To amend the Internal Revenue Code of 1986 to provide a partially refundable credit against payroll taxes for certain restaurants affected by the COVID-19 pandemic.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Restaurant Revitalization Tax Credit Act”.

SEC. 2. RESTAURANT REVITALIZATION CREDIT.

(a) IN GENERAL.—Subchapter D of chapter 21 of subtitle C of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:
“SEC. 3135. RESTAURANT REVITALIZATION CREDIT.

“(a) In General.—In the case of an eligible employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to 100 percent of the wages with respect to each employee of such employer for such calendar quarter.

“(b) Limitations and Refundability.—

“(1) In General.—The aggregate amount of wages which may be taken into account under subsection (a) by the eligible employer for any calendar quarter shall not exceed $25,000.

“(2) Credit limited to employment taxes.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the applicable employment taxes (reduced by any credits allowed under subsections (e) and (f) of section 3111) on the wages paid with respect to the employment of all the employees of the eligible employer for such calendar quarter. For purposes of the preceding sentence, the credit allowed under subsection (a) shall be applied first against applicable employment taxes described in subsection (e)(1)(A).

“(3) Partial refundability of excess credit.—

“(A) In General.—If the amount of the credit under subsection (a) exceeds the limita-
tion of paragraph (2), so much of such excess as does not exceed the applicable employer refund limitation shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b).

“(B) Applicable employer refund limitation.—For purposes of subparagraph (A), the applicable employer refund limitation is the excess of—

“(i) $25,000, over

“(ii) the amount of credit treated as an overpayment of the eligible employer by reason of this paragraph for all preceding calendar quarters.

“(C) Reduction based on number of employees.—In the case of any eligible employer for which the average number of full-time employees (within the meaning of section 4980H) employed by such eligible employer during the last calendar quarter of 2022 (rounded to the nearest multiple of 1) exceeds 10, the $25,000 dollar amount under subparagraph (A)(ii)(I) shall be reduced (but not below zero) by the product of such excess and $2,500.

“(c) Definitions.—For purposes of this section—
“(1) A PPLICABLE EMPLOYMENT TAXES.—The term ‘applicable employment taxes’ means the following:

“(A) The taxes imposed under section 3111(a).

“(B) The taxes imposed under section 3111(b).

“(2) E LIGIBLE EMPLOYER.—

“(A) I N GENERAL.—The term ‘eligible employer’ means any employer—

“(i) which is an eligible entity (as defined in section 5003(a) of the American Rescue Plan Act of 2021) which—

“(I) was established before March 14, 2020,

“(II) submitted an application for a grant under section 5003(c) of such Act in accordance with the procedures established by the Administrator of the Small Business Administration under such section,

“(III) certifies to the Secretary (in such form and manner as the Secretary requires) that such employer
was eligible for a grant under such section, and

“(IV) did not receive any grant funds under such section due to a lack of funding,

“(ii) which paid applicable employment taxes with respect to pay periods occurring in at least 2 calendar quarters of calendar year 2021, and

“(iii) which meets the gross receipts test of subparagraph (B).

“(B) GROSS RECEIPTS TEST.—An employer meets the gross receipts test of this subparagraph if—

“(i) the gross receipts of such employer for any applicable calendar year were less than 50 percent the gross receipts of such employer for calendar year 2019, or

“(ii) the average gross receipts of such employer for all applicable calendar years were less than 70 percent the gross receipts of such employer for the calendar year 2019.
“(C) Applicable calendar year.—For purposes of this paragraph, the term ‘applicable calendar year’ means any of the following:

“(i) Calendar year 2020.

“(ii) Calendar year 2021.

“(D) Special rule for employers not in existence for entirety of 2019.—In the case of any employer that was in existence before January 1, 2020, but not in existence on January 1, 2019, the amount of gross receipts taken into account for any applicable calendar year shall be the amount of such gross receipts (determined without regard to this clause) multiplied by the ratio of—

“(i) the number of days during 2019 during which such employer was in existence, to

“(ii) 365.

