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(Original Signature of Member)

118TH CONGRESS
2D SESSION

H. R. _____

To increase the penalties applicable to persons facilitate fraud with respect to any COVID-related employee retention credit, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. SCHWEIKERT introduced the following bill; which was referred to the Committee on _____

A BILL

To increase the penalties applicable to persons facilitate fraud with respect to any COVID-related employee retention credit, 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. ENFORCEMENT PROVISIONS WITH RESPECT TO**
4 **COVID-RELATED EMPLOYEE RETENTION**
5 **CREDITS.**

6 (a) INCREASE IN ASSESSABLE PENALTY ON COVID-
7 ERTC PROMOTERS FOR AIDING AND ABETTING UNDER-
8 STATEMENTS OF TAX LIABILITY.—

1 (1) IN GENERAL.—If any COVID–ERTC pro-
2 moter is subject to penalty under section 6701(a) of
3 the Internal Revenue Code of 1986 with respect to
4 any COVID–ERTC document, notwithstanding
5 paragraphs (1) and (2) of section 6701(b) of such
6 Code, the amount of the penalty imposed under such
7 section 6701(a) shall be the greater of—

8 (A) \$200,000 (\$10,000, in the case of a
9 natural person), or

10 (B) 75 percent of the gross income derived
11 (or to be derived) by such promoter with re-
12 spect to the aid, assistance, or advice referred
13 to in section 6701(a)(1) of such Code with re-
14 spect to such document.

15 (2) NO INFERENCE.—Paragraph (1) shall not
16 be construed to create any inference with respect to
17 the proper application of the knowledge requirement
18 of section 6701(a)(3) of the Internal Revenue Code
19 of 1986.

20 (b) FAILURE TO COMPLY WITH DUE DILIGENCE RE-
21 QUIREMENTS TREATED AS KNOWLEDGE FOR PURPOSES
22 OF ASSESSABLE PENALTY FOR AIDING AND ABETTING
23 UNDERSTATEMENT OF TAX LIABILITY.—In the case of
24 any COVID–ERTC promoter, the knowledge requirement
25 of section 6701(a)(3) of the Internal Revenue Code of

1 1986 shall be treated as satisfied with respect to any
2 COVID-ERTC document with respect to which such pro-
3 moter provided aid, assistance, or advice, if such promoter
4 fails to comply with the due diligence requirements re-
5 ferred to in subsection (c)(1).

6 (c) ASSESSABLE PENALTY FOR FAILURE TO COMPLY
7 WITH DUE DILIGENCE REQUIREMENTS.—

8 (1) IN GENERAL.—Any COVID-ERTC pro-
9 moter which provides aid, assistance, or advice with
10 respect to any COVID-ERTC document and which
11 fails to comply with due diligence requirements im-
12 posed by the Secretary with respect to determining
13 eligibility for, or the amount of, any COVID-related
14 employee retention tax credit, shall pay a penalty of
15 \$1,000 for each such failure.

16 (2) DUE DILIGENCE REQUIREMENTS.—Except
17 as otherwise provided by the Secretary, the due dili-
18 gence requirements referred to in paragraph (1)
19 shall be similar to the due diligence requirements
20 imposed under section 6695(g).

21 (3) RESTRICTION TO DOCUMENTS USED IN
22 CONNECTION WITH RETURNS OR CLAIMS FOR RE-
23 FUND.—Paragraph (1) shall not apply with respect
24 to any COVID-ERTC document unless such docu-

1 ment constitutes, or relates to, a return or claim for
2 refund.

3 (4) TREATMENT AS ASSESSABLE PENALTY,
4 ETC.—For purposes of the Internal Revenue Code of
5 1986, the penalty imposed under paragraph (1) shall
6 be treated in the same manner as a penalty imposed
7 under section 6695(g).

8 (5) SECRETARY.—For purposes of this sub-
9 section, the term “Secretary” means the Secretary
10 of the Treasury or the Secretary’s delegate.

11 (d) ASSESSABLE PENALTIES FOR FAILURE TO DIS-
12 CLOSE INFORMATION, MAINTAIN CLIENT LISTS, ETC.—
13 For purposes of sections 6111, 6112, 6707 and 6708 of
14 the Internal Revenue Code of 1986—

15 (1) any COVID-related employee retention tax
16 credit (whether or not the taxpayer claims such
17 COVID-related employee retention tax credit) shall
18 be treated as a listed transaction (and as a report-
19 able transaction) with respect to any COVID–ERTC
20 promoter if such promoter provides any aid, assist-
21 ance, or advice with respect to any COVID–ERTC
22 document relating to such COVID-related employee
23 retention tax credit, and

1 (2) such COVID-ERTC promoter shall be
2 treated as a material advisor with respect to such
3 transaction.

