

## 1       **Subtitle C—Business Provisions**

### 2       **SEC. 2301. EMPLOYEE RETENTION CREDIT FOR EMPLOY-** 3                   **ERS SUBJECT TO CLOSURE DUE TO COVID-19.**

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 wages with respect  
8 to each employee of such employer for such calendar quar-  
9 ter.

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

11           (1) **WAGES TAKEN INTO ACCOUNT.**—The  
12 amount of qualified wages with respect to any em-  
13 ployee which may be taken into account under sub-  
14 section (a) by the eligible employer for all calendar  
15 quarters shall not exceed \$10,000.

16           (2) **CREDIT LIMITED TO EMPLOYMENT**  
17 **TAXES.**—The credit allowed by subsection (a) with  
18 respect to any calendar quarter shall not exceed the  
19 applicable employment taxes (reduced by any credits  
20 allowed under subsections (e) and (f) of section  
21 3111 of the Internal Revenue Code of 1986 and sec-  
22 tions 7001 and 7003 of the Families First  
23 Coronavirus Response Act) on the wages paid with  
24 respect to the employment of all the employees of  
25 the eligible employer for such calendar quarter.

1 (3) REFUNDABILITY OF EXCESS CREDIT.—

2 (A) IN GENERAL.—If the amount of the  
3 credit under subsection (a) exceeds the limita-  
4 tion of paragraph (2) for any calendar quarter,  
5 such excess shall be treated as an overpayment  
6 that shall be refunded under sections 6402(a)  
7 and 6413(b) of the Internal Revenue Code of  
8 1986.

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

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

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

19 (A) The taxes imposed under section  
20 3111(a) of the Internal Revenue Code of 1986.

21 (B) So much of the taxes imposed under  
22 section 3221(a) of such Code as are attrib-  
23 utable to the rate in effect under section  
24 3111(a) of such Code.

25 (2) ELIGIBLE EMPLOYER.—

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

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

5 (ii) with respect to any calendar quar-  
6 ter, for which—

7 (I) the operation of the trade or  
8 business described in clause (i) is fully  
9 or partially suspended during the cal-  
10 endar quarter due to orders from an  
11 appropriate governmental authority  
12 limiting commerce, travel, or group  
13 meetings (for commercial, social, reli-  
14 gious, or other purposes) due to the  
15 coronavirus disease 2019 (COVID-  
16 19), or

17 (II) such calendar quarter is  
18 within the period described in sub-  
19 paragraph (B).

20 (B) SIGNIFICANT DECLINE IN GROSS RE-  
21 CEIPTS.—The period described in this subpara-  
22 graph is the period—

23 (i) beginning with the first calendar  
24 quarter beginning after December 31,  
25 2019, for which gross receipts (within the

1 meaning of section 448(c) of the Internal  
2 Revenue Code of 1986) for the calendar  
3 quarter are less than 50 percent of gross  
4 receipts for the same calendar quarter in  
5 the prior year, and

6 (ii) ending with the calendar quarter  
7 following the first calendar quarter begin-  
8 ning after a calendar quarter described in  
9 clause (i) for which gross receipts of such  
10 employer are greater than 80 percent of  
11 gross receipts for the same calendar quar-  
12 ter in the prior year.

13 (C) TAX-EXEMPT ORGANIZATIONS.—In the  
14 case of an organization which is described in  
15 section 501(c) of the Internal Revenue Code of  
16 1986 and exempt from tax under section 501(a)  
17 of such Code, clauses (i) and (ii)(I) of subpara-  
18 graph (A) shall apply to all operations of such  
19 organization.

20 (3) QUALIFIED WAGES.—

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

23 (i) in the case of an eligible employer  
24 for which the average number of full-time  
25 employees (within the meaning of section

1 4980H of the Internal Revenue Code of  
2 1986) employed by such eligible employer  
3 during 2019 was greater than 100, wages  
4 paid by such eligible employer with respect  
5 to which an employee is not providing serv-  
6 ices due to circumstances described in sub-  
7 clause (I) or (II) of paragraph (2)(A)(ii),  
8 or

9 (ii) in the case of an eligible employer  
10 for which the average number of full-time  
11 employees (within the meaning of section  
12 4980H of the Internal Revenue Code of  
13 1986) employed by such eligible employer  
14 during 2019 was not greater than 100—

15 (I) with respect to an eligible em-  
16 ployer described in subclause (I) of  
17 paragraph (2)(A)(ii), wages paid by  
18 such eligible employer with respect to  
19 an employee during any period de-  
20 scribed in such clause, or

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

1           Such term shall not include any wages taken  
2           into account under section 7001 or section  
3           7003 of the Families First Coronavirus Re-  
4           sponse Act.

