

117TH CONGRESS
1ST SESSION

S. 537

To provide a tax credit for certain expenses associated with protecting employees from COVID–19.

IN THE SENATE OF THE UNITED STATES

MARCH 2 (legislative day, MARCH 1), 2021

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

A BILL

To provide a tax credit for certain expenses associated with protecting employees from 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. SHORT TITLE.**

4 This Act may be cited as the “Healthy Workplaces
5 Act”.

6 **SEC. 2. HEALTHY WORKPLACE PAYROLL TAX CREDIT.**

7 (a) IN GENERAL.—In the case of an employer, there
8 shall be allowed as a credit against applicable employment
9 taxes for each calendar quarter an amount equal to 50
10 percent of the sum of—

1 (1) the qualified employee protection expenses
 2 paid or incurred by the employer during such cal-
 3 endar quarter,

4 (2) the qualified workplace reconfiguration ex-
 5 penses paid or incurred by the employer during such
 6 calendar quarter, and

7 (3) the qualified education and training ex-
 8 penses paid or incurred by the employer during such
 9 calendar quarter.

10 (b) LIMITATIONS AND REFUNDABILITY.—

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

13 (A) IN GENERAL.—The amount of the
 14 credit allowed under subsection (a) with respect
 15 to any employer for any calendar quarter shall
 16 not exceed the excess (if any) of—

17 (i) the applicable dollar limit with re-
 18 spect to such employer for such calendar
 19 quarter, over

20 (ii) the aggregate credits allowed
 21 under subsection (a) with respect to such
 22 employer for all preceding calendar quar-
 23 ters.

24 (B) APPLICABLE DOLLAR LIMIT.—

1 (i) IN GENERAL.—The term “applica-
2 ble dollar limit” means, with respect to any
3 employer for any calendar quarter, the
4 sum of—

5 (I) \$1,000, multiplied by so much
6 of the average number of full-time
7 employees employed by such employer
8 during such calendar quarter as does
9 not exceed 500, plus

10 (II) \$750, multiplied by so much
11 of such average number of full-time
12 employees as exceeds 500 but does
13 not exceed 1,000, plus

14 (III) \$500, multiplied by so much
15 of such average number of full-time
16 employees as exceeds 1,000 but does
17 not exceed 2,500, plus

18 (IV) \$250, multiplied by so much
19 of such average number of full-time
20 employees as exceeds 2,500 but does
21 not exceed 5,000, plus

22 (V) \$50, multiplied by so much
23 of such average number of full-time
24 employees as exceeds 5,000.

1 (ii) AVERAGE NUMBER OF FULL-TIME
2 EMPLOYEES.—For purposes of this sub-
3 section, the average number of full time
4 employees shall be determined in the same
5 manner as such number is determined for
6 purposes of determining whether an em-
7 ployer is an applicable large employer for
8 purposes of section 4980H(c)(2) of the In-
9 ternal Revenue Code of 1986, except
10 that—

11 (I) an individual shall not be
12 taken into account as an employee for
13 any period during which substantially
14 all of the services provided by such in-
15 dividual as an employee are provided
16 outside the United States, and

17 (II) under regulations provided
18 by the Secretary, an individual who
19 performs services as an independent
20 contractor shall be treated as an em-
21 ployee of the employer if no credit
22 under this section is allowed to any
23 other employer with respect to such
24 individual.

1 (2) CREDIT LIMITED TO EMPLOYMENT
2 TAXES.—The credit allowed by subsection (a) with
3 respect to any calendar quarter shall not exceed the
4 applicable employment taxes (reduced by any credits
5 allowed under subsections (e) and (f) of section
6 3111 of the Internal Revenue Code of 1986, sections
7 7001 and 7003 of the Families First Coronavirus
8 Response Act, and section 2301 of the CARES Act)
9 on the wages paid with respect to the employment
10 of all the employees of the employer for such cal-
11 endar quarter.

12 (3) REFUNDABILITY OF EXCESS CREDIT.—

13 (A) IN GENERAL.—If the amount of the
14 credit under subsection (a) exceeds the limita-
15 tion of paragraph (2) for any calendar quarter,
16 such excess shall be treated as an overpayment
17 that shall be refunded under sections 6402(a)
18 and 6413(b) of the Internal Revenue Code of
19 1986.

