—The requirements of this para-
15 graph are met with respect to any entity if qualified
16 active investors own directly or indirectly—

17 “(A) in the case of a corporation, more
18 than 50 percent (by vote and value) of the
19 stock in the corporation, and

20 “(B) in the case of any other entity, more
21 than 50 percent of the capital or profits inter-
22 ests in the entity.

23 “(3) WAGE REQUIREMENTS.—

24 “(A) IN GENERAL.—The requirements of
25 this paragraph are met with respect to any enti-

1 ty if the entity, during the taxable year of the
 2 entity preceding the taxable year in which the
 3 qualified investment is made—

4 “(i) employed at least 1 full-time em-
 5 ployee, or employees constituting a full-
 6 time equivalent employee, in 1 or more
 7 trades or businesses actively conducted by
 8 the entity, and

9 “(ii) paid W-2 wages to such em-
 10 ployee or employees with respect to such
 11 employment.

12 “(B) CERTAIN WAGES NOT TAKEN INTO
 13 ACCOUNT.—W-2 wages shall not be taken into
 14 account under subparagraph (A) if paid by an
 15 entity to an employee, and such employee shall
 16 not be taken into account under subparagraph
 17 (A)(i), during any period the employee is—

18 “(i) a qualified active investor, or

19 “(ii) an employee other than a quali-
 20 fied active investor who is a 5-percent
 21 owner (as defined in section
 22 416(i)(1)(B)(i)) of the entity.

23 “(C) W-2 WAGES.—The term ‘W-2 wages’
 24 means, with respect to any entity, the amounts
 25 described in paragraphs (3) and (8) of section

1 6051(a) paid by the entity with respect to em-
2 ployment of employees by the entity. Such term
3 shall not include any amount which is not prop-
4 erly included in a return filed with the Social
5 Security Administration on or before the 60th
6 day after the due date (including extensions)
7 for such return.

8 “(D) FULL-TIME EMPLOYEES AND
9 EQUIVALENTS.—For purposes of this para-
10 graph—

11 “(i) the term ‘full-time employee’ has
12 the meaning given to such term by section
13 4980H(c)(4), and

14 “(ii) the determination of the number
15 of employees constituting a full-time equiv-
16 alent shall be made in the same manner as
17 under section 4980H(c)(2)(E).

18 “(4) CERTIFICATION REQUIREMENTS.—

19 “(A) IN GENERAL.—The requirements of
20 this paragraph are met with respect to any enti-
21 ty if the entity certifies, in such form and man-
22 ner and at such time as the Secretary may pre-
23 scribe, that, at the time of the qualified invest-
24 ment, the entity—

1 “(i) is engaged in the active conduct
2 of 1 or more trades or businesses, and

3 “(ii) meets the requirements of para-
4 graphs (2) and (3) to be treated as a
5 qualifying business entity.

6 “(B) CERTIFICATION PROVIDED TO INVES-
7 TORS AND SECRETARY.—An entity shall—

8 “(i) provide the certification under
9 subparagraph (A) to the person making
10 the qualified investment at the time such
11 investment is made, and

12 “(ii) include such certification, and
13 the names, addresses, and taxpayer identi-
14 fication numbers of the entity’s qualified
15 active investors and the persons making
16 the qualified investment, with its return of
17 tax for the taxable year which includes the
18 date of the qualified investment.

19 “(C) CERTIFICATION INCLUDED WITH RE-
20 TURN CLAIMING CREDIT.—No credit shall be
21 determined under subsection (a) with respect to
22 any taxpayer making a qualified investment in
23 a qualifying business entity unless the taxpayer
24 includes the certification under subparagraph
25 (A) with respect to the investment with its re-

turn of tax for any taxable year for which such credit is being claimed.

“(D) TIMELY FILED RETURN REQUIRED.—

The requirements of subparagraph (B)(ii) or (C) shall be treated as met only if the return described in such subparagraph is filed on or before its due date (including extensions).

