116TH CONGRESS
2D Session

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To amend the CARES Act to modify the employee retention tax credit to secure the paychecks and benefits of workers, to provide a refundable credit against payroll taxes for the operating costs of employers, to amend the Internal Revenue Code of 1986 to provide a small business rebate, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WARNER (for himself, Mr. SANDERS, Mr. JONES, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the CARES Act to modify the employee retention tax credit to secure the paychecks and benefits of workers, to provide a refundable credit against payroll taxes for the operating costs of employers, to amend the Internal Revenue Code of 1986 to provide a small business rebate, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, ETC.

(a) Short Title.—This Act may be cited as the “Paycheck Security Act”.

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(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title, etc.

TITLE I—EMPLOYER CREDITS

Sec. 101. Paycheck security credit.
Sec. 102. Credit for employer operating expenses.
Sec. 103. Advance payments of credits.
Sec. 104. Administration.
Sec. 105. Public disclosure.
Sec. 106. Employee notification.

TITLE II—SMALL BUSINESS REBATE

Sec. 201. Small business rebate.

TITLE III—OTHER PROVISIONS

Sec. 301. Additional appropriations for Department of Treasury.
Sec. 302. GAO report.

3 TITLE I—EMPLOYER CREDITS

4 SEC. 101. PAYCHECK SECURITY CREDIT.

(a) AMOUNT OF CREDIT.—Section 2301(a) of the CARES Act is amended—

(1) by striking “In the case of” and inserting the following:

“(1) ALLOWANCE OF CREDIT.—In the case of”,

(2) by striking “an amount equal to 50 per-
cent” and inserting “an amount equal to the sum of—

“(A) 100 percent”,

(3) by striking the period at the end and insert-
ing “, plus

“(B) in the case of an eligible employer for which the average number of full-time employ-
ees (within the meaning of section 4980H of the Internal Revenue Code of 1986) employed by such eligible employer during 2019 was not greater than 100, 50 percent of all other wages with respect to each employee of such employer for the calendar quarter.”, and

(4) by adding at the end the following new paragraph:

“(2) PHASEOUT.—In the case of an eligible employer for which the gross receipts for the calendar quarter exceed 80 percent of gross receipts for the same calendar quarter in the prior year, the amount of credit allowed under paragraph (1) (determined without regard to this paragraph) shall be reduced (but not below zero) by an amount that bears the same ratio to such amount of credit as—

“(A) the excess of—

“(i) 85 percent, over

“(ii) the percentage by which the taxpayer’s gross receipts for the calendar quarter exceed the taxpayer’s gross receipts for the same calendar quarter in the prior year, bears to

“(B) 5 percent.”.
(b) Modification of Limitation.—Section 2301(b)(1) of the CARES Act is amended by striking “for all calendar quarters shall not exceed $10,000” and inserting “shall not exceed—

“(A) $22,500 for any calendar quarter, or
“(B) $90,000 for all calendar quarters.”.

(c) Definition of Eligible Employer.—Section 2301(c)(2) of the CARES Act is amended to read as follows:

“(2) Eligible employer.—

“(A) In general.—The term ‘eligible employer’ means any employer—

“(i) which was carrying on a trade or business during calendar year 2020,
“(ii) which meets the requirements of subparagraph (B),
“(iii) with respect to any calendar quarter, for which the gross receipts (within the meaning of section 448(c) of the Internal Revenue Code of 1986) for the calendar quarter are less than 85 percent of gross receipts for the same calendar quarter in the prior year.
“(B) Requirements.—An employer meets the requirements of this subparagraph if such employer—

“(i) did not have gross receipts for the last taxable year ending in 2019 of more than $1,000,000,000, and

“(ii) did not have on hand on March 1, 2020, cash and cash equivalents of more than an amount equal to 150 percent of the wages paid by the employer during calendar year 2019.

“(C) Tax-exempt organizations.—In the case of an organization which is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code—

“(i) subparagraph (A)(i) shall apply to all operations of such organization, and

“(ii) any reference in this section to gross receipts shall be treated as a reference to gross receipts within the meaning of section 6033 of such Code.