20 (B) TREATMENT OF PAYMENTS.—For pur-
21 poses of section 1324 of title 31, United States
22 Code, any amounts due to the employer under
23 this paragraph shall be treated in the same
24 manner as a refund due from a credit provision
25 referred to in subsection (b)(2) of such section.

1 (c) QUALIFIED EMPLOYEE PROTECTION EX-
2 PENSES.—For purposes of this section, the term “quali-
3 fied employee protection expenses” means amounts (other
4 than any qualified workplace reconfiguration expense)
5 paid or incurred by the employer for—

6 (1) testing employees of the employer for
7 COVID–19 (including on a periodic basis),

8 (2) equipment (including masks, gloves, and
9 disinfectants) and technology systems used—

10 (A) to protect customers or employees of
11 the employer from contracting COVID–19, or

12 (B) to enhance social distancing and con-
13 tact tracing.

14 (3) cleaning products or services (whether pro-
15 vided by an employee of the taxpayer or a cleaning
16 service provider) related to preventing the spread of
17 COVID–19, and

18 (4) such other equipment or technology which—

19 (A) is recommended as part of the Federal
20 government’s recommendations for safe work-
21 places, and

22 (B) the Secretary, in consultation with the
23 Secretary of Health and Human Services and
24 the Director of the Centers for Disease Control

1 and Prevention, determines is necessary and ap-
2 propriate for preventing COVID–19.

3 (d) QUALIFIED WORKPLACE RECONFIGURATION EX-
4 PENSES.—For purposes of this section—

5 (1) IN GENERAL.—The term “qualified work-
6 place reconfiguration expenses” means amounts paid
7 or incurred by the employer to evaluate, design, and
8 reconfigure retail space, work areas, break areas, or
9 other areas that employees or customers regularly
10 use in the ordinary course of the employer’s trade or
11 business if such evaluation, design, and reconfigura-
12 tion—

13 (A) has a primary purpose of preventing
14 the spread of COVID–19,

15 (B) is with respect to an area that is lo-
16 cated in the United States and that is leased or
17 owned by the employer,

18 (C) is consistent with the ordinary use of
19 the property immediately before the reconfig-
20 uration,

21 (D) is commensurate with the risks faced
22 by the employees or customers or is consistent
23 with recommendations made by the Centers for
24 Disease Control and Prevention or the Occupa-
25 tional Safety and Health Administration,

1 (E) is completed pursuant to a reconfig-
 2 uration plan and no comparable reconfiguration
 3 plan was in place before March 13, 2020, and

4 (F) is completed before January 1, 2022.

5 (2) REGULATIONS.—The Secretary shall pre-
 6 scribe such regulations and other guidance as may
 7 be necessary or appropriate to carry out the pur-
 8 poses of this subsection, including guidance defining
 9 primary purpose and reconfiguration plan.

10 (e) QUALIFIED EDUCATION AND TRAINING EX-
 11 PENSES.—For purposes of this section—

12 (1) IN GENERAL.—The term “qualified edu-
 13 cation and training expenses” means amount paid or
 14 incurred to a qualified entity for the training em-
 15 ployees on new business procedures related to pre-
 16 venting COVID–19 transmission.

17 (2) QUALIFIED ENTITY.—The term “qualified
 18 entity” means any entity certified by the Secretary
 19 as an accredited training institution, an industry-
 20 recognized trade association, or a nonprofit entity
 21 qualified to provide training described in paragraph
 22 (1).

23 (f) OTHER DEFINITIONS.—For purposes of this sec-
 24 tion—

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

4 (A) The taxes imposed under section
 5 3111(a) of the Internal Revenue Code of 1986.

6 (B) So much of the taxes imposed under
 7 section 3221(a) of such Code as are attrib-
 8 utable to the rate in effect under section
 9 3111(a) of such Code.

10 (2) COVID-19.—Except where the context
 11 clearly indicates otherwise, any reference in this sec-
 12 tion to COVID-19 shall be treated as including a
 13 reference to the virus which causes COVID-19.

14 (3) SECRETARY.—The term “Secretary” means
 15 the Secretary of the Treasury or the Secretary’s del-
 16 egate.

17 (4) OTHER TERMS.—Any term used in this sec-
 18 tion (other than subsection (b)(1)(B)) which is also
 19 used in chapter 21 or 22 of the Internal Revenue
 20 Code of 1986 shall have the same meaning as when
 21 used in such chapter.

22 (g) CERTAIN GOVERNMENTAL EMPLOYERS.—This
 23 section shall not apply to the Government of the United
 24 States, the government of any State or political subdivi-

1 sion thereof, or any agency or instrumentality of any of
 2 the foregoing.

