

107TH CONGRESS
1ST SESSION

S. 1856

To amend the Internal Revenue Code of 1986 to promote employer and employee participation in telework arrangements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 19 (legislative day, DECEMBER 18), 2001

Mr. KERRY (for himself, Mr. BURNS, Mr. CORZINE, and Mr. BAUCUS) 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 promote employer and employee participation in telework arrangements, and for other purposes.

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 “Teleworking Advance-
5 ment Act”.

6 **SEC. 2. CREDIT FOR TELEWORKING.**

7 (a) IN GENERAL.—Subpart B of part IV of sub-
8 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to foreign tax credit, etc.) is amended by
 2 inserting after section 30A the following new section:

3 **“SEC. 30B. TELEWORK CREDIT.**

4 “(a) GENERAL RULE.—There shall be allowed as a
 5 credit against the tax imposed by this chapter for any tax-
 6 able year an amount equal to the sum of—

7 “(1) the employer telework tax credit, plus

8 “(2) the telework equipment tax credit.

9 “(b) EMPLOYER TELEWORK TAX CREDIT;
 10 TELEWORK EQUIPMENT TAX CREDIT.—For purposes of
 11 this section—

12 “(1) EMPLOYER TELEWORK TAX CREDIT.—Ex-
 13 cept as provided for in subsection (c)(1), the em-
 14 ployer telework tax credit for any taxable year is
 15 equal to \$500 for each employee who participates in
 16 an employer sponsored telework arrangement during
 17 the taxable year.

18 “(2) TELEWORK EQUIPMENT TAX CREDIT.—
 19 Except as provided for in subsection (c)(2), the
 20 telework equipment tax credit for any taxable year
 21 is equal to 10 percent of qualified telework expenses
 22 paid or incurred during the taxable year by either
 23 the employer on behalf of the employee, or directly
 24 by the employee, pursuant to an employer sponsored
 25 telework arrangement.

1 “(c) SPECIAL RULE FOR DISABLED EMPLOYEES AND
2 EMPLOYEES OF SMALL BUSINESSES.—For purposes of
3 this section:

4 “(1) For each employee who is covered under
5 the Americans with Disabilities Act of 1990 (42
6 U.S.C. 1201), or for each employee of a small busi-
7 ness, the employer telework tax credit for any tax-
8 able year is equal to \$1,000 for each employee who
9 participates in an employer sponsored telework ar-
10 rangement during the taxable year.

11 “(2) For each employee who is covered under
12 the Americans with Disabilities Act of 1990 (42
13 U.S.C. 1201), or for each employee of a small busi-
14 ness, the telework equipment tax credit for any tax-
15 able year is equal to 20 percent of qualified telework
16 expenses paid or incurred during the taxable year by
17 either the employer on behalf of the employee, or di-
18 rectly by the employee, pursuant to an employer
19 sponsored telework arrangement.

20 “(d) CREDIT ADJUSTMENTS AND LIMITATIONS.—

21 “(1) CREDIT ADJUSTMENTS.—In computing the
22 credit allowed under subsection (b)(1) or (c)(1) for
23 any taxable year, the following adjustments shall
24 apply:

1 “(A) In the case of an employee who par-
2 ticipates in an employer sponsored telework ar-
3 rangement for less than the full taxable year,
4 the credit amount identified in subsection (b)(1)
5 or (c)(1), whichever is applicable, shall be mul-
6 tiplied by a fraction, the numerator of which is
7 the total number of months in the taxable year
8 that the employee participates in an employer
9 sponsored telework arrangement and the de-
10 nominator of which is 12. For purposes of the
11 preceding sentence, an employee is considered
12 to be participating in an employer sponsored
13 telework arrangement for a month if the em-
14 ployee teleworks for at least one full day of
15 such month.