“(D) Exceptions.—The term ‘eligible employer’ shall not include—
“(i) any employer that is a debtor in a case under chapter 7 of title 11, United States Code, during the calendar quarter, or

“(ii) any covered entity (as defined in section 4019).”.

(d) Determination of Qualified Wages.—

(1) In general.—Section 2301(c)(3) of the CARES Act is amended to read as follows:

“(3) Qualified wages.—

“(A) In general.—The term ‘qualified wages’ means wages paid with respect to any period during the calendar quarter in which an employee is not providing services. Such term shall not include any wages taken into account under section 7001 or section 7003 of the Families First Coronavirus Response Act.

“(B) Limitation.—Qualified wages paid or incurred by an eligible employer with respect to an employee for any period described in sub-paragraph (A) may not exceed the greater of—

“(i) $600 per week, or

“(ii) the amount such employee would have been paid (including tips which would have been deemed to be paid by the em-
ployer under section 3121(q)) for working an equivalent duration during the 30 days immediately preceding such period.”.

(2) HEALTH PLAN EXPENSES.—Section 2301(c)(5) of such Act is amended to read as follows:

“(5) WAGES.—

“(A) IN GENERAL.—The term ‘wages’ means wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) and compensation (as defined in section 3231(e) of such Code).

“(B) ALLOWANCE FOR CERTAIN HEALTH PLAN EXPENSES.—

“(i) IN GENERAL.—Such term shall include amounts paid or incurred by the eligible employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a) of such Code.

“(ii) ALLOCATION RULES.—For purposes of this section, amounts treated as
wages under clause (i) shall be treated as
paid with respect to any employee (and
with respect to any period) to the extent
that such amounts are properly allocable to
such employee (and to such period) in such
manner as the Secretary may prescribe.
Except as otherwise provided by the Sec-
retary, such allocation shall be treated as
properly made if made on the basis of
being pro rata among periods of cov-

(e) CERTAIN GOVERNMENTAL EMPLOYEES ELIGIBLE
FOR CREDIT.—

(1) IN GENERAL.—Section 2301(f) of the
CARES Act is amended to read as follows:

“(f) CERTAIN GOVERNMENTAL EMPLOYERS.—

“(1) IN GENERAL.—The credit under this sec-
tion 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.

“(3) SPECIAL RULES.—In the case of any State
government, Indian tribal government, or any agen-
cy, instrumentality, or political subdivision of the
foregoing—

“(A) clauses (i) of subsection (c)(2)(A)
shall apply to all operations of such entity, and

“(B) clauses (ii) and (iii) of subsection
(c)(2)(A) shall not apply.”.

(2) Coordination with application of cer-
tain definitions.—

(A) In general.—Section 2301(c)(5)(A)
of the CARES Act, as amended by the pre-
ceding provisions of this Act, is amended by
adding at the end the following: “For purposes
of the preceding sentence (other than for pur-
poses of subsection (b)(2)), wages as defined in
section 3121(a) of the Internal Revenue Code
of 1986 shall be determined without regard to
paragraphs (1), (5), (6), (7), (8), (10), (13),
(18), (19), and (22) of section 3212(b) of such
Code (except with respect to services performed
in a penal institution by an inmate thereof).”.

(B) Conforming amendments.—Sec-
tions 2301(c)(6) of the CARES Act is amended
by striking “Any term” and inserting “Except
as otherwise provided in this section, any
term”.

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(f) Coordination with Paycheck Protection Program.—

(1) Amendment to Paycheck Protection Program.—Section 1106(a)(8) of the Cares Act is amended by inserting “, except that such costs shall not include qualified wages taken into account in determining the credit allowed under section 2301 of this Act” before the period at the end.

(2) Amendments to Employee Retention Tax Credit.—

(A) In general.—Section 2301(g) of the CARES Act is amended to read as follows:

“(g) Election to not take certain wages into account.—

“(1) In general.—This section shall not apply to qualified wages paid by an eligible employer with respect to which such employer makes an election (at such time and in such manner as the Secretary may prescribe) to have this section not apply to such wages.