“(5) QUALIFIED ACTIVE INVESTOR.—

“(A) IN GENERAL.—The term ‘qualified active investor’ means, with respect to any entity, an individual who—

“(i) is a citizen or resident of the United States,

“(ii) materially participates (within the meaning of section 469(h)) in 1 or more trades or businesses actively conducted by the entity,

“(iii) holds stock, or a capital or profits interest, in the entity, and

“(iv) meets the income requirements of subparagraph (B).

“(B) INCOME REQUIREMENTS.—The requirements of this subparagraph are met with respect to an individual if the average annual taxable income of the individual for the 3 tax-

1 able years of the individual immediately pre-
 2 ceding the taxable year in which the qualified
 3 investment is made does not exceed the applica-
 4 ble amount.

5 “(C) APPLICABLE AMOUNT.—For purposes
 6 of this paragraph, the term ‘applicable amount’
 7 means, with respect to any taxable year in
 8 which a qualified investment is made—

9 “(i) in the case of an individual not
 10 described in clause (ii), \$100,000 (as in-
 11 creased for the taxable year by the cost-of-
 12 living adjustment under subsection (e)(2)),
 13 and

14 “(ii) in the case of an individual who
 15 is a married individual filing a joint return
 16 or who is a head of household (as defined
 17 in section 2(b)) for the taxable year, an
 18 amount equal to 2 times the amount in ef-
 19 fect under clause (i) for the taxable year.

20 “(D) RULES FOR DETERMINING AVERAGE
 21 TAXABLE INCOME.—For purposes of this para-
 22 graph—

23 “(i) a married individual filing a sepa-
 24 rate return of tax for any taxable year
 25 shall include the taxable income of their

1 spouse in computing the individual's aver-
 2 age taxable income for any period unless
 3 the Secretary determines that the spouse's
 4 information is not available to the indi-
 5 vidual, and

6 “(ii) the Secretary shall prescribe
 7 rules for the determination of average tax-
 8 able income in cases where the individual
 9 had different filing statuses for the 3 tax-
 10 able years described in subparagraph (B).

11 “(e) DEFINITIONS AND SPECIAL RULES.—For pur-
 12 poses of this section—

13 “(1) RELATED PERSONS.—A person shall be
 14 treated as related to another person if the person
 15 bears a relationship to such other person described
 16 in section 267(b), except that section 267(b) shall be
 17 applied by substituting ‘5 percent’ for ‘50 percent’
 18 each place it appears.

19 “(2) COST-OF-LIVING ADJUSTMENTS.—In the
 20 case of any taxable year beginning after 2020, the
 21 \$10,000 amount under subsection (b)(2)(A)(i) and
 22 the \$100,000 amount under subsection (d)(5)(C)(i)
 23 shall each be increased by an amount equal to—

24 “(A) such dollar amount, multiplied by

1 “(B) the cost-of-living adjustment under
 2 section 1(f)(3) for the calendar year in which
 3 the taxable year begins, determined by sub-
 4 stituting ‘2019’ for ‘2016’ in subparagraph
 5 (A)(ii) thereof.

6 If any increase in such \$10,000 amount is not a
 7 multiple of \$100, such increase shall be rounded to
 8 the next lowest multiple of \$100 and if any increase
 9 in such \$100,000 amount is not a multiple of
 10 \$1,000, such increase shall be rounded to the next
 11 lowest multiple of \$1,000.

12 “(3) RULES RELATING TO ENTITIES.—

13 “(A) SOLE PROPRIETORSHIPS.—If a tax-
 14 payer carries on 1 or more trades or businesses
 15 as sole proprietorships, all such trades or busi-
 16 nesses shall be treated as a single entity for
 17 purposes of applying this section.

18 “(B) APPLICATION TO DISREGARDED EN-
 19 TITIES.—In the case of any entity with a single
 20 owner which is disregarded as an entity sepa-
 21 rate from its owner for purposes of this title,
 22 this section shall be applied in the same manner
 23 as if such entity were a corporation.

1 “(f) REGULATIONS.—The Secretary shall prescribe
 2 such regulations or other guidance as may be necessary
 3 to carry out the provisions of this section.”.

