

117TH CONGRESS  
1ST SESSION

# S. 122

To provide a credit against payroll taxes to businesses and nonprofit organizations that purchase or upgrade ventilation and air filtration systems to help prevent the spread of COVID–19 and other airborne communicable diseases.

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IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2021

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

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## A BILL

To provide a credit against payroll taxes to businesses and nonprofit organizations that purchase or upgrade ventilation and air filtration systems to help prevent the spread of COVID–19 and other airborne communicable diseases.

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 “Filtering and Retro-  
5 fitting the Environment for Safe and Healthy Activities  
6 Indoors and Revenue (FRESH AIR) for Businesses Act”.

1 **SEC. 2. BUSINESS VENTILATION TAX CREDIT.**

2 (a) IN GENERAL.—In the case of an employer, there  
3 shall be allowed as a credit against applicable employment  
4 taxes for each calendar quarter an amount equal to 50  
5 percent of the qualified ventilation, zoning, and air filtra-  
6 tion and purification expenses paid or incurred by the em-  
7 ployer during such calendar quarter.

8 (b) LIMITATIONS AND REFUNDABILITY.—

9 (1) OVERALL DOLLAR LIMITATION ON CRED-  
10 IT.—The amount of the credit allowed under sub-  
11 section (a) with respect to any employer for all cal-  
12 endar quarters with respect to any qualified location  
13 shall not exceed \$15,000.

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 employer for such cal-  
24 endar 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 VENTILATION, ZONING, AND AIR FIL-  
15 TRATION AND PURIFICATION EXPENSES; QUALIFIED LO-  
16 CATION.—For purposes of this section—

17 (1) IN GENERAL.—The term “qualified ventila-  
18 tion, zoning, and air filtration and purification ex-  
19 penses” means amounts paid or incurred by the em-  
20 ployer for—

21 (A) the purchase and installation of a  
22 heating, ventilation, and air conditioning sys-  
23 tem—

24 (i) which is placed in service at a  
25 qualified location,

1 (ii) which includes indoor air quality  
2 sensors and controls, and

3 (iii) which—

4 (I) is designed to filter air at a  
5 rate equivalent to or in excess of a  
6 MERV 13 or equivalent level of filtra-  
7 tion,

8 (II) uses UV-based purification,  
9 or

10 (III) provides a fresh air supply  
11 at least 17 cubic feet per minute per  
12 occupant, the ability to conduct zon-  
13 ing and sub-zoning, and the ability to  
14 direct air via directional and con-  
15 trolled air outlets in order to minimize  
16 draft air exchange between neigh-  
17 boring occupants or zones,

18 (B) upgrading a heating, ventilation, and  
19 air conditioning system at a qualified location  
20 which does not meet the requirements of any  
21 item of subparagraph (A)(iii) so that the sys-  
22 tem meets such requirements,

23 (C) the purchase of any—

24 (i) air filter—

1 (I) which is used in a heating,  
2 ventilation, and air conditioning sys-  
3 tem at a qualified location, and

4 (II) which filters air at a rate  
5 equivalent to or in excess of a MERV  
6 13 or equivalent level of filtration, or

7 (ii) UV light bulb which is used in a  
8 heating, ventilation, and air conditioning  
9 system at a qualified location,

10 (D) the purchase of any stand alone air  
11 cleaner or air purifier—

12 (i) which is placed in service at such  
13 qualified location by the employer,

14 (ii) which is capable of providing at  
15 least 5 air changes per hour at such quali-  
16 fied location, and

17 (iii) which—

18 (I) is capable of using HEPA fil-  
19 ters,

20 (II) uses UV-based purification,  
21 or

22 (III) uses electronic air cleaners  
23 or ionizers to clean air at a rate  
24 equivalent to a HEPA filter, and

25 (E) the purchase of any—

1 (i) HEPA filter used in an air cleaner  
2 described in subparagraph (D)(iii)(I),

3 (ii) UV light bulb used in an air puri-  
4 fier described in subparagraph (D)(iii)(II),  
5 or

6 (iii) purification component used in an  
7 air purifier described in subparagraph  
8 (D)(iii)(III).

9 (2) TERMINATION.—Such term shall not in-  
10 clude any expenses for property placed in service  
11 after December 31, 2021.

12 (d) OTHER DEFINITIONS.—For purposes of this sec-  
13 tion—

14 (1) APPLICABLE EMPLOYMENT TAXES.—The  
15 term “applicable employment taxes” means the fol-  
16 lowing:

17 (A) The taxes imposed under section  
18 3111(a) of the Internal Revenue Code of 1986.

19 (B) So much of the taxes imposed under  
20 section 3221(a) of such Code as are attrib-  
21 utable to the rate in effect under section  
22 3111(a) of such Code.

