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H.R. 6787 (116th Session) – Providing Essentials for Frontline Workers Act

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Tax Policy Analysis

H.R. 6787 (116th Session) – Providing Essentials for Frontline Workers Act

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Introduction

On March 11, 2020, the World Health Organization (WHO) declared the ongoing global outbreak of the coronavirus disease 2019 (COVID-19) a global pandemic, as the disease rampaged across countries, claiming the lives of over 700,000 people.^{1,2} As of August 13, 2020, more than 5.1 million cases of COVID-19 have been reported in the United States.³ Across the country, business closures and shelter-in-place orders imposed to mitigate the effects of COVID-19 continue to vary by jurisdiction, yet all exempt essential service and frontline employees continue to support and meet the most basic needs of individuals and communities since the start of this pandemic.

On May 8, 2020, H.R. 6787, Providing Essentials for Frontline Workers Act, was introduced and referred to the U.S. House Committee on Ways and Means by Congresswoman Linda Teresa Sánchez (D-CA-38). The bill aims to provide relief in the form of a payroll tax credit to ease the tax liability burden on businesses, as they continue to struggle amidst the pandemic.⁶

Brief Overview of Payroll Taxes

Generally, payroll taxes, as mandated by the Federal Insurance Contributions Act, are split evenly by the employer and the employee. One-half of the payroll taxes (7.65%) are remitted directly by employers, while the other half is withheld from workers' paychecks. The first 12.4% of the total tax is used to fund Social Security and the remaining 2.9% funds Medicare, for a total combined rate of 15.3%.⁴

Employers are required to report payroll taxes on a quarterly basis in most jurisdictions. Employers must file Form 941 - Employer's Quarterly Federal Tax Return to report income

¹"WHO Director-General's Opening Remarks at the Media Briefing on COVID-19 - 11 March 2020." *World Health Organization*, World Health Organization, 11 Mar. 2020, available at: www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.

²Ritchie, Hannah. "Coronavirus (COVID-19) Deaths - Statistics and Research." *Our World in Data*, 2020, available at <https://ourworldindata.org/covid-deaths>.

³"CDC COVID Data Tracker." *Centers for Disease Control and Prevention*, Centers for Disease Control and Prevention, 2020, available at: www.cdc.gov/covid-data-tracker/#cases.

⁴"Topic No. 751 Social Security and Medicare Withholding Rates." *Internal Revenue Service*, Internal Revenue Service, 23 June 2020, available at: www.irs.gov/taxtopics/tc751.

taxes, social security taxes, and/or Medicare taxes withheld from their employees' paychecks.⁵ Due to COVID-19, significant changes have been made to provide new employment tax credits and other tax relief.

Overview of H.R. 6787 - Providing Essentials for Frontline Workers Act⁶

The Act aims to provide a payroll tax credit against employment taxes equal to a percentage of certain pandemic-related employee benefit expenses paid by employers between March 12, 2020, and January 1, 2021. The amount of the credit is 50% of pandemic-related expenses of essential employees and 30% for all other employees. The amount of qualified pandemic-related employee benefit expenses with respect to any employee may not exceed \$5,000 for any calendar quarter.

Credits are usually applied against income taxes; however, to ensure employers get immediate relief, this credit is applied against employment taxes, which are generally reported on a quarterly basis. If the amount of the allowable credit exceeds the applicable employment taxes on wages paid of the employees, the excess is treated as an overpayment and will be refunded back to the employer.

Per the bill, the term "qualified pandemic-related employee benefit expenses" refers to the amounts paid to an employee that are excludable from gross income as disaster relief payments (§139) related to COVID-19 and that the employee has elected to treat as a pandemic-related expense. Per §139(b)(1), a "qualified disaster relief payment" is defined as an amount paid to the benefit of an individual to reimburse or pay reasonable or necessary personal, family, living or funeral expenses incurred as a result of a qualified disaster.⁷ Congresswoman Sánchez notes examples of such expenses in her press release such as "temporary housing at hotels for those employees who are sheltering elsewhere to avoid exposing family members, meals, laundry service for uniforms, or child care expenses."⁸

Per the bill, the term "essential employee" refers to any employee who performs a substantial portion of services that constitute "essential work" for the employer. The term "essential work" is yet to be defined upon passage of the bill. Should the bill become enacted, within 30 days of

⁵"Instructions for Form 941 (04/2020)." *Internal Revenue Service*, available at: www.irs.gov/instructions/i941.