“(2) Coordination with Paycheck Protection Program.—The Secretary, in consultation with the Administrator of the Small Business Administration, shall issue guidance providing that payroll costs paid or incurred during the covered pe-
period shall not fail to be treated as qualified wages under this section by reason of an election under paragraph (1) to the extent that a covered loan of the eligible employer is not forgiven by reason of a decision under section 1106(g). Terms used in the preceding sentence which are also used in section 1106 shall have the same meaning as when used in such section.”.

(B) CONFORMING AMENDMENT.—Section 2301 of the CARES Act is amended by striking subsection (j).

(g) DENIAL OF DOUBLE BENEFIT.—Section 2301(h) of the CARES Act is amended—

(1) by striking paragraphs (1) and (2) and inserting the following:

“(1) DENIAL OF DOUBLE BENEFIT.—Any wages taken into account in determining the credit allowed under this section shall not be taken into account as wages for purposes of sections 45A, 45B, 45P, 45S, 51, and 1396 of the Internal Revenue Code of 1986.”, and

(2) by redesignating paragraph (3) as paragraph (2).

(h) RECAPTURE AND ADVANCEMENT OF CREDIT.—Section 2301 of the CARES Act is amended by redesig-
nating subsections (l) and (m) as subsections (o) and (p), respectively, and by inserting after subsection (k) the follow-

"(l) Recapture.—

“(1) In general.—In any case in which an eligi-
gible employer which has been allowed a credit under this section for any calendar quarter takes any action described in paragraph (2) during the 1-
year period beginning on the day after the end of such calendar quarter, the tax imposed by chapter 21 or 22 of the Internal Revenue Code of 1986 (whichever is applicable) for the calendar quarter in which such action occurs shall be increased by the amount of the credit so allowed.

“(2) Actions described.—The following actions are described in this paragraph:

“(A) Returns of capital.—The eligible employer purchases its own stock or otherwise distributes capital (including through a dividend).

“(B) Labor negotiations.—The eligible employer—

“(i) abrogates a collective bargaining agreement, or
“(ii) does not remain neutral in any
union organizing effort.

“(C) PAYROLL.—The eligible employer
pays any officer or employee a salary in an
amount that is greater than 50 times the me-
dian salary of employees during the period last-
ing one year after the end of the calendar quar-
ter in which credit is claimed.

“(3) LIMITATION.—The amount of tax imposed
under paragraph (1) with respect to any calendar
quarter for all actions described in paragraph (2)
shall not exceed the amount allowed as a credit
under this section with respect to such calendar
quarter.

“(m) COORDINATION WITH ADVANCE REFUNDS OF
CREDIT.—

“(1) IN GENERAL.—The amount of credit
which would (but for this subsection) be allowed
under this section shall be reduced (but not below
zero) by the aggregate refunds and credits made or
allowed to the taxpayer under section 103 of the
Paycheck Security Act by reason of this section. Any
failure to so reduce the credit shall be treated as
arising out of a mathematical or clerical error and
assessed according to section 6213(b)(1) of the Internal Revenue Code of 1986.

“(2) EXCESS ADVANCE PAYMENTS.—If the advance payments to a taxpayer under section 103 of the Paycheck Security Act by reason of this section for a calendar quarter exceed the credit allowed by this section (determined without regard to paragraph (1)), the tax imposed by chapter 21 or 22 of the Internal Revenue Code of 1986 (whichever is applicable) for the calendar quarter shall be increased by the amount of such excess.”.

(i) REGULATIONS AND GUIDANCE.—Section 2301(o) of the CARES Act, as redesignated by subsection (h), is amended—

(1) by striking paragraphs (1), (2), and (3), and inserting the following:

“(1) to require employers allowed a credit under this section to report information relevant to actions described in subsection (l)(2),”.

(2) by redesignating paragraphs (4) and (5) as paragraphs (2) and (3), respectively, and

(3) in paragraph (3), as so redesignated, by striking “subparagraphs (A)(ii) and (B) of subsection (c)(2)” and inserting “subsections (a)(2) and (c)(2)(A)(iv)”. 
(j) Effective Date.—The amendments made by this section shall apply to wages paid in calendar quarters beginning after the date of the enactment of this Act.

SEC. 102. CREDIT FOR EMPLOYER OPERATING EXPENSES.

(a) In General.—

(1) Allowance of credit.—In the case of an eligible employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to the lesser of—

(A) 5 percent of the qualifying gross receipts of the eligible employer, or

(B) $500,000.

