

107TH CONGRESS
1ST SESSION

S. 1710

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2001

Mr. SMITH of New Hampshire 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 provide that tips received for certain services 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 RECEIVED FOR CERTAIN SERVICES NOT**
4 **SUBJECT TO INCOME OR EMPLOYMENT**
5 **TAXES.**

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

10 “(d) TIPS RECEIVED FOR CERTAIN SERVICES.—

1 “(1) IN GENERAL.—For purposes of subsection
2 (a), tips received by an individual for qualified serv-
3 ices performed by such individual shall be treated as
4 property transferred by gift.

5 “(2) QUALIFIED SERVICES.—For purposes of
6 this subsection, the term ‘qualified services’ means
7 cosmetology, hospitality (including lodging and food
8 and beverage services), recreation, baggage handling,
9 transportation, delivery, shoe shine, and other serv-
10 ices where tips are customary.

11 “(3) ANNUAL LIMIT.—The amount excluded
12 from gross income for the taxable year by reason of
13 paragraph (1) with respect to each service provider
14 shall not exceed \$10,000.

15 “(4) EMPLOYEE TAXABLE ON AT LEAST MIN-
16 IMUM WAGE.—Paragraph (1) shall not apply to tips
17 received by an employee during any month to the ex-
18 tent that such tips—

19 “(A) are deemed to have been paid by the
20 employer to the employee pursuant to section
21 3121(q) (without regard to whether such tips
22 are reported under section 6053), and

23 “(B) do not exceed the excess of—

24 “(i) the minimum wage rate applica-
25 ble to such individual under section 6(a)(1)

1 of the Fair Labor Standards Act of 1938
2 (determined without regard to section 3(m)
3 of such Act), over

4 “(ii) the amount of the wages (exclud-
5 ing tips) paid by the employer to the em-
6 ployee during such month.

7 “(5) TIPS.—For purposes of this title, the term
8 ‘tip’ means a gratuity paid by an individual for serv-
9 ices performed for such individual (or for a group
10 which includes such individual) by another individual
11 if such services are not provided pursuant to an em-
12 ployment or similar contractual relationship between
13 such individual.”

14 (b) EXCLUSION FROM SOCIAL SECURITY TAXES.—

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

17 “(12)(A) tips paid in any medium other than
18 cash;

19 “(B) cash tips received by an employee in any
20 calendar month in the course of his employment by
21 an employer unless the amount of such cash tips is
22 \$20 or more and then only to the extent includible
23 in gross income after the application of section
24 102(d).”;

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

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

5 “(B) cash tips received by an employee in any
6 calendar month in the course of his employment by
7 an employer unless the amount of such cash tips is
8 \$20 or more and then only to the extent includible
9 in gross income after the application of section
10 102(d) of the Internal Revenue Code of 1986 of
11 such month.”; and

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

14 “(3) Solely for purposes of the taxes imposed
15 by section 3201 and other provisions of this chapter
16 insofar as they relate to such taxes, the term ‘com-
17 pensation’ also includes cash tips received by an em-
18 ployee in any calendar month in the course of his
19 employment by an employer if the amount of such
20 cash tips is \$20 or more and then only to the extent
21 includible in gross income after the application of
22 section 102(d).”.

23 (c) EXCLUSION FROM UNEMPLOYMENT COMPENSA-
24 TION TAXES.—Submission (s) of section 3306 of such
25 Code is amended to read as follows:

1 “(s) TIPS NOT TREATED AS WAGES.—For purposes
2 of this chapter, the term ‘wages’ shall include tips received
3 in any month only to the extent includible in gross income
4 after the application of section 102(d) of such month.”.

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

8 “(16)(A) as tips in any medium other than
9 cash;

10 “(B) as cash tips to an employee in any cal-
11 endar month in the course of his employment by an
12 employer unless the amount of such cash tips is \$20
13 or more and then only to the extent includible in
14 gross income after the application of section
15 102(d).”

16 (e) CONFORMING AMENDMENT.—Sections
17 32(c)(2)(A)(i) and 220(b)(4)(A) of such Code are each
18 amended by striking “tips” and inserting “tips to the ex-
19 tent includable in gross income after the application of
20 section 102(d)”.

21 (f) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to tips received after the calendar
23 month which includes the date of the enactment of this
24 Act.

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