

“(B) in the case of payments made before January 1, 2021, the payment by an employer, whether paid to the employee or to a lender, of principal or interest on any qualified education loan (as defined in section 221(d)(1)) incurred by the employee for education of the employee, and”.

(b) **CONFORMING AMENDMENT; DENIAL OF DOUBLE BENEFIT.**—The first sentence of paragraph (1) of section 221(e) of the Internal Revenue Code of 1986 is amended by inserting before the period the following: “, or for which an exclusion is allowable under section 127 to the taxpayer by reason of the payment by the taxpayer’s employer of any indebtedness on a qualified education loan of the taxpayer”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to payments made after the date of the enactment of this Act.

Subtitle C—Business Provisions

SEC. 2301. EMPLOYEE RETENTION CREDIT FOR EMPLOYERS SUBJECT TO CLOSURE DUE TO COVID-19.

(a) **IN GENERAL.**—In the case of an eligible employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to 50 percent of the qualified wages with respect to each employee of such employer for such calendar quarter.

(b) **LIMITATIONS AND REFUNDABILITY.**—

(1) **WAGES TAKEN INTO ACCOUNT.**—The amount of qualified wages with respect to any employee which may be taken into account under subsection (a) by the eligible employer for all calendar quarters shall not exceed \$10,000.

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

(3) **REFUNDABILITY OF EXCESS CREDIT.**—

(A) **IN GENERAL.**—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of the Internal Revenue Code of 1986.

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

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

(1) **APPLICABLE EMPLOYMENT TAXES.**—The term “applicable employment taxes” means the following:

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

(B) So much of the taxes imposed under section 3221(a) of such Code as are attributable to the rate in effect under section 3111(a) of such Code.

(2) ELIGIBLE EMPLOYER.—

(A) IN GENERAL.—The term “eligible employer” means any employer—

(i) which was carrying on a trade or business during calendar year 2020, and

(ii) with respect to any calendar quarter, for which—

(I) the operation of the trade or business described in clause (i) is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 2019 (COVID-19), or

(II) such calendar quarter is within the period described in subparagraph (B).

(B) SIGNIFICANT DECLINE IN GROSS RECEIPTS.—The period described in this subparagraph is the period—

(i) beginning with the first calendar quarter beginning after December 31, 2019, for which gross receipts (within the meaning of section 448(c) of the Internal Revenue Code of 1986) for the calendar quarter are less than 50 percent of gross receipts for the same calendar quarter in the prior year, and

(ii) ending with the calendar quarter following the first calendar quarter beginning after a calendar quarter described in clause (i) for which gross receipts of such employer are greater than 80 percent of gross receipts for the same calendar quarter in the prior year.

(C) TAX-EXEMPT ORGANIZATIONS.—In the case of an organization which is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, clauses (i) and (ii)(I) of subparagraph (A) shall apply to all operations of such organization.

(3) QUALIFIED WAGES.—

(A) IN GENERAL.—The term “qualified wages” means—

(i) in the case of an eligible employer for which the average number of full-time employees (within the meaning of section 4980H of the Internal Revenue Code of 1986) employed by such eligible employer during 2019 was greater than 100, wages paid by such eligible employer with respect to which an employee is not providing services due to circumstances described in subclause (I) or (II) of paragraph (2)(A)(ii), or

(ii) in the case of an eligible employer for which the average number of full-time employees (within the meaning of section 4980H of the Internal Revenue Code of 1986) employed by such eligible employer during 2019 was not greater than 100—

(I) with respect to an eligible employer described in subclause (I) of paragraph (2)(A)(ii),

wages paid by such eligible employer with respect to an employee during any period described in such clause, or

(II) with respect to an eligible employer described in subclause (II) of such paragraph, wages paid by such eligible employer with respect to an employee during such quarter.

Such term shall not include any wages taken into account under section 7001 or section 7003 of the Families First Coronavirus Response Act.

(B) LIMITATION.—Qualified wages paid or incurred by an eligible employer described in subparagraph (A)(i) with respect to an employee for any period described in such subparagraph may not exceed the amount such employee would have been paid for working an equivalent duration during the 30 days immediately preceding such period.

(C) ALLOWANCE FOR CERTAIN HEALTH PLAN EXPENSES.—

(i) IN GENERAL.—The term “qualified wages” shall include so much of the eligible employer’s qualified health plan expenses as are properly allocable to such wages.

(ii) QUALIFIED HEALTH PLAN EXPENSES.—For purposes of this paragraph, the term “qualified health plan expenses” means amounts paid or incurred by the eligible employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a) of such Code.

(iii) ALLOCATION RULES.—For purposes of this paragraph, qualified health plan expenses shall be allocated to qualified wages in such manner as the Secretary may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among employees and pro rata on the basis of periods of coverage (relative to the periods to which such wages relate).

