

118TH CONGRESS
1ST SESSION

S. 28

To amend the Internal Revenue Code of 1986 to provide a partially refundable credit against payroll taxes for certain restaurants affected by the COVID–19 pandemic.

IN THE SENATE OF THE UNITED STATES

JANUARY 24 (legislative day, JANUARY 3), 2023

Mr. CARDIN (for himself, Mr. BROWN, Mrs. MURRAY, and Mr. MARKEY) 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 partially refundable credit against payroll taxes for certain restaurants affected by the COVID–19 pandemic.

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 “Restaurant Revitaliza-
5 tion Tax Credit Act”.

6 **SEC. 2. RESTAURANT REVITALIZATION CREDIT.**

7 (a) IN GENERAL.—Subchapter D of chapter 21 of
8 subtitle C of the Internal Revenue Code of 1986 is amend-
9 ed by adding at the end the following new section:

1 **“SEC. 3135. RESTAURANT REVITALIZATION CREDIT.**

2 “(a) IN GENERAL.—In the case of an eligible em-
3 ployer, there shall be allowed as a credit against applicable
4 employment taxes for each calendar quarter an amount
5 equal to 100 percent of the wages with respect to each
6 employee of such employer for such calendar quarter.

7 “(b) LIMITATIONS AND REFUNDABILITY.—

8 “(1) IN GENERAL.—The aggregate amount of
9 wages which may be taken into account under sub-
10 section (a) by the eligible employer for any calendar
11 quarter shall not exceed \$25,000.

12 “(2) CREDIT LIMITED TO EMPLOYMENT
13 TAXES.—The credit allowed by subsection (a) with
14 respect to any calendar quarter shall not exceed the
15 applicable employment taxes (reduced by any credits
16 allowed under subsections (e) and (f) of section
17 3111) on the wages paid with respect to the employ-
18 ment of all the employees of the eligible employer for
19 such calendar quarter. For purposes of the pre-
20 ceding sentence, the credit allowed under subsection
21 (a) shall be applied first against applicable employ-
22 ment taxes described in subsection (c)(1)(A).

23 “(3) PARTIAL REFUNDABILITY OF EXCESS
24 CREDIT.—

25 “(A) IN GENERAL.—If the amount of the
26 credit under subsection (a) exceeds the limita-

1 tion of paragraph (2), so much of such excess
 2 as does not exceed the applicable employer re-
 3 fund limitation shall be treated as an overpay-
 4 ment that shall be refunded under sections
 5 6402(a) and 6413(b).

6 “(B) APPLICABLE EMPLOYER REFUND
 7 LIMITATION.—For purposes of subparagraph
 8 (A), the applicable employer refund limitation is
 9 the excess of—

10 “(i) \$25,000, over

11 “(ii) the amount of credit treated as
 12 an overpayment of the eligible employer by
 13 reason of this paragraph for all preceding
 14 calendar quarters.

15 “(C) REDUCTION BASED ON NUMBER OF
 16 EMPLOYEES.—In the case of any eligible em-
 17 ployer for which the average number of full-
 18 time employees (within the meaning of section
 19 4980H) employed by such eligible employer
 20 during the last calendar quarter of 2022
 21 (rounded to the nearest multiple of 1) exceeds
 22 10, the \$25,000 dollar amount under subpara-
 23 graph (A)(ii)(I) shall be reduced (but not below
 24 zero) by the product of such excess and \$2,500.

25 “(c) DEFINITIONS.—For purposes of this section—

1 “(1) APPLICABLE EMPLOYMENT TAXES.—The
2 term ‘applicable employment taxes’ means the fol-
3 lowing:

4 “(A) The taxes imposed under section
5 3111(a).

6 “(B) The taxes imposed under section
7 3111(b).

8 “(2) ELIGIBLE EMPLOYER.—

9 “(A) IN GENERAL.—The term ‘eligible em-
10 ployer’ means any employer—

11 “(i) which is an eligible entity (as de-
12 fined in section 5003(a) of the American
13 Rescue Plan Act of 2021) which—

14 “(I) was established before
15 March 14, 2020,

16 “(II) submitted an application
17 for a grant under section 5003(c) of
18 such Act in accordance with the pro-
19 cedures established by the Adminis-
20 trator of the Small Business Adminis-
21 tration under such section,

22 “(III) certifies to the Secretary
23 (in such form and manner as the Sec-
24 retary requires) that such employer

1 was eligible for a grant under such
2 section, and

3 “(IV) did not receive any grant
4 funds under such section due to a lack
5 of funding,

6 “(ii) which paid applicable employ-
7 ment taxes with respect to pay periods oc-
8 ccurring in at least 2 calendar quarters of
9 calendar year 2021, and

10 “(iii) which meets the gross receipts
11 test of subparagraph (B).

12 “(B) GROSS RECEIPTS TEST.—An em-
13 ployer meets the gross receipts test of this sub-
14 paragraph if—

15 “(i) the gross receipts of such em-
16 ployer for any applicable calendar year
17 were less than 50 percent the gross re-
18 ceipts of such employer for calendar year
19 2019, or

20 “(ii) the average gross receipts of
21 such employer for all applicable calendar
22 years were less than 70 percent the gross
23 receipts of such employer for the calendar
24 year 2019.

1 “(C) APPLICABLE CALENDAR YEAR.—For
2 purposes of this paragraph, the term ‘applicable
3 calendar year’ means any of the following:

4 “(i) Calendar year 2020.