4 (b) CREDIT TO BE PART OF GENERAL BUSINESS
 5 CREDIT.—Section 38(b) of such Code is amended by strik-
 6 ing “plus” at the end of paragraph (31), by striking the
 7 period at the end of paragraph (32) and inserting “, plus”,
 8 and by adding at the end the following new paragraph:
 9 “(33) the angel investor credit determined
 10 under section 45T(a).”.

11 (c) CREDIT ALLOWED AGAINST ALTERNATIVE MIN-
 12 IMUM TAX.—Section 38(c)(4)(B) of such Code is amended
 13 by redesignating clauses (x), (xi), and (xii) as clauses (xi),
 14 (xii), and (xiii), respectively, and by inserting after clause
 15 (ix) the following new clause:

16 “(x) the credit determined under sec-
 17 tion 45T.”.

18 (d) CLERICAL AMENDMENT.—The table of sections
 19 for subpart D of part IV of subchapter A of chapter 1
 20 of such Code is amended by adding at the end the fol-
 21 lowing new item:

“Sec. 45T. Angel investor tax credit.”.

22 (e) EFFECTIVE DATE.—The amendments made by
 23 this section shall apply to qualified investments made in
 24 taxable years beginning after December 31, 2019.

1 **SEC. 3. FIRST EMPLOYEE BUSINESS WAGE CREDIT.**

2 (a) ALLOWANCE OF CREDIT.—

3 (1) IN GENERAL.—Subpart D of part IV of
4 subchapter A of chapter 1 of the Internal Revenue
5 Code of 1986, as amended by section 2, is amended
6 by adding at the end the following new section:

7 **“SEC. 45U. FIRST EMPLOYEE BUSINESS WAGE CREDIT.**

8 “(a) GENERAL RULE.—For purposes of section 38,
9 in the case of a qualifying business entity, the first em-
10 ployee business wage credit determined under this section
11 for any taxable year is an amount equal to 25 percent
12 of the qualified wages of the entity for the taxable year.

13 “(b) DOLLAR LIMITATIONS.—

14 “(1) IN GENERAL.—The amount of the credit
15 determined under subsection (a) with respect to any
16 qualifying business entity for any taxable year shall
17 not exceed the lesser of—

18 “(A) \$10,000 (as increased for the taxable
19 year by the cost-of-living adjustment under sub-
20 section (f)), or

21 “(B) the excess (if any) of—

22 “(i) an amount equal to 4 times the
23 amount under subparagraph (A) for the
24 taxable year, over

1 “(ii) the amount of the credit deter-
 2 mined under this section with respect to
 3 such entity for all preceding taxable years.

4 “(2) NO CREDIT BY REASON OF COST-OF-LIV-
 5 ING ADJUSTMENT AFTER OVERALL LIMIT FIRST
 6 REACHED.—No credit shall be determined under this
 7 section with respect to any qualifying business entity
 8 for any taxable year after the first taxable year for
 9 which the amount determined under clause (ii) of
 10 paragraph (1)(B) equals or exceeds the amount de-
 11 termined under clause (i) of such paragraph.

12 “(3) PASS-THRU ENTITIES.—If a qualifying
 13 business entity is a partnership, trust, S corporation,
 14 or other pass-thru entity, the limitations under this
 15 subsection shall apply at the partnership or other
 16 entity level and not at the partner or similar level.

17 “(c) QUALIFIED WAGES.—For purposes of this sec-
 18 tion—

19 “(1) IN GENERAL.—The term ‘qualified wages’
 20 means, with respect to any qualifying business enti-
 21 ty, the amount of W-2 wages paid or incurred dur-
 22 ing any eligible taxable year to employees for serv-
 23 ices performed in connection with the active conduct
 24 of a trade or business by the entity.

1 “(2) EXCEPTION FOR QUALIFIED ACTIVE IN-
 2 VESTORS AND 5-PERCENT OWNER-EMPLOYEES.—W-
 3 2 wages shall not be taken into account under para-
 4 graph (1) if paid by an entity to an employee, and
 5 such employee shall not be taken into account under
 6 paragraph (3)(A), during any period the employee
 7 is—

8 “(A) a qualified active investor, or

9 “(B) an employee other than a qualified
 10 active investor who is a 5-percent owner (as de-
 11 fined in section 416(i)(1)(B)(i)) of the entity.

