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(Original Signature of Member)

116TH CONGRESS
2D SESSION

H. R. _____

To amend the Internal Revenue Code of 1986 to provide for advance refunds of certain net operating losses and research expenditures relating to covid-19, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To amend the Internal Revenue Code of 1986 to provide for advance refunds of certain net operating losses and research expenditures relating to covid-19, and for other purposes.

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. ADVANCE REFUNDS OF NET OPERATING**
4 **LOSSES FOR C CORPORATION TAXPAYERS.**

5 (a) IN GENERAL.—

6 (1) NET OPERATING LOSS CARRYOVERS.—Sec-
7 tion 172 of the Internal Revenue Code of 1986 is

1 amended by redesignating subsection (g) as sub-
2 section (h) and by inserting after subsection (f) the
3 following:

4 “(g) ADVANCE REFUND FOR C CORPORATIONS RE-
5 LATING TO CERTAIN CARRYOVERS ARISING DURING 2015
6 THROUGH 2021.—

7 “(1) IN GENERAL.—

8 “(A) ELECTION.—A taxpayer to whom this
9 paragraph applies may elect an advance refund
10 of net operating loss carryovers in the amounts
11 and manner determined under subparagraphs
12 (B) and (C).

13 “(B) NET OPERATING LOSS CARRYOVERS
14 ARISING DURING 2015 THROUGH 2021.—The ad-
15 vance refund determined under this subpara-
16 graph is an amount elected by the taxpayer in
17 lieu of an election with respect to a net oper-
18 ating loss carryback under subsection
19 (b)(1)(D), in the amount equal to—

20 “(i) the rate set forth in section 11
21 (as in effect on the date of the enactment
22 of this paragraph), multiplied by

23 “(ii) any net operating loss carryovers
24 that arose—

1 “(I) in a taxable year beginning
2 on or after January 1, 2015, and be-
3 fore January 1, 2020, or

4 “(II) in a taxable year beginning
5 on or after January 1, 2019, and be-
6 fore January 1, 2022.

7 “(C) COVID–19 RESEARCH EXPENDI-
8 TURES FOR 2020 AND 2021.—The advance re-
9 fund under this subparagraph is the amount of
10 the advance refund with respect to the portion
11 of any net operating loss attributable to and
12 arising from qualified COVID–19 research ex-
13 penditures that are paid or incurred on or after
14 February 15, 2020 and before January 1,
15 2022, that is equal to 200 percent of the
16 amount otherwise taken into account under
17 paragraph (1)(B)(ii). A net operating loss shall
18 be treated as arising from qualified COVID–19
19 research expenditures to the extent that such
20 expenses are paid or incurred by the taxpayer.

21 “(2) QUALIFIED COVID–19 RESEARCH EXPENDI-
22 TURES.—For purposes of this subsection, the term
23 ‘qualified COVID–19 research expenditures’ means
24 expenditures paid or incurred in connection with the
25 research and development of products regulated by

1 the Food and Drug Administration (including bio-
2 logics, drugs, and devices) that are intended to be
3 used in the diagnosis, prevention and treatment of
4 coronavirus disease 2019 (COVID–19), and such
5 other similar expenditures as prescribed by the Sec-
6 retary in regulations.

7 “(3) TAXPAYER DESCRIBED.—For purposes of
8 paragraph (1), this subsection applies to a taxpayer
9 if—

10 “(A) the taxpayer is a C corporation,

11 “(B) the average number of full-time em-
12 ployees (as determined for purposes of deter-
13 mining whether an employer is an applicable
14 large employer for purposes of section
15 4980H(c)(2) of the Internal Revenue Code of
16 1986) employed by the taxpayer during cal-
17 endar year 2019 or 2020, whichever is greater,
18 is greater than five and did not exceed 1,500,
19 and

20 “(C) the taxpayer has complied to date
21 with filing of all forms or return requirements
22 under section 3102, 3111, 3301, and 3402 with
23 respect to calendar years 2019 and 2020.

24 “(4) SPECIAL RULES.—For purposes of this
25 subsection—

1 “(A) CERTAIN CONTRIBUTIONS OF CAP-
2 ITAL NOT TAKEN INTO ACCOUNT IN DETER-
3 MINING OWNERSHIP CHANGE UNDER SECTION
4 382.—For purposes of determining whether an
5 ownership change has occurred with respect to
6 the loss corporation under section 382(g) in
7 computing the amount of any advance refund
8 under this section, a transfer of stock in ex-
9 change for a capital contribution to such loss
10 corporation shall not be taken into account if—

11 “(i) the value of the stock transferred
12 is commensurate with the amount of cap-
13 ital being contributed, and

14 “(ii) such exchange is not part of a
15 plan to redeem other shareholders.

