

117TH CONGRESS
1ST SESSION

H. R. 3623

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

IN THE HOUSE OF REPRESENTATIVES

MAY 28, 2021

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, 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”.

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

9 (a) IN GENERAL.—

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

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

9 “(1) IN GENERAL.—A taxpayer to whom this
10 subsection applies may, in lieu of an election with re-
11 spect to a net operating loss carryback under sub-
12 section (b)(1)(D), elect an advance refund of net op-
13 erating loss carryovers in the amount equal to—

14 “(A) the rate set forth in section 11 (as in
15 effect on the date of the enactment of this para-
16 graph), multiplied by

17 “(B) any net operating loss carryovers that
18 arose—

19 “(i) in a taxable year beginning on or
20 after January 1, 2015, and before January
21 1, 2020, or

22 “(ii) in a taxable year beginning on or
23 after January 1, 2019, and before January
24 1, 2022.

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

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

5 “(B) the average number of full-time em-
6 ployees (as determined for purposes of deter-
7 mining whether an employer is an applicable
8 large employer for purposes of section
9 4980H(c)(2)) employed by the taxpayer during
10 calendar year 2019 or 2020, whichever is great-
11 er, is greater than five and did not exceed
12 1,500, and

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

17 “(3) SPECIAL RULES.—For purposes of this
18 subsection—

19 “(A) CERTAIN CONTRIBUTIONS OF CAP-
20 ITAL NOT TAKEN INTO ACCOUNT IN DETER-
21 MINING OWNERSHIP CHANGE UNDER SECTION
22 382.—For purposes of determining whether an
23 ownership change has occurred with respect to
24 the loss corporation under section 382(g) in
25 computing the amount of any advance refund

1 under this section, a transfer of stock in ex-
2 change for a capital contribution to such loss
3 corporation shall not be taken into account if—

4 “(i) the value of the stock transferred
5 is commensurate with the amount of cap-
6 ital being contributed, and

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

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

14 “(C) REDUCTION OF NET OPERATING
15 LOSS.—The net operating losses of the taxpayer
16 determined under subsection (c) shall be re-
17 duced by the amount of any net operating loss
18 or net operating loss carryover for which an ad-
19 vance refund is elected pursuant to this sub-
20 section.

21 “(D) AGGREGATION RULE.—All corpora-
22 tions treated as a single employer under sub-
23 section (a) of section 52 or subsection (m) or
24 (o) under section 414 shall be treated as a sin-
25 gle taxpayer for purposes of this section.

1 “(4) REGULATIONS AND GUIDANCE.—The Sec-
2 retary shall issue such regulations and other guid-
3 ance as may be necessary to carry out the purposes
4 of this section, including regulations and other guid-
5 ance—

6 “(A) to allow for the making of an election
7 for the application of this subsection in such
8 manner as the Secretary may prescribe,

9 “(B) to allow the payment of the advance
10 refund in accordance with section 6429 based
11 on such information as the Secretary shall re-
12 quire,

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

16 “(D) to provide for the application of this
17 subsection to taxpayers that file consolidated
18 returns.

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

21 (2) CONFORMING AMENDMENT.—Section
22 172(c) of such Code is amended by inserting before
23 the period at the end the following: “and with the
24 reduction required by subsection (g)”.

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

5 “(e) ADVANCE REFUND OF RESEARCH AND ORPHAN
6 DRUG CREDITS.—

7 “(1) IN GENERAL.—An eligible taxpayer may
8 elect an advance refund of the portion of any unused
9 business credit carryforward under section 39 that—

10 “(A) is attributable to the credit deter-
11 mined under section 41 or the credit deter-
12 mined under section 45C, and

13 “(B) is an unused business credit
14 carryforward carried to a taxable year begin-
15 ning on or after January 1, 2020, and before
16 January 1, 2022, and that arose in taxable
17 years beginning after January 1, 2015.

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

23 “(3) ELIGIBLE TAXPAYER.—For purposes of
24 this subsection, a taxpayer is an eligible taxpayer
25 if—

1 “(A) the taxpayer is a C corporation, and

2 “(B) the taxpayer does not have an out-
3 standing loan made or guaranteed pursuant to
4 section 7(a)(37) of the Small Business Act (15
5 U.S.C. 636(a)(37)).

