

117TH CONGRESS
1ST SESSION

S. 2529

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 SENATE OF THE UNITED STATES

JULY 29, 2021

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on Finance

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.—A taxpayer to which this
13 subsection applies for any taxable year beginning in
14 2020 or 2021 shall be allowed an advance refund in
15 the amount determined under paragraph (2) for
16 such taxable year.

17 “(2) AMOUNT OF THE ADVANCE REFUND.—

18 “(A) IN GENERAL.—The advance refund
19 determined under this paragraph for any tax-
20 able year is an amount equal the lesser of—

21 “(i) the amount specified by the tax-
22 payer in the election to have this sub-
23 section apply, or

24 “(ii) an amount equal to 21 percent of
25 the sum of—

1 “(I) any net operating loss arising in such taxable year (reduced by
2 any portion of such net operating loss
3 carried back to a preceding taxable
4 year under subsection (b)(1)(D)), plus
5 “(II) any carryforward to such
6 taxable year of a net operating loss
7 arising in a taxable year beginning
8 after December 31, 2014, and before
9 such taxable year.
10

11 “(B) AGGREGATE DOLLAR LIMITATION.—
12 The aggregate amount of advance refunds of a
13 taxpayer under this subsection for all taxable
14 years shall not exceed \$100,000,000.

15 “(3) NET OPERATING LOSS OFFSET BY ADVANCE REFUNDS.—The net operating loss of the
16 taxpayer for any taxable year to which this sub-
17 section applies shall be reduced by the amount of
18 any net operating loss arising in such taxable year,
19 or net operating loss carryforward to such taxable
20 year, for which an advance refund is elected pursuant to this subsection.
21

22 “(4) TAXPAYER TO WHICH SUBSECTION APPLIES.—For purposes of paragraph (1), this sub-
23 section applies to a taxpayer for a taxable year if—
24
25

1 “(A) the taxpayer is a C corporation—

2 “(i) with respect to which the average
3 number of full-time employees (as deter-
4 mined for purposes of determining whether
5 an employer is an applicable large em-
6 ployer for purposes of section 4980H(c)(2)
7 of the Internal Revenue Code of 1986) em-
8 ployed by the taxpayer during calendar
9 year 2019 or 2020, whichever is greater, is
10 greater than five and is not greater than
11 1,500, and

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

17 “(B) the taxpayer elects the application of
18 this subsection for such taxable year.

19 “(5) SPECIAL RULES.—For purposes of this
20 subsection—

21 “(A) CERTAIN CONTRIBUTIONS OF CAP-
22 ITAL NOT TAKEN INTO ACCOUNT IN DETER-
23 MINING OWNERSHIP CHANGE UNDER SECTION
24 382.—For purposes of determining whether an
25 ownership change has occurred with respect to

1 the loss corporation under section 382(g) in
2 computing the amount of any advance refund
3 under this section, a transfer of stock in ex-
4 change for a capital contribution to such loss
5 corporation shall not be taken into account if—

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

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

11 “(B) 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 gles taxpayer for purposes of this section.

16 “(6) 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 “(7) ADVANCE REFUND.—For rules for claim-
12 ing the advance refund, see section 6429.”.

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 which—

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 December 31, 2014.

11 “(2) ANNUAL LIMITATION.—The amount of the
12 advance refund under paragraph (1) for a taxable
13 year shall not exceed the excess (if any) of
14 \$25,000,000 reduced by the amount of the advance
15 refund for such taxable year 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) ADVANCE REFUND.—

20 “(1) IN GENERAL.—In the case of a C corpora-
21 tion, the advance refund sum for any taxable year
22 may be claimed by the taxpayer as follows:

23 “(A) PAYROLL TAXES.—First, by reducing
24 deposits or payments of applicable employment
25 taxes.

1 “(B) ADVANCE REFUNDABILITY.—Second,
2 any remaining amount of the advance refund
3 sum to be refunded to the taxpayer after the
4 application of subparagraph (A) shall be treated
5 as an overpayment and shall be refunded in a
6 manner similar to that prescribed in subsection
7 2301(b)(3) of the Coronavirus, Aid, Relief, and
8 Economic Security Act.

9 “(2) APPLICABLE EMPLOYMENT TAXES.—For
10 purposes of paragraph (1)(A), the term ‘applicable
11 employment taxes’ means the following:

12 “(A) The taxes imposed under section
13 3111(b).

14 “(B) So much of the taxes imposed under
15 section 3221(a) as are attributable to the rate
16 in effect under section 3111(b).

17 “(b) ADVANCE REFUND SUM.—For purposes of sub-
18 section (a), the term ‘advance refund sum’ means, with
19 respect to any taxable year, the sum of—

20 “(1) the amount of the taxpayer’s advance re-
21 fund under section 172(g) for the taxable year, and

22 “(2) the amount of the advance refund for such
23 taxable year under section 39(e) of any unused busi-
24 ness credit carryforward which is attributable to the

1 research credit determined under section 41 or the
2 orphan drug credit determined under section 45C.

3 “(c) RECAPTURE.—

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

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

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

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

23 (2) CLERICAL AMENDMENT.—The table of sec-
24 tions for subchapter B of chapter 65 of such Code

1 is amended by inserting after the item relating to
2 section 6428 the following new item:

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

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

6 **SEC. 3. ENHANCED RESEARCH CREDIT FOR COVID-19 EX-**
7 **PENDITURES.**

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

11 “(i) **ENHANCED CREDIT FOR COVID-19 RESEARCH**
12 **EXPENDITURES.**—

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

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

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

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

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