⁶"H.R.6787 - 116th Congress (2019-2020): Providing Essentials for Frontline Workers Act." *Congress.gov*, Library of Congress, 8 May 2020, available at: www.congress.gov/bill/116th-congress/house-bill/6787?q=%7B%22search%22%3A%5B%22hr%2B6787%22%5D%7D&r=1&s=1.

⁷Internal Revenue Code §139(b)(1).

⁸"Sánchez Introduces Legislation to Cover Expenses for Essential Workers." *Congresswoman Linda Sanchez*, 8 May 2020, available at: <https://lindasanchez.house.gov/media-center/press-releases/s-nchez-introduces-legislation-cover-expenses-essential-workers>.

the Act’s enactment, the Director of Cybersecurity and Infrastructure Security Agency (CISA) is instructed, as per the provisions of the bill, to issue a definition of “essential work”, taking into consideration its April 17th “Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-10 Response” and solicit public input in arriving to a definition.

Per the aforementioned memorandum, CISA provided an advisory list that identified workers who performed services that are deemed essential to continued critical infrastructure viability and who support crucial supply chains in states and communities. To elucidate, the industries, and respectively, specifically defined workers under these industries, identified in this report include, but are not limited to: medical and healthcare; food and agriculture; water and wastewater; law enforcement; and transportation and logistics.⁹

The bill also outlines special rules taking aim at abuse and exploitation of the credit. Employers are denied the credit if the qualified pandemic-related employee benefit expenses provided by the employer to employees discriminate in favor of highly-compensated individuals. It also denies the credit if the taxpayer has claimed a different deduction or credit against these expenses, preventing the taxpayer from receiving a double benefit.

The credit is not permitted to be taken by the federal government nor its agencies, with exception to tax-exempt organizations.

The Federal Old-Age and Survivors Insurance Trust Fund and Federal Disability Insurance Trust Fund (collectively, the Social Security Trust Fund or Trust Funds) are trust funds that provide for payment of Social Security (Old-Age, Survivors, and Disability Insurance; OASDI) benefits administered by the United States Social Security Administration. With a credit against employment taxes, a smaller portion of taxes will be collected to fund OASDI benefits. To address this, paragraph (j) provides that funds from the general fund are to be appropriated to the Social Security Trust Fund to account for the expenditures of this bill that result in the reduction in revenues to the Treasury for OASDI benefits.

Penalties will be waived under IRC §6656 if an employer fails to make a deposit of applicable employment taxes if the Secretary determines that the failure was due to anticipation of the credit defined in this bill. The Secretary is also instructed to prescribe regulations for guidance related to advance payment of the credit and such reconciliation and adjustment steps that need to be taken due to receiving an advance payment of the credit.

Application of Principles of Good Tax Policy

⁹“Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response Version 2.0.” Cybersecurity and Infrastructure Security Agency, Cybersecurity and Infrastructure Security Agency, 17 Apr. 2020, available at:

www.cisa.gov/sites/default/files/publications/Version_3.0_CISA_Guidance_on_Essential_Critical_Infrastructure_Workers_1.pdf.

This section analyzes H.R. 6787, Providing Essentials for Frontline Workers Act, using the twelve principles set out in the AICPA’s *Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals*.¹⁰