16 “(B) In the case of an employee who par-
17 ticipates in an employer sponsored telework ar-
18 rangement but does not telework every day of
19 the taxable year that the employee is required
20 by his or her employer to work, the credit
21 amount identified in subsection (b)(1) or (c)(1),
22 whichever is applicable, shall be multiplied by a
23 fraction, the numerator of which is the total
24 number of full days in the taxable year that the
25 employee teleworks and the denominator of

1 which is the total number of days in the taxable
2 year that the employee is required by his or her
3 employer to work.

4 “(2) TELEWORK EQUIPMENT CREDIT LIMITA-
5 TIONS.—

6 “(A) In computing the credit allowed
7 under subsection (b)(2) for any taxable year,
8 the following limitations shall apply:

9 “(i) The maximum credit claimed by
10 any employer with respect to qualified
11 telework expenses paid or incurred on be-
12 half of an employee shall not exceed \$500
13 for each employee who participates in an
14 employer sponsored telework arrangement.

15 “(ii) The maximum credit claimed by
16 any employee with respect to qualified
17 telework expenses paid or incurred directly
18 by the employee pursuant to an employer
19 sponsored telework arrangement shall not
20 exceed \$500.

21 “(B) In computing the credit allowed
22 under subsection (c)(2) for any taxable year
23 with respect to employees who are covered
24 under the Americans with Disabilities Act of
25 1990 (42 U.S.C. 1201), or for each employee of

1 a small business, the following limitations shall
2 apply:

3 “(i) The maximum credit claimed by
4 any employer with respect to qualified
5 telework expenses paid or incurred on be-
6 half of an employee shall not exceed
7 \$1,000 for each employee who participates
8 in an employer sponsored telework ar-
9 rangement.

10 “(ii) The maximum credit claimed by
11 any employee with respect to qualified
12 telework expenses paid or incurred directly
13 by the employee pursuant to an employer
14 sponsored telework arrangement shall not
15 exceed \$1,000.

16 “(e) DEFINITIONS.—For purposes of this section—

17 “(1) EMPLOYER SPONSORED TELEWORK AR-
18 RANGEMENT.—The term ‘employer sponsored
19 telework arrangement’ means an arrangement estab-
20 lished by an employer that enables employees of the
21 employer to telework for a minimum of 25 full days
22 per taxable year. Such an arrangement shall be sup-
23 ported by a written agreement between the employer
24 and each teleworking employee that describes the

1 terms of the employer sponsored telework arrange-
2 ment.

3 “(2) QUALIFIED TELEWORK EXPENSES.—

4 “(A) IN GENERAL.—The term ‘qualified
5 telework expenses’ shall include expenses paid
6 or incurred for computers, computer-related
7 hardware and software, modems, data proc-
8 essing equipment, telecommunications equip-
9 ment, and access to Internet or broadband tech-
10 nologies, including applicable taxes and other
11 expenses for the delivery, installation, or main-
12 tenance of such equipment.

13 “(B) ONLY CERTAIN EXPENSES TAKEN
14 INTO ACCOUNT.—Expenses shall be taken into
15 account under subparagraph (A) only to the ex-
16 tent they are authorized by the employer pursu-
17 ant to an employer sponsored telework arrange-
18 ment and are necessary to enable the employee
19 to telework.

20 “(3) SMALL BUSINESS.—The term ‘small busi-
21 ness’ means a business with an average of 100 or
22 fewer employees during the taxable year.

23 “(4) TELEWORK.—An employee shall be treated
24 as engaged in telework if—

1 “(A) the employee’s normal and regular
2 work functions are performed at a fixed loca-
3 tion provided by the employer,

4 “(B)(i) the employee, under an employer
5 sponsored telework arrangement, performs such
6 functions at the employee’s residence or at a lo-
7 cation specifically designed to allow employees
8 to perform such functions closer to their resi-
9 dence, and

10 “(ii) the performance of such func-
11 tions at such residence or location elimi-
12 nates or substantially reduces the physical
13 commute of the employee to the fixed loca-
14 tion described in subparagraph (A), and

15 “(C) the employee transmits by electronic
16 or other communications medium the employ-
17 ee’s work product from such residence or loca-
18 tion to the fixed location where such functions
19 would otherwise have been performed.

