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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. _____

To provide a payroll credit for certain fixed expenses of employers subject to closure by reason of COVID-19.

IN THE HOUSE OF REPRESENTATIVES

Mr. THOMPSON of California introduced the following bill; which was referred to the Committee on _____

A BILL

To provide a payroll credit for certain fixed expenses of employers subject to closure by reason of COVID-19.

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 “Keeping the Lights
5 On Act of 2021”.

1 **SEC. 2. PAYROLL CREDIT FOR CERTAIN FIXED EXPENSES**
2 **OF EMPLOYERS SUBJECT TO CLOSURE BY**
3 **REASON OF COVID-19.**

4 (a) IN GENERAL.—In the case of an eligible em-
5 ployer, there shall be allowed as a credit against applicable
6 employment taxes for each calendar quarter an amount
7 equal to 50 percent of the qualified fixed expenses paid
8 or incurred by such employer during such calendar quar-
9 ter.

10 (b) LIMITATIONS AND REFUNDABILITY.—

11 (1) LIMITATION.—The qualified fixed expenses
12 which may be taken into account under subsection
13 (a) by any eligible employer for any calendar quarter
14 shall not exceed the least of—

15 (A) the qualified fixed expenses paid by the
16 eligible employer in the same calendar quarter
17 of calendar year 2019,

18 (B) \$50,000; or

19 (C) the greater of—

20 (i) 25 percent of the wages paid with
21 respect to the employment of all the em-
22 ployees of the eligible employer for such
23 calendar quarter; or

24 (ii) 6.25 percent of the gross receipts
25 of the eligible employer for calendar year
26 2019.

1 (2) CREDIT LIMITED TO CERTAIN EMPLOYMENT
2 TAXES.—The credit allowed by subsection (a) with
3 respect to any calendar quarter shall not exceed the
4 applicable employment taxes for such calendar quar-
5 ter (reduced by any credits allowed under sub-
6 sections (e) and (f) of section 3111 of such Code,
7 sections 7001 and 7003 of the Families First
8 Coronavirus Response Act, section 2301 of the
9 CARES Act, and sections 101, 102, and 304 of this
10 division, for such quarter) on the wages paid with
11 respect to the employment of all the employees of
12 the eligible employer for such calendar quarter.

13 (3) REFUNDABILITY OF EXCESS CREDIT.—

14 (A) IN GENERAL.—If the amount of the
15 credit under subsection (a) exceeds the limita-
16 tion of paragraph (2) for any calendar quarter,
17 such excess shall be treated as an overpayment
18 that shall be refunded under sections 6402(a)
19 and 6413(b) of the Internal Revenue Code of
20 1986.

21 (B) TREATMENT OF PAYMENTS.—For pur-
22 poses of section 1324 of title 31, United States
23 Code, any amounts due to an employer under
24 this paragraph shall be treated in the same

1 manner as a refund due from a credit provision
2 referred to in subsection (b)(2) of such section.

3 (c) DEFINITIONS.—For purposes of this section—

4 (1) APPLICABLE EMPLOYMENT TAXES.—The
5 term “applicable employment taxes” means the fol-
6 lowing:

7 (A) The taxes imposed under section
8 3111(a) of the Internal Revenue Code of 1986.

9 (B) So much of the taxes imposed under
10 section 3221(a) of such Code as are attrib-
11 utable to the rate in effect under section
12 3111(a) of such Code.