Principles of Good Tax Policy

Criteria	Does the proposal satisfy the criteria? (explain)	+/-
<p><i>Equity and Fairness</i> – Are similarly situated taxpayers taxed similarly? Consider the tax effect as a percentage of the taxpayer’s income for different income levels of taxpayers.</p>	<p><u><i>Vertical Equity:</i></u> The vertical equity principle is satisfied when taxpayers with higher income pay more tax than taxpayers with lower income. The direct benefit of this credit would be received by companies that can afford to support their employees through the pandemic to compensate for some of the economic hardships. Larger corporations, who generally employ more workers, are likely to be able to do so, thereby benefiting over small businesses and receiving large tax cuts (this is because the credit is limited to \$5,000 per employee).</p> <p>Illustration: If an essential employee incurs a qualified pandemic-related benefit expense for \$1,530, for which his or her employer reimburses her for that amount, the employer could in effect receive a credit of \$765 (a reduction in their payroll tax liability) for which this credit was in effect. If a non-essential employee incurred the same expense, the employer would receive a credit of \$459. With no phase-out rules based on quarterly net income or gross receipts, larger businesses are likely to fare better at the advantage of this credit.</p> <p>Moreover, companies with efficient and effective expense reimbursement recording will further benefit over small businesses that may not have as efficient records for the months already passed for which this credit can apply to (<i>i.e.</i> March through July). Companies that could afford to implement proper systems before or during the pandemic may have sufficient records of such qualified expenses</p>	<p>- (vertical equity)</p> <p>-</p>

¹⁰ American Institute of Certified Public Accountants (AICPA) Tax Division. (January 2017). *Tax Policy Concept Statement 1 - Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals*; available at: <https://www.aicpa.org/advocacy/tax/downloadabledocuments/tax-policy-concept-statement-no-1-global.pdf>.

	<p>reimbursed to their employees and claim the credit over those companies that do not.</p> <p>Furthermore, individuals with jobs and therefore, a source of income, receive the indirect benefit of having some of their expenses compensated by their employer. Moreover, this credit results in a double benefit in that the same expense results in a tax-exempt item for the employee per §139 and a credit for the employer (note, that the bill does explicitly deny the employer from receiving the credit and then taking corresponding deduction for the same expense). Individuals, who are unemployed due to the pandemic, face a double penalty - (1) loss of income and (2) loss of government funds that may have provided support to them.</p> <p><u>Horizontal Equity:</u> This type of equity holds that similarly situated taxpayers should pay the same amount of tax. This bill also violates the principle of horizontal equity because taxpayers of similar financial footing and resources can be impacted differently from the benefit of this credit. If taxpayer A is in an industry that is not classified as an essential service or does not have essential workers, it can only receive a credit for 30% of the qualified pandemic-related benefit expenses that it reimburses of its employees. On the other hand, an employer who does fall within one of the categories outlined in CISA’s memorandum has the potential to deduct up to 50% of any qualified pandemic related benefit expenses it reimburses.</p> <p><u>Fairness:</u> The bill does not provide a credit or other tax benefit to the employees or individual taxpayers, who notably bear the burden of payroll taxes in indirect forms. Employees effectively bear the burden for almost the <i>entire</i> payroll tax, despite the tax on the surface being split half-half amongst the employer and employee. The demand for labor - or an employers’ willingness to hire - is much more sensitive to taxes. As taxes decrease, generally speaking, employers are more likely to hire or increase wages. Vice versa, when taxes increase, employees’ wages are reduced and the demand for labor is much lower. So, while employers may be sending their portion of the tax to the</p>	<p>(horizontal equity)</p> <p>- (fairness)</p>
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	<p>government, effectively it results in a decrease to their employees' wages by almost the same amount.</p> <p>Looking at the current economic situation, while at the face, decreasing an employer's tax liability may stimulate the demand for labor, this effect is unlikely due to the unpredictability and instability of the economy in relation to the pandemic. Rather employers are likely to hold on to these additional tax savings as reserves that will continue to support their current footing as the pandemic pursues. Effectively, providing a payroll tax credit to the employers will not evenly re-distribute the burden, thereby violating the principle of fairness.</p>	
<p><i>Certainty</i> – Does the rule clearly specify when the tax is owed and how the amount is determined? Are taxpayers likely to have confidence that they have applied the rule correctly?</p>	<p>The bill creates a new payroll tax credit that allows employers to claim a refundable credit against employment taxes paid quarterly. The credit is a maximum of \$5,000 per frontline worker paid after March 12, 2020, through Dec. 31, 2020. The calculation of the credit amount is relatively straightforward.</p> <p>However, there is no set definition of “essential work” or “essential industry”. The list of critical infrastructure sectors provided by the CISA is not a set federal directive or standard. Employers may have confusion on identification since there are no legal regulations to outline in the code currently and it is uncertain what direction CISA will take with its definitions should this bill be passed.</p> <p>Furthermore, there is little guidance under §139 as there have been no regulations released as the date of this article. While §139 may be straightforward for more common disasters, guidance may be needed to address the situations and circumstances specific to the COVID-19 pandemic. For example, the IRS may likely need to release a regulation to address when an employer may deduct a qualified expense, when it is entitled to this credit, or if the employer can choose the benefit it receives. In addition, the IRS may need to clarify the extent or breathe of employer's spending in relation to this bill, and the necessity of expenses incurred due to the pandemic. Arguably, §139 could apply to an employer buying computers, software and educational</p>	<p>-</p>