(2) Phaseout.—In the case of an eligible employer for which the gross receipts for the calendar quarter exceed 80 percent of gross receipts for the same calendar quarter in the prior year, the amount of determined under paragraph (1)(A) (determined without regard to this paragraph) shall be reduced (but not below zero) by an amount that bears the same ratio to such amount as—

(A) the excess of—

(i) 85 percent, over

(ii) the percentage by which the taxpayer’s gross receipts for the calendar quarter exceed the taxpayer’s gross re-
receipts for the same calendar quarter in the prior year, bears to

(B) 5 percent.

(b) LIMITATIONS AND REFUNDABILITY.—

(1) CREDIT LIMITED TO EMPLOYMENT TAXES.—The credit allowed under subsection (a) with respect to any calendar quarter shall not exceed the applicable employment taxes (reduced by any credits allowed under subsections (e) and (f) of section 3111 of the Internal Revenue Code of 1986, sections 7001 and 7003 of the Families First Coronavirus Response Act, and section 2301 of the CARES Act) on the wages paid with respect to the employment of all the employees of the eligible employer for such calendar quarter.

(2) REFUNDABILITY OF EXCESS CREDIT.—

(A) IN GENERAL.—If the amount of the credit under subsection (a) (determined without regard to paragraph (1)) exceeds the limitation of paragraph (1) 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 the 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.

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

(1) APPLICABLE EMPLOYMENT TAXES.—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.

(2) ELIGIBLE EMPLOYER.—The term “eligible employer” means an employer which—

(A) is an eligible employer (as defined in section 2301(c)(2) of the CARES Act, determined without regard to subparagraph (A)(ii) thereof), and

(B) with respect to any calendar quarter, meets the gross receipts test of section 448(c) (determined by substituting “$41,500,000” for “$25,000,000” in paragraph (1) thereof) for
the taxable year that includes the first day of
the calendar quarter.

For purposes of subparagraph (B), in the case of
any taxpayer which is not a corporation or a part-
nership, the gross receipts test of section 448(c)
shall be applied in the same manner as if such tax-
payer were a corporation or partnership.

(3) QUALIFYING GROSS RECEIPTS.—The term
“qualifying gross receipts” means the aggregate
gross receipts of the eligible employer for the last
taxable year ending before the date of the enactment
of this Act.

(4) GROSS RECEIPTS.—

(A) IN GENERAL.—The term “gross re-
cceipts” has the meaning given such term under
section 448(c) of the Internal Revenue Code of
1986.

(B) TAX-EXEMPT ORGANIZATIONS.—In the
case of an organization which is described in
section 501(c) of the Internal Revenue Code of
1986 and exempt from tax under section 501(a)
of such Code, any reference in this section to
gross receipts shall be treated as a reference to
gross receipts within the meaning of section
(5) SECRETARY.—The term “Secretary” means
the Secretary of the Treasury or the Secretary’s del-
egate.

(d) OTHER RULES.—For purposes of this section—

(1) AGGREGATION RULE.—All persons treated
as a single employer under subsection (a) or (b) of
section 52 of the Internal Revenue Code of 1986, or
subsection (m) or (o) of section 414 of such Code,
shall be treated as one employer.

(2) CERTAIN GOVERNMENTAL EMPLOYERS.—
This credit shall not apply to the Government of the
United States, the government of any State or polit-
ical subdivision thereof, or any agency or instrumen-
tality of any of the foregoing.

(3) ELECTION NOT TO HAVE SECTION APPLY.—
This section shall not apply with respect to any eligi-
ble employer for any calendar quarter if such em-
ployer elects (at such time and in such manner as
the Secretary may prescribe) not to have this section
apply.

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

(e) TRANSFERS TO FEDERAL OLD-AGE AND SUR-
vivors INSURANCE TRUST FUND.—There are hereby ap-
propriated 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. 14 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.

(f) TREATMENT OF DEPOSITS.—The Secretary shall waive any penalty under section 6656 of the Internal Revenue Code of 1986 for any failure to make a deposit of any applicable employment taxes if the Secretary determines that such failure was due to the reasonable anticipation of the credit allowed under this section.

