

105TH CONGRESS  
2D SESSION

# H. R. 4408

To amend the Internal Revenue Code of 1986 to provide that tips shall not be subject to income or employment taxes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 5, 1998

Mr. HUNTER introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide that tips shall not be subject to income or employment taxes.

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. TIPS NOT SUBJECT TO INCOME OR EMPLOY-**  
4 **MENT TAXES.**

5 (a) IN GENERAL.—Section 102 of the Internal Reve-  
6 nue Code of 1986 (relating to gifts and inheritances) is  
7 amended by adding at the end the following new sub-  
8 section:

9 “(d) TIPS.—

1           “(1) IN GENERAL.—For purposes of subsection  
2 (a), tips shall be treated as property transferred by  
3 gift.

4           “(2) EMPLOYEE TAXABLE ON AT LEAST MINI-  
5 MUM WAGE.—Paragraph (1) shall not apply to tips  
6 received by an employee during any month to the ex-  
7 tent that such tips—

8                   “(A) are deemed to have been paid by the  
9 employer to the employee pursuant to section  
10 3121(q) (without regard to whether such tips  
11 are reported under section 6053), and

12                   “(B) do not exceed the excess of—

13                           “(i) the minimum wage rate applica-  
14 ble to such individual under section 6(a)(1)  
15 of the Fair Labor Standards Act of 1938  
16 (determined without regard to section 3(m)  
17 of such Act), over

18                           “(ii) the amount of the wages (exclud-  
19 ing tips) paid by the employer to the em-  
20 ployee during such month.”

21 (b) EXCLUSION FROM SOCIAL SECURITY TAXES.—

22           (1) Paragraph (12) of section 3121(a) of such  
23 Code is amended to read as follows:

24                   “(12)(A) tips paid in any medium other than  
25 cash;

1           “(B) cash tips received by an employee in any  
2           calendar month in the course of his employment by  
3           an employer unless the amount of such cash tips is  
4           \$20 or more and then only to the extent of the ex-  
5           cess referred to in section 102(d)(2)(B) for such  
6           month;”.

7           (2) Paragraph (10) of section 209(a) of the So-  
8           cial Security Act is amended to read as follows:

9           “(10)(A) tips paid in any medium other than  
10          cash;

11          “(B) cash tips received by an employee in any  
12          calendar month in the course of his employment by  
13          an employer unless the amount of such cash tips is  
14          \$20 or more and then only to the extent of the ex-  
15          cess referred to in section 102(d)(2)(B) of the Inter-  
16          nal Revenue Code of 1986 for such month;”.

17          (3) Paragraph (3) of section 3231(e) of such  
18          Code is amended to read as follows:

19          “(3) Solely for purposes of the taxes imposed  
20          by section 3201 and other provisions of this chapter  
21          insofar as they relate to such taxes, the term ‘com-  
22          pensation’ also includes cash tips received by an em-  
23          ployee in any calendar month in the course of his  
24          employment by an employer if the amount of such  
25          cash tips is \$20 or more and then only to the extent

1 of the excess referred to in section 102(d)(2)(B) for  
2 such month.”.

3 (c) EXCLUSION FROM UNEMPLOYMENT COMPENSA-  
4 TION TAXES.—Subsection (s) of section 3306 of such  
5 Code is amended to read as follows:

6 “(s) TIPS NOT TREATED AS WAGES.—For purposes  
7 of this chapter, the term ‘wages’ shall include tips received  
8 in any month only to the extent includible in gross income  
9 under section 102(d)(2) for such month.”

10 (d) EXCLUSION FROM WAGE WITHHOLDING.—Para-  
11 graph (16) of section 3401(a) of such Code is amended  
12 to read as follows:

13 “(16)(A) as tips in any medium other than  
14 cash;

15 “(B) as cash tips to an employee in any cal-  
16 endar month in the course of his employment by an  
17 employer unless the amount of such cash tips is \$20  
18 or more and then only to the extent of the excess re-  
19 ferred to in section 102(d)(2)(B) for such month;”

20 (e) CONFORMING AMENDMENT.—Sections  
21 32(c)(2)(A)(i) and 220(b)(4)(A) of such Code are each  
22 amended by striking “tips” and inserting “tips (to the ex-  
23 tent includible in gross income under section 102(d)(2))”.

24 (f) EFFECTIVE DATE.—The amendments made by  
25 this section shall apply to tips received after the calendar

1 month which includes the date of the enactment of this  
2 Act.

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