	<p>workbooks to help employees who are teaching their kids at home while schools are either closed or online.</p> <p>In addition, there is no legal definition of “frontline worker”. The term itself is informal yet. While some regard frontline workers as those in serving in hospitals and healthcare facilities, having direct exposure to the virus, others regard it as those having to report directly on-site to their jobs.</p> <p>Meanwhile, in the digital age, telecommuting allows industries to remain open while employees are able to maintain operation remotely from home. There is no certainty in the definition of frontline workers. Therefore, this bill does not meet the principle of certainty.</p>	
<p><i>Convenience of payment</i> – Does the rule result in tax being paid at a time that is convenient for the payor?</p>	<p>The payroll tax credit is comparatively easy to claim since it is applied to employment taxes with Form 941 on a quarterly basis. The credit will be collected when reporting the quarterly employment taxes, which is more beneficial than an annual basis currently because it provides struggling businesses with almost-immediate relief. The employers that are adversely impacted by the COVID-19 national lockdowns will quickly receive the payment closer to when they need it, instead of waiting till 2021 when their 2020 tax return is filed. With the current allowance in place to defer payment on payroll taxes, this bill offers additional timing convenience for the employers to get additional tax relief, as long as the qualified pandemic-related expenses are determined. Therefore, this bill meets the principle of convenience of payment.</p>	<p>+</p>
<p><i>Effective Tax Administration</i> – Are the costs to administer and comply with this rule at minimum level for both the government and taxpayers?</p>	<p>Some companies would have minimum cost influence if they have already implemented efficient payroll tracking systems. For example, they have good record-keeping procedures on employees’ reimbursement, which saves time and cost to track and calculate the amount of credit. While, for other companies, the bill increases the burden of tracking and reporting the payment of qualified employee benefit expenses. Accountants and tax administrators may have to go back and review thousands of transactions incurred and reimbursed to employees in months already passed (<i>i.e.</i> March to July), which is a significant time and cost consuming.</p>	<p>-</p>

	<p>The guidance for §139 does not explicitly require an employer to institute a written Section 139 program. Still, while the employer is likely to have to establish systems for the purposes of receiving the payroll tax credit, it is also important to note that Rev. Rul. 2003-12 described a fact pattern in which the employer established a written program and the IRS favorably held that the payment met the criteria of §139 and was allowed to be excluded from income tax.¹¹ Accordingly, employers may need to devise a system that identifies expenses that will be reimbursed, the method of reimbursement and the start/end dates of the program, as well as appoint an administrator. Employers interested in adopting such a program will need to consider aspects of implementation including, but not limited to the administrative burden at a time when staffing may be decreased or remote as well as the costs.</p> <p>Also, it is important to note that by itself, §139 does not require employers to instruct employees to document their actual expenses, provided that the relief payments are reasonably expected to be commensurate with the expenses incurred. Yet, most tax professionals recommend that employers secure signed statements from employees, affirming that their claims arise from an area covered by the disaster declaration, have incurred these expenses and that such expenses have not been covered through an insurance policy. If the employer requires documentation or a signed statement with proof from the employee, this would also place a compliance burden on the individual taxpayer.</p> <p>The bill also increases the cost of the government to examine the records. The IRS needs to update or issue multiple tax returns as well as regulations to comply with the credit. It is even more challenging for the IRS auditors to testify the expense paid to the qualified employees. They need to have more staff to verify the accurate amount of expenditures paid to the frontline workers by the employers in essential industries. Referring to the Bureau of Labor Statistic data, there are 50 million people who qualify as frontline workers while a majority of 90 million people</p>	
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¹¹Rev. Rul. 2003-12, 2003-1 CB 283