13 (2) ELIGIBLE EMPLOYER.—

14 (A) IN GENERAL.—The term “eligible em-
15 ployer” means any employer—

16 (i) which was carrying on a trade or
17 business immediately prior to the suspen-
18 sion described in clause (iii)(i) or imme-
19 diately prior to the period described in sub-
20 paragraph (B);

21 (ii) which had either—

22 (I) not more than 1,500 full-time
23 equivalent employees (as determined
24 for purposes of determining whether
25 an employer is an applicable large em-

1 ployer for purposes of section
2 4980H(c)(2) of the Internal Revenue
3 Code of 1986) for calendar year 2019;
4 or

5 (II) not more than \$41,500,000
6 of gross receipts in the last taxable
7 year ending in 2019; and

8 (iii) with respect to any calendar
9 quarter, for which—

10 (I) the operation of the trade or
11 business described in clause (i) is fully
12 or partially suspended during the cal-
13 endar quarter due to orders from an
14 appropriate governmental authority
15 limiting commerce, travel, or group
16 meetings (for commercial, social, reli-
17 gious, or other purposes) due to the
18 coronavirus disease 2019 (COVID-
19 19); or

20 (II) such calendar quarter is
21 within the period described in sub-
22 paragraph (B).

23 (B) SIGNIFICANT DECLINE IN GROSS RE-
24 CEIPTS.—The period described in this subpara-
25 graph is the period—

1 (i) beginning with the first calendar
2 quarter beginning after December 31,
3 2019, for which gross receipts (within the
4 meaning of section 448(c) of the Internal
5 Revenue Code of 1986) for the calendar
6 quarter are less than 80 percent of gross
7 receipts for the same calendar quarter in
8 the prior year; and

9 (ii) ending with the calendar quarter
10 following the first calendar quarter begin-
11 ning after a calendar quarter described in
12 clause (i) for which gross receipts of such
13 employer are greater than 80 percent of
14 gross receipts for the same calendar quar-
15 ter in the prior year.

16 (C) TAX-EXEMPT ORGANIZATIONS.—In the
17 case of an organization which is described in
18 section 501(c) of the Internal Revenue Code of
19 1986 and exempt from tax under section 501(a)
20 of such Code—

21 (i) clauses (i) and (iii)(I) of subpara-
22 graph (A) shall apply to all operations of
23 such organization; and

24 (ii) any reference in this section to
25 gross receipts shall be treated as a ref-

1 erence to gross receipts within the meaning
2 of section 6033 of the Internal Revenue
3 Code of 1986.

4 (D) PHASE-IN OF CREDIT WHERE BUSI-
5 NESS NOT SUSPENDED AND REDUCTION IN
6 GROSS RECEIPTS LESS THAN 50 PERCENT.—

7 (i) IN GENERAL.—In the case of any
8 calendar quarter with respect to which an
9 eligible employer would not be an eligible
10 employer if subparagraph (B)(i) were ap-
11 plied by substituting “50 percent” for “80
12 percent”, the amount of the credit allowed
13 under subsection (a) shall be reduced by
14 the amount which bears the same ratio to
15 the amount of such credit (determined
16 without regard to this subparagraph) as—

17 (I) the excess gross receipts per-
18 centage point amount; bears to

19 (II) 30 percentage points.

20 (ii) EXCESS GROSS RECEIPTS PER-
21 CENTAGE POINT AMOUNT.—For purposes
22 of this subparagraph, the term “excess
23 gross receipts percentage point amount”
24 means, with respect to any calendar quar-
25 ter, the excess of—

1 (I) the lowest of the gross re-
2 ceipts percentage point amounts de-
3 termined with respect to any calendar
4 quarter during the period ending with
5 such calendar quarter and beginning
6 with the first calendar quarter during
7 the period described in subparagraph
8 (B); over

9 (II) 50 percentage points.

10 (iii) GROSS RECEIPTS PERCENTAGE
11 POINT AMOUNTS.—For purposes of this
12 subparagraph, the term “gross receipts
13 percentage point amount” means, with re-
14 spect to any calendar quarter, the percent-
15 age (expressed as a number of percentage
16 points) obtained by dividing—

17 (I) the gross receipts (within the
18 meaning of subparagraph (B)) for
19 such calendar quarter; by

20 (II) the gross receipts for the
21 same calendar quarter in calendar
22 year 2019.