3 (h) SPECIAL RULES.—

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

10 (2) DENIAL OF DOUBLE BENEFIT.—Rules simi-
 11 lar to the rules of section 280C(a) of the Internal
 12 Revenue Code of 1986 shall apply for purposes of
 13 this section.

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

17 (4) ELECTION NOT TO HAVE SECTION APPLY.—
 18 This section shall not apply with respect to any em-
 19 ployer for any calendar quarter if such employer
 20 elects (at such time and in such manner as the Sec-
 21 retary may prescribe) not to have this section apply.

22 (5) COORDINATION WITH PAYCHECK PROTEC-
 23 TION PROGRAM AND OTHER GOVERNMENT
 24 GRANTS.—

25 (A) PAYCHECK PROTECTION PROGRAM.—

1 (i) IN GENERAL.—No credit shall be
2 allowed under section with respect to any
3 amounts taken into account in connection
4 with a covered loan under section 7(a)(37)
5 or 7A of the Small Business Act.

6 (ii) APPLICATION WHERE LOANS NOT
7 FORGIVEN.—The Secretary, in consultation
8 with the Administrator of the Small Busi-
9 ness Administration, shall issue guidance
10 providing that amounts taken into account
11 during the covered period shall not fail to
12 be treated as qualified wages under this
13 section by reason of subparagraph (A) to
14 the extent that—

15 (I) a covered loan of the taxpayer
16 under section 7(a)(37) of the Small
17 Business Act is not forgiven by reason
18 of a decision under section
19 7(a)(37)(J) of such Act, or

20 (II) a covered loan of the tax-
21 payer under section 7A of the Small
22 Business Act is not forgiven by reason
23 of a decision under section 7A(g) of
24 such Act.

1 (B) GOVERNMENT GRANTS.—No credit
 2 shall be allowed under this section with respect
 3 to any amount paid or incurred for property or
 4 services if such property or services are fi-
 5 nanced with funding provided under a Federal,
 6 State, or local program a principal purpose of
 7 which is to provide subsidized financing for
 8 such property or services.

9 (6) EXPENSES MUST BE FOR PROPERTY OR
 10 SERVICES WITHIN THE UNITED STATES.—An
 11 amount paid or incurred by the employer shall not
 12 be taken into account as a qualified employee protec-
 13 tion expense, a qualified workplace reconfiguration
 14 expense, or a qualified education and training ex-
 15 pense if such amount is paid or incurred for—

16 (A) equipment which is not for use in the
 17 United States, or

18 (B) services which are not conducted in the
 19 United States.

20 (i) TRANSFERS TO CERTAIN TRUST FUNDS.—There
 21 are hereby appropriated to the Federal Old-Age and Sur-
 22 vivors Insurance Trust Fund and the Federal Disability
 23 Insurance Trust Fund established under section 201 of
 24 the Social Security Act (42 U.S.C. 401) and the Social
 25 Security Equivalent Benefit Account established under

1 section 15A(a) of the Railroad Retirement Act of 1974
 2 (45 U.S.C. 231n-1(a)) amounts equal to the reduction in
 3 revenues to the Treasury by reason of this section (without
 4 regard to this subsection). Amounts appropriated by the
 5 preceding sentence shall be transferred from the general
 6 fund at such times and in such manner as to replicate
 7 to the extent possible the transfers which would have oc-
 8 curred to such Trust Fund or Account had this section
 9 not been enacted.

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

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

20 (1) with respect to the application of the credit
 21 under subsection (a) to third-party payors (including
 22 professional employer organizations, certified profes-
 23 sional employer organizations, or agents under sec-
 24 tion 3504 of the Internal Revenue Code of 1986),
 25 regulations or other guidance allowing such payors

1 to submit documentation necessary to substantiate
2 the amount of the credit allowed under subsection
3 (a),

4 (2) regulations or other guidance with respect
5 to amounts paid or incurred by an employer on be-
6 half of the owner or lessee, or paid or incurred by
7 such owner or lessee, of a property that is the sub-
8 ject of a management agreement or other similar
9 legal arrangement, and

10 (3) regulations or other guidance to prevent
11 abusive transactions.

12 (l) APPLICATION.—This section shall only apply to
13 amounts paid or incurred after December 31, 2020, and
14 before January 1, 2022.