16 “(B) AGGREGATE LIMITATION.—The ag-
17 gregate amount of net operating loss or net op-
18 erating loss carryover for which an advance re-
19 fund is elected pursuant to this subsection shall
20 not exceed \$100,000,000.

21 “(C) REDUCTION OF NET OPERATING
22 LOSS.—The net operating losses of the taxpayer
23 determined under subsection (c) shall be re-
24 duced by the amount of any net operating loss
25 or net operating loss carryover for which an ad-

1 vance refund is elected pursuant to this sub-
2 section, including the amount of any net oper-
3 ating loss to which paragraph (1)(C) applies.

4 “(D) AGGREGATION RULE.—All corpora-
5 tions treated as a single employer under sub-
6 section (a) of section 52 or subsection (m) or
7 (o) under section 414 shall be treated as a sin-
8 gle taxpayer for purposes of this section.

9 “(5) REGULATIONS AND GUIDANCE.—The Sec-
10 retary shall issue such regulations and other guid-
11 ance as may be necessary to carry out the purposes
12 of this section, including regulations and other guid-
13 ance to carry out the purposes of this subsection—

14 “(A) to allow for the making of an election
15 for the application of this subsection in such
16 manner as the Secretary may by regulations
17 prescribe,

18 “(B) to allow the payment of the advance
19 refund in accordance with section 6429 based
20 on such information as the Secretary shall re-
21 quire,

22 “(C) to allow advance refunds permitted
23 under this subsection to be claimed on such
24 forms as the Secretary shall prescribe, and

1 “(D) to provide for the application of this
2 subsection to taxpayers that file consolidated
3 returns.

4 “(6) ADVANCE REFUND.—See section 6429 for
5 rules for claiming the advance refund.”.

6 (2) CONFORMING AMENDMENT.—Section
7 172(c) of such Code is amended by inserting before
8 the period at the end the following: “and with the
9 reduction required by subsection (g)”.

10 (b) ADVANCE REFUND OF RESEARCH CREDITS AND
11 ORPHAN DRUG CREDITS FOR C CORPORATION TAX-
12 PAYERS.—Section 39 of such Code is amended by adding
13 at the end the following:

14 “(e) ADVANCE REFUND OF RESEARCH AND ORPHAN
15 DRUG CREDITS.—

16 “(1) IN GENERAL.—A taxpayer that is a C cor-
17 poration may elect an advance refund of the portion
18 of any unused business credit carryforward under
19 section 39 that—

20 “(A) is attributable to the credit deter-
21 mined under section 41 or the credit deter-
22 mined under section 45C, and

23 “(B) is an unused business credit
24 carryforward carried to a taxable year begin-
25 ning on or after January 1, 2020, and before

1 January 1, 2022, and that arose in taxable
2 years beginning after January 1, 2015.

3 “(2) LIMITATION.—The amount elected under
4 paragraph (1) for a taxable year may not exceed the
5 excess of \$25,000,000 reduced by the amount elect-
6 ed for the taxable year as an advance refund of net
7 operating loss carryovers under section 172(g).

8 “(3) INAPPLICABILITY OF SECTIONS 38(C) AND
9 383.—For purposes of this subsection, the amount of
10 any advance refund shall be computed without re-
11 spect to the limitations under sections 38(c) and
12 383(a).

13 “(4) REGULATIONS AND GUIDANCE.—The Sec-
14 retary shall issue such regulations and other guid-
15 ance as may be necessary—

16 “(A) to allow for the making of an election
17 under paragraph (1) in such manner as the
18 Secretary may by regulations prescribe,

19 “(B) to allow the advance refund under
20 this subsection and section 6429 based on such
21 information as the Secretary shall require, and

22 “(C) to allow advance refunds under this
23 section to be claimed on such forms as the Sec-
24 retary shall prescribe.”.

1 (c) ADVANCE REFUND OF CERTAIN NET OPERATING
2 LOSSES, RESEARCH CREDIT, AND ORPHAN DRUG CRED-
3 IT.—

4 (1) IN GENERAL.—Subchapter B of chapter 65
5 of such Code is amended by inserting after section
6 6428 the following new section:

7 **“SEC. 6429. ADVANCE REFUND OF CERTAIN NET OPER-**
8 **ATING LOSSES, RESEARCH CREDIT, AND OR-**
9 **PHAN DRUG CREDIT.**

10 “(a) IN GENERAL.—In the case of a C corporation,
11 the advance refund sum may be claimed by the taxpayer
12 as follows:

13 “(1) PAYROLL TAXES.—First, by reducing de-
14 posits or payments of—

15 “(A) the applicable employment taxes im-
16 posed under sections 3101(a), 3101(b),
17 3111(a), and 3111(b) (reduced by any credits
18 allowed under subsections (e) and (f) of section
19 3111, sections 7001 and 7003 of the Families
20 First Coronavirus Response Act and section
21 2301 of the Coronavirus, Aid, Relief, and Eco-
22 nomic Security Act) on the wages paid with re-
23 spect to the employment of all the employees of
24 the taxpayer for a calendar quarter, and

1 “(B) the withholding taxes required to be
2 paid by an employer pursuant to section 3403,
3 with the balance of the advance refund payable
4 to the taxpayer.