	<p>are employed in essential industries.¹² The burden of examining and tracking expense reimbursement is heavy. Therefore, this bill does not meet the principle of effective tax administration.</p>	
<p><i>Information Security</i> – Will taxpayer information be protected from both unintended and improper disclosure?</p>	<p>The bill is unlikely to impact information security. The credit is received based on the payroll taxes of current employees. Employees’ personal information, such as name, address, and social security number, is likely to already be recorded in a company’s payroll system. Therefore, there is no additional risk to disclose employees’ important information.</p> <p>However, this principle becomes a cause of concern if employers require documentation from employees to verify expenses. As of date, §139 does not require documentation for qualified disaster-relief payments; however, several tax professionals are recommending employers to do so due to the ambiguity of the pandemic. If this is the case, privacy concerns as well as information security considerations are now prevalent. Employees may be forced to disclose certain medical concerns or even sensitive information that they may have not had to or been protected from having to do so under the U.S. labor and employer-employee relationship laws.</p> <p>Furthermore, taxpayers’ information is further disclosed to the federal government as it is likely that IRS auditors may need to look at receipts of reimbursement in order to assure that the correct amount of qualified expenses paid to the eligible workers. While it is unlikely that that information is will be subjected to improper or intentional disclosure, the lack of clarify regarding the necessity and extent of documentation from the employee raises concerns of privacy and information security. If documentation is required, the principle of information security may be violated.</p>	<p>+/-</p>

¹²Adele Tomer & Joseph W. Kane, “To Protect Frontline Workers During and After COVID-19, We Must Define Who They Are,” Brookings, 10 June, 2020; available at: <https://www.brookings.edu/research/to-protect-frontline-workers-during-and-after-covid-19-we-must-define-who-they-are/>.

	<p>Lastly, the IRS may need issue new tax forms that will be attached to the employment taxes for employers to claim the credit. However, the risk of information leakage would not be greatly increased than the case without new forms. As a result, the bill would comply with the principle of information security, disregarding the issue of employee documentation.</p>	
<p><i>Simplicity</i> - Can taxpayers understand the rule and comply with it correctly and in a cost-efficient manner?</p>	<p>Although there is no complicated process to increase the difficulty of calculation, employers would easily have confusion amongst the terminology of essential work and frontline workers. Without clear legal definitions, employers would be easily misunderstood and spend more time and cost to claim the credit that they may not be qualified for. As a result, taxpayers are unlikely to comply with the rule correctly due to ambiguous definitions.</p> <p>In addition, with no income threshold, employers have to trace after code sections 139, 125, and 414(q) to look at the meanings of “qualified pandemic-related employee benefit expense” or “highly compensated individuals”, in order to help understand some of the specified terms. The bill sets barriers for companies to comply with, especially for small businesses with no tax professionals. Therefore, this bill does not meet the principle of simplicity.</p>	<p>-</p>
<p><i>Neutrality</i> – Is the rule unlikely to change taxpayer behavior?</p>	<p>The proposed law may influence a taxpayer’s decision to reimburse expenses for their employees during the started time period provided in the bill. Large employers that can afford to incur and support qualified pandemic-related employee benefit expenses may extend this benefit out to their employees, but most likely will extend it only up to the cap of the credit. In addition, taxpayers may engage in tax planning to take advantage of the refundable perspective of this credit.</p> <p>The bill is also not neutral because it favors particular industries and types of workers over others. The amount of the credit is 50% of pandemic-related expenses of essential employees and 30% for all other employees. Employers, with a limited budget, may be more motivated to reimburse or compensate for the qualified expenses of their “essential employees” first before considering the expenses of a non-</p>	

