

Amendment to the Amendment in the Nature of a Substitute to Subtitle G. Budget Reconciliation Legislative Recommendations Relating to Promoting Economic Security offered by Rep. Buchanan of Florida

The amendment would provide a small business tax credit to offset the cost of the federal minimum wage mandate.

AMENDMENT

OFFERED BY Mr. Buchanan

At the end of subtitle G, add the following:

1 **SEC. 9674. CREDIT FOR MINIMUM WAGE DIFFERENTIAL.**

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 the
5 applicable percentage of the qualified wage differential
6 with respect to each employee of the employer who was
7 employed by the employer on the date of the enactment
8 of this Act.

9 (b) APPLICABLE PERCENTAGE.—For purposes of
10 this section, the term “applicable percentage” means, with
11 respect to any calendar quarter—

12 (1) 100 percent in the case of any employer the
13 average number of employees on business days dur-
14 ing the calendar quarter of which is less than 50,
15 and

16 (2) 50 percent in the case of any employer the
17 average number of employees on business days dur-
18 ing the calendar quarter of which is not less than 50
19 and is less than 500, and

20 (3) 0 percent in any other case.

1 (c) QUALIFIED WAGE DIFFERENTIAL.—For pur-
2 poses of this section, the term “qualified wage differen-
3 tial” means, with respect to any employee for any calendar
4 quarter, the product of the number of hours of work per-
5 formed by such employee for the employer during such cal-
6 endar quarter, multiplied by the excess (if any) of—

7 (1) the Federal minimum wage in effect for
8 such calendar quarter, over

9 (2) the average hourly rate of pay paid by the
10 employer to such employee determined with respect
11 to the 30-day period ending on the date of the en-
12 actment of this Act.

13 (d) LIMITATION AND REFUNDABILITY.—

14 (1) 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 against such taxes under sections 7001 and
19 7003 of the Families First Coronavirus Response
20 Act, section 2301 of the CARES Act, and any other
21 provision of this Act) on the wages paid with respect
22 to the employment of all the employees of the eligi-
23 ble employer for such calendar quarter.

24 (2) 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 (e) OTHER DEFINITIONS.—For purposes of this sec-
15 tion—

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(b) 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(b) of such Code.

1 (2) FEDERAL MINIMUM WAGE.—For purposes
2 of this section, the term “Federal minimum wage”
3 means, with respect to any hour of work, the wage
4 rate which applies to such hour of work under the
5 Fair Labor Standards Act of 1938.

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

10 (f) SPECIAL RULES.—

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

17 (2) CERTAIN GOVERNMENTAL EMPLOYERS.—
18 This credit shall not apply to the Government of the
19 United States, the government of any State or polit-
20 ical subdivision thereof, or any agency or instrumen-
21 tality of any of the foregoing.

22 (3) CERTAIN INDIVIDUALS NOT SUBJECT TO
23 MINIMUM WAGE.—No credit shall be allowed under
24 subsection (a) with respect to any employee for any
25 calendar quarter to the extent that the Federal min-

1 imum wage does not apply to such employee or the
2 rate of pay paid by such employer to such employee
3 does not equal or exceed the Federal minimum wage.

4 (4) CERTAIN RULES TO APPLY.—For purposes
5 of this section, rules similar to the rules of sections
6 51(i)(1) and 280C(a) of the Internal Revenue Code
7 of 1986 shall apply.

8 (5) DENIAL OF DOUBLE BENEFIT.—With re-
9 spect to any employee taken into account under this
10 section for any calendar quarter, no wages paid to
11 such employee for such calendar quarter shall be
12 taken into account as wages for purposes of sections
13 41, 45A, 45P, 45S, 51, and 1396 of the Internal
14 Revenue Code of 1986 or section 2301 of CARES.

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

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

23 (g) TREATMENT OF DEPOSITS.—The Secretary shall
24 waive any penalty under section 6656 of the Internal Rev-
25 enue Code of 1986 for any failure to make a deposit of

1 any applicable employment taxes if the Secretary deter-
2 mines that such failure was due to the reasonable anticipa-
3 tion of the credit allowed under this section.

4 (h) REGULATIONS AND GUIDANCE.—The Secretary
5 shall prescribe such regulations and other guidance as
6 may be necessary or appropriate to carry out the purposes
7 of this section, including—

8 (1) with respect to the application of the credit
9 under subsection (a) to third-party payors (including
10 professional employer organizations, certified profes-
11 sional employer organizations, or agents under sec-
12 tion 3504 of the Internal Revenue Code of 1986),
13 regulations or other guidance allowing such payors
14 to submit documentation necessary to substantiate
15 the amount of the credit allowed under subsection
16 (a), and

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

19 (i) APPLICATION.—This section shall apply with re-
20 spect to hours of work performed after the date of the
21 enactment of this Act and before January 1, 2022.

