

116TH CONGRESS
2D SESSION

S. 4467

To rescue domestic medical product manufacturing activity by providing incentives in economically distressed areas of the United States and its possessions.

IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2020

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To rescue domestic medical product manufacturing activity by providing incentives in economically distressed areas of the United States and its possessions.

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 “Medical Manufac-
5 turing, Economic Development, and Sustainability Act of
6 2020” or the “MMEDS Act of 2020”.

1 **SEC. 2. ECONOMICALLY DISTRESSED ZONES.**

2 (a) IN GENERAL.—Chapter 1 of the Internal Rev-
 3 enue Code of 1986 is amended by adding at the end the
 4 following new subchapter:

5 **“Subchapter AA—Medical Product Manufac-**
 6 **turing in Economically Distressed Zones**

“SUBCHAPTER AA—MEDICAL PRODUCT MANUFACTURING IN ECONOMICALLY
 DISTRESSED ZONES

“Sec. 1400AA–1. Medical product manufacturing in economically distressed
 zone credit.

“Sec. 1400AA–2. Credit for economically distressed zone products and services
 acquired by domestic medical product manufacturers.

“Sec. 1400AA–3. Special rules to secure the national supply chain.

“Sec. 1400AA–4. Designation of economically distressed zones.

7 **“SEC. 1400AA–1. MEDICAL PRODUCT MANUFACTURING IN**
 8 **ECONOMICALLY DISTRESSED ZONE CREDIT.**

9 “(a) ALLOWANCE OF CREDIT.—There shall be al-
 10 lowed as a credit against the tax imposed by subtitle A
 11 for the taxable year an amount equal to 40 percent of the
 12 sum of—

13 “(1) the aggregate amount of the taxpayer’s
 14 medical product manufacturing economically dis-
 15 tressed zone wages for such taxable year,

16 “(2) the allocable employee fringe benefit ex-
 17 penses of the taxpayer for such taxable year, and

18 “(3) the depreciation and amortization allow-
 19 ances of the taxpayer for the taxable year with re-
 20 spect to qualified medical product manufacturing fa-
 21 cility property.

1 “(b) DENIAL OF DOUBLE BENEFIT.—Any wages or
 2 other expenses taken into account in determining the cred-
 3 it under this section may not be taken into account in de-
 4 termining the credit under sections 41, and any other pro-
 5 vision determined by the Secretary to be substantially
 6 similar.

7 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
 8 poses of this section—

9 “(1) ECONOMICALLY DISTRESSED ZONE
 10 WAGES.—

11 “(A) IN GENERAL.—The term ‘economi-
 12 cally distressed zone wages’ means amounts
 13 paid or incurred for wages during the taxable
 14 year which are—

15 “(i) in connection with the active con-
 16 duct of a trade or business of the taxpayer,
 17 and

18 “(ii) paid or incurred for an employee
 19 the principal place of employment of whom
 20 is in a qualified medical product manufac-
 21 turing facility of such taxpayer.

22 “(B) LIMITATION ON AMOUNT OF WAGES
 23 TAKEN INTO ACCOUNT.—

24 “(i) IN GENERAL.—The amount of
 25 wages which may be taken into account

1 under subparagraph (A) with respect to
2 any employee for any taxable year shall
3 not exceed the contribution and benefit
4 base determined under section 230 of the
5 Social Security Act for the calendar year
6 in which such taxable year begins.

7 “(ii) TREATMENT OF PART-TIME EM-
8 PLOYEES, ETC.—If—

9 “(I) any employee is not em-
10 ployed by the taxpayer on a substan-
11 tially full-time basis at all times dur-
12 ing the taxable year, or

13 “(II) the principal place of em-
14 ployment of any employee is not with-
15 in an economically distressed zone at
16 all times during the taxable year,
17 the limitation applicable under clause (i)
18 with respect to such employee shall be the
19 appropriate portion (as determined by the
20 Secretary) of the limitation which would
21 otherwise be in effect under clause (i).

22 “(C) TREATMENT OF CERTAIN EMPLOY-
23 EES.—The term ‘economically distressed zone
24 wages’ shall not include any wages paid to em-
25 ployees who are assigned by the employer to

1 perform services for another person, unless the
2 principal trade or business of the employer is to
3 make employees available for temporary periods
4 to other persons in return for compensation.

