

116TH CONGRESS
2D SESSION

H. R. 7917

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

JULY 31, 2020

Mr. PHILLIPS (for himself and Mrs. WALORSKI) introduced the following bill;
which was referred to the Committee on Ways and Means

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. SHORT TITLE.**

4 This Act may be cited as the “Innovation and Growth
5 Now by Investing in Tomorrow’s Enterprises Act” or the
6 “IGNITE American Innovation Act”.

1 **SEC. 2. ADVANCE REFUNDS OF NET OPERATING LOSSES**
2 **FOR C CORPORATION TAXPAYERS.**

3 (a) IN GENERAL.—

4 (1) NET OPERATING LOSS CARRYOVERS.—Sec-
5 tion 172 of the Internal Revenue Code of 1986 is
6 amended by redesignating subsection (g) as sub-
7 section (h) and by inserting after subsection (f) the
8 following:

9 “(g) ADVANCE REFUND FOR C CORPORATIONS RE-
10 LATING TO CERTAIN CARRYOVERS ARISING DURING 2015
11 THROUGH 2021.—

12 “(1) IN GENERAL.—

13 “(A) ELECTION.—A taxpayer to whom this
14 paragraph applies may elect an advance refund
15 of net operating loss carryovers in the amounts
16 and manner determined under subparagraphs
17 (B) and (C).

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

1 “(i) the rate set forth in section 11
2 (as in effect on the date of the enactment
3 of this paragraph), multiplied by

4 “(ii) any net operating loss carryovers
5 that arose—

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

9 “(II) in a taxable year beginning
10 on or after January 1, 2019, and be-
11 fore January 1, 2022.

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

1 “(2) QUALIFIED COVID–19 RESEARCH EXPENDI-
2 TURES.—For purposes of this subsection, the term
3 ‘qualified COVID–19 research expenditures’ means
4 expenditures paid or incurred in connection with the
5 research and development of products regulated by
6 the Food and Drug Administration (including bio-
7 logics, drugs, and devices) that are intended to be
8 used in the diagnosis, prevention and treatment of
9 coronavirus disease 2019 (COVID–19), and such
10 other similar expenditures as prescribed by the Sec-
11 retary in regulations.

12 “(3) TAXPAYER DESCRIBED.—For purposes of
13 paragraph (1), this subsection applies to a taxpayer
14 if—

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

16 “(B) the average number of full-time em-
17 ployees (as determined for purposes of deter-
18 mining whether an employer is an applicable
19 large employer for purposes of section
20 4980H(c)(2) of the Internal Revenue Code of
21 1986) employed by the taxpayer during cal-
22 endar year 2019 or 2020, whichever is greater,
23 is greater than five and did not exceed 1,500,
24 and

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

5 “(4) SPECIAL RULES.—For purposes of this
6 subsection—

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

17 “(i) the value of the stock transferred
18 is commensurate with the amount of cap-
19 ital being contributed, and

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

22 “(B) AGGREGATE LIMITATION.—The ag-
23 gregate amount of net operating loss or net op-
24 erating loss carryover for which an advance re-

1 fund is elected pursuant to this subsection shall
2 not exceed \$100,000,000.

3 “(C) REDUCTION OF NET OPERATING
4 LOSS.—The net operating losses of the taxpayer
5 determined under subsection (c) shall be re-
6 duced by the amount of any net operating loss
7 or net operating loss carryover for which an ad-
8 vance refund is elected pursuant to this sub-
9 section, including the amount of any net oper-
10 ating loss to which paragraph (1)(C) applies.

11 “(D) AGGREGATION RULE.—All corpora-
12 tions treated as a single employer under sub-
13 section (a) of section 52 or subsection (m) or
14 (o) under section 414 shall be treated as a sin-
15 gle taxpayer for purposes of this section.

16 “(5) REGULATIONS AND GUIDANCE.—The Sec-
17 retary shall issue such regulations and other guid-
18 ance as may be necessary to carry out the purposes
19 of this section, including regulations and other guid-
20 ance to carry out the purposes of this subsection—

21 “(A) to allow for the making of an election
22 for the application of this subsection in such
23 manner as the Secretary may by regulations
24 prescribe,

1 “(B) to allow the payment of the advance
2 refund in accordance with section 6429 based
3 on such information as the Secretary shall re-
4 quire,

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

8 “(D) to provide for the application of this
9 subsection to taxpayers that file consolidated
10 returns.

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

13 (2) CONFORMING AMENDMENT.—Section
14 172(c) of such Code is amended by inserting before
15 the period at the end the following: “and with the
16 reduction required by subsection (g)”.

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

21 “(e) ADVANCE REFUND OF RESEARCH AND ORPHAN
22 DRUG CREDITS.—

23 “(1) IN GENERAL.—A taxpayer that is a C cor-
24 poration may elect an advance refund of the portion

1 of any unused business credit carryforward under
2 section 39 that—

3 “(A) is attributable to the credit deter-
4 mined under section 41 or the credit deter-
5 mined under section 45C, and

6 “(B) is an unused business credit
7 carryforward carried to a taxable year begin-
8 ning on or after January 1, 2020, and before
9 January 1, 2022, and that arose in taxable
10 years beginning after January 1, 2015.