23 (2) QUALIFIED LOCATION.—The term “quali-  
24 fied location” means any location in the United  
25 States—

1 (A) which is leased or owned by the em-  
2 ployer, and

3 (B) at which an employer conducts busi-  
4 ness.

5 (3) COVID-19.—Except where the context  
6 clearly indicates otherwise, any reference in this sec-  
7 tion to COVID-19 shall be treated as including a  
8 reference to the virus which causes COVID-19.

9 (4) SECRETARY.—The term “Secretary” means  
10 the Secretary of the Treasury or such Secretary’s  
11 delegate.

12 (5) OTHER TERMS.—Any term used in this sec-  
13 tion which is also used in chapter 21 or 22 of the  
14 Internal Revenue Code of 1986 shall have the same  
15 meaning as when used in such chapter.

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

21 (f) RULES RELATING TO EMPLOYER, ETC.—

22 (1) AGGREGATION RULE.—All persons treated  
23 as a single employer under subsection (a) or (b) of  
24 section 52 of the Internal Revenue Code of 1986, or  
25 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) THIRD-PARTY PAYORS.—Any credit allowed  
4 under subsection (a) shall be treated as a credit de-  
5 scribed in section 3511(d)(2) of such Code.

6 (g) 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 subsection (a).

12 (h) DENIAL OF DOUBLE BENEFIT.—For purposes of  
13 chapter 1 of such Code—

14 (1) the gross income of any employer, for the  
15 taxable year which includes the last day of any cal-  
16 endar quarter with respect to which a credit is al-  
17 lowed under this section, shall be increased by the  
18 amount of such credit, and

19 (2) no deduction or other benefit shall be de-  
20 nied or reduced by reason of expenses taking into  
21 account for purposes of determining the amount of  
22 the credit allowed under this section.

23 (i) ELECTION NOT TO HAVE SECTION APPLY.—This  
24 section shall not apply with respect to any employer for  
25 any calendar quarter if such employer elects (at such time

1 and in such manner as the Secretary may prescribe) not  
2 to have this section apply.

3 (j) TRANSFERS TO CERTAIN TRUST FUNDS.—There  
4 are hereby appropriated to the Federal Old-Age and Sur-  
5 vivors Insurance Trust Fund and the Federal Disability  
6 Insurance Trust Fund established under section 201 of  
7 the Social Security Act (42 U.S.C. 401) and the Social  
8 Security Equivalent Benefit Account established under  
9 section 15A(a) of the Railroad Retirement Act of 1974  
10 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in  
11 revenues to the Treasury by reason of this section (without  
12 regard to this subsection). Amounts appropriated by the  
13 preceding sentence shall be transferred from the general  
14 fund at such times and in such manner as to replicate  
15 to the extent possible the transfers which would have oc-  
16 curred to such Trust Fund or Account had this section  
17 not been enacted.

18 (k) REGULATIONS AND GUIDANCE.—The Secretary  
19 shall prescribe such regulations and other guidance as  
20 may be necessary or appropriate to carry out the purposes  
21 of this section, including—

22 (1) with respect to the application of the credit  
23 under subsection (a) to third-party payors (including  
24 professional employer organizations, certified profes-  
25 sional employer organizations, or agents under sec-

1 tion 3504 of the Internal Revenue Code of 1986),  
2 regulations or other guidance allowing such payors  
3 to submit documentation necessary to substantiate  
4 the amount of the credit allowed under subsection  
5 (a),

6 (2) regulations or other guidance for recap-  
7 turing the benefit of credits determined under sub-  
8 section (a) in cases where there is a subsequent ad-  
9 justment to the credit determined under such sub-  
10 section, and

11 (3) regulations or other guidance to prevent  
12 abuse of the purposes of this section.

13 (l) APPLICATION.—

14 (1) IN GENERAL.—This section shall only apply  
15 to amounts paid or incurred after January 31, 2020,  
16 and before January 1, 2022.

17 (2) SPECIAL RULE FOR CERTAIN AMOUNTS  
18 PAID OR INCURRED IN CALENDAR QUARTERS END-  
19 ING BEFORE THE DATE OF THE ENACTMENT OF  
20 THIS ACT.—For purposes of this section, in the case  
21 of any amount paid or incurred after January 31,  
22 2020, and on or before the last day of the last cal-  
23 endar quarter ending before the date of the enact-  
24 ment of this Act, such amount shall be treated as  
25 paid or incurred on such date of enactment.

1           (m) VOLUNTARY LABELING.—Not later than 90 days  
2 after the date of the enactment of this Act, the Adminis-  
3 trator of the Environmental Protection Agency, in con-  
4 sultation with the Director of the Centers for Disease Con-  
5 trol and Prevention and other appropriate agencies, shall  
6 establish a framework and guidelines for a voluntary label  
7 to certify that air pressure ventilation, zoning, fresh air  
8 intake, purification, or filtration systems meet the applica-  
9 ble standards provided under subsection (c)(1).

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