	<p>essential employee in order to receive a greater benefit for themselves.</p> <p>This bill seeks to establish a payroll tax credit for employers who reimburse qualified pandemic-related expenses for their employees. Inherently, the credit is not neutral. It purposefully incentivizes businesses that have the ability to support employees adversely impacted by the pandemic and provide them a benefit for doing so.</p>	
<p><i>Economic growth and efficiency – Will the rule not unduly impede or reduce the productive capacity of the economy?</i></p>	<p><u><i>Short Term:</i></u> In the short run, the credit may allow or provide relief to some employers that are adversely impacted by the pandemic. For those businesses that may see reduced business due to the shelter-in-place and lockdown orders, but still need to maintain a physical presence through their employees and pay payroll taxes as a result, this credit may provide some relief in that manner. It may also incentivize employers to retain more employees, rather than downsize, which would neither impede nor reduce current production capacity in the economy.</p> <p>Yet, the credit provides relief to certain industries, but not others. More particularly, industries that are essential and can continue to operate during this time are likely to receive the relief, while businesses, such as gyms and salons, that cannot operate are not likely to receive this relief. Instead, this credit redirects resources away from these non-operational businesses, which may impede economic growth. With this tax rule favoring particular industries, thereby causing capital to flow to such areas for reasons not supported by economic factors, this can harm other industries as well as the economy as a whole.</p> <p>At the individual level, the bill may help more employees and families to be able to work if §139 expenditures included things like computers or school supplies for children whose schools are closed or online. Families would not have the burden of additional expenses during this time where most are seeing reductions or a complete loss of income. It would also reduce the spending burden of the federal government and allow it to direct resources to other issues. However, based on the intentions noted by</p>	<p>+/- (short-run)</p> <p>- (long-run)</p>

	<p>Congresswoman Sánchez in her press release, such expenses do not seem to be the purpose of this bill, though, due to the vagueness of §139 would qualify.</p> <p><u>Long Term:</u> In the long-run, failing to support non-essential and non-operational can lead to massive collapses in certain industries, as indicated above.</p> <p>Moreover, a tax credit of such design may impede the incentive for individual taxpayers to work. If a large number of companies take advantage of this credit, this could impact Social Security and Medicare. “The Social Security Trustees’ annual report, released in April of 2020, noted that the trust funds will be depleted by 2035, at which point the system may be able to pay only 79% of promised benefits. Medicare’s funding for Part A (hospital coverage) is expected to run dry by 2026 and be able to cover 90% of benefits. However, with the current economic crisis and the added payroll credit, economists believe that these shortfalls could arrive sooner.”^{13, 14}</p> <p>Furthermore, in a model designed by Penn Budget Wharton Model, the organization estimated that eliminating payroll taxes altogether would have little effect on the economy in the short-run, but could reduce the size of the economy by 0.1% in 2030 and 0.2% in 2050 due to additional debt.¹⁵ While this credit does not eliminate the entire payroll taxes, it still reduces them significantly, which in turn could have similar, but slightly smaller impacts on the economy in the long-run.</p>	
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¹³Konish, Lorie. “The Trump Administration Wants to Give Workers a Payroll Tax Cut. Experts Question Whether It Could Work.” *CNBC*, CNBC, 5 June 2020, available at: www.cnbc.com/2020/06/05/trump-wants-to-give-workers-a-payroll-tax-cut-how-it-would-work.html.

¹⁴Ziv, Shahar. “Trump Threatens Stimulus Package; Insists On Including Payroll Tax Cut.” *Forbes*, Forbes Magazine, 16 July 2020, available at: www.forbes.com/sites/shaharziv/2020/07/16/trump-threatens-stimulus-package-second-stimulus-check-federal-unemployment-bonus-insists-on-including-payroll-tax-cut/#3976b41a6cbd.

¹⁵ Paulson, Mariko. “President Trump’s Payroll Tax Holiday: Budgetary, Distributional, and Economic Effects.” Penn Wharton Budget Model, Penn Wharton Budget Model, 12 Mar. 2020, available at: <https://budgetmodel.wharton.upenn.edu/issues/2020/3/12/president-trump-payroll-tax-holiday>.

