To amend the Internal Revenue Code of 1986 to provide emergency savings accounts for small businesses.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2021

Mr. CLOUD (for himself, Mrs. HINSON, Mr. LA MALFA, and Mr. OWENS) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide emergency savings accounts for small businesses.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Emergency Savings Accounts Act of 2021”.

SEC. 2. DEDUCTION FOR CONTRIBUTIONS TO SMALL BUSINESS EMERGENCY SAVINGS ACCOUNTS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to...
itemized deductions for individuals and corporations) is amended by adding at the end the following new section:

“SEC. 200. SMALL BUSINESS EMERGENCY SAVINGS ACCOUNTS.

“(a) DEDUCTION ALLOWED.—In the case of a eligible business, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid during such taxable year by such business to a small business emergency savings account of such business.

“(b) LIMITATION.—The amount allowed as a deduction under subsection (a) to any business for any taxable year shall not exceed the lesser of—

“(1) 25 percent of the wages (as defined in section 3121(a)) paid by the eligible business during such taxable year, or

“(2) the greater of—

“(A) zero, or

“(B) the maximum amount which when added to the balance of such account (as determined at the end of such taxable year but without regard to contributions made during such taxable year) would not result in such balance (as so determined) to exceed 150 percent of wages (as defined in section 3121(a)) paid by the eligible business during such taxable year.
“(c) Eligible Business.—For purposes of this section, the term ‘eligible business’ means any person if—

“(1) such person carries on any trade or business in the United States (other than the trade or business of being an employee), and

“(2) the average number of full-time employees (as determined for purposes of determining whether an employer is an applicable large employer for purposes of section 4980H(c)(2)) employed by such employer during the taxable year does not exceed 500.

“(d) Small Business Emergency Savings Account.—For purposes of this section—

“(1) In general.—The term ‘small business emergency savings account’ means a trust created or organized in the United States as a small business emergency savings account exclusively for the purpose of paying the qualified disaster and public health emergency expenses of the account beneficiary, but only if the written governing instrument creating the trust meets the following requirements:

“(A) Except in the case of a rollover contribution described in subsection (f)(5), no contribution will be accepted unless it is in cash.

“(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as de-
fined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

“(C) No part of the trust assets will be invested in life insurance contracts.

“(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

“(E) The interest of account beneficiary in the balance in the account is nonforfeitable.

“(2) QUALIFIED DISASTER AND PUBLIC HEALTH EMERGENCY EXPENSES.—The term ‘qualified disaster and public health emergency expenses’ means—

“(A) disaster loss replacement expenses,

“(B) disaster recovery operations expenses,

and

“(C) public health emergency expenses.

“(3) DISASTER LOSS REPLACEMENT EXPENSES.—The term ‘disaster loss replacement expenses’ means any expense paid or incurred in the ordinary course of a trade or business of the eligible
business to replace or repair casualty losses totaling $3,000 or more resulting from a federally declared disaster.

“(4) DISASTER RECOVERY OPERATIONS EXPENSES.—The term ‘disaster recovery operations expenses’ means the following amounts if paid or incurred in the ordinary course of a trade or business of the eligible business while the declaration with respect to a federally declared disaster is in effect:

“(A) Wages (as defined in section 3121(a)) and taxes imposed under section 3111.

“(B) Unemployment insurance contributions.

“(C) Health care costs.

“(D) Rent, lease, or mortgage costs, including property taxes.

“(E) Utilities.

“(5) PUBLIC HEALTH EMERGENCY EXPENSES.—The term ‘public health emergency expenses’ means amounts described in subparagraphs (A) through (E) of paragraph (4) if paid or incurred in the ordinary course of a trade or business of the eligible business while a public health emergency declaration is in effect.
“(6) **Federally declared disaster.**—The term ‘federally declared disaster’ has the meaning given such term by section 165(i)(5).

“(7) **Public health emergency declaration.**—The term ‘public health emergency declaration’ means any declaration of a public health emergency by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d).

“(8) **Account beneficiary.**—The term ‘account beneficiary’ means the eligible business on whose behalf the small business emergency savings account was established.

“(e) **Treatment of account.**—

“(1) **In general.**—A small business emergency savings account is exempt from taxation under this subtitle unless such account has ceased to be a small business emergency savings account. Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

“(2) **Account terminations.**—Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to small business emergency sav-
ings accounts, and any amount treated as distributed under such rules shall be treated as not used to pay qualified disaster and public health emergency expenses.

“(f) Tax Treatment of Distributions.—

“(1) Amounts Used for Qualified Disaster and Public Health Emergency Expenses.—Any amount paid or distributed out of a small business emergency savings account which is used exclusively to pay qualified disaster and public health emergency expenses of any account beneficiary shall not be includible in gross income.

“(2) Inclusion of Amounts Not Used for Qualified Disaster and Public Health Emergency Expenses.—Any amount paid or distributed out of a small business emergency savings account which is not used exclusively to pay the qualified disaster and public health emergency expenses of the account beneficiary shall be included in the gross income of such beneficiary.

“(3) Excess Contributions Returned Before Due Date of Return.—

“(A) In General.—If any excess contribution is contributed for a taxable year to any small business emergency savings account
of an eligible business, paragraph (2) shall not
apply to distributions from the small business
emergency savings accounts of such eligible
business (to the extent such distributions do not
exceed the aggregate excess contributions to all
such accounts of such eligible business for such
year) if—

“(i) such distribution is received by
the eligible business on or before the last
day prescribed by law (including extensions
of time) for filing such eligible business’s
return for such taxable year, and

“(ii) such distribution is accompanied
by the amount of net income attributable
to such excess contribution.

