

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.

○