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

(5) WAGES.—The term “wages” means wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) and compensation (as defined in section 3231(e) of such Code).

(6) OTHER TERMS.—Any term used in this section which is also used in chapter 21 or 22 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such chapter.

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

(e) CERTAIN RULES TO APPLY.—For purposes of this section, rules similar to the rules of sections 51(i)(1) and 280C(a) of the Internal Revenue Code of 1986 shall apply.

(f) CERTAIN GOVERNMENTAL EMPLOYERS.—This credit shall not apply to the Government of the United States, the government

of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

(g) ELECTION NOT TO HAVE SECTION APPLY.—This section shall not apply with respect to any eligible employer for any calendar quarter if such employer elects (at such time and in such manner as the Secretary may prescribe) not to have this section apply.

(h) SPECIAL RULES.—

(1) EMPLOYEE NOT TAKEN INTO ACCOUNT MORE THAN ONCE.—An employee shall not be included for purposes of this section for any period with respect to any employer if such employer is allowed a credit under section 51 of the Internal Revenue Code of 1986 with respect to such employee for such period.

(2) DENIAL OF DOUBLE BENEFIT.—Any wages taken into account in determining the credit allowed under this section shall not be taken into account for purposes of determining the credit allowed under section 45S of such Code.

(3) THIRD PARTY PAYORS.—Any credit allowed under this section shall be treated as a credit described in section 3511(d)(2) of such Code.

(i) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 14 231n-1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

(j) RULE FOR EMPLOYERS TAKING SMALL BUSINESS INTERRUPTION LOAN.—If an eligible employer receives a covered loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act, such employer shall not be eligible for the credit under this section.

(k) TREATMENT OF DEPOSITS.—The Secretary shall waive any penalty under section 6656 of the Internal Revenue Code of 1986 for any failure to make a deposit of any applicable employment taxes if the Secretary determines that such failure was due to the reasonable anticipation of the credit allowed under this section.

(l) REGULATIONS AND GUIDANCE.—The Secretary shall issue such forms, instructions, regulations, and guidance as are necessary—

(1) to allow the advance payment of the credit under subsection (a), subject to the limitations provided in this section, based on such information as the Secretary shall require,

(2) to provide for the reconciliation of such advance payment with the amount advanced at the time of filing the return of tax for the applicable calendar quarter or taxable year,

(3) to provide for the recapture of the credit under this section if such credit is allowed to a taxpayer which receives a loan described in subsection (j) during a subsequent quarter,

(4) with respect to the application of the credit under subsection (a) to third party payors (including professional

employer organizations, certified professional employer organizations, or agents under section 3504 of the Internal Revenue Code of 1986), including regulations or guidance allowing such payors to submit documentation necessary to substantiate the eligible employer status of employers that use such payors, and

(5) for application of subparagraphs (A)(ii)(II) and (B) of subsection (c)(2) in the case of any employer which was not carrying on a trade or business for all or part of the same calendar quarter in the prior year.

(m) APPLICATION.—This section shall only apply to wages paid after March 12, 2020, and before January 1, 2021.

SEC. 2302. DELAY OF PAYMENT OF EMPLOYER PAYROLL TAXES.

(a) IN GENERAL.—

(1) TAXES.—Notwithstanding any other provision of law, the payment for applicable employment taxes for the payroll tax deferral period shall not be due before the applicable date.

(2) DEPOSITS.—Notwithstanding section 6302 of the Internal Revenue Code of 1986, an employer shall be treated as having timely made all deposits of applicable employment taxes that are required to be made (without regard to this section) for such taxes during the payroll tax deferral period if all such deposits are made not later than the applicable date.

(3) EXCEPTION.—This subsection shall not apply to any taxpayer if such taxpayer has had indebtedness forgiven under section 1106 of this Act with respect to a loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act, or indebtedness forgiven under section 1109 of this Act.

(b) SECA.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the payment for 50 percent of the taxes imposed under section 1401(a) of the Internal Revenue Code of 1986 for the payroll tax deferral period shall not be due before the applicable date.

(2) ESTIMATED TAXES.—For purposes of applying section 6654 of the Internal Revenue Code of 1986 to any taxable year which includes any part of the payroll tax deferral period, 50 percent of the taxes imposed under section 1401(a) of such Code for the payroll tax deferral period shall not be treated as taxes to which such section 6654 applies.

(c) LIABILITY OF THIRD PARTIES.—

(1) ACTS TO BE PERFORMED BY AGENTS.—For purposes of section 3504 of the Internal Revenue Code of 1986, in the case of any person designated pursuant to such section (and any regulations or other guidance issued by the Secretary with respect to such section) to perform acts otherwise required to be performed by an employer under such Code, if such employer directs such person to defer payment of any applicable employment taxes during the payroll tax deferral period under this section, such employer shall be solely liable for the payment of such applicable employment taxes before the applicable date for any wages paid by such person on behalf of such employer during such period.