

116TH CONGRESS  
2D SESSION

# S. 4178

To provide for a credit against employment taxes for certain workplace safety expenses, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

JULY 2, 2020

Ms. SINEMA (for herself and Mr. CRAMER) introduced the following bill; which was read twice and referred to the Committee on Finance

---

## A BILL

To provide for a credit against employment taxes for certain workplace safety expenses, 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. TAX CREDIT FOR SAFETY IMPROVEMENTS.**

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

9       (b) LIMITATIONS AND REFUNDABILITY.—

1           (1) LIMITATION.—The qualified fixed expenses  
 2           which may be taken into account under subsection  
 3           (a) by any eligible employer for any calendar quarter  
 4           shall not exceed—

5                     (A) in the case of any calendar quarter be-  
 6                     ginning in 2020, \$500,000, and

7                     (B) in the case of any calendar quarter be-  
 8                     ginning after 2020, \$250,000.

9           (2) CREDIT LIMITED TO CERTAIN EMPLOYMENT  
 10          TAXES.—The credit allowed by subsection (a) with  
 11          respect to any calendar quarter shall not exceed the  
 12          applicable employment taxes for such calendar quar-  
 13          ter (reduced by any credits allowed under sub-  
 14          sections (e) and (f) of section 3111 of such Code,  
 15          sections 7001 and 7003 of the Families First  
 16          Coronavirus Response Act, and section 2301 of the  
 17          CARES Act, for such quarter) on the wages paid  
 18          with respect to the employment of all the employees  
 19          of the eligible employer for such calendar quarter.

20          (3) REFUNDABILITY OF EXCESS CREDIT.—

21                     (A) IN GENERAL.—If the amount of the  
 22                     credit under subsection (a) exceeds the limita-  
 23                     tion of paragraph (2) for any calendar quarter,  
 24                     such excess shall be treated as an overpayment  
 25                     that shall be refunded under sections 6402(a)

1 and 6413(b) of the Internal Revenue Code of  
2 1986.

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

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

10 (1) APPLICABLE EMPLOYMENT TAXES.—The  
11 term “applicable employment taxes” means the fol-  
12 lowing:

13 (A) The taxes imposed under section  
14 3111(a) of the Internal Revenue Code of 1986.

15 (B) So much of the taxes imposed under  
16 section 3221(a) of such Code as are attrib-  
17 utable to the rate in effect under section  
18 3111(a) of such Code.

19 (2) ELIGIBLE EMPLOYER.—

20 (A) IN GENERAL.—The term “eligible em-  
21 ployer” means any employer—

22 (i) which was carrying on a trade or  
23 business at any time during calendar quar-  
24 ter, and

1                   (ii) which has not more than 2,000  
 2                   full-time equivalent employees (within the  
 3                   meaning of section 45R(d)(2) of the Inter-  
 4                   nal Revenue Code of 1986) for the taxable  
 5                   year.

6                   (B) TAX-EXEMPT ORGANIZATIONS.—In the  
 7                   case of an organization which is described in  
 8                   section 501(c) of the Internal Revenue Code of  
 9                   1986 and exempt from tax under section 501(a)  
 10                  of such Code, subparagraph (A)(i) shall apply  
 11                  to all operations of such organization.

12                  (3) QUALIFIED EXPENSES.—For purposes of  
 13                  this section—

14                   (A) IN GENERAL.—The term “qualified ex-  
 15                   penses” means any amount paid or incurred  
 16                   after February 1, 2020, for—

17                   (i) qualified equipment and services  
 18                   for the purposes of preventing infection re-  
 19                   lated to SARS-CoV-2, or

20                   (ii) the reconfiguration of facilities for  
 21                   such purposes, or

22                   (iii) qualified education and training  
 23                   of employees for new business procedures  
 24                   related to preventing COVID-19 trans-  
 25                   mission.

1 (B) QUALIFIED EQUIPMENT AND SERV-  
2 ICES.—The term “qualified equipment and  
3 services” means—

4 (i) any product or material which—

5 (I) serves as personal protective  
6 equipment or as a barrier erected to  
7 prevent virus spread between cus-  
8 tomers and employees, including  
9 plexiglass installed at cashiers and  
10 other counters, and partitions to sepa-  
11 rate customers,

12 (II) is a disinfectant product reg-  
13 istered by the Administrator of the  
14 Environmental Protection Agency for  
15 which the Administrator of the Envi-  
16 ronmental Protection Agency has ap-  
17 proved an emerging viral pathogen  
18 claim that applies with respect to use  
19 against SARS-CoV-2,

