

116TH CONGRESS  
2D SESSION

# H. R. 7658

To provide a payroll tax credit for certain costs of providing employees with testing for COVID-19.

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IN THE HOUSE OF REPRESENTATIVES

JULY 16, 2020

Mr. SCHWEIKERT introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To provide a payroll tax credit for certain costs of providing employees with testing for COVID-19.

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. EMPLOYEE TESTING TAX CREDIT.**

4 (a) IN GENERAL.—In the case of an employer, there  
5 shall be allowed as a credit against applicable employment  
6 taxes for each calendar quarter an amount equal to 50  
7 percent of the qualified employee testing expenses paid or  
8 incurred by the employer during such calendar quarter.

9 (b) LIMITATIONS AND REFUNDABILITY.—

1           (1) OVERALL DOLLAR LIMITATION ON CRED-  
2 IT.—

3           (A) IN GENERAL.—The amount of the  
4 credit allowed under subsection (a) with respect  
5 to any employer for any calendar quarter shall  
6 not exceed the excess (if any) of—

7                   (i) the applicable dollar limit with re-  
8 spect to such employer for such calendar  
9 quarter, over

10                   (ii) the aggregate credits allowed  
11 under subsection (a) with respect to such  
12 employer for all preceding calendar quar-  
13 ters.

14           (B) APPLICABLE DOLLAR LIMIT.—The  
15 term “applicable dollar limit” means, with re-  
16 spect to any employer for any calendar quarter,  
17 the sum of—

18                   (i) \$500, multiplied so much of the  
19 average number of full-time employees (as  
20 determined for purposes of determining  
21 whether an employer is an applicable large  
22 employer for purposes of section  
23 4980H(c)(2) of the Internal Revenue Code  
24 of 1986, except that an individual shall not  
25 be taken into account as employee for any

1 period during which substantially all of the  
2 services provided by such individual as an  
3 employee are provided outside the United  
4 States) employed by such employer during  
5 such calendar quarter as does not exceed  
6 500, plus

7 (ii) \$375, multiplied by so much of  
8 such average number of full-time employ-  
9 ees as exceeds 500 but does not exceed  
10 1,000, plus

11 (iii) \$250, multiplied by so much of  
12 such average number of full-time employ-  
13 ees as exceeds 1,000.

14 (2) CREDIT LIMITED TO EMPLOYMENT  
15 TAXES.—The credit allowed by subsection (a) with  
16 respect to any calendar quarter shall not exceed the  
17 applicable employment taxes (reduced by any credits  
18 allowed under subsections (e) and (f) of section  
19 3111 of the Internal Revenue Code of 1986, sections  
20 7001 and 7003 of the Families First Coronavirus  
21 Response Act, and section 2301 of the CARES Act)  
22 on the wages paid with respect to the employment  
23 of all the employees of the eligible employer for such  
24 calendar quarter.

25 (3) REFUNDABILITY OF EXCESS CREDIT.—

1           (A) IN GENERAL.—If the amount of the  
2           credit under subsection (a) exceeds the limita-  
3           tion of paragraph (2) for any calendar quarter,  
4           such excess shall be treated as an overpayment  
5           that shall be refunded under sections 6402(a)  
6           and 6413(b) of the Internal Revenue Code of  
7           1986.

8           (B) TREATMENT OF PAYMENTS.—For pur-  
9           poses of section 1324 of title 31, United States  
10          Code, any amounts due to the employer under  
11          this paragraph shall be treated in the same  
12          manner as a refund due from a credit provision  
13          referred to in subsection (b)(2) of such section.

14          (c) QUALIFIED EMPLOYEE TESTING EXPENSES.—  
15          For purposes of this section, the term “qualified employee  
16          testing expenses” means amounts paid or incurred by the  
17          employer for testing employees of the employer for  
18          COVID-19 or SARS-CoV-2 (including on a periodic  
19          basis).

20          (d) OTHER DEFINITIONS.—For purposes of this sec-  
21          tion—

22                  (1) APPLICABLE EMPLOYMENT TAXES.—The  
23                  term “applicable employment taxes” means the fol-  
24                  lowing:

1           (A) The taxes imposed under section  
2           3111(a) of the Internal Revenue Code of 1986.

3           (B) So much of the taxes imposed under  
4           section 3221(a) of such Code as are attrib-  
5           utable to the rate in effect under section  
6           3111(a) of such Code.

7           (2) SECRETARY.—The term “Secretary” means  
8           the Secretary of the Treasury or the Secretary’s del-  
9           egate.

10          (3) OTHER TERMS.—Any term used in this sec-  
11          tion (other than subsection (b)(1)(B)) which is also  
12          used in chapter 21 or 22 of the Internal Revenue  
13          Code of 1986 shall have the same meaning as when  
14          used in such chapter.

15          (e) CERTAIN GOVERNMENTAL EMPLOYERS.—This  
16          credit shall not apply to the Government of the United  
17          States, the government of any State or political subdivi-  
18          sion thereof, or any agency or instrumentality of any of  
19          the foregoing.

20          (f) SPECIAL RULES.—

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

1 shall be treated as one employer for purposes of this  
2 section.

3 (2) DENIAL OF DOUBLE BENEFIT.—Rules simi-  
4 lar to the rules of section 280C(a) of the Internal  
5 Revenue Code of 1986 shall apply for purposes of  
6 this section.

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

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

16 (g) TRANSFERS TO CERTAIN TRUST FUNDS.—There  
17 are hereby appropriated to the Federal Old-Age and Sur-  
18 vivors Insurance Trust Fund and the Federal Disability  
19 Insurance Trust Fund established under section 201 of  
20 the Social Security Act (42 U.S.C. 401) and the Social  
21 Security Equivalent Benefit Account established under  
22 section 15A(a) of the Railroad Retirement Act of 1974  
23 (45 U.S.C. 14 231n-1(a)) amounts equal to the reduction  
24 in revenues to the Treasury by reason of this section  
25 (without regard to this subsection). Amounts appropriated

1 by the preceding sentence shall be transferred from the  
2 general fund at such times and in such manner as to rep-  
3 licate to the extent possible the transfers which would have  
4 occurred to such Trust Fund or Account had this section  
5 not been enacted.

6 (h) TREATMENT OF DEPOSITS.—The Secretary shall  
7 waive any penalty under section 6656 of the Internal Rev-  
8 enue Code of 1986 for any failure to make a deposit of  
9 any applicable employment taxes if the Secretary deter-  
10 mines that such failure was due to the reasonable anticipa-  
11 tion of the credit allowed under this section.

12 (i) REGULATIONS AND GUIDANCE.—The Secretary  
13 shall prescribe such regulations and other guidance as  
14 may be necessary or appropriate to carry out the purposes  
15 of this section, including—

16 (1) with respect to the application of the credit  
17 under subsection (a) to third-party payors (including  
18 professional employer organizations, certified profes-  
19 sional employer organizations, or agents under sec-  
20 tion 3504 of the Internal Revenue Code of 1986),  
21 regulations or other guidance allowing such payors  
22 to submit documentation necessary to substantiate  
23 the amount of the credit allowed under subsection  
24 (a), and

1           (2) regulations or other guidance to prevent  
2           abusive transactions.

3           (j) APPLICATION.—This section shall only apply to  
4           amounts paid or incurred after March 12, 2020, and be-  
5           fore January 1, 2021.

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