15 **SEC. 3. INCOME TAX CREDIT FOR 2020 QUALIFIED WORK-**
16 **PLACE RECONFIGURATION EXPENSES.**

17 (a) IN GENERAL.—For purposes of section 38 of the
18 Internal Revenue Code of 1986, in the case of an em-
19 ployer, the 2020 qualified workplace reconfiguration credit
20 shall be treated as a credit listed at the end of subsection
21 (b) of such section. For purposes of this subsection, the
22 2020 qualified workplace reconfiguration credit for any
23 taxable year is an amount equal to 50 percent of the quali-
24 fied workplace reconfiguration expenses paid or incurred
25 by the employer during such taxable year.

1 (b) LIMITATION.—

2 (1) IN GENERAL.—The amount of the credit al-
3 lowed under subsection (a) with respect to any em-
4 ployer for any taxable year shall not exceed—

5 (A) \$3,000, multiplied by so much of the
6 average number of full-time employees em-
7 ployed by such employer during such taxable
8 year as does not exceed 500, plus

9 (B) \$0, multiplied by so much of such av-
10 erage number of full-time employees as exceeds
11 500.

12 (2) AVERAGE NUMBER OF FULL-TIME EMPLOY-
13 EES.—For purposes of this subsection, the average
14 number of full time employees shall be determined in
15 the same manner as such number is determined for
16 purposes of determining whether an employer is an
17 applicable large employer for purposes of section
18 4980H(c)(2) of the Internal Revenue Code of 1986,
19 except that—

20 (A) an individual shall not be taken into
21 account as an employee for any period during
22 which substantially all of the services provided
23 by such individual as an employee are provided
24 outside the United States, and

1 (B) under regulations provided by the Sec-
 2 retary, an individual who performs services as
 3 an independent contractor shall be treated as
 4 an employee of the employer if no credit under
 5 this section is allowed to any other employer
 6 with respect to such individual.

7 (c) QUALIFIED WORKPLACE RECONFIGURATION EX-
 8 PENSES.—For purposes of this section—

9 (1) IN GENERAL.—The term “qualified work-
 10 place reconfiguration expenses” has the meaning
 11 given such term under section 2(d).

12 (2) EXPENSES MUST BE FOR PROPERTY OR
 13 SERVICES WITHIN THE UNITED STATES.—An
 14 amount paid or incurred by the employer shall not
 15 be taken into account as a qualified workplace re-
 16 configuration expense if such amount is paid or in-
 17 curred for—

18 (A) equipment which is not for use in the
 19 United States, or

20 (B) services which are not conducted in the
 21 United States.

22 (d) OTHER RULES.—

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

1 subsection (m) or (o) of section 414 of such Code,
 2 shall be treated as one employer for purposes of this
 3 section.

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

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

13 (4) COORDINATION WITH PAYCHECK PROTEC-
 14 TION PROGRAM AND OTHER GOVERNMENT
 15 GRANTS.—

16 (A) PAYCHECK PROTECTION PROGRAM.—

17 (i) IN GENERAL.—No credit shall be
 18 allowed under section with respect to any
 19 amounts taken into account in connection
 20 with a covered loan under section 7(a)(37)
 21 or 7A of the Small Business Act.

22 (ii) APPLICATION WHERE LOANS NOT
 23 FORGIVEN.—The Secretary, in consultation
 24 with the Administrator of the Small Busi-
 25 ness Administration, shall issue guidance

1 providing that amounts taken into account
2 during the covered period shall not fail to
3 be treated as qualified wages under this
4 section by reason of subparagraph (A) to
5 the extent that—

6 (I) a covered loan of the taxpayer
7 under section 7(a)(37) of the Small
8 Business Act is not forgiven by reason
9 of a decision under section
10 7(a)(37)(J) of such Act, or

11 (II) a covered loan of the tax-
12 payer under section 7A of the Small
13 Business Act is not forgiven by reason
14 of a decision under section 7A(g) of
15 such Act.

16 (B) GOVERNMENT GRANTS.—No credit
17 shall be allowed under this section with respect
18 to any amount paid or incurred for property or
19 services if such property or services are fi-
20 nanced with funding provided under a Federal,
21 State, or local program a principal purpose of
22 which is to provide subsidized financing for
23 such property or services.

1 (e) APPLICABILITY.—This section shall apply to
2 qualified workplace reconfiguration expenses paid or in-
3 curred after March 12, 2020, and before January 1, 2021.

○