5 “(2) ALLOCABLE EMPLOYEE FRINGE BENEFIT
6 EXPENSES.—

7 “(A) IN GENERAL.—The term ‘allocable
8 employee fringe benefit expenses’ means the ag-
9 gregate amount allowable as a deduction under
10 this chapter to the taxpayer for the taxable year
11 for the following amounts which are allocable to
12 employment in a qualified medical product
13 manufacturing facility:

14 “(i) Employer contributions under a
15 stock bonus, pension, profit-sharing, or an-
16 nuity plan.

17 “(ii) Employer-provided coverage
18 under any accident or health plan for em-
19 ployees.

20 “(iii) The cost of life or disability in-
21 surance provided to employees.

22 “(B) ALLOCATION.—For purposes of sub-
23 paragraph (A), an amount shall be treated as
24 allocable to a qualified medical product manu-
25 facturing facility only if such amount is with re-

1 spect to employment of an individual for serv-
 2 ices provided, and the principal place of employ-
 3 ment of whom is, in such facility.

4 “(3) QUALIFIED MEDICAL PRODUCT MANUFAC-
 5 TURING FACILITY.—The term ‘qualified medical
 6 product manufacturing facility’ means any facility
 7 that—

8 “(A) researches and develops or produces
 9 medical products or essential components of
 10 medical products, and

11 “(B) is located within an economically dis-
 12 tressed zone.

13 “(4) QUALIFIED MEDICAL PRODUCT MANUFAC-
 14 TURING FACILITY PROPERTY.—The term ‘qualified
 15 medical product manufacturing facility property’
 16 means any property used in (or consisting of) a
 17 qualified medical product manufacturing facility if
 18 such property is directly connected to the research,
 19 development, or production of a medical product.

20 “(5) MEDICAL PRODUCT; ESSENTIAL COMPO-
 21 NENT.—

22 “(A) MEDICAL PRODUCT.—The term ‘med-
 23 ical product’ means—

24 “(i) a drug that—

1 “(I) is a prescription drug sub-
2 ject to regulation under section 505 of
3 the Federal Food, Drug, and Cos-
4 metic Act (21 U.S.C. 355) or section
5 351 of the Public Health Service Act
6 (42 U.S.C. 262);

7 “(II) is subject to regulation
8 under section 802 of the Federal
9 Food, Drug, and Cosmetic Act (21
10 U.S.C. 382); or

11 “(III) is described in section
12 201(jj) of such Act (21 U.S.C.
13 321(jj)); or

14 “(ii) a device, as defined in section
15 201(h) of such Act (21 U.S.C. 321(h)).

16 “(B) ESSENTIAL COMPONENT.—The term
17 ‘essential component’ means, with respect to a
18 medical product—

19 “(i) an active pharmaceutical ingre-
20 dient; or

21 “(ii) a protein, antibody, enzyme, hor-
22 mone, or other organic material that is an
23 active ingredient in a biological product.

24 “(6) AGGREGATION RULES.—

1 “(A) IN GENERAL.—For purposes of this
 2 section, members of an affiliated group shall be
 3 treated as a single taxpayer.

4 “(B) AFFILIATED GROUP.—The term ‘af-
 5 filiated group’ means an affiliated group (as de-
 6 fined in section 1504(a), determined without re-
 7 gard to section 1504(b)(3)) one or more mem-
 8 bers of which are engaged in the active conduct
 9 of a trade or business within an economically
 10 distressed zone.

11 **“SEC. 1400AA-2. CREDIT FOR ECONOMICALLY DISTRESSED**
 12 **ZONE PRODUCTS AND SERVICES ACQUIRED**
 13 **BY DOMESTIC MEDICAL PRODUCT MANUFAC-**
 14 **TURERS.**

15 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-
 16 gible medical product manufacturer, there shall be allowed
 17 as a credit against the tax imposed by subtitle A for the
 18 taxable year an amount equal to the applicable percentage
 19 of the aggregate amounts paid or incurred by the taxpayer
 20 during such taxable year for qualified products or services.

21 “(b) APPLICABLE PERCENTAGE.—For purposes of
 22 this section, the term applicable percentage means—

23 “(1) 30 percent in the case of amounts paid or
 24 incurred to persons not described in paragraph (2)
 25 or (3), and

1 “(2) 5 percent in the case of amounts paid or
2 incurred to a related person.