“(E) Special rule for employers not in existence before 2020.—In the case of any employer that was not in existence before January 1, 2020, in applying this paragraph—

“(i) the amount of gross receipts for calendar year 2019 shall be equal to the product of—
“(I) the amount of gross receipts for the period beginning on the date the employer was established and ending before March 14, 2020, and

“(II) the ratio of 366 to the number of days in the period described in subclause (I), and

“(ii) the amount of gross receipts for calendar year 2020 shall be equal to the product of—

“(I) the amount of gross receipts for the period beginning after March 13, 2020, and ending on December 31, 2020, and

“(II) the ratio of 366 to the number of days in the period described in subclause (I).

“(3) WAGES.—

“(A) IN GENERAL.—The term ‘wages’ has the meaning given such term under section 3121(a), determined without regard to paragraph (1) thereof.

“(B) EXCEPTION.—Such term shall not include any wages taken into account under sections 41, 45A, 45P, 45S, 51, and 1396.
“(4) **Other Terms.**—Any term used in this section which is also used in this chapter shall have the same meaning as when used in this chapter.

“(d) **Aggregation Rule.**—All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (m) or (o) of section 414, shall be treated as one employer for purposes of this section.

“(e) **Election to Not Take Certain Wages Into Account.**—This section shall not apply to so much of the wages paid by an eligible employer as such employer elects (at such time and in such manner as the Secretary may prescribe) to not take into account for purposes of this section.

“(f) **Third Party Payors.**—Any credit allowed under this section shall be treated as a credit described in section 3511(d)(2).

“(g) **Treatment of Deposits.**—The Secretary shall waive any penalty under section 6656 for any failure to make a deposit of any applicable employment taxes if the Secretary determines that such failure was due to the reasonable anticipation of the credit allowed under this section.

“(h) **Extension of Limitation on Assessment.**—Notwithstanding section 6501, the limitation on the time period for the assessment of any amount attributable to
a credit claimed under this section shall not expire before
the date that is 5 years after the later of—

“(1) the date on which the original return
which includes the calendar quarter with respect to
which such credit is determined is filed, or

“(2) the date on which such return is treated
as filed under section 6501(b)(2).

“(i) Regulations and Guidance.—The Secretary
shall issue such forms, instructions, regulations, and other
guidance as are necessary—

“(1) with respect to the application of the cred-
it under subsection (a) to third party payors (includ-
ing professional employer organizations, certified
professional employer organizations, or agents under
section 3504), including regulations or guidance al-
lowing such payors to submit documentation nec-
essary to substantiate the eligible employer status of
employers that use such payors, and

“(2) to prevent the avoidance of the purposes of
the limitations under this section, including through
the leaseback of employees.

Any forms, instructions, regulations, or other guidance de-
scribed in paragraph (1) shall require the customer to be
responsible for the accounting of the credit and for any
liability for improperly claimed credits and shall require
the certified professional employer organization or other
third party payor to accurately report such tax credits
based on the information provided by the customer.

“(j) APPLICATION.—This section shall only apply to
wages paid after December 31, 2022, and before January
1, 2024.”.

(b) REFUNDS.—Paragraph (2) of section 1324(b) of
title 31, United States Code, is amended by inserting
“3135,” after “3134”.

(c) CLERICAL AMENDMENT.—The table of sections
for subchapter D of chapter 21 of subtitle C of the Inter-
nal Revenue Code of 1986 is amended by adding at the
end the following:

“Sec. 3135. Restaurant revitalization credit.”.

(d) COORDINATION WITH SMALL BUSINESS ADMIN-
ISTRATION.—The Administrator of the Small Business
Administration shall coordinate with and provide informa-
tion to the Secretary of the Treasury (or the Secretary’s
delegate) to assist in identifying employers that are eligi-
ble for the credit allowed by section 3135 of the Internal
Revenue Code of 1986, as added by this section.

(e) EFFECTIVE DATE.—The amendments made by
this section shall apply to calendar quarters beginning
after December 31, 2022.