(g) RECAPTURE.—

(1) IN GENERAL.—In any case in which an eligible employer which has been allowed a credit under this section for any calendar quarter takes any action described in section 2301(l)(2) of the
CARES Act during the 1-year period beginning on
the day after the end of such calendar quarter, the
tax imposed by chapter 21 or 22 of the Internal
Revenue Code of 1986 (whichever is applicable) for
the calendar quarter in which such action occurs
shall be increased by the amount of the credit so al-
lowed.

(2) LIMITATION.—The amount of tax imposed
under paragraph (1) with respect to any calendar
quarter for all actions described in section
2301(l)(2) of the CARES Act shall not exceed the
amount allowed as a credit under this section with
respect to such calendar quarter.

(h) COORDINATION WITH ADVANCE REFUNDS OF
CREDIT.—The amount of credit which would (but for this
subsection) be allowed under this section shall be reduced
(but not below zero) by the aggregate refunds and credits
made or allowed to the taxpayer under section 103 by rea-
son of this section. Any failure to so reduce the credit shall
be treated as arising out of a mathematical or clerical
error and assessed according to section 6213(b)(1) of the

(i) CREDIT TREATED AS INCOME.—For purposes of
the Internal Revenue Code of 1986, the amount allowed
as a credit under this section for any calendar quarter
shall be included in income of the employer for the taxable year that includes the last day of the calendar quarter.

(j) Regulations and Guidance.—The Secretary shall issue such forms, instructions, regulations, and guidance as are necessary—

(1) to require employers allowed a credit under this section to report information relevant to actions described in subsection (g)(1),

(2) with respect to the application of the credit under subsection (a) to third party payors (including professional employer organizations, certified professional employer organizations, or agents under section 3504 of the Internal Revenue Code of 1986), including regulations or guidance allowing such payors to submit documentation necessary to substantiate the eligible employer status of employers that use such payors, and

(3) for application of subsections (a)(2) in the case of any employer which was not carrying on a trade or business for all or part of the same calendar quarter in the prior year.

(k) Application.—This section shall only apply to calendar quarters beginning after the date of the enactment of this Act and before January 1, 2020.
SEC. 103. ADVANCE PAYMENTS OF CREDITS.

(a) IN GENERAL.—The Secretary of the Treasury (or the Secretary’s delegate) shall establish a program under which an employer may elect to receive an advance payment of—

(1) the credit allowable under section 2301 of the CARES Act, and

(2) the credit allowable under section 102.

The employer shall designate the amount of any advance payment made under this section which is made by reason of each credit described in the preceding sentence.

(b) LIMITATIONS.—

(1) LIMITATION ON AMOUNT OF PAYMENT.—

The aggregate amount of advance payments under this section with respect to any calendar quarter shall not exceed the deemed credit amount.

(2) LIMITATION ON NUMBER OF ADVANCES.—

An employer may not make an election under the program established under subsection (a) with respect to more than 2 calendar quarters in any calendar year.

(c) DEEMED CREDIT AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term “deemed credit amount” means the sum of—
(A) the average quarterly wages (as defined in section 2301 of the CAREs Act) paid by the taxpayer in calendar year 2019, plus

(B) 5 percent of the qualifying gross receipts (as defined in section 102(c)(3)) of the taxpayer.

(2) Special rule for seasonal employers.—In the case of any employer who employs seasonal workers (as defined in section 45R(d)(5)(B) of the Internal Revenue Code of 1986), the employer may elect to use the wages (as defined in section 2301 of the CARES Act) for the calendar quarter in 2019 which corresponds to the calendar quarter to which the election relates in lieu of the amount described in paragraph (1)(A).

SEC. 104. ADMINISTRATION.

(a) Priority.—In carrying out the provisions of section 2301 of the CARES Act and sections 3 and 4, the Secretary of the Treasury (or the Secretary’s delegate) shall prioritize businesses with 100 or fewer employees.

(b) Audits.—In enforcing the requirements section 2301 of the CARES Act and sections 3 and 4, the Secretary of the Treasury (or the Secretary’s delegate) shall prioritize employers with gross receipts for the last taxable year ending in 2019 of $1,000,000,000 or more.
SEC. 105. PUBLIC DISCLOSURE.