3 “(c) ELIGIBLE MEDICAL PRODUCT MANUFAC-
4 TURER.—For purposes of this section, the term ‘eligible
5 medical product manufacturer’ means any person in the
6 trade or business of producing medical products in the
7 United States.

8 “(d) QUALIFIED PRODUCT OR SERVICE.—For pur-
9 poses of this section, the term ‘qualified product or service’
10 means—

11 “(1) any product which is produced in an eco-
12 nomically distressed zone and which is integrated
13 into a medical product produced by the taxpayer,
14 and

15 “(2) any service which is provided in an eco-
16 nomically distressed zone and which is necessary to
17 the production of a medical product by the taxpayer
18 (including packaging).

19 “(e) RELATED PERSONS.—For purposes of this sec-
20 tion, persons shall be treated as related to each other if
21 such persons would be treated as a single employer under
22 the regulations prescribed under section 52(b).

23 “(f) OTHER TERMS.—Terms used in this section
24 which are also used in section 1400AA–1 shall have the
25 same meaning as when used in such section.

1 **“SEC. 1400AA-3. SPECIAL RULES TO SECURE THE NATIONAL**
 2 **SUPPLY CHAIN.**

3 “(a) IN GENERAL.—In the case of a qualified repatri-
 4 ated pharmaceutical manufacturing facility, section
 5 1400AA-1(a) shall be applied by substituting ‘60 percent’
 6 for ‘40 percent’.

7 “(b) ELECTION TO EXPENSE IN LIEU OF TAX CRED-
 8 IT FOR DEPRECIATION.—In the case of a taxpayer which
 9 elects (at such time and in such manner as the Secretary
 10 may provide) the application of this subsection with re-
 11 spect to any qualified repatriated medical product manu-
 12 facturing facility or qualified population health product
 13 manufacturing facility—

14 “(1) section 1400AA-1(a)(3) shall not apply
 15 with respect to any qualified medical product manu-
 16 facturing facility property with respect to such facil-
 17 ity, and

18 “(2) for purposes of section 168(k)—

19 “(A) such property shall be treated as
 20 qualified property, and

21 “(B) the applicable percentage with respect
 22 to such property shall be 100 percent.

23 “(c) QUALIFIED REPATRIATED MEDICAL PRODUCT
 24 MANUFACTURING FACILITY.—For purposes of this sec-
 25 tion, the term ‘qualified repatriated medical product man-
 26 ufacturing facility’ means any qualified medical product

1 manufacturing facility (as defined in section 1400AA–1)
 2 the production of which was moved to an economically dis-
 3 tressed zone from a foreign country that the United States
 4 Trade Representative has determined could pose a risk to
 5 the national supply chain because of political or social fac-
 6 tors.

7 **“SEC. 1400AA–4. DESIGNATION OF ECONOMICALLY DIS-**
 8 **TRESSED ZONES.**

9 “(a) IN GENERAL.—For purposes of this subchapter,
 10 the term ‘economically distressed zone’ means any popu-
 11 lation census tract within the United States which—

12 “(1) has a poverty rate of not less than 35 per-
 13 cent for each of the 5 most recent calendar years for
 14 which information is available, or

15 “(2) satisfies each of the following require-
 16 ments:

17 “(A) The census tract has pervasive pov-
 18 erty, unemployment, low labor force participa-
 19 tion, and general distress measured as a pro-
 20 longed period of economic decline measured by
 21 real gross national product.

22 “(B) The census tract has a poverty rate
 23 of not less than 30 percent for each of the 5
 24 most recent calendar years for which informa-
 25 tion is available.

1 “(C) The census tract has been designated
 2 as such by the Secretary and the Secretary of
 3 Commerce pursuant to an application under
 4 subsection (b).

5 “(b) APPLICATION FOR DESIGNATION.—

6 “(1) IN GENERAL.—An application for designa-
 7 tion as an economically distressed zone may be filed
 8 by a State or local government in which the popu-
 9 lation census tract to which the application applies
 10 is located.