12 “(3) ELIGIBLE TAXABLE YEAR.—

13 “(A) IN GENERAL.—The term ‘eligible tax-
 14 able year’ means any taxable year of a quali-
 15 fying business entity—

16 “(i) which occurs during the period—

17 “(I) beginning with the first tax-
 18 able year of the entity in which the
 19 entity employed at least 1 full-time
 20 employee (or employees constituting a
 21 full-time equivalent employee) in 1 or
 22 more trades or businesses actively
 23 conducted by the entity during the
 24 taxable year and paid W-2 wages to

1 such employee or employees with re-
2 spect to such employment, and

3 “(II) ending with the last taxable
4 year for which a credit may be deter-
5 mined for the entity under this section
6 by reason of the limitation under sub-
7 section (b)(2), and

8 “(ii) in the case of a taxable year
9 other than the first taxable year described
10 in clause (i)(I), with respect to which the
11 entity meets the employment and wage re-
12 quirements of such clause.

13 Such term shall not include any taxable year
14 during such a period if the first taxable year
15 described in clause (i)(I) of the entity (or any
16 predecessor) begins before January 1, 2020.

17 “(B) W-2 WAGES; FULL-TIME EMPLOY-
18 EES.—For purposes of this subsection, W-2
19 wages, full-time employees, and full-time em-
20 ployee equivalents shall be determined in the
21 same manner as under section 45T.

22 “(d) QUALIFYING BUSINESS ENTITY.—For purposes
23 of this section—

24 “(1) QUALIFYING BUSINESS ENTITY DE-
25 FINED.—

“(A) IN GENERAL.—The term ‘qualifying business entity’ means, with respect to any taxable year for which a credit under this section is being determined, any entity—

“(i) which is engaged in the active conduct of 1 or more trades or businesses,

“(ii) with respect to which the qualified active investor ownership requirements of paragraph (2) of section 45T(d) are met as of the close of such taxable year (rather than immediately before and after the qualified investment), and

“(iii) with respect to which the certification requirements of paragraph (2) are met.

“(B) ENTITIES UNDER COMMON CONTROL.—For purposes of this section—

“(i) IN GENERAL.—All qualifying business entities treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as a single qualifying business entity.

“(ii) ALLOCATION OF CREDIT.—Except as provided in regulations, the credit

under this section shall be allocated among the entities comprising the single entity described in clause (i) in proportion to the qualified wages of each such entity taken into account under subsection (a).

“(2) CERTIFICATION REQUIREMENTS.—

“(A) IN GENERAL.—The requirements of this paragraph are met with respect to any entity for any taxable year described in paragraph (1) if the entity certifies, in such form and manner and at such time as the Secretary may prescribe, that the entity meets the requirements described in clauses (i) and (ii) of paragraph (1)(A).

“(B) CERTIFICATION PROVIDED TO SECRETARY.—An entity shall include the certification under subparagraph (A), and the names, addresses, and taxpayer identification numbers of the entity’s qualified active investors (and employees who are 5-percent owners described in subsection (c)(2)(B)), with its return of tax for the taxable year to which the certification relates. The requirement of this subparagraph is met only if such return is filed before its due date (including extensions).

1 “(3) QUALIFIED ACTIVE INVESTOR.—For pur-
 2 poses of this section (including applying the require-
 3 ments of paragraph (2) of section 45T(d) for pur-
 4 poses of paragraph (1)(A)(ii)), the term ‘qualified
 5 active investor’ has the same meaning given such
 6 term by section 45T(d)(5), except that such section
 7 shall be applied separately for each taxable year de-
 8 scribed in paragraph (1) (rather than the taxable
 9 year of the qualified investment).