<p><i>Transparency and Visibility</i> – Will taxpayers know that the tax exists and how and when it is imposed upon them and others?</p>	<p>It is likely that taxpayers can get information about the bill from the IRS website itself. The IRS has been updating the instructions page for Form 941 with significant changes to the form that allows for the reporting of new COVID-19 related tax credits or tax relief. All such changes are condensed into one section at the top of the IRS page, and it is likely that if this bill were to pass, the information would be made available in that section of the webpage. Yet, owners of small businesses that may not frequently check the instructions webpage may miss out on receiving such information, without an official campaign to create awareness of this particular credit.</p> <p>Moreover, the title, “Providing Essentials to Frontline Workers”, is misleading and businesses may pass over the credit believing that it does not apply to their business. Furthermore, in general, the payroll tax structure violates the principle of transparency because roughly half of the payroll taxes (the employer’s portion) are hidden in the form of lower wages, thus causing the individual (employee) to bear a larger burden of the tax. With this bill, revenues to fund Social Security and Medicare are expected to decrease and funds from the general fund are expected to be appropriated to cover the cost of this credit. This, in turn, may reduce available funds for other programs that individual taxpayers may benefit from. As a result, in the long-run, individual taxpayers may see higher taxes to compensate for the lower revenues, but may not be entirely apparent to taxpayers currently, due to how the taxes are levied.¹⁶</p>	
<p><i>Minimum tax gap</i> – Is the likelihood of intentional and unintentional non-compliance likely to be low?</p>	<p>The likelihood of non-compliance is high currently due to the lack of well-defined definitions of eligible frontline workers and essential industries. It is not particularly clear how many employees working in essential industries are still reporting to the job site and how many of them are qualified for the credit. Thus, if no further regulations are issued, employers may easily make unintentional errors caused by confusion and uncertainty.</p>	<p>-</p>

¹⁶ Olson, John. “What Are Payroll Taxes and Who Pays Them?” *Tax Foundation*, Tax Foundation, 6 July 2020, available at: <https://taxfoundation.org/what-are-payroll-taxes-and-who-pays-them/>.

	<p>The likelihood of intentional errors is also increased due to the nature of credit. Per the bill, if employers reimburse employees for qualified pandemic-related expenses, then the employers can get a quarterly-based credit. What would normally be a business deduction is currently a more frequent credit against payroll taxes. The deviation from the norm of the tax system would easily lead to mistakes and fraud (<i>i.e.</i> overstating the number of essential workers and the amount of employee benefit expenses).</p> <p>As a result, employers are likely to make intentional and unintentional errors to get more tax relief. Therefore, this bill does not satisfy the principle of minimum tax gap.</p>	
<p><i>Accountability to taxpayers – Will taxpayers know the purpose of the rule, why needed and whether alternatives were considered? Can lawmakers support a rationale for the rule?</i></p>	<p>Although the IRS tries to release guidance and inform taxpayers regarding developments in the tax law, taxpayers are unlikely to understand the purpose as well as their qualification for the credit due to the title of the Act. Should the bill be passed, the title “Providing Essentials to Frontline Workers” eludes that this credit may be particularly aimed at employees and employers in the medical and healthcare industry.</p> <p>In current news and common terminology, “frontline workers” are often regarded as those workers employed within the medical and healthcare industry. Yet, the bill allows for credits for all “essential workers”, a broader group. Those employers (typically of a large size either in financial capital or human capital) with resources and abilities to track and review recent developments will likely understand their qualifications for taking advantage of this credit. Smaller businesses that are not up-to-date with the slew of tax legislation coming out of Congress are likely to not know of or understand the purpose of this rule. Furthermore, the title of the bill alludes to the idea that the benefits of this bill are being provided to the workers, themselves. Yet, the context of the bill outlines that the benefit is for the employers, not the employees.</p> <p>Multiple alternative payroll tax credits have been proposed and made available through congress.gov, and are frequently being publicized through the national news coverage due to the on-going pandemic. Yet, due to the</p>	