(a) QUARTERLY REPORTS.—Not later than 60 days after the date of the enactment of this Act, and once every calendar quarter thereafter, the Treasury Inspector General for Tax Administration shall make publicly available a report on the provisions of this Act, including—

(1) A listing of each eligible employer that was allowed the credit under section 2301 of the CARES Act and the number of employees taken into account in determining the amount of such credit.

(2) A listing of each eligible employer that was allowed the credit under section 102.

(3) The aggregate amount of advance payments provided to each eligible employer under section 103.

(4) The aggregate amount of credits recaptured from each eligible employer under each of the following provisions—

(A) Section 2301(l) of the CARES Act and section 102(g).

(B) Section 2301(m)(2) of the CARES Act.

(b) CONFORMING AMENDMENT.—Section 6103(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(23) DISCLOSURE OF RETURN INFORMATION RELATING TO PAYCHECK SECURITY CREDITS.—The
Treasury Inspector General for Tax Administration shall disclose to the public taxpayer information required under section 105 of the Paycheck Security Act.”

SEC. 106. EMPLOYEE NOTIFICATION.

(a) In General.—Each employer shall post and keep posted on its website (if any) and in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Secretary of Labor, of the credits allowed to employers under section 2301 of the CARES Act and section 102.

(b) Model Notice.—Not later than 7 days after the date of enactment of this Act, the Secretary of Labor shall make publicly available a model of notice that meets the requirements of subsection (a).

TITLE II—SMALL BUSINESS REBATE

SEC. 201. SMALL BUSINESS REBATE.

(a) In General.—Subchapter B of chapter 65 of subtitle F of the Internal Revenue Code of 1986 is amended by inserting after section 6428 the following new section:

“SEC. 6429. SMALL BUSINESS REBATE.

“(a) ALLOWANCE OF CREDIT.—
“(1) IN GENERAL.—In the case of a qualifying taxpayer, there shall be allowed as a credit against the tax imposed by subtitle A for the first taxable year beginning in 2020 an amount equal to the lesser of—

“(A) 30 percent of qualified gross profits of such qualifying taxpayer for the applicable taxable year, or

“(B) $75,000.

“(2) PHASE-OUT FOR INDIVIDUALS.—In the case of a qualifying taxpayer that is a qualified individual, the amount of the credit determined under paragraph (1) (determined without regard to this paragraph) shall be reduced (but not below zero) by the amount which bears the same ratio to such credit (as so determined) as—

“(A) the excess of—

“(i) the taxpayer’s adjusted gross income for the applicable taxable year, over

“(ii) $100,000 ($200,000 in the case of a joint return), bears to

“(B) $50,000 ($100,000 in the case of a joint return).

“(3) REDUCTION FOR QUALIFIED ORGANIZATIONS.—
“(A) IN GENERAL.—In the case of a qualifying taxpayer that is a qualified organization, the amount of the credit determined under paragraph (1) (determined without regard to this paragraph) shall be reduced by the total expenditures of the organization described in section 162(e)(1) (other than expenditures described in section 6033(e)(1)(B)(ii)).

“(B) EXCEPTION.—This paragraph shall not apply to any organization described in section 6033(e)(1)(B)(i).

“(b) QUALIFYING TAXPAYER.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualifying taxpayer’ means any taxpayer that is a domestic C corporation, a qualified organization, or a qualified individual that meets the gross profits test under paragraph (4) for the applicable taxable year.

“(2) QUALIFIED ORGANIZATION.—The term ‘qualified organization’ means any organization which is described in section 501(c) and exempt from tax under section 501(a).

“(3) QUALIFIED INDIVIDUAL.—The term ‘qualified individual’ means any individual who—
“(A) is a United States citizen or resident, and

“(B) materially participates (within the meaning of section 469(h)) in one or more trades or businesses (other than any trade or business consisting of the performance of services by the taxpayer as an employee (within the meaning of section 62(a)(1))).

“(4) GROSS PROFITS TEST.—

“(A) IN GENERAL.—A taxpayer meets the gross profits test under this section if the qualified gross profits of the taxpayer for the applicable taxable year are not more than $1,000,000.