10 “(e) ELECTION TO APPLY CREDIT AGAINST PAY-
 11 ROLL TAXES.—

12 “(1) IN GENERAL.—At the election of a quali-
 13 fying business entity, section 3111(g) shall apply to
 14 the payroll tax credit portion of the credit otherwise
 15 determined under subsection (a) for the taxable year
 16 and such portion shall not be treated (other than for
 17 purposes of section 280C) as a credit determined
 18 under subsection (a).

19 “(2) PAYROLL TAX CREDIT PORTION.—For
 20 purposes of this subsection, the payroll tax credit
 21 portion of the credit determined under subsection
 22 (a) with respect to any qualifying business entity for
 23 any taxable year is the least of—

24 “(A) the amount specified in the election
 25 made under this subsection,

1 “(B) the credit determined under sub-
 2 section (a) for the taxable year (determined be-
 3 fore the application of this subsection), or

4 “(C) in the case of a qualifying business
 5 entity other than a partnership, estate, S cor-
 6 poration or other pass-thru entity, the amount
 7 of the business credit carryforward under sec-
 8 tion 39 carried from the taxable year (deter-
 9 mined before the application of this subsection
 10 to the taxable year).

11 “(3) ELECTION.—

12 “(A) IN GENERAL.—Any election under
 13 this subsection for any taxable year—

14 “(i) shall specify the amount of the
 15 credit to which such election applies,

16 “(ii) shall be made on or before the
 17 due date (including extensions) of the re-
 18 turn for the taxable year, and

19 “(iii) may be revoked only with the
 20 consent of the Secretary.

21 “(B) SPECIAL RULE FOR PASS-THRU ENTI-
 22 TIES.—In the case of a partnership, estate, S
 23 corporation, or other pass-thru entity, the elec-
 24 tion made under this subsection shall be made
 25 at the entity level.

1 “(f) COST-OF-LIVING ADJUSTMENTS.—In the case of
 2 any taxable year beginning after 2020, the \$10,000
 3 amount under subsection (b)(1)(A) shall be increased by
 4 an amount equal to—

5 “(1) such dollar amount, multiplied by

6 “(2) the cost-of-living adjustment under section
 7 1(f)(3) for the calendar year in which the taxable
 8 year begins, determined by substituting ‘2019’ for
 9 ‘2016’ in subparagraph (A)(ii) thereof.

10 If any increase in such amount is not a multiple of \$100,
 11 such increase shall be rounded to the next lowest multiple
 12 of \$100.

13 “(g) OTHER RULES.—For purposes of this section—

14 “(1) RULES RELATING TO ENTITIES.—Rules
 15 similar to the rules of section 45T(e)(3) shall apply.

16 “(2) ELECTION NOT TO HAVE CREDIT APPLY.—

17 “(A) IN GENERAL.—A taxpayer may elect
 18 not to have this section apply for any taxable
 19 year.

20 “(B) OTHER RULES.—Rules similar to the
 21 rules of paragraphs (2) and (3) of section 51(j)
 22 shall apply for purposes of this paragraph.

23 “(3) CERTAIN OTHER RULES MADE APPLICA-
 24 BLE.—Rules similar to the rules of subsections (c),
 25 (d), and (e) of section 52 shall apply.

1 “(h) REGULATIONS.—The Secretary shall prescribe
 2 such regulations or other guidance as may be necessary
 3 to carrying out the provisions of this section, including
 4 regulations—

5 “(1) preventing the avoidance of the limitations
 6 under this section in cases in which there is a suc-
 7 cessor or new qualified business entity with respect
 8 to the same trade or business for which a prede-
 9 cessor qualified business entity already claimed the
 10 credit under this section,

11 “(2) to minimize compliance and recordkeeping
 12 burdens under the provisions of this section, and

13 “(3) for recapturing the benefit of credits deter-
 14 mined under section 3111(g) in cases where there is
 15 a recapture or a subsequent adjustment to the pay-
 16 roll tax credit portion of the credit determined under
 17 subsection (a), including requiring amended income
 18 tax returns in the cases where there is such an ad-
 19 justment.”.