11 “(2) REQUIREMENTS.—Such application shall
 12 include a strategic plan for accomplishing the pur-
 13 poses of this subchapter, which—

14 “(A) describes the coordinated economic,
 15 human, community, and physical development
 16 plan and related activities proposed for the
 17 nominated area,

18 “(B) describes the process by which the af-
 19 fected community is a full partner in the proc-
 20 ess of developing and implementing the plan
 21 and the extent to which local institutions and
 22 organizations have contributed to the planning
 23 process,

24 “(C) identifies the amount of State, local,
 25 and private resources that will be available in

1 the nominated area and the private/public part-
2 nerships to be used, which may include partici-
3 pation by, and cooperation with, universities,
4 medical centers, and other private and public
5 entities,

6 “(D) identifies the funding requested
7 under any Federal program in support of the
8 proposed economic, human, community, and
9 physical development and related activities,

10 “(E) identifies baselines, methods, and
11 benchmarks for measuring the success of car-
12 rying out the strategic plan, including the ex-
13 tent to which poor persons and families will be
14 empowered to become economically self-suffi-
15 cient, and

16 “(F) does not include any action to assist
17 any establishment in relocating from one area
18 outside the nominated area to the nominated
19 area, except that assistance for the expansion of
20 an existing business entity through the estab-
21 lishment of a new branch, affiliate, or sub-
22 sidiary is permitted if—

23 “(i) the establishment of the new
24 branch, affiliate, or subsidiary will not re-
25 sult in a decrease in employment in the

1 area of original location or in any other
2 area where the existing business entity
3 conducts business operations,

4 “(ii) there is no reason to believe that
5 the new branch, affiliate, or subsidiary is
6 being established with the intention of clos-
7 ing down the operations of the existing
8 business entity in the area of its original
9 location or in any other area where the ex-
10 isting business entity conducts business op-
11 eration, and

12 “(iii) includes such other information
13 as may be required by the Secretary and
14 the Secretary of Commerce.

15 “(c) PERIOD FOR WHICH DESIGNATIONS ARE IN EF-
16 FECT.—Designation as an economically distressed zone
17 may be made at any time during the 10-year period begin-
18 ning on the date of the enactment of this section, and shall
19 remain in effect with respect to such zone during the 15-
20 year period beginning on the date of such designation.
21 Economically distressed zones described in subsection
22 (a)(1) shall take effect on the date of the enactment of
23 this Act and shall remain in effect during the 15-year pe-
24 riod beginning on such date.

1 “(d) TERRITORIES AND POSSESSIONS.—The term
 2 ‘United States’ includes the 50 States, the District of Co-
 3 lumbia, and the territories and possessions of the United
 4 States.

5 “(e) REGULATIONS.—The Secretary shall issue such
 6 regulations or other guidance as may be necessary or ap-
 7 propriate to carry out the purposes of this section, includ-
 8 ing—

9 “(1) not later than 30 days after the date of
 10 the enactment of this section, a list of the population
 11 census tracts described in subsection (a)(1), and

12 “(2) not later than 60 days after the date of
 13 the enactment of this section, regulations or other
 14 guidance regarding the designation of population
 15 census tracts described in subsection (a)(2).”.

16 (b) CLERICAL AMENDMENT.—The table of sub-
 17 chapters for chapter 1 of the Internal Revenue Code of
 18 1986 is amended by adding at the end the following new
 19 item:

“SUBCHAPTER AA—MEDICAL PRODUCT MANUFACTURING IN ECONOMICALLY
 DISTRESSED ZONES”.

20 (c) EFFECTIVE DATE.—The amendments made by
 21 this section shall apply to taxable years beginning after
 22 December 31, 2019.

1 **SEC. 3. REPORT ON NEED FOR INCENTIVIZING DEVELOP-**
2 **MENT OF THERAPIES.**

3 Not later than 90 days after the date of enactment
4 of this Act, the Secretary of Health and Human Services
5 shall examine and report to the Congress on—

6 (1) the extent to which the health of aging indi-
7 viduals in the United States, African Americans,
8 Hispanics, Native Americans, veterans, or other vul-
9 nerable populations in the United States has been
10 disproportionately harmed by the COVID–19 pan-
11 demic and prior epidemics and pandemics;

12 (2) the therapies currently available, and
13 whether there is a need for additional innovation
14 and development to produce therapies, to reduce the
15 exposure of vulnerable populations in the United
16 States to risk of disproportionate harm in epidemics
17 and pandemics; and

18 (3) whether the Secretary recommends pro-
19 viding the same incentives for the development and
20 marketing of therapies described in paragraph (2) as
21 is provided under the Federal Food, Drug, and Cos-
22 metic Act (21 U.S.C. 301 et seq.) with respect to
23 qualified infectious disease products designated
24 under section 505E(d) of such Act (21 U.S.C.
25 355f(d)).

