

117TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

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Mr. CARDIN introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

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.

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 “Restaurant Revitaliza-  
5 tion Tax Credit Act”.

6 **SEC. 2. RESTAURANT REVITALIZATION CREDIT.**

7 (a) IN GENERAL.—Subchapter D of chapter 21 of  
8 subtitle C of the Internal Revenue Code of 1986 is amend-  
9 ed by adding at the end the following new section:

1 **“SEC. 3135. RESTAURANT REVITALIZATION CREDIT.**

2 “(a) IN GENERAL.—In the case of an eligible em-  
3 ployer, there shall be allowed as a credit against applicable  
4 employment taxes for each calendar quarter an amount  
5 equal to 100 percent of the wages with respect to each  
6 employee of such employer for such calendar quarter.

7 “(b) LIMITATIONS AND REFUNDABILITY.—

8 “(1) IN GENERAL.—The aggregate amount of  
9 wages which may be taken into account under sub-  
10 section (a) by the eligible employer for any calendar  
11 quarter shall not exceed \$25,000.

12 “(2) CREDIT LIMITED TO EMPLOYMENT  
13 TAXES.—The credit allowed by subsection (a) with  
14 respect to any calendar quarter shall not exceed the  
15 applicable employment taxes (reduced by any credits  
16 allowed under subsections (e) and (f) of section  
17 3111) on the wages paid with respect to the employ-  
18 ment of all the employees of the eligible employer for  
19 such calendar quarter. For purposes of the pre-  
20 ceding sentence, the credit allowed under subsection  
21 (a) shall be applied first against applicable employ-  
22 ment taxes described in subsection (c)(1)(A).

23 “(3) PARTIAL REFUNDABILITY OF EXCESS  
24 CREDIT.—

25 “(A) IN GENERAL.—If the amount of the  
26 credit under subsection (a) exceeds the limita-

1           tion of paragraph (2), so much of such excess  
2           as does not exceed the applicable employer re-  
3           fund limitation shall be treated as an overpay-  
4           ment that shall be refunded under sections  
5           6402(a) and 6413(b).

6           “(B) APPLICABLE EMPLOYER REFUND  
7           LIMITATION.—For purposes of subparagraph  
8           (A), the applicable employer refund limitation is  
9           the excess of—

10                   “(i) \$25,000, over

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

15           “(C) REDUCTION BASED ON NUMBER OF  
16           EMPLOYEES.—In the case of any eligible em-  
17           ployer for which the average number of full-  
18           time employees (within the meaning of section  
19           4980H) employed by such eligible employer  
20           during the last calendar quarter of 2022  
21           (rounded to the nearest multiple of 1) exceeds  
22           10, the \$25,000 dollar amount under subpara-  
23           graph (A)(ii)(I) shall be reduced (but not below  
24           zero) by the product of such excess and \$2,500.

25           “(c) DEFINITIONS.—For purposes of this section—

1           “(1) APPLICABLE EMPLOYMENT TAXES.—The  
2 term ‘applicable employment taxes’ means the fol-  
3 lowing:

4           “(A) The taxes imposed under section  
5 3111(a).

6           “(B) The taxes imposed under section  
7 3111(b).

8           “(2) ELIGIBLE EMPLOYER.—

9           “(A) IN GENERAL.—The term ‘eligible em-  
10 ployer’ means any employer—

11           “(i) which is an eligible entity (as de-  
12 fined in section 5003(a) of the American  
13 Rescue Plan Act of 2021) which—

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

16           “(II) submitted an application  
17 for a grant under section 5003(c) of  
18 such Act in accordance with the pro-  
19 cedures established by the Adminis-  
20 trator of the Small Business Adminis-  
21 tration under such section,

22           “(III) certifies to the Secretary  
23 (in such form and manner as the Sec-  
24 retary requires) that such employer

1 was eligible for a grant under such  
2 section, and

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

6 “(ii) which paid applicable employ-  
7 ment taxes with respect to pay periods oc-  
8 ccurring in at least 2 calendar quarters of  
9 calendar year 2021, and

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

12 “(B) GROSS RECEIPTS TEST.—An em-  
13 ployer meets the gross receipts test of this sub-  
14 paragraph if—

15 “(i) the gross receipts of such em-  
16 ployer for any applicable calendar year  
17 were less than 50 percent the gross re-  
18 ceipts of such employer for calendar year  
19 2019, or

20 “(ii) the average gross receipts of  
21 such employer for all applicable calendar  
22 years were less than 70 percent the gross  
23 receipts of such employer for the calendar  
24 year 2019.