23 (3) QUALIFIED FIXED EXPENSES.—

24 (A) IN GENERAL.—The term “qualified
25 fixed expenses” means the payment or accrual

1 of any covered mortgage obligation, covered
2 rent obligation, or covered utility payment.
3 Such term shall not include the prepayment of
4 any obligation for a period in excess of a month
5 unless the payment for such period is custom-
6 arily due in advance.

7 (B) APPLICATION OF DEFINITIONS.—The
8 terms “covered mortgage obligation”, “covered
9 rent obligation”, and “covered utility payment”
10 shall each have the same meaning as when used
11 in section 1106 of the CARES Act.

12 (4) SECRETARY.—The term “Secretary” means
13 the Secretary of the Treasury or the Secretary’s del-
14 egate.

15 (5) WAGES.—

16 (A) IN GENERAL.—The term “wages”
17 means wages (as defined in section 3121(a) of
18 the Internal Revenue Code of 1986) and com-
19 pensation (as defined in section 3231(e) of such
20 Code). For purposes of the preceding sentence
21 (other than for purposes of subsection (b)(2)),
22 wages as defined in section 3121(a) of such
23 Code shall be determined without regard to
24 paragraphs (1), (8), (10), (13), (18), (19), and
25 (22) of section 3121(b) of such Code.

1 (B) ALLOWANCE FOR CERTAIN HEALTH
2 PLAN EXPENSES.—

3 (i) IN GENERAL.—Such term shall in-
4 clude amounts paid or incurred by the eli-
5 gible employer to provide and maintain a
6 group health plan (as defined in section
7 5000(b)(1) of the Internal Revenue Code
8 of 1986), but only to the extent that such
9 amounts are excluded from the gross in-
10 come of employees by reason of section
11 106(a) of such Code.

12 (ii) ALLOCATION RULES.—For pur-
13 poses of this section, amounts treated as
14 wages under clause (i) shall be treated as
15 paid with respect to any employee (and
16 with respect to any period) to the extent
17 that such amounts are properly allocable to
18 such employee (and to such period) in such
19 manner as the Secretary may prescribe.
20 Except as otherwise provided by the Sec-
21 retary, such allocation shall be treated as
22 properly made if made on the basis of
23 being pro rata among periods of coverage.

24 (6) OTHER TERMS.—Except as otherwise pro-
25 vided in this section, any term used in this section

1 which is also used in chapter 21 or 22 of the Inter-
2 nal Revenue Code of 1986 shall have the same
3 meaning as when used in such chapter.

4 (d) AGGREGATION RULE.—All persons treated as a
5 single employer under subsection (a) or (b) of section 52
6 of the Internal Revenue Code of 1986, or subsection (m)
7 or (o) of section 414 of such Code, shall be treated as
8 one employer for purposes of this section.

9 (e) DENIAL OF DOUBLE BENEFIT.—For purposes of
10 chapter 1 of such Code, the gross income of any eligible
11 employer, for the taxable year which includes the last day
12 of any calendar quarter with respect to which a credit is
13 allowed under this section, shall be increased by the
14 amount of such credit.

15 (f) CERTAIN GOVERNMENTAL EMPLOYERS.—

16 (1) IN GENERAL.—The credit under this section
17 shall not be allowed to the Federal Government, the
18 government of any State, of the District of Colum-
19 bia, or of any possession of the United States, any
20 tribal government, or any political subdivision, agen-
21 cy, or instrumentality of any of the foregoing.

22 (2) EXCEPTION.—Paragraph (1) shall not
23 apply to any organization described in section
24 501(c)(1) of the Internal Revenue Code of 1986 and
25 exempt from tax under section 501(a) of such Code.

1 (g) ELECTION TO NOT TAKE CERTAIN EXPENSES
2 INTO ACCOUNT.—

3 (1) IN GENERAL.—If an eligible employer elects
4 (at such time and in such manner as the Secretary
5 may prescribe) to not take into account any amount
6 of qualified fixed expenses for purposes of deter-
7 mining the credit under this section, such amount of
8 qualified fixed expenses shall not be so taken into
9 account.