Any net income described in clause (ii) shall be
included in the gross income of the eligible busi-
ness for the taxable year in which it is received.

“(B) EXCESS CONTRIBUTION.—For pur-
poses of subparagraph (A), the term ‘excess
contribution’ means any contribution (other
than a rollover contribution described in para-
graph (5)) which is not deductible under this
section.
“(4) ADDITIONAL TAX ON DISTRIBUTIONS NOT USED FOR QUALIFIED DISASTER AND PUBLIC HEALTH EMERGENCY EXPENSES.—

“(A) IN GENERAL.—The tax imposed by this chapter on the account beneficiary for any taxable year in which there is a payment or distribution from a small business emergency savings account of such beneficiary which is includible in gross income under paragraph (2) shall be increased by 20 percent of the amount which is so includible.

“(B) EXCEPTION FOR DISABILITY OR DEATH.—If the eligible business is an individual, subparagraph (A) shall not apply if the payment or distribution is made after the account beneficiary becomes disabled within the meaning of section 72(m)(7) or dies.

“(5) ROLLOVER CONTRIBUTION.—An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

“(A) IN GENERAL.—Paragraph (2) shall not apply to any amount paid or distributed from a small business emergency savings account to the account beneficiary to the extent
the amount received is paid into a small business emergency savings account for the benefit of such beneficiary not later than the 60th day after the day on which the beneficiary receives the payment or distribution.

“(B) LIMITATION.—This paragraph shall not apply to any amount described in subparagraph (A) received by an eligible business from a small business emergency savings account if, at any time during the 1-year period ending on the day of such receipt, such eligible business received any other amount described in subparagraph (A) from a small business emergency savings account which was not includible in the small business’s gross income because of the application of this paragraph.

“(g) COST-OF-LIVING ADJUSTMENT.—

“(1) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2021, the $3,000 amount in subsection (d)(3) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins deter-
mined by substituting ‘calendar year 2020’ for
‘calendar year 2016’ in subparagraph (A)(ii)
thereof.

“(2) Rounding.—If any increase under para-
graph (1) is not a multiple of $50, such increase
shall be rounded to the nearest multiple of $50.

“(h) Special Rules.—

“(1) Denial of Deduction to Dependents.—No deduction shall be allowed under this
section to any individual with respect to whom a de-
duction under section 151 is allowable to another
taxpayer for a taxable year beginning in the cal-
endar year in which such individual’s taxable year
begins.

“(2) Taxable Year Must Be Full Taxable
Year.—Except in the case of a taxable year closed
by reason of the death of an individual who is an eli-
gible business, no deduction shall be allowed under
this section in the case of a taxable year covering a
period of less than 12 months.

“(3) Certain Rules to Apply.—Rules similar
to the following rules shall apply for purposes of this
section:

“(A) Section 219(d)(2) (relating to no de-
duction for rollovers).
“(B) Section 219(f)(3) (relating to time when contributions deemed made).

“(C) Section 219(f)(5) (relating to employer payments).

“(D) Section 408(g) (relating to community property laws).

“(E) Section 408(h) (relating to custodial accounts).

“(F) Section 223(f)(7) (relating to transfer of account incident to divorce).

“(G) Section 223(f)(8) (relating to treatment after death of account beneficiary).

“(4) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this chapter for any qualified disaster and public health emergency expenses with respect to which any payment or distribution is excluded from gross income under subsection (f)(1).

“(i) REPORTS.—The Secretary may require the trustee of a small business emergency savings account to make such reports regarding such account to the Secretary and to the account beneficiary with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary determines appropriate.”.
(b) Deduction Allowed Whether or Not Individual Itemizes Other Deductions.—Section 62(a) of such Code is amended by inserting after paragraph (21) the following new paragraph:

“(22) Small business emergency savings accounts.—In the case of an individual who is an eligible business, the deduction allowed by section 200.”.

(e) Tax on Excess Contributions.—Section 4973 of such Code (relating to tax on excess contributions to certain tax-favored accounts and annuities) is amended—

(1) by striking “or” at the end of subsection (a)(5), by inserting “or” at the end of subsection (a)(6), and by inserting after subsection (a)(6) the following new paragraph:

“(7) a small business emergency savings account (within the meaning of section 220(d)),”; and

(2) by adding at the end the following new subsection:

“(i) Excess contributions to small business emergency savings accounts.—For purposes of this section, in the case of small business emergency savings accounts (within the meaning of section 220(d)), the term ‘excess contributions’ means the sum of—
“(1) the aggregate amount contributed for the taxable year to the accounts (other than a rollover contribution described in section 220(f)(5)) which is not allowable as a deduction under section 220 for such year, and

“(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

“(A) the distributions out of the accounts which were included in gross income under section 220(f)(2), and

“(B) the excess (if any) of—

“(i) the maximum amount allowable as a deduction under section 220(b) for the taxable year, over

“(ii) the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed out of the small business emergency savings account in a distribution to which section 220(f)(3) applies shall be treated as an amount not contributed.”.

(d) Failure To Provide Reports On Small Business Emergency Savings Accounts.—Section 6693(a)(2) of such Code is amended by redesignating sub-
paragraphs (D), (E), and (F) as subparagraphs (E), (F),
and (G), respectively, and by inserting after subparagraph
(C) the following new subparagraph:

“(D) section 220(i) (relating to small busi-
ness emergency savings accounts),”.

(e) CLERICAL AMENDMENT.—The table of sections
for part VI of subchapter B of chapter 1 of such Code
is amended by adding at the end the following:

“Sec. 200. Small business emergency savings accounts.”.

(f) EFFECTIVE DATE.—The amendments made by
this section shall apply to taxable years beginning after