4 (e) COVID-ERTC PROMOTER.—For purposes of
5 this section—

6 (1) IN GENERAL.—The term “COVID-ERTC
7 promoter” means, with respect to any COVID-
8 ERTC document, any person which provides aid, as-
9 sistance, or advice with respect to such document
10 if—

11 (A) such person charges or receives a fee
12 for such aid, assistance, or advice which is
13 based on the amount of the refund or credit
14 with respect to such document and, with respect
15 to such person’s taxable year in which such per-
16 son provided such assistance or the preceding
17 taxable year, the aggregate gross receipts of
18 such person for aid, assistance, and advice with
19 respect to all COVID-ERTC documents exceeds
20 20 percent of the gross receipts of such person
21 for such taxable year, or

22 (B) with respect to such person’s taxable
23 year in which such person provided such assist-
24 ance or the preceding taxable year—

1 (i) the aggregate gross receipts of
2 such person for aid, assistance, and advice
3 with respect to all COVID-ERTC docu-
4 ments exceeds 50 percent of the gross re-
5 cepts of such person for such taxable year,
6 or

7 (ii) both—

8 (I) such aggregate gross receipts
9 exceeds 20 percent of the gross re-
10 cepts of such person for such taxable
11 year, and

12 (II) the aggregate gross receipts
13 of such person for aid, assistance, and
14 advice with respect to all COVID-
15 ERTC documents (determined after
16 application of paragraph (3)) exceeds
17 \$500,000.

18 (2) EXCEPTION FOR CERTIFIED PROFESSIONAL
19 EMPLOYER ORGANIZATIONS.—The term “COVID-
20 ERTC promoter” shall not include a certified profes-
21 sional employer organization (as defined in section
22 7705).

23 (3) AGGREGATION RULE.—For purposes of
24 paragraph (1)(B)(ii)(II), all persons treated as a
25 single employer under subsection (a) or (b) of sec-

1 tion 52 of the Internal Revenue Code of 1986, or
2 subsection (m) or (o) of section 414 of such Code,
3 shall be treated as 1 person.

4 (4) SHORT TAXABLE YEARS.—In the case of
5 any taxable year of less than 12 months, paragraph
6 (1) shall be applied with respect to the calendar year
7 in which such taxable year begins (in addition to ap-
8 plying to such taxable year).

9 (f) COVID-ERTC DOCUMENT.—For purposes of
10 this section, the term “COVID-ERTC document” means
11 any return, affidavit, claim, or other document related to
12 any COVID-related employee retention tax credit, includ-
13 ing any document related to eligibility for, or the calcula-
14 tion or determination of any amount directly related to
15 any COVID-related employee retention tax credit.

16 (g) COVID-RELATED EMPLOYEE RETENTION TAX
17 CREDIT.—For purposes of this section, the term
18 “COVID-related employee retention tax credit” means—

19 (1) any credit, or advance payment, under sec-
20 tion 3134 of the Internal Revenue Code of 1986,
21 and

22 (2) any credit, or advance payment, under sec-
23 tion 2301 of the CARES Act.

24 (h) LIMITATION ON CREDIT AND REFUND OF
25 COVID-RELATED EMPLOYEE RETENTION TAX CRED-

1 ITS.—Notwithstanding section 6511 of the Internal Rev-
2 enue Code of 1986 or any other provision of law, no credit
3 or refund of any COVID-related employee retention tax
4 credit shall be allowed or made after January 31, 2024,
5 unless a claim for such credit or refund is filed by the
6 taxpayer on or before such date.

7 (i) AMENDMENTS TO EXTEND LIMITATION ON AS-
8 SESSMENT.—

9 (1) IN GENERAL.—Section 3134(l) of the Inter-
10 nal Revenue Code of 1986 is amended to read as fol-
11 lows:

12 “(l) EXTENSION OF LIMITATION ON ASSESSMENT.—

13 “(1) IN GENERAL.—Notwithstanding section
14 6501, the limitation on the time period for the as-
15 sessment of any amount attributable to a credit
16 claimed under this section shall not expire before the
17 date that is 6 years after the latest of—

18 “(A) the date on which the original return
19 which includes the calendar quarter with re-
20 spect to which such credit is determined is filed,

21 “(B) the date on which such return is
22 treated as filed under section 6501(b)(2), or

23 “(C) the date on which the claim for credit
24 or refund with respect to such credit is made.

1 “(2) DEDUCTION FOR WAGES TAKEN INTO AC-
2 COUNT IN DETERMINING IMPROPERLY CLAIMED
3 CREDIT.—

4 “(A) IN GENERAL.—Notwithstanding sec-
5 tion 6511, in the case of an assessment attrib-
6 utable to a credit claimed under this section,
7 the limitation on the time period for credit or
8 refund of any amount attributable to a deduc-
9 tion for improperly claimed ERTC wages shall
10 not expire before the time period for such as-
11 sessment expires under paragraph (1).

12 “(B) IMPROPERLY CLAIMED ERTC
13 WAGES.—For purposes of this paragraph, the
14 term ‘improperly claimed ERTC wages’ means,
15 with respect to an assessment attributable to a
16 credit claimed under this section, the wages
17 with respect to which a deduction would not
18 have been allowed if the portion of the credit to
19 which such assessment relates had been prop-
20 erly claimed.”.