“(B) AGGREGATION RULES.—

“(i) IN GENERAL.—All qualifying taxpayers that are domestic C corporations or qualified organizations and that are 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 person for purposes of subparagraph (A).

“(ii) QUALIFYING INDIVIDUALS.—All trades or businesses in which a qualified
individual materially participates (within the meaning of section 469(h)) shall be treated as a single trade or business for purposes of subparagraph (A).

“(c) QUALIFIED GROSS PROFITS.—For purposes of this section—

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the term ‘qualified gross profits’ means the excess of—

“(A) the gross receipts of the taxpayer as reported on the return of tax for the applicable taxable year, reduced by

“(B) returns and allowances and cost of goods sold as reported on the return of tax for the applicable taxable year.

“(2) APPLICATION TO QUALIFIED ORGANIZATIONS.—In the case of a qualified organization—

“(A) paragraph (1) shall be applied—

“(i) by treating the reference to gross receipts as a reference to gross receipts within the meaning of section 6033, and

“(ii) without regard to subparagraph (B) thereof, and

“(B) in the case of an organization which, for all applicable taxable years, is exempt from
filing a return pursuant to section 6033(a) or which is not required to include in such return the information necessary to determine the amount qualified gross receipts, such organization may submit to the Secretary (in such form and manner as is deemed appropriate by the Secretary) any information required for purposes of determining the amount of such gross receipts.

For purposes of section 6104, any information submitted by an organization under subparagraph (B) shall be deemed to be information required to be furnished by such organization pursuant to section 6033.

“(3) APPLICATION TO QUALIFIED INDIVIDUALS.—

“(A) IN GENERAL.—In the case of a qualified individual—

“(i) gross receipts, returns and allowances, and cost of goods sold taken into account under paragraph (1) shall only include gross receipts from trades or businesses described in subsection (b)(3) in which the qualified individual materially participated, and
“(ii) wages received from any such trade or business by the qualified individual shall not be taken into account under paragraph (1)(A).

“(B) Treatment of amounts from partnerships and S corporations.—In the case of any qualified individual who materially participates (within the meaning of section 469(h)) in a trade or business of a partnership or S corporation in which such individual is a partner or shareholder, the amount determined under paragraph (1) with respect to such trade or business shall be determined using—

“(i) in the case of a partnership, the partner’s distributive share of non-separatedly stated income, as reported on the return of tax for the applicable taxable year,

and

“(ii) in the case of an S corporation, the shareholder’s pro rata share of non-separatedly stated income, as reported on the return of tax for the applicable taxable year.

“(C) Treatment of amounts from farming businesses.—In the case of a quali-
fied individual who materially participates (within the meaning of section 469(h)) in a farming business (as defined in section 263A(e)(4)), the amount of determined under paragraph (1) shall be the gross income derived from such business, as reported on the return of tax for the applicable taxable year.

“(d) APPLICABLE TAXABLE YEAR.—For purposes of this section, the term ‘applicable taxable year’ means—

“(1) the first taxable year beginning in 2019, or

“(2) in any case in which the qualifying taxpayer did not file a tax return for the taxable year described in paragraph (1), the first taxable year beginning in 2018.

“(e) TREATMENT OF CREDIT.—

“(1) IN GENERAL.—The credit allowed by subsection (a) shall be treated as allowed by subpart C of part IV of subchapter A of chapter 1.

“(2) CREDIT INCLUDED IN GROSS INCOME.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), for purposes of subtitle A, the amount of any credit allowed under this section shall be included in gross income.
“(B) AMOUNTS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF PREMIUM TAX CREDIT.—

“(i) IN GENERAL.—For purposes of determining modified adjusted gross income under section 36B(d)(2)(B), adjusted gross income shall not include any amount treated as income by reason of subparagraph (A).

“(ii) EXCEPTION.—Paragraph (1) shall not apply to the extent such reduction results in an amount of household income (as defined in section 36B(d)(2)(A)) of a taxpayer that is less than 100 percent of the poverty line (as defined in section 36B(d)(3)) for a family of the size involved (as determined under the rules of section 36B(d)(1)).

