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(Original Signature of Member)

116TH CONGRESS
2D SESSION

H. R. _____

To provide for improvements related to the employee retention tax credit.

IN THE HOUSE OF REPRESENTATIVES

Mrs. MURPHY (for herself, Mr. KATKO, Ms. DELBENE, Mr. FITZPATRICK,
and Mr. PAPPAS) introduced the following bill; which was referred to the
Committee on _____

A BILL

To provide for improvements related to the employee
retention tax credit.

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 “Jumpstarting Our
5 Businesses’ Success Credit Act of 2020” or as the “JOBS
6 Credit Act of 2020”.

1 **SEC. 2. IMPROVEMENTS TO EMPLOYEE RETENTION CRED-**
2 **IT.**

3 (a) INCREASE IN CREDIT PERCENTAGE.—Section
4 2301(a) of the CARES Act is amended by striking “50
5 percent” and inserting “80 percent”.

6 (b) INCREASE IN PER EMPLOYEE LIMITATION.—Sec-
7 tion 2301(b)(1) of the CARES Act is amended by striking
8 “for all calendar quarters shall not exceed \$10,000.” and
9 inserting “shall not exceed—

10 “(A) \$15,000 in any calendar quarter, and

11 “(B) \$45,000 in the aggregate for all cal-
12 endar quarters.”.

13 (c) MODIFICATION OF THRESHOLD FOR TREATMENT
14 AS A LARGE EMPLOYER.—

15 (1) IN GENERAL.—Section 2301(c)(3)(A) of the
16 CARES Act is amended—

17 (A) by striking “for which the average
18 number of full-time employees (within the
19 meaning of section 4980H of the Internal Rev-
20 enue Code of 1986) employed by such eligible
21 employer during 2019 was greater than 100” in
22 clause (i) and inserting “which is a large em-
23 ployer”, and

24 (B) by striking “for which the average
25 number of full-time employees (within the
26 meaning of section 4980H of the Internal Rev-

1 enue Code of 1986) employed by such eligible
2 employer during 2019 was not greater than
3 100” in clause (ii) and inserting “which is not
4 a large employer”.

5 (2) LARGE EMPLOYER DEFINED.—Section
6 2301(c) of the CARES Act is amended by redesign-
7 nating paragraph (6) as paragraph (7) and by in-
8 serting after paragraph (5) the following new para-
9 graph:

10 “(6) LARGE EMPLOYER.—The term ‘large em-
11 ployer’ means any eligible employer if—

12 “(A) the average number of full-time em-
13 ployees (as determined for purposes of deter-
14 mining whether an employer is an applicable
15 large employer for purposes of section
16 4980H(c)(2) of the Internal Revenue Code of
17 1986) employed by such eligible employer dur-
18 ing calendar year 2019 was greater than 1,500,
19 and

20 “(B) the gross receipts (within the mean-
21 ing of section 448(c) of the Internal Revenue
22 Code of 1986) of such eligible employer during
23 calendar year 2019 was greater than
24 \$41,500,000.”.

1 (d) PHASE-IN OF ELIGIBILITY BASED ON REDUC-
2 TION IN GROSS RECEIPTS.—

3 (1) DECREASE OF REDUCTION IN GROSS RE-
4 CEIPTS NECESSARY TO QUALIFY FOR CREDIT.—Sec-
5 tion 2301(c)(2)(B)(i) of the CARES Act is amended
6 by striking “50 percent” and inserting “80 per-
7 cent”.

8 (2) PHASE-IN OF CREDIT IF REDUCTION IN
9 GROSS RECEIPTS IS LESS THAN 50 PERCENT.—Sec-
10 tion 2301(c)(2) of the CARES Act is amended by
11 adding at the end the following new subparagraph:

12 “(D) PHASE-IN OF CREDIT WHERE BUSI-
13 NESS NOT SUSPENDED AND REDUCTION IN
14 GROSS RECEIPTS LESS THAN 50 PERCENT.—

15 “(i) IN GENERAL.—In the case of any
16 calendar quarter with respect to which an
17 eligible employer would not be an eligible
18 employer if subparagraph (B)(i) were ap-
19 plied by substituting ‘50 percent’ for ‘80
20 percent’, the amount of the credit allowed
21 under subsection (a) shall be reduced by
22 the amount which bears the same ratio to
23 the amount of such credit (determined
24 without regard to this subparagraph) as—

1 “(I) the excess gross receipts per-
2 centage point amount, bears to

3 “(II) 30 percentage points.