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

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

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

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

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

23 (c) ADVANCE REFUND OF CERTAIN NET OPERATING
24 LOSSES, RESEARCH CREDIT, AND ORPHAN DRUG CRED-
25 IT.—

1 (1) IN GENERAL.—Subchapter B of chapter 65
2 of such Code is amended by inserting after section
3 6428 the following new section:

4 **“SEC. 6429. ADVANCE REFUND OF CERTAIN NET OPER-**
5 **ATING LOSSES, RESEARCH CREDIT, AND OR-**
6 **PHAN DRUG CREDIT.**

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

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

12 “(A) the applicable employment taxes im-
13 posed under sections 3101(a), 3101(b),
14 3111(a), and 3111(b) (reduced by any credits
15 allowed under subsections (e) and (f) of section
16 3111, sections 7001 and 7003 of the Families
17 First Coronavirus Response Act and section
18 2301 of the Coronavirus, Aid, Relief, and Eco-
19 nomic Security Act) on the wages paid with re-
20 spect to the employment of all the employees of
21 the taxpayer for a calendar quarter, and

22 “(B) the withholding taxes required to be
23 paid by an employer pursuant to section 3403,
24 with the balance of the advance refund payable
25 to the taxpayer.

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

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

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

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

19 “(c) RECAPTURE.—

20 “(1) IN GENERAL.—The Secretary shall, by
21 regulations, provide for recapturing the benefit of
22 any advance refund allowable under this section in
23 the amount that the advance refund exceeds the sum
24 of—

1 “(A) the aggregate amount spent by the
2 corporation on payroll, research expenses, and
3 property, plant and equipment during the re-
4 capture period, plus

5 “(B) in the case of a sale or full or partial
6 liquidation of the corporation during the recap-
7 ture period, the amount of any proceeds or dis-
8 tributions received by shareholders of the cor-
9 poration attributable to such sale or liquidation.

10 “(2) RECAPTURE PERIOD.—For purposes of
11 paragraph (1), the term ‘recapture period’ means
12 the three-year period beginning on the date of the
13 advance refund.”.

14 (2) TRANSFERS TO FEDERAL OLD-AGE AND
15 SURVIVORS INSURANCE TRUST FUND.—There are
16 hereby appropriated to the Federal Old-Age and
17 Survivors Insurance Trust Fund and the Federal
18 Disability Insurance Trust Fund established under
19 section 201 of the Social Security Act (42 U.S.C.
20 401), the Federal Hospital Insurance Trust Fund
21 established under section 1817(a) of the Social Se-
22 curity Act (42 U.S.C. 1395i(a)), and the Social Se-
23 curity Equivalent Benefit Account established under
24 section 15A(a) of the Railroad Retirement Act of
25 1974 (45 U.S.C. 14 231n–1(a)) amounts equal to

1 the reduction in revenues to the Treasury by reason
 2 of this section (without regard to this subsection).
 3 Amounts appropriated by the preceding sentence
 4 shall be transferred from the general fund at such
 5 times and in such manner as to replicate to the ex-
 6 tent possible the transfers which would have oc-
 7 curred to such Trust Fund or Account had this sec-
 8 tion not been enacted.

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

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

13 (d) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to taxable years beginning after
 15 December 31, 2020.

16 **SEC. 3. ENHANCED RESEARCH CREDIT FOR CERTAIN PAN-**
 17 **DEMIC RESEARCH EXPENDITURES.**

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

21 “(i) ENHANCED CREDIT FOR CERTAIN PANDEMIC
 22 RESEARCH EXPENDITURES.—

23 “(1) IN GENERAL.—For purposes of deter-
 24 mining the amount of qualified research expenses

1 under subsection (b) for the taxable year, the
2 amount of any qualified pandemic research expendi-
3 tures paid or incurred by a taxpayer on or after
4 February 15, 2020, and before January 1, 2022,
5 shall be equal to 200 percent of the amount paid or
6 incurred.

7 “(2) QUALIFIED PANDEMIC RESEARCH EX-
8 PENDITURES.—The term ‘qualified pandemic re-
9 search expenditures’ means expenditures paid or in-
10 curred in connection with the research and develop-
11 ment of products regulated by the Food and Drug
12 Administration (including biological products, drugs,
13 and devices) that are intended to be used in the di-
14 agnosis, prevention and treatment of diseases arising
15 from a virus (or other pathogen) with pandemic po-
16 tential, and such other similar expenditures as pre-
17 scribed by the Secretary in regulations.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to taxable years beginning after
20 December 31, 2020.

○