5 “(2) ADVANCE REFUNDABILITY OF EXCESS
6 LOSSES.—Second, any remaining amount to be re-
7 funded to the taxpayer after the application of para-
8 graph (1) shall be treated as an overpayment and
9 shall be refunded in a manner similar to that pre-
10 scribed in subsection 2301(b)(3) of the Coronavirus,
11 Aid, Relief, and Economic Security Act.

12 “(b) ADVANCE REFUND SUM.—For purposes of sub-
13 section (a), the term ‘advance refund sum’ means the sum
14 of—

15 “(1) the amount elected by the taxpayer as an
16 advance refund of net operating loss carryovers
17 under section 172(g), and

18 “(2) the amount of any unused business credit
19 carryforward elected under section 39(e) that is at-
20 tributable to the research credit determined under
21 section 41 or the orphan drug credit determined
22 under section 45C.

23 “(c) RECAPTURE.—

24 “(1) IN GENERAL.—The Secretary shall, by
25 regulations, provide for recapturing the benefit of

1 any advance refund allowable under this section if
2 there is a sale or full or partial liquidation of the
3 corporation during the recapture period. The recap-
4 ture amount shall not exceed the lesser of—

5 “(A) the amount of any proceeds or dis-
6 tributions received by shareholders of the cor-
7 poration attributable to such sale or liquidation,
8 or

9 “(B) the amount that the advance refund
10 exceeds the aggregate amount spent by the cor-
11 poration on payroll, research expenses, and
12 property, plant and equipment during the re-
13 capture period.

14 “(2) RECAPTURE PERIOD.—For purposes of
15 paragraph (1), the term ‘recapture period’ means
16 the two-year period beginning on the date of the ad-
17 vance refund.”.

18 (2) TRANSFERS TO FEDERAL OLD-AGE AND
19 SURVIVORS INSURANCE TRUST FUND.—There are
20 hereby appropriated to the Federal Old-Age and
21 Survivors Insurance Trust Fund and the Federal
22 Disability Insurance Trust Fund established under
23 section 201 of the Social Security Act (42 U.S.C.
24 401), the Federal Hospital Insurance Trust Fund
25 established under section 1817(a) of the Social Se-

1 security Act (42 U.S.C. 1395i(a)), and the Social Se-
2 curity Equivalent Benefit Account established under
3 section 15A(a) of the Railroad Retirement Act of
4 1974 (45 U.S.C. 14 231n-1(a)) amounts equal to
5 the reduction in revenues to the Treasury by reason
6 of this section (without regard to this subsection).
7 Amounts appropriated by the preceding sentence
8 shall be transferred from the general fund at such
9 times and in such manner as to replicate to the ex-
10 tent possible the transfers which would have oc-
11 curred to such Trust Fund or Account had this sec-
12 tion not been enacted.

13 (3) CLERICAL AMENDMENT.—The table of sec-
14 tions for subchapter B of chapter 65 of such Code
15 is amended by inserting after the item relating to
16 section 6428 the following new item:

“Sec. 6429. Advance refund of certain net operating losses, research credit, and
orphan drug credit.”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years beginning after
19 December 31, 2019.

20 **SEC. 2. ENHANCED RESEARCH CREDIT FOR COVID-19 EX-**
21 **PENDITURES.**

22 (a) IN GENERAL.—Section 41 of the Internal Rev-
23 enue Code of 1986 is amended by adding at the end the
24 following:

1 “(i) ENHANCED CREDIT FOR COVID–19 RESEARCH
2 EXPENDITURES.—

3 “(1) IN GENERAL.—For purposes of deter-
4 mining the amount of qualified research expenses
5 under subsection (b) for the taxable year, the
6 amount of any qualified COVID–19 research ex-
7 penditures paid or incurred by a taxpayer on or
8 after February 15, 2020, and before January 1,
9 2022, shall be equal to 200 percent of the amount
10 paid or incurred.

11 “(2) QUALIFIED COVID-19 RESEARCH EXPENDI-
12 TURES.—The term ‘qualified COVID–19 research
13 expenditures’ has the meaning given such term by
14 section 172(g)(2).”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to taxable years beginning after
17 December 31, 2019.