4 “(ii) EXCESS GROSS RECEIPTS PER-
5 CENTAGE POINT AMOUNT.—For purposes
6 of this subparagraph, the term ‘excess
7 gross receipts percentage point amount’
8 means, with respect to any calendar quar-
9 ter, the excess of—

10 “(I) the lowest of the gross re-
11 ceipts percentage point amounts de-
12 termined with respect to any calendar
13 quarter during the period ending with
14 such calendar quarter and beginning
15 with the first calendar quarter during
16 the period described in subparagraph
17 (B), over

18 “(II) 50 percentage points.

19 “(iii) GROSS RECEIPTS PERCENTAGE
20 POINT AMOUNTS.—For purposes of this
21 subparagraph, the term ‘gross receipts per-
22 centage point amount’ means, with respect
23 to any calendar quarter, the percentage
24 (expressed as a number of percentage
25 points) obtained by dividing—

1 “(I) the gross receipts (within
2 the meaning of subparagraph (B)) for
3 such calendar quarter, by

4 “(II) the gross receipts for the
5 same calendar quarter in calendar
6 year 2019.”.

7 (3) GROSS RECEIPTS OF TAX-EXEMPT ORGANI-
8 ZATIONS.—Section 2301(c)(2)(C) of the CARES Act
9 is amended—

10 (A) by striking “of such Code, clauses (i)
11 and (ii)(I)” and inserting “of such Code—

12 “(i) clauses (i) and (ii)(I),

13 (B) by striking the period at the end and
14 inserting “, and”, and

15 (C) by adding at the end the following new
16 clause:

17 “(ii) any reference in this section to
18 gross receipts shall be treated as a ref-
19 erence to gross receipts within the meaning
20 of section 6033 of such Code.”.

21 (e) MODIFICATION OF TREATMENT OF HEALTH
22 PLAN EXPENSES.—

23 (1) IN GENERAL.—Section 2301(c)(5) of the
24 CARES Act is amended to read as follows:

25 “(5) WAGES.—

1 “(A) IN GENERAL.—The term ‘wages’
2 means wages (as defined in section 3121(a) of
3 the Internal Revenue Code of 1986) and com-
4 pensation (as defined in section 3231(e) of such
5 Code).

6 “(B) ALLOWANCE FOR CERTAIN HEALTH
7 PLAN EXPENSES.—

8 “(i) IN GENERAL.—Such term shall
9 include amounts paid or incurred by the el-
10 igible employer to provide and maintain a
11 group health plan (as defined in section
12 5000(b)(1) of the Internal Revenue Code
13 of 1986), but only to the extent that such
14 amounts are excluded from the gross in-
15 come of employees by reason of section
16 106(a) of such Code.

17 “(ii) ALLOCATION RULES.—For pur-
18 poses of this section, amounts treated as
19 wages under clause (i) shall be treated as
20 paid with respect to any employee (and
21 with respect to any period) to the extent
22 that such amounts are properly allocable to
23 such employee (and to such period) in such
24 manner as the Secretary may prescribe.
25 Except as otherwise provided by the Sec-

1 retary, such allocation shall be treated as
2 properly made if made on the basis of
3 being pro rata among periods of cov-
4 erage.”.

5 (2) CONFORMING AMENDMENT.—Section
6 2301(c)(3) of the CARES Act is amended by strik-
7 ing subparagraph (C).

8 (f) QUALIFIED WAGES PERMITTED TO INCLUDE
9 AMOUNTS FOR TIP REPLACEMENT.—

10 (1) IN GENERAL.—Section 2301(c)(3)(B) of the
11 CARES Act is amended by inserting “(including tips
12 which would have been deemed to be paid by the em-
13 ployer under section 3121(q))” after “would have
14 been paid”.

15 (2) CONFORMING AMENDMENT.—Section
16 2301(h)(2) of the CARES Act is amended by insert-
17 ing “45B or” before “45S”.