5                   (B) LIMITATION.—Qualified wages paid or  
6           incurred by an eligible employer described in  
7           subparagraph (A)(i) with respect to an em-  
8           ployee for any period described in such sub-  
9           paragraph may not exceed the amount such em-  
10          ployee would have been paid for working an  
11          equivalent duration during the 30 days imme-  
12          diately preceding such period.

13                   (C) ALLOWANCE FOR CERTAIN HEALTH  
14          PLAN EXPENSES.—

15                           (i) IN GENERAL.—The term “qualified  
16          wages” shall include so much of the eligi-  
17          ble employer’s qualified health plan ex-  
18          penses as are properly allocable to such  
19          wages.

20                           (ii) QUALIFIED HEALTH PLAN EX-  
21          PENSES.—For purposes of this paragraph,  
22          the term “qualified health plan expenses”  
23          means amounts paid or incurred by the eli-  
24          gible employer to provide and maintain a  
25          group health plan (as defined in section

1           5000(b)(1) of the Internal Revenue Code  
2           of 1986), but only to the extent that such  
3           amounts are excluded from the gross in-  
4           come of employees by reason of section  
5           106(a) of such Code.

6           (iii) ALLOCATION RULES.—For pur-  
7           poses of this paragraph, qualified health  
8           plan expenses shall be allocated to quali-  
9           fied wages in such manner as the Sec-  
10          retary may prescribe. Except as otherwise  
11          provided by the Secretary, such allocation  
12          shall be treated as properly made if made  
13          on the basis of being pro rata among em-  
14          ployees and pro rata on the basis of peri-  
15          ods of coverage (relative to the periods to  
16          which such wages relate).

17          (4) SECRETARY.—The term “Secretary” means  
18          the Secretary of the Treasury or the Secretary’s del-  
19          egate.

20          (5) WAGES.—The term “wages” means wages  
21          (as defined in section 3121(a) of the Internal Rev-  
22          enue Code of 1986) and compensation (as defined in  
23          section 3231(e) of such Code).

24          (6) OTHER TERMS.—Any term used in this sec-  
25          tion which is also used in chapter 21 or 22 of the

1 Internal Revenue Code of 1986 shall have the same  
2 meaning as when used in such chapter.

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

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

12 (f) CERTAIN GOVERNMENTAL EMPLOYERS.—This  
13 credit shall not apply to the Government of the United  
14 States, the government of any State or political subdivi-  
15 sion thereof, or any agency or instrumentality of any of  
16 the foregoing.

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

22 (h) SPECIAL RULES.—

23 (1) EMPLOYEE NOT TAKEN INTO ACCOUNT  
24 MORE THAN ONCE.—An employee shall not be in-  
25 cluded for purposes of this section for any period



1 with respect to any employer if such employer is al-  
2 lowed a credit under section 51 of the Internal Rev-  
3 enue Code of 1986 with respect to such employee for  
4 such period.

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

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

13 (i) TRANSFERS TO FEDERAL OLD-AGE AND SUR-  
14 VIVORS INSURANCE TRUST FUND.—There are hereby ap-  
15 propriated to the Federal Old-Age and Survivors Insur-  
16 ance Trust Fund and the Federal Disability Insurance  
17 Trust Fund established under section 201 of the Social  
18 Security Act (42 U.S.C. 401) and the Social Security  
19 Equivalent Benefit Account established under section  
20 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C.  
21 14 231n–1(a)) amounts equal to the reduction in revenues  
22 to the Treasury by reason of this section (without regard  
23 to this subsection). Amounts appropriated by the pre-  
24 ceding sentence shall be transferred from the general fund  
25 at such times and in such manner as to replicate to the

1 extent possible the transfers which would have occurred  
2 to such Trust Fund or Account had this section not been  
3 enacted.

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

10 (k) 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 (l) REGULATIONS AND GUIDANCE.—The Secretary  
17 shall issue such forms, instructions, regulations, and guid-  
18 ance as are necessary—

19 (1) to allow the advance payment of the credit  
20 under subsection (a), subject to the limitations pro-  
21 vided in this section, based on such information as  
22 the Secretary shall require,

23 (2) to provide for the reconciliation of such ad-  
24 vance payment with the amount advanced at the

1 time of filing the return of tax for the applicable cal-  
2 endar quarter or taxable year,

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

7 (4) with respect to the application of the credit  
8 under subsection (a) to third party payors (including  
9 professional employer organizations, certified profes-  
10 sional employer organizations, or agents under sec-  
11 tion 3504 of the Internal Revenue Code of 1986),  
12 including regulations or guidance allowing such  
13 payors to submit documentation necessary to sub-  
14 stantiate the eligible employer status of employers  
15 that use such payors, and

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

21 (m) APPLICATION.—This section shall only apply to  
22 wages paid after March 12, 2020, and before January 1,  
23 2021.