1           “(C) APPLICABLE CALENDAR YEAR.—For  
2 purposes of this paragraph, the term ‘applicable  
3 calendar year’ means any of the following:

4                   “(i) Calendar year 2020.

5                   “(ii) Calendar year 2021.

6           “(D) SPECIAL RULE FOR EMPLOYERS NOT  
7 IN EXISTENCE FOR ENTIRETY OF 2019.—In the  
8 case of any employer that was in existence be-  
9 fore January 1, 2020, but not in existence on  
10 January 1, 2019, the amount of gross receipts  
11 taken into account for any applicable calendar  
12 year shall be the amount of such gross receipts  
13 (determined without regard to this clause) mul-  
14 tiplied by the ratio of—

15                   “(i) the number of days during 2019  
16 during which such employer was in exist-  
17 ence, to

18                   “(ii) 365.

19           “(E) SPECIAL RULE FOR EMPLOYERS NOT  
20 IN EXISTENCE BEFORE 2020.—In the case of  
21 any employer that was not in existence before  
22 January 1, 2020, in applying this paragraph—

23                   “(i) the amount of gross receipts for  
24 calendar year 2019 shall be equal to the  
25 product of—

1                   “(I) the amount of gross receipts  
2                   for the period beginning on the date  
3                   the employer was established and end-  
4                   ing before March 14, 2020, and

5                   “(II) the ratio of 366 to the  
6                   number of days in the period de-  
7                   scribed in subclause (I), and

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

11                  “(I) the amount of gross receipts  
12                  for the period beginning after March  
13                  13, 2020, and ending on December  
14                  31, 2020, and

15                  “(II) the ratio of 366 to the  
16                  number of days in the period de-  
17                  scribed in subclause (I).

18                  “(3) WAGES.—

19                  “(A) IN GENERAL.—The term ‘wages’ has  
20                  the meaning given such term under section  
21                  3121(a), determined without regard to para-  
22                  graph (1) thereof.

23                  “(B) EXCEPTION.—Such term shall not in-  
24                  clude any wages taken into account under sec-  
25                  tions 41, 45A, 45P, 45S, 51, and 1396.

1           “(4) OTHER TERMS.—Any term used in this  
2           section which is also used in this chapter shall have  
3           the same meaning as when used in this chapter.

4           “(d) AGGREGATION RULE.—All persons treated as a  
5           single employer under subsection (a) or (b) of section 52,  
6           or subsection (m) or (o) of section 414, shall be treated  
7           as one employer for purposes of this section.

8           “(e) ELECTION TO NOT TAKE CERTAIN WAGES INTO  
9           ACCOUNT.—This section shall not apply to so much of the  
10          wages paid by an eligible employer as such employer elects  
11          (at such time and in such manner as the Secretary may  
12          prescribe) to not take into account for purposes of this  
13          section.

14          “(f) THIRD PARTY PAYORS.—Any credit allowed  
15          under this section shall be treated as a credit described  
16          in section 3511(d)(2).

17          “(g) TREATMENT OF DEPOSITS.—The Secretary  
18          shall waive any penalty under section 6656 for any failure  
19          to make a deposit of any applicable employment taxes if  
20          the Secretary determines that such failure was due to the  
21          reasonable anticipation of the credit allowed under this  
22          section.

23          “(h) EXTENSION OF LIMITATION ON ASSESSMENT.—  
24          Notwithstanding section 6501, the limitation on the time  
25          period for the assessment of any amount attributable to

1 a credit claimed under this section shall not expire before  
2 the date that is 5 years after the later of—

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

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

8 “(i) REGULATIONS AND GUIDANCE.—The Secretary  
9 shall issue such forms, instructions, regulations, and other  
10 guidance as are necessary—

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

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

22 Any forms, instructions, regulations, or other guidance de-  
23 scribed in paragraph (1) shall require the customer to be  
24 responsible for the accounting of the credit and for any  
25 liability for improperly claimed credits and shall require

1 the certified professional employer organization or other  
2 third party payor to accurately report such tax credits  
3 based on the information provided by the customer.

4 “(j) APPLICATION.—This section shall only apply to  
5 wages paid after December 31, 2022, and before January  
6 1, 2024.”.

7 (b) REFUNDS.—Paragraph (2) of section 1324(b) of  
8 title 31, United States Code, is amended by inserting  
9 “3135,” after “3134”.

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

“Sec. 3135. Restaurant revitalization credit.”.

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

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