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

16 “(3) INAPPLICABILITY OF SECTIONS 38(c) AND
17 383(a).—For purposes of this subsection, the
18 amount of any advance refund shall be computed
19 without respect to the limitations under sections
20 38(c) and 383(a).

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

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

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

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

10 (c) ADVANCE REFUND OF CERTAIN NET OPERATING
 11 LOSSES, RESEARCH CREDIT, AND ORPHAN DRUG CRED-
 12 IT.—

13 (1) IN GENERAL.—Subchapter B of chapter 65
 14 of such Code is amended by inserting after section
 15 6428 the following new section:

16 **“SEC. 6429. ADVANCE REFUND OF CERTAIN NET OPER-**
 17 **ATING LOSSES, RESEARCH CREDIT, AND OR-**
 18 **PHAN DRUG CREDIT.**

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

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

24 “(A) the applicable employment taxes im-
 25 posed under sections 3101(a), 3101(b),

1 3111(a), and 3111(b) (reduced by any credits
2 allowed under subsections (e) and (f) of section
3 3111, sections 7001 and 7003 of the Families
4 First Coronavirus Response Act and section
5 2301 of the Coronavirus, Aid, Relief, and Eco-
6 nomic Security Act) on the wages paid with re-
7 spect to the employment of all the employees of
8 the taxpayer for a calendar quarter, and

9 “(B) the withholding taxes required to be
10 paid by an employer pursuant to section 3403,
11 with the balance of the advance refund payable
12 to the taxpayer.

13 “(2) ADVANCE REFUNDABILITY OF EXCESS
14 LOSSES.—Second, any remaining amount to be re-
15 funded to the taxpayer after the application of para-
16 graph (1) shall be treated as an overpayment and
17 shall be refunded in a manner similar to that pre-
18 scribed in subsection 2301(b)(3) of the Coronavirus,
19 Aid, Relief, and Economic Security Act.

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

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

1 “(2) the amount of any unused business credit
2 carryforward elected under section 39(e) that is at-
3 tributable to the research credit determined under
4 section 41 or the orphan drug credit determined
5 under section 45C.

6 “(c) RECAPTURE.—

7 “(1) IN GENERAL.—The Secretary shall, by
8 regulations, provide for recapturing the benefit of
9 any advance refund allowable under this section if
10 there is a sale or full or partial liquidation of the
11 corporation during the recapture period. The recap-
12 ture amount shall not exceed the lesser of—

13 “(A) the amount of any proceeds or dis-
14 tributions received by shareholders of the cor-
15 poration attributable to such sale or liquidation,
16 or

17 “(B) the amount that the advance refund
18 exceeds the aggregate amount spent by the cor-
19 poration on payroll, research expenses, and
20 property, plant and equipment during the re-
21 capture period.

22 “(2) RECAPTURE PERIOD.—For purposes of
23 paragraph (1), the term ‘recapture period’ means
24 the two-year period beginning on the date of the ad-
25 vance refund.”.

1 (2) TRANSFERS TO FEDERAL OLD-AGE AND
2 SURVIVORS INSURANCE TRUST FUND.—There are
3 hereby appropriated to the Federal Old-Age and
4 Survivors Insurance Trust Fund and the Federal
5 Disability Insurance Trust Fund established under
6 section 201 of the Social Security Act (42 U.S.C.
7 401), the Federal Hospital Insurance Trust Fund
8 established under section 1817(a) of the Social Se-
9 curity Act (42 U.S.C. 1395i(a)), and the Social Se-
10 curity Equivalent Benefit Account established under
11 section 15A(a) of the Railroad Retirement Act of
12 1974 (45 U.S.C. 14 231n–1(a)) amounts equal to
13 the reduction in revenues to the Treasury by reason
14 of this section (without regard to this subsection).
15 Amounts appropriated by the preceding sentence
16 shall be transferred from the general fund at such
17 times and in such manner as to replicate to the ex-
18 tent possible the transfers which would have oc-
19 curred to such Trust Fund or Account had this sec-
20 tion not been enacted.

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

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

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

4 **SEC. 3. ENHANCED RESEARCH CREDIT FOR COVID-19 EX-**
5 **PENDITURES.**

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

9 “(i) ENHANCED CREDIT FOR COVID-19 RESEARCH
10 EXPENDITURES.—

11 “(1) IN GENERAL.—For purposes of deter-
12 mining the amount of qualified research expenses
13 under subsection (b) for the taxable year, the
14 amount of any qualified COVID-19 research ex-
15 penditures paid or incurred by a taxpayer on or
16 after February 15, 2020, and before January 1,
17 2022, shall be equal to 200 percent of the amount
18 paid or incurred.

19 “(2) QUALIFIED COVID-19 RESEARCH EXPENDI-
20 TURES.—The term ‘qualified COVID-19 research
21 expenditures’ has the meaning given such term by
22 section 172(g)(2).”.

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

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