20 (2) CREDIT TO BE PART OF GENERAL BUSI-
 21 NESS CREDIT.—Section 38(b) of such Code, as
 22 amended by section 2, is amended by striking “plus”
 23 at the end of paragraph (32), by striking the period
 24 at the end of paragraph (33) and inserting “, plus”,

1 and by adding at the end the following new para-
 2 graph:

3 “(34) the first employee business wage credit
 4 determined under section 45U(a).”.

5 (3) CREDIT ALLOWED AGAINST ALTERNATIVE
 6 MINIMUM TAX.—Section 38(c)(4)(B) of such Code,
 7 as amended by section 2, is amended by redesign-
 8 ating clauses (xi), (xii), and (xiii) as clauses (xii),
 9 (xiii), and (xiv), respectively, and by inserting after
 10 clause (x) the following new clause:

11 “(xi) the credit determined under sec-
 12 tion 45U,”.

13 (4) CLERICAL AMENDMENT.—The table of sec-
 14 tions for subpart D of part IV of subchapter A of
 15 chapter 1 of such Code, as amended by section 2, is
 16 amended by adding at the end the following new
 17 item:

“Sec. 45U. First employee business wage credit.”.

18 (b) PAYROLL TAX CREDIT.—Section 3111 of the In-
 19 ternal Revenue Code of 1986 is amended by adding at the
 20 end the following new subsection:

21 “(g) CREDIT FOR FIRST EMPLOYEE BUSINESS WAGE
 22 EXPENSES.—

23 “(1) IN GENERAL.—In the case of a taxpayer
 24 who has made an election under section 45U(e) for
 25 a taxable year, there shall be allowed as a credit

1 against the tax imposed by subsection (a) for the
 2 first calendar quarter which begins after the date on
 3 which the taxpayer files the return for the taxable
 4 year an amount equal to the payroll tax credit por-
 5 tion determined under section 45U(e)(2).

6 “(2) LIMITATION.—The credit allowed by para-
 7 graph (1) shall not exceed the tax imposed by sub-
 8 section (a) for any calendar quarter on the wages
 9 paid with respect to the employment of all individ-
 10 uals in the employ of the employer.

11 “(3) CARRYOVER OF UNUSED CREDIT.—If the
 12 amount of the credit under paragraph (1) exceeds
 13 the limitation of paragraph (2) for any calendar
 14 quarter, such excess shall be carried to the suc-
 15 ceeding calendar quarter and allowed as a credit
 16 under paragraph (1) for such quarter.

17 “(4) DEDUCTION ALLOWED FOR CREDITED
 18 AMOUNTS.—Notwithstanding section 280C(a), the
 19 credit allowed under paragraph (1) shall not be
 20 taken into account for purposes of determining the
 21 amount of any deduction allowed under chapter 1
 22 for taxes imposed under subsection (a).”.

23 (c) COORDINATION WITH DEDUCTIONS AND OTHER
 24 CREDITS.—

1 (1) DEDUCTIONS.—Section 280C(a) of the In-
 2 ternal Revenue Code of 1986 is amended by insert-
 3 ing “45U(a),” after “45S(a),”.

4 (2) OTHER CREDITS.—

5 (A) Section 41(b)(2)(D) of such Code is
 6 amended by adding at the end the following:

7 “(iv) EXCLUSION FOR WAGES TO
 8 WHICH FIRST EMPLOYEE WAGE CREDIT
 9 APPLIES.—The term ‘wages’ shall not in-
 10 clude any amount taken into account in
 11 determining the credit under section
 12 45U.”.

13 (B) Section 45A(b)(1) of such Code is
 14 amended by adding at the end the following:

15 “(C) COORDINATION WITH FIRST EM-
 16 PLOYEE WAGE CREDIT.—The term ‘qualified
 17 wages’ shall not include wages if any portion of
 18 such wages is taken into account in determining
 19 the credit under section 45U.”.

20 (C) Section 1396(c)(3) of such Code is
 21 amended—

22 (i) by striking “section 51” each place
 23 it appears and inserting “section 45U or
 24 51”, and

1 (ii) by inserting “AND FIRST EM-
2 PLOYEE WAGE” after “OPPORTUNITY” in
3 the heading thereof.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years beginning after
6 December 31, 2019.

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