10 (2) COORDINATION WITH PAYCHECK PROTEC-
11 TION PROGRAM.—The Secretary, in consultation
12 with the Administrator of the Small Business Ad-
13 ministration, shall issue guidance providing that cov-
14 ered mortgage obligations, covered rent obligations,
15 and covered utility payments paid or incurred during
16 the covered period shall not fail to be taken into ac-
17 count as qualified fixed expenses for purposes of de-
18 termining the credit under this section by reason of
19 an election under paragraph (1) to the extent that
20 a covered loan of the eligible employer is not for-
21 given by reason of a decision under section 1106(g).
22 Terms used in the preceding sentence which are also
23 used in section 1106 shall have the same meaning
24 as when used in such section.

1 (h) TRANSFERS TO CERTAIN TRUST FUNDS.—There
2 are hereby appropriated to the Federal Old-Age and Sur-
3 vivors Insurance Trust Fund and the Federal Disability
4 Insurance Trust Fund established under section 201 of
5 the Social Security Act (42 U.S.C. 401) and the Social
6 Security Equivalent Benefit Account established under
7 section 15A(a) of the Railroad Retirement Act of 1974
8 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in
9 revenues to the Treasury by reason of this section (without
10 regard to this subsection). Amounts appropriated by the
11 preceding sentence shall be transferred from the general
12 fund at such times and in such manner as to replicate
13 to the extent possible the transfers which would have oc-
14 curred to such Trust Fund or Account had this section
15 not been enacted.

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

21 (j) THIRD-PARTY PAYORS.—Any credit allowed
22 under this section shall be treated as a credit described
23 in section 3511(d)(2) of such Code.

1 (k) REGULATIONS AND GUIDANCE.—The Secretary
2 shall issue such forms, instructions, regulations, and guid-
3 ance as are necessary—

4 (1) to allow the advance payment of the credit
5 under subsection (a), subject to the limitations pro-
6 vided in this section, based on such information as
7 the Secretary shall require;

8 (2) regulations or other guidance to provide for
9 the reconciliation of such advance payment with the
10 amount of the credit at the time of filing the return
11 of tax for the applicable quarter or taxable year;

12 (3) with respect to the application of the credit
13 under subsection (a) to third-party payors (including
14 professional employer organizations, certified profes-
15 sional employer organizations, or agents under sec-
16 tion 3504 of the Internal Revenue Code of 1986),
17 including regulations or guidance allowing such
18 payors to submit documentation necessary to sub-
19 stantiate the eligible employer status of employers
20 that use such payors;

21 (4) for application of subsection (b)(1)(A) and
22 subparagraphs (A)(ii)(II) and (B) of subsection
23 (c)(2) in the case of any employer which was not
24 carrying on a trade or business for all or part of the
25 same calendar quarter in the prior year; and

1 (5) for recapturing the benefit of credits deter-
2 mined under this section in cases where there is a
3 subsequent adjustment to the credit determined
4 under subsection (a).

5 (l) APPLICATION OF SECTION.—This section shall
6 apply only to qualified fixed expenses paid or accrued after
7 March 12, 2020, and before January 1, 2022.

8 (m) AMENDMENT TO PAYCHECK PROTECTION PRO-
9 GRAM TO COORDINATION WITH CREDIT FOR QUALIFIED
10 FIXED EXPENSES.—Section 1106 of the CARES Act is
11 amended by adding at the end the following new sub-
12 section:

13 “(l) COORDINATION WITH PAYROLL TAX CREDIT
14 FOR QUALIFIED FIXED EXPENSES.—For purposes of this
15 section, any payment of interest on any covered mortgage
16 obligation, any payment on any covered rent obligation,
17 and any covered utility payment shall not include any
18 qualified fixed expenses which are taken into account in
19 determining the credit allowed under section 2 of the
20 Keeping the Lights On Act of 2021.”.