18 (g) CERTAIN GOVERNMENTAL EMPLOYERS ELIGIBLE
19 FOR CREDIT.—

20 (1) IN GENERAL.—Section 2301(f) of the
21 CARES Act is amended to read as follows:

22 “(f) CERTAIN GOVERNMENTAL EMPLOYERS.—

23 “(1) IN GENERAL.—The credit under this sec-
24 tion shall not be allowed to the Federal Government
25 or any agency or instrumentality thereof.

1 “(2) EXCEPTION.—Paragraph (1) shall not
2 apply to any organization described in section
3 501(c)(1) of the Internal Revenue Code of 1986 and
4 exempt from tax under section 501(a) of such Code.

5 “(3) SPECIAL RULES.—In the case of any State
6 government, Indian tribal government, or any agen-
7 cy, instrumentality, or political subdivision of the
8 foregoing—

9 “(A) clauses (i) and (ii)(I) of subsection
10 (c)(2)(A) shall apply to all operations of such
11 entity, and

12 “(B) subclause (II) of subsection
13 (c)(2)(A)(ii) shall not apply.”.

14 (2) COORDINATION WITH APPLICATION OF CER-
15 TAIN DEFINITIONS.—

16 (A) IN GENERAL.—Section 2301(c)(5)(A)
17 of the CARES Act, as amended by the pre-
18 ceding provisions of this Act, is amended by
19 adding at the end the following: “For purposes
20 of the preceding sentence (other than for pur-
21 poses of subsection (b)(2)), wages as defined in
22 section 3121(a) of the Internal Revenue Code
23 of 1986 shall be determined without regard to
24 paragraphs (1), (5), (6), (7), (8), (10), (13),
25 (18), (19), and (22) of section 3212(b) of such

1 Code (except with respect to services performed
2 in a penal institution by an inmate thereof).”.

3 (B) CONFORMING AMENDMENTS.—Sec-
4 tions 2301(c)(6) of the CARES Act is amended
5 by striking “Any term” and inserting “Except
6 as otherwise provided in this section, any
7 term”.

8 (h) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect as if included in section 2301
10 of the CARES Act.

11 **SEC. 3. IMPROVED COORDINATION BETWEEN PAYCHECK**
12 **PROTECTION PROGRAM AND EMPLOYEE RE-**
13 **TENTION TAX CREDIT.**

14 (a) AMENDMENT TO PAYCHECK PROTECTION PRO-
15 GRAM.—Section 1106(a)(8) of the CARES Act is amended
16 by inserting “, except that such costs shall not include
17 qualified wages taken into account in determining the
18 credit allowed under section 2301 of this Act” before the
19 period at the end.

20 (b) AMENDMENTS TO EMPLOYEE RETENTION TAX
21 CREDIT.—

22 (1) IN GENERAL.—Section 2301(g) of the
23 CARES Act is amended to read as follows:

24 “(g) ELECTION TO NOT TAKE CERTAIN WAGES INTO
25 ACCOUNT.—

1 “(1) IN GENERAL.—This section shall not apply
2 to qualified wages paid by an eligible employer with
3 respect to which such employer makes an election
4 (at such time and in such manner as the Secretary
5 may prescribe) to have this section not apply to such
6 wages.

7 “(2) COORDINATION WITH PAYCHECK PROTEC-
8 TION PROGRAM.—The Secretary, in consultation
9 with the Administrator of the Small Business Ad-
10 ministration, shall issue guidance providing that
11 payroll costs paid or incurred during the covered pe-
12 riod shall not fail to be treated as qualified wages
13 under this section by reason of an election under
14 paragraph (1) to the extent that a covered loan of
15 the eligible employer is not forgiven by reason of a
16 decision under section 1106(g). Terms used in the
17 preceding sentence which are also used in section
18 1106 shall have the same meaning as when used in
19 such section.”.

20 (2) CONFORMING AMENDMENTS.—

21 (A) Section 2301 of the CARES Act is
22 amended by striking subsection (j).

23 (B) Section 2301(l) of the CARES Act is
24 amended by striking paragraph (3) and by re-

1 designating paragraphs (4) and (5) as para-
2 graphs (3) and (4), respectively.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect as if included in the provisions
5 of the CARES Act to which they relate.