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(Original Signature of Member)

116TH CONGRESS
2D SESSION

H. R. _____

To provide a payroll tax credit for certain costs of providing employees with testing for COVID-19.

IN THE HOUSE OF REPRESENTATIVES

Mr. SCHWEIKERT introduced the following bill; which was referred to the Committee on _____

A BILL

To provide a payroll tax credit for certain costs of providing employees with testing for 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. EMPLOYEE TESTING TAX CREDIT.**

4 (a) IN GENERAL.—In the case of an employer, there
5 shall be allowed as a credit against applicable employment
6 taxes for each calendar quarter an amount equal to 50
7 percent of the the qualified employee testing expenses paid
8 or incurred by the employer during such calendar quarter.

9 (b) LIMITATIONS AND REFUNDABILITY.—

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

3 (A) IN GENERAL.—The amount of the
4 credit allowed under subsection (a) with respect
5 to any employer for any calendar quarter shall
6 not exceed the excess (if any) of—

7 (i) the applicable dollar limit with re-
8 spect to such employer for such calendar
9 quarter, over

10 (ii) the aggregate credits allowed
11 under subsection (a) with respect to such
12 employer for all preceding calendar quar-
13 ters.

14 (B) APPLICABLE DOLLAR LIMIT.—The
15 term “applicable dollar limit” means, with re-
16 spect to any employer for any calendar quarter,
17 the sum of—

18 (i) \$500, multiplied so much of the
19 average number of full-time employees (as
20 determined for purposes of determining
21 whether an employer is an applicable large
22 employer for purposes of section
23 4980H(c)(2) of the Internal Revenue Code
24 of 1986, except that an individual shall not
25 be taken into account as employee for any

1 period during which substantially all of the
2 services provided by such individual as an
3 employee are provided outside the United
4 States) employed by such employer during
5 such calendar quarter as does not exceed
6 500, plus

7 (ii) \$375, multiplied by so much of
8 such average number of full-time employ-
9 ees as exceeds 500 but does not exceed
10 1,000, plus

11 (iii) \$250, multiplied by so much of
12 such average number of full-time employ-
13 ees as exceeds 1,000.

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 eligible employer for such
24 calendar 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 EMPLOYEE TESTING EXPENSES.—
15 For purposes of this section, the term “qualified employee
16 testing expenses” means amounts paid or incurred by the
17 employer for testing employees of the employer for
18 COVID-19 or SARS-CoV-2 (including on a periodic
19 basis).

20 (d) OTHER DEFINITIONS.—For purposes of this sec-
21 tion—

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

1 (A) The taxes imposed under section
2 3111(a) of the Internal Revenue Code of 1986.

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

7 (2) SECRETARY.—The term “Secretary” means
8 the Secretary of the Treasury or the Secretary’s del-
9 egate.

10 (3) OTHER TERMS.—Any term used in this sec-
11 tion (other than subsection (b)(1)(B)) which is also
12 used in chapter 21 or 22 of the Internal Revenue
13 Code of 1986 shall have the same meaning as when
14 used in such chapter.

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

20 (f) SPECIAL RULES.—

21 (1) AGGREGATION RULE.—All persons treated
22 as a single employer under subsection (a) or (b) of
23 section 52 of the Internal Revenue Code of 1986, or
24 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) DENIAL OF DOUBLE BENEFIT.—Rules simi-
4 lar to the rules of section 280C(a) of the Internal
5 Revenue Code of 1986 shall apply for purposes of
6 this section.

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

10 (4) ELECTION NOT TO HAVE SECTION APPLY.—
11 This section shall not apply with respect to any eligi-
12 ble employer for any calendar quarter if such em-
13 ployer elects (at such time and in such manner as
14 the Secretary may prescribe) not to have this section
15 apply.

16 (g) TRANSFERS TO CERTAIN TRUST FUNDS.—There
17 are hereby appropriated to the Federal Old-Age and Sur-
18 vivors Insurance Trust Fund and the Federal Disability
19 Insurance Trust Fund established under section 201 of
20 the Social Security Act (42 U.S.C. 401) and the Social
21 Security Equivalent Benefit Account established under
22 section 15A(a) of the Railroad Retirement Act of 1974
23 (45 U.S.C. 14 231n–1(a)) amounts equal to the reduction
24 in revenues to the Treasury by reason of this section
25 (without regard to this subsection). Amounts appropriated

1 by the preceding sentence shall be transferred from the
2 general fund at such times and in such manner as to rep-
3 licate to the extent possible the transfers which would have
4 occurred to such Trust Fund or Account had this section
5 not been enacted.

6 (h) 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 this section.

12 (i) REGULATIONS AND GUIDANCE.—The Secretary
13 shall prescribe such regulations and other guidance as
14 may be necessary or appropriate to carry out the purposes
15 of this section, including—

16 (1) with respect to the application of the credit
17 under subsection (a) to third party payors (including
18 professional employer organizations, certified profes-
19 sional employer organizations, or agents under sec-
20 tion 3504 of the Internal Revenue Code of 1986),
21 regulations or other guidance allowing such payors
22 to submit documentation necessary to substantiate
23 the amount of the credit allowed under subsection
24 (a), and

1 (2) regulations or other guidance to prevent
2 abusive transactions.

3 (j) APPLICATION.—This section shall only apply to
4 amounts paid or incurred after March 12, 2020, and be-
5 fore January 1, 2021.