“(f) COORDINATION WITH ADVANCE REFUNDS AND CREDIT FOR EMPLOYER OPERATING EXPENSES.—

“(1) COORDINATION WITH ADVANCE REFUNDS OF CREDIT.—The amount of credit which would (but for this subsection) be allowable under this section shall be reduced (but not below zero) by the aggregate refunds and credits made or allowed to the taxpayer under subsection (g). Any failure to so reduce
the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

“(2) COORDINATION WITH CREDIT FOR EMPLOYER OPERATING EXPENSES.—The amount of the credit allowed under this section (determined without regard to this subsection) shall be reduced (but not below zero) by the amount of any credit allowed under section 102 of the Paycheck Security Act during the taxable year.

“(3) SPECIAL RULE FOR RECAPTURE OF ADVANCED REFUNDS AND CREDITS.—

“(A) IN GENERAL.—In the case of any qualifying taxpayer who received a refund or credit by reason of subsection (g) and who was allowed a credit under section 102 of the Paycheck Security Act for any quarter ending on or before the last day of the taxpayer’s first taxable year beginning in 2020, the tax imposed by chapter 1 on the taxpayer to whom such refund or credit was made or allowed shall be increased for the taxable year by the lesser of—

“(i) the refund or credit made or allowed to such taxpayer by reason of subsection (g), or
“(ii) the amount of the credit allowed under section 102 of the Paycheck Security Act.

“(B) Application to partnerships and S corporations.—For purposes of applying subparagraph (A), in the case of any partnership or S corporation which was allowed a credit under section 102 of the Paycheck Security Act, each partner of such partnership shall be treated as having been allowed a credit under such section equal to such partner’s distributive share of such credit and each shareholder of such S corporation shall be treated as having been allowed a credit equal to such shareholder’s pro rata share of such credit.

“(C) Return requirement.—If the tax imposed by chapter 1 for the taxable year is increased under this paragraph, the taxpayer shall, notwithstanding section 6012, be required to file a return with respect to the taxes imposed under subtitle A.

“(g) Advance refunds and credits.—

“(1) In general.—Any person which was a qualifying taxpayer for such person’s last taxable year ending before January 1, 2020, shall be treated
as having made a payment against the tax imposed by chapter 1 for such taxable year in an amount equal to the advance refund amount for such taxable year, regardless of whether such tax would have been imposed on such person.

“(2) ADVANCE REFUND AMOUNT.—For purposes of paragraph (1), the advance refund amount is the amount that would have been allowed as a credit under this section for such taxable year if this section (other than subsection (f) and this subsection) had applied to such taxable year.

“(3) TIMING OF PAYMENTS.—The Secretary shall, subject to the provisions of this title, refund or credit any overpayment attributable to this section as rapidly as possible. No refund or credit shall be made or allowed under this subsection after December 31, 2020.

“(4) NO INTEREST.—No interest shall be allowed on any overpayment attributable to this section.

“(h) REGULATIONS AND GUIDANCE.—The Secretary shall issue such forms, instructions, regulations, and guidance as are necessary, including guidance with respect to the application of subsection (f)(3)(B) to partners and partnerships with differing taxable years.”.
Title III—OTHER PROVISIONS

Sec. 301. ADDITIONAL APPROPRIATIONS FOR DEPARTMENT OF TREASURY.

(a) Internal Revenue Service.—There is authorized to be appropriated, and there is appropriated, to the Internal Revenue Service $1,000,000,000, to remain available until expended, to carry out the provisions of, and amendments made by, this Act.

(b) Treasury Inspector General for Tax Administration.—There is authorized to be appropriated, and there is appropriated, to the Treasury Inspector General for Tax Administration $25,000,000, to remain available until expended, to carry out investigations, audits and other oversight activities with respect to the credits al-
lowed under section 2301 of the CARES Act, and sections 102 and 201 of this Act, and the provisions of section 103 and 105 of this Act, as authorized under the Inspector General Act of 1978 (5 U.S.C. App.).

SEC. 302. GAO REPORT.

Not later than 5 months after the date of enactment of this Act, the Comptroller General of the United States shall issue a report evaluating the effectiveness of the operative provisions of and amendments made by this Act. Such report shall include recommendations on extending the applicability of such amendments and provisions and how to transition workers after the expiration such provisions and amendments.