21 (2) APPLICATION TO CARES ACT CREDIT.—Sec-
22 tion 2301 of the CARES Act is amended by adding
23 at the end the following new subsection:

24 “(o) EXTENSION OF LIMITATION ON ASSESSMENT.—

1 “(1) IN GENERAL.—Notwithstanding section
2 6501 of the Internal Revenue Code of 1986, the lim-
3 itation on the time period for the assessment of any
4 amount attributable to a credit claimed under this
5 section shall not expire before the date that is 6
6 years after the latest of—

7 “(A) the date on which the original return
8 which includes the calendar quarter with re-
9 spect to which such credit is determined is filed,

10 “(B) the date on which such return is
11 treated as filed under section 6501(b)(2) of
12 such Code, or

13 “(C) the date on which the claim for credit
14 or refund with respect to such credit is made.

15 “(2) DEDUCTION FOR WAGES TAKEN INTO AC-
16 COUNT IN DETERMINING IMPROPERLY CLAIMED
17 CREDIT.—

18 “(A) IN GENERAL.—Notwithstanding sec-
19 tion 6511 of such Code, in the case of an as-
20 sessment attributable to a credit claimed under
21 this section, the limitation on the time period
22 for credit or refund of any amount attributable
23 to a deduction for improperly claimed ERTC
24 wages shall not expire before the time period

1 for such assessment expires under paragraph
2 (1).

3 “(B) IMPROPERLY CLAIMED ERTC
4 WAGES.—For purposes of this paragraph, the
5 term ‘improperly claimed ERTC wages’ means,
6 with respect to an assessment attributable to a
7 credit claimed under this section, the wages
8 with respect to which a deduction would not
9 have been allowed if the portion of the credit to
10 which such assessment relates had been prop-
11 erly claimed.”.

12 (j) EFFECTIVE DATES.—

13 (1) IN GENERAL.—Except as otherwise pro-
14 vided in this subsection, the provisions of this sec-
15 tion shall apply to aid, assistance, and advice pro-
16 vided after March 12, 2020.

17 (2) DUE DILIGENCE REQUIREMENTS.—Sub-
18 sections (b) and (c) shall apply to aid, assistance,
19 and advice provided after the date of the enactment
20 of this Act.

21 (3) LIMITATION ON CREDIT AND REFUND OF
22 COVID-RELATED EMPLOYEE RETENTION TAX CRED-
23 ITS.—Subsection (h) shall apply to credits and re-
24 funds allowed or made after January 31, 2024.

1 (4) AMENDMENTS TO EXTEND LIMITATION ON
2 ASSESSMENT.—The amendments made by subsection
3 (i) shall apply to assessments made after the date of
4 the enactment of this Act.

5 (k) TRANSITION RULE WITH RESPECT TO REQUIRE-
6 MENTS TO DISCLOSE INFORMATION, MAINTAIN CLIENT
7 LISTS, ETC.—Any return under section 6111 of the Inter-
8 nal Revenue Code of 1986, or list under section 6112 of
9 such Code, required by reason of subsection (d) of this
10 section to be filed or maintained, respectively, with respect
11 to any aid, assistance, or advice provided by a COVID-
12 ERTC promoter with respect to a COVID-ERTC docu-
13 ment before the date of the enactment of this Act, shall
14 not be required to be so filed or maintained (with respect
15 to such aid, assistance or advice) before the date which
16 is 90 days after such date.

17 (l) PROVISIONS NOT TO BE CONSTRUED TO CREATE
18 NEGATIVE INFERENCES.—

19 (1) NO INFERENCE WITH RESPECT TO APPLICA-
20 TION OF KNOWLEDGE REQUIREMENT TO PRE-EN-
21 ACTMENT CONDUCT OF COVID-ERTC PROMOTERS,
22 ETC.—Subsection (b) shall not be construed to cre-
23 ate any inference with respect to the proper applica-
24 tion of section 6701(a)(3) of the Internal Revenue
25 Code of 1986 with respect to any aid, assistance, or

1 advice provided by any COVID-ERTC promoter on
2 or before the date of the enactment of this Act (or
3 with respect to any other aid, assistance, or advice
4 to which such subsection does not apply).

5 (2) REQUIREMENTS TO DISCLOSE INFORMA-
6 TION, MAINTAIN CLIENT LISTS, ETC.—Subsections
7 (d) and (k) shall not be construed to create any in-
8 ference with respect to whether any COVID-related
9 employee retention tax credit is (without regard to
10 subsection (d)) a listed transaction (or reportable
11 transaction) with respect to any COVID–ERTC pro-
12 moter; and, for purposes of subsection (j), a return
13 or list shall not be treated as required (with respect
14 to such aid, assistance, or advice) by reason of sub-
15 section (d) if such return or list would be so re-
16 quired without regard to subsection (d).

17 (m) REGULATIONS.—The Secretary (as defined in
18 subsection (c)(5)) shall issue such regulations or other
19 guidance as may be necessary or appropriate to carry out
20 the purposes of this section (and the amendments made
21 by this section).