

117TH CONGRESS
1ST SESSION

S. 147

To amend the Internal Revenue Code of 1986 to impose a limitation on excess business losses of non-corporate taxpayers and to modify the carryback of net operating losses for certain taxable years.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2021

Mr. WHITEHOUSE (for himself, Mr. BROWN, Ms. WARREN, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. KING, Mr. MARKEY, Mr. DURBIN, Mr. MERKLEY, Mr. REED, Mr. BOOKER, Mr. SANDERS, Ms. HIRONO, Mr. MURPHY, Mr. LEAHY, Mr. SCHATZ, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to impose a limitation on excess business losses of non-corporate taxpayers and to modify the carryback of net operating losses for certain taxable years.

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 “CARES Windfall for
5 the Wealthiest Repeal Act”.

1 **SEC. 2. LIMITATION ON EXCESS BUSINESS LOSSES OF NON-**
 2 **CORPORATE TAXPAYERS RESTORED AND**
 3 **MADE PERMANENT.**

4 (a) IN GENERAL.—Section 461(l)(1) of the Internal
 5 Revenue Code of 1986 is amended to read as follows:

6 “(1) LIMITATION.—In the case of a taxpayer
 7 other than a corporation, any excess business loss of
 8 the taxpayer shall not be allowed.”.

9 (b) FARMING LOSSES.—Section 461 of such Code is
 10 amended by striking subsection (j).

11 (c) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to taxable years beginning after
 13 December 31, 2017.

14 **SEC. 3. CERTAIN TAXPAYERS ALLOWED CARRYBACK OF**
 15 **NET OPERATING LOSSES ARISING IN 2019**
 16 **AND 2020.**

17 (a) CARRYBACK OF LOSSES ARISING IN 2019 AND
 18 2020.—

19 (1) IN GENERAL.—Section 172(b)(1)(D)(i) of
 20 the Internal Revenue Code of 1986 is amended to
 21 read as follows:

22 “(i) IN GENERAL.—In the case of any
 23 net operating loss arising in a taxable year
 24 beginning after December 31, 2018, and
 25 before January 1, 2021, and to which sub-
 26 paragraphs (B) and (C)(i) do not apply,

such loss shall be a net operating loss
 carryback to each taxable year preceding
 the taxable year of such loss, but not to
 any taxable year beginning before January
 1, 2018.”.

(2) CONFORMING AMENDMENTS.—

(A) The heading for section 172(b)(1)(D)
 of such Code is amended by striking “2018,
 2019, AND” and inserting “2019 AND”.

(B) Section 172(b)(1)(D) of such Code is
 amended by striking clause (iii) and by redesignating
 clauses (iv) and (v) as clauses (iii) and
 (iv), respectively.

(C) Section 172(b)(1)(D)(iii) of such Code,
 as so redesignated, is amended by striking
 “(i)(I)” and inserting “(i)”.

(D) Section 172(b)(1)(D)(iv) of such Code,
 as so redesignated, is amended—

(i) by striking “If the 5-year
 carryback period under clause (i)(I)” in
 subclause (I) and inserting “If the
 carryback period under clause (i)”, and

(ii) by striking “2018 or” in subclause
 (II).

1 (b) DISALLOWED FOR CERTAIN TAXPAYERS.—Sec-
 2 tion 172(b)(1)(D) of such Code, as amended by the pre-
 3 ceding provisions of this Act, is amended by adding at the
 4 end the following new clauses:

5 “(v) CARRYBACK DISALLOWED FOR
 6 CERTAIN TAXPAYERS.—Clause (i) shall not
 7 apply with respect to any loss arising in a
 8 taxable year in which—

9 “(I) the taxpayer (or any related
 10 person) is not allowed a deduction
 11 under this chapter for the taxable
 12 year by reason of section 162(m) or
 13 section 280G, or

14 “(II) the taxpayer (or any related
 15 person) is a specified corporation for
 16 the taxable year.

17 “(vi) SPECIFIED CORPORATION.—For
 18 purposes of clause (v)—

19 “(I) IN GENERAL.—The term
 20 ‘specified corporation’ means, with re-
 21 spect to any taxable year, a corpora-
 22 tion the aggregate distributions (in-
 23 cluding redemptions) of which during
 24 all taxable years ending after Decem-
 25 ber 31, 2017, exceed the sum of appli-

1 cable stock issued of such corporation
2 and 5 percent of the fair market value
3 of the stock of such corporation as of
4 the last day of the taxable year.

5 “(II) APPLICABLE STOCK
6 ISSUED.—The term ‘applicable stock
7 issued’ means, with respect to any
8 corporation, the aggregate fair market
9 value of stock (as of the issue date of
10 such stock) issued by the corporation
11 during all taxable years ending after
12 December 31, 2017, in exchange for
13 money or property other than stock in
14 such corporation.

15 “(III) CERTAIN PREFERRED
16 STOCK DISREGARDED.—For purposes
17 of subclause (I), stock described in
18 section 1504(a)(4), and distributions
19 (including redemptions) with respect
20 to such stock, shall be disregarded.

21 “(vii) RELATED PERSON.—For pur-
22 poses of clause (v), a person is a related
23 person to a taxpayer if the related person
24 bears a relationship to the taxpayer speci-

1 fied in section 267(b) or section
2 707(b)(1).”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect as if included in the enact-
5 ment of section 2303(b) of the Coronavirus Aid, Relief,
6 and Economic Security Act.

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