	<p>amount of proposals, not all bills catch public attention, which could therefore hinder the understanding and informed debate in the evaluation of multiple alternatives. Still, lawmakers can support the rationale for this credit. Due to the on-going pandemic and forced business closures, consumption across the U.S. economy has fallen, reducing a business’ ability to fulfill their tax obligations. Yet, the burden of payroll taxes is borne by the workers themselves.</p> <p>Employers hire workers based on the total compensation cost of that employee. With higher taxes, employers are not as willing to pay higher wages. Even with the credit, it is unlikely for employers to increase wages during this time as the pandemic continues to have an adverse economic impact.</p>	
<p><i>Appropriate government revenues</i> – Will the government be able to determine how much tax revenue will likely be collected and when?</p>	<p>While the credit is not a direct expenditure, it is an indirect expenditure because it reduces the amount of tax revenues available to the federal government by reducing the amount of taxes collected from payroll. As of June, 2020, the U.S. Bureau of Labor Statistics reported an unemployment rate of 11.1%.¹⁷ This in turn translates to a further reduction in payroll taxes being collected by the federal government that may have provided available revenues to fund the current influx in tax expenditure legislation being enacted to support taxpayers impacted by the pandemic as well as resuscitate the economy.</p> <p>While the federal government has data available from agencies such as the Social Security Administration and the Internal Revenue Service that can produce an estimate as to the number of taxpayers as well as the amount of tax credit claimed per this bill, due to the constant evolving changes in state and local jurisdictions’ shelter-in-place and lockdown orders, it is unlikely that the federal government can produce a reasonable estimate. The lack of predictability, stability and reliability in the current pandemic situation disables the federal government from being able to determine the extent of this tax expenditure.</p>	<p>-</p>

¹⁷ “The Employment Situation - June 2020.” *Bureau of Labor Statistics*, U.S. Department of Labor, 2 July 2020.

	<p>Furthermore, since the credit is refundable, it may be harder to estimate which and how many businesses will engage in tax planning to take advantage of this particular aspect.</p> <p>However, the timing of this tax expenditure is more predictable as the credit is applied on a quarterly basis.¹⁸ While the credit’s impact on revenues incurred between March 2020 to July 2020 may be more easily understood, it will be difficult to foresee and estimate the impact of this credit on future revenues.</p>	
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Conclusion

The foundation of H.R. 6787 rests on positive morals with the intention to provide opportunities for employers to obtain an immediate source of liquidity and incentives to maintain more employees.

However, our analysis above shows more shortcomings than successes, as the bill fails to meet eleven of the twelve guiding principles for good tax policy. Many key principles are violated, including equity, certainty, simplicity, neutrality, minimum tax gap, and economic growth and efficiency, due to several long-term repercussions and costs associated with the bill. Yet, one particular facet of the credit, the delivery method, satisfies the principle of convenience of payment and provides some positive points to the principle of information security. Therefore, before the government can consider enacting this bill, the design needs to be modified such that its positive externalities outweigh the negative ones.

Suggested Improvements

1. To address the equity issue, the bill should set forth limitations on the size of business that is eligible for the credit, either in terms of quarterly income and gross receipts or number of employees. If Congress deems to credit necessary and appropriate for large companies with more employees and more revenue, it may be more efficient to issue the credit through the income tax system, or grant a business deduction instead of the payroll credit, for these sizes of businesses, which would bring greater equity to small businesses with fewer employees and mitigate some of the long-term repercussions.
2. To address the certainty and simplicity issues, the bill should set forth legal definitions of specific terms, such as “essential worker” and define an income threshold and phase-out

¹⁸ Treasury Reg. §31.6302-1; Form 941 - Quarterly Wage and Tax Return is generally filed each quarter. If the taxpayer reported \$50,000 or less of taxes for the lookback period, it is a monthly schedule depositor. If it reported more than \$50,000, the taxpayer is a semi-weekly schedule depositor.

structure for highly compensated individuals. Regulations should also be issued out under §139 to address certain situations and areas of ambiguity in relation to the COVID-19 pandemic.

3. To address the issue of appropriate government revenues, the bill should scratch the provision that allows the credit to be refundable. A non-refundable credit would discourage tax planning and help the IRS forecast tax revenues with some certainty and reasonability.
4. Congresswoman Sánchez noted in her press release for this bill, “This legislation is...about giving [essential workers] peace of mind by covering their cost of staying at a hotel. It’s about easing the burden of child care costs for a food processing worker.”¹⁹ To address and lift the burden of this credit off of the intended targeted individuals, a viable alternative would be to issue a similar credit or deduction directly to these individuals (“essential workers” and “frontline workers”).

¹⁹ “Sánchez Introduces Legislation to Cover Expenses for Essential Workers.” *Congresswoman Linda Sanchez*, Congresswoman Linda Sanchez, 8 May 2020, available at: <https://lindasanchez.house.gov/media-center/press-releases/s-nchez-introduces-legislation-cover-expenses-essential-workers>.