5 “(ii) Calendar year 2021.

6 “(D) SPECIAL RULE FOR EMPLOYERS NOT
7 IN EXISTENCE FOR ENTIRETY OF 2019.—In the
8 case of any employer that was in existence be-
9 fore January 1, 2020, but not in existence on
10 January 1, 2019, the amount of gross receipts
11 taken into account for any applicable calendar
12 year shall be the amount of such gross receipts
13 (determined without regard to this clause) mul-
14 tiplied by the ratio of—

15 “(i) the number of days during 2019
16 during which such employer was in exist-
17 ence, to

18 “(ii) 365.

19 “(E) SPECIAL RULE FOR EMPLOYERS NOT
20 IN EXISTENCE BEFORE 2020.—In the case of
21 any employer that was not in existence before
22 January 1, 2020, in applying this paragraph—

23 “(i) the amount of gross receipts for
24 calendar year 2019 shall be equal to the
25 product of—

1 “(I) the amount of gross receipts
2 for the period beginning on the date
3 the employer was established and end-
4 ing before March 14, 2020, and

5 “(II) the ratio of 366 to the
6 number of days in the period de-
7 scribed in subclause (I), and

8 “(ii) the amount of gross receipts for
9 calendar year 2020 shall be equal to the
10 product of—

11 “(I) the amount of gross receipts
12 for the period beginning after March
13 13, 2020, and ending on December
14 31, 2020, and

15 “(II) the ratio of 366 to the
16 number of days in the period de-
17 scribed in subclause (I).

18 “(3) WAGES.—

19 “(A) IN GENERAL.—The term ‘wages’ has
20 the meaning given such term under section
21 3121(a), determined without regard to para-
22 graph (1) thereof.

23 “(B) EXCEPTION.—Such term shall not in-
24 clude any wages taken into account under sec-
25 tions 41, 45A, 45P, 45S, 51, and 1396.

1 “(4) OTHER TERMS.—Any term used in this
2 section which is also used in this chapter shall have
3 the same meaning as when used in this chapter.

4 “(d) AGGREGATION RULE.—All persons treated as a
5 single employer under subsection (a) or (b) of section 52,
6 or subsection (m) or (o) of section 414, shall be treated
7 as one employer for purposes of this section.

8 “(e) ELECTION TO NOT TAKE CERTAIN WAGES
9 INTO ACCOUNT.—This section shall not apply to so much
10 of the wages paid by an eligible employer as such employer
11 elects (at such time and in such manner as the Secretary
12 may prescribe) to not take into account for purposes of
13 this section.

14 “(f) THIRD PARTY PAYORS.—Any credit allowed
15 under this section shall be treated as a credit described
16 in section 3511(d)(2).

17 “(g) TREATMENT OF DEPOSITS.—The Secretary
18 shall waive any penalty under section 6656 for any failure
19 to make a deposit of any applicable employment taxes if
20 the Secretary determines that such failure was due to the
21 reasonable anticipation of the credit allowed under this
22 section.

23 “(h) EXTENSION OF LIMITATION ON ASSESSMENT.—
24 Notwithstanding section 6501, the limitation on the time
25 period for the assessment of any amount attributable to

1 a credit claimed under this section shall not expire before
2 the date that is 5 years after the later of—

3 “(1) the date on which the original return
4 which includes the calendar quarter with respect to
5 which such credit is determined is filed, or

6 “(2) the date on which such return is treated
7 as filed under section 6501(b)(2).

8 “(i) REGULATIONS AND GUIDANCE.—The Secretary
9 shall issue such forms, instructions, regulations, and other
10 guidance as are necessary—

11 “(1) with respect to the application of the cred-
12 it under subsection (a) to third party payors (includ-
13 ing professional employer organizations, certified
14 professional employer organizations, or agents under
15 section 3504), including regulations or guidance al-
16 lowing such payors to submit documentation nec-
17 essary to substantiate the eligible employer status of
18 employers that use such payors, and

19 “(2) to prevent the avoidance of the purposes of
20 the limitations under this section, including through
21 the leaseback of employees.

22 Any forms, instructions, regulations, or other guidance de-
23 scribed in paragraph (1) shall require the customer to be
24 responsible for the accounting of the credit and for any
25 liability for improperly claimed credits and shall require

1 the certified professional employer organization or other
2 third party payor to accurately report such tax credits
3 based on the information provided by the customer.

4 “(j) APPLICATION.—This section shall only apply to
5 wages paid after December 31, 2022, and before January
6 1, 2024.”.

7 (b) REFUNDS.—Paragraph (2) of section 1324(b) of
8 title 31, United States Code, is amended by inserting
9 “3135,” after “3134,”.

10 (c) CLERICAL AMENDMENT.—The table of sections
11 for subchapter D of chapter 21 of subtitle C of the Inter-
12 nal Revenue Code of 1986 is amended by adding at the
13 end the following:

“Sec. 3135. Restaurant revitalization credit.”.

14 (d) COORDINATION WITH SMALL BUSINESS ADMIN-
15 ISTRATION.—The Administrator of the Small Business
16 Administration shall coordinate with and provide informa-
17 tion to the Secretary of the Treasury (or the Secretary’s
18 delegate) to assist in identifying employers that are eligi-
19 ble for the credit allowed by section 3135 of the Internal
20 Revenue Code of 1986, as added by this section.

21 (e) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to calendar quarters beginning
23 after December 31, 2022.

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