20 (III) is a thermometer, or

21 (IV) is approved by the Food and  
22 Drug Administration for testing for  
23 COVID-19 (including diagnostic test-  
24 ing and serology testing to detect  
25 antibodies) by the eligible employer, in

1 conjunction with a certified  
2 diagnostics laboratory or health care  
3 provider,

4 (ii) any—

5 (I) contactless point-of-sale sys-  
6 tem,

7 (II) new software and technology  
8 to assist in maintaining social  
9 distancing,

10 (III) application for reporting  
11 employee symptom or providing  
12 wellness checks, and

13 (IV) property used to enable  
14 curbside pickup or delivery services,

15 (iii) hand sanitizer,

16 (iv) any sign related to public health  
17 awareness, social distancing, or altered  
18 services such as curbside pickups, and

19 (v) services for—

20 (I) cleaning and disinfecting, or

21 (II) testing for COVID-19 by a  
22 certified diagnostics laboratory, and

23 (vi) such other equipment or tech-  
24 nology as determined by the Secretary, in  
25 consultation with the Secretary of Labor,

1 the Secretary of Health and Human Serv-  
2 ices, the Director of the Centers for Dis-  
3 ease Control and Prevention, the Commis-  
4 sioner of the Food and Drug Administra-  
5 tion, the Secretary of Veterans Affairs, the  
6 Secretary of Defense, and the Secretary of  
7 Agriculture, determines is necessary and  
8 appropriate for preventing COVID–19 and  
9 is recommended as part of the Federal  
10 government’s recommendations for safe  
11 workplaces.

12 Such term shall not include any equipment  
13 which is not for use in the United States or any  
14 service which is not conducted in the United  
15 States.

16 (C) QUALIFIED EDUCATION AND TRAIN-  
17 ING.—The term “qualified education and train-  
18 ing” means education or training provided by  
19 an accredited training institution, an industry-  
20 recognized trade association, or another non-  
21 profit entity.

22 (4) SECRETARY.—The term “Secretary” means  
23 the Secretary of the Treasury or the Secretary’s del-  
24 egate.

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

6 (e) DENIAL OF DOUBLE BENEFIT.—For purposes of  
7 chapter 1 of such Code, the gross income of any eligible  
8 employer, for the taxable year which includes the last day  
9 of any calendar quarter with respect to which a credit is  
10 allowed under this section, shall be increased by the  
11 amount of such credit.

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

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



1 regard to this subsection). Amounts appropriated by the  
 2 preceding sentence shall be transferred from the general  
 3 fund at such times and in such manner as to replicate  
 4 to the extent possible the transfers which would have oc-  
 5 curred to such Trust Fund or Account had this section  
 6 not been enacted.

7 (h) TREATMENT OF DEPOSITS.—The Secretary shall  
 8 waive any penalty under section 6656 of such Code for  
 9 any failure to make a deposit of applicable employment  
 10 taxes if the Secretary determines that such failure was due  
 11 to the anticipation of the credit allowed under this section.

12 (i) REGULATIONS AND GUIDANCE.—The Secretary  
 13 shall issue such forms, instructions, regulations, and guid-  
 14 ance as are necessary—

15 (1) to allow the advance payment of the credit  
 16 under subsection (a), subject to the limitations pro-  
 17 vided in this section, based on such information as  
 18 the Secretary shall require,

19 (2) to provide for the reconciliation of such ad-  
 20 vance payment with the amount of the credit at the  
 21 time of filing the return of tax for the applicable  
 22 quarter or taxable year,

23 (3) with respect to the application of the credit  
 24 under subsection (a) to third-party payors (including  
 25 professional employer organizations, certified profes-

1 sional employer organizations, or agents under sec-  
2 tion 3504 of the Internal Revenue Code of 1986),  
3 including regulations or guidance allowing such  
4 payors to submit documentation necessary to sub-  
5 stantiate the eligible employer status of employers  
6 that use such payors,

7 (4) for recapturing the benefit of credits deter-  
8 mined under this section in cases where there is a  
9 subsequent adjustment to the credit determined  
10 under subsection (a), and

11 (5) for providing the benefit of the credit under  
12 subsection (a) to taxpayers who have already filed  
13 returns for calendar quarters ending before the date  
14 of the enactment of this Act.

15 (j) APPLICATION OF SECTION.—This section shall  
16 apply only to qualified fixed expenses paid or accrued in  
17 calendar quarters ending on or after February 1, 2020,  
18 and beginning before January 1, 2022.

○