20 “(f) SPECIAL RULES.—

21 “(1) LIMITATION BASED ON AMOUNT OF
22 TAX.—

23 “(A) LIABILITY FOR TAX.—The credit al-
24 lowable under subsection (a) for any taxable
25 year shall not exceed the excess (if any) of—

1 “(i) the regular tax for the taxable
2 year, reduced by the sum of the credits al-
3 lowable under subpart A and the preceding
4 sections of this subpart, over

5 “(ii) the tentative minimum tax for
6 the taxable year.

7 “(B) CARRYFORWARD OF UNUSED CRED-
8 IT.—If the amount of the credit allowable under
9 subsection (a) for any taxable year exceeds the
10 limitation under paragraph (1)(A) for the tax-
11 able year, the excess shall be carried to the suc-
12 ceeding taxable year and added to the amount
13 allowable as a credit under subsection (a) for
14 such succeeding taxable year.

15 “(2) BASIS REDUCTION.—The basis of any
16 property for which a credit is allowable under sub-
17 section (a) shall be reduced by the amount of such
18 credit (determined without regard to paragraph (1)).

19 “(3) RECAPTURE.—The Secretary shall, by reg-
20 ulations, provide for recapturing the benefit of any
21 credit allowable under subsection (a) with respect to
22 any property which ceases to be property eligible for
23 such credit.

24 “(4) PROPERTY USED OUTSIDE UNITED
25 STATES, ETC., NOT QUALIFIED.—No credit shall be

1 allowed under subsection (a) with respect to any
2 property referred to in section 50(b) or with respect
3 to the portion of the cost of any property taken into
4 account under section 179.

5 “(5) ELECTION NOT TO TAKE CREDITS.—No
6 credits shall be allowed under subsection (a) for any
7 expense if the taxpayer elects to not have this sec-
8 tion apply with respect to such expense.

9 “(6) DENIAL OF DOUBLE BENEFIT.—No deduc-
10 tion or credit (other than under this section) shall
11 be allowed under this chapter with respect to any ex-
12 pense which is taken into account in determining the
13 credit under this section.

14 “(7) DOCUMENTATION.—Employers and em-
15 ployees are responsible for maintaining adequate
16 documentation to support any credits claimed under
17 this section.”

18 (b) CONFORMING AMENDMENT.—Subsection (a) of
19 section 1016 of the Internal Revenue Code of 1986 (relat-
20 ing to general rule for adjustments to basis) is amended
21 by striking “and” at the end of paragraph (27), by strik-
22 ing the period at the end of paragraph (28) and inserting
23 “, and”, and by adding at the end the following:

1 “(29) in the case of property with respect to
2 which a credit was allowed under section 30B, to the
3 extent provided in section 30B(f)(2).”

4 (c) CLERICAL AMENDMENT.—The table of sections
5 for subpart B of part IV of subchapter A of chapter 1
6 of the Internal Revenue Code of 1986 is amended by in-
7 serting after the item relating to section 30A the following
8 new item:

 “Sec. 30B. Telework credit.”

9 (d) REGULATORY MATTERS.—

10 (1) PROHIBITION.—No Federal or State agency
11 or instrumentality shall adopt regulations or rate-
12 making procedures that would have the effect of
13 confiscating any credit or portion thereof allowed
14 under sections 30B of the Internal Revenue Code of
15 1986 (as added by this Act) or otherwise subverting
16 the purpose of this Act.

17 (2) TREASURY REGULATORY AUTHORITY.—It is
18 the intent of Congress in providing the telework tax
19 credit under section 30B of the Internal Revenue
20 Code of 1986 (as added by this Act) to promote
21 broad participation in employer sponsored telework
22 arrangements by providing incentives to both em-
23 ployers and employees. Accordingly, the Secretary of
24 the Treasury shall prescribe such regulations as may
25 be necessary or appropriate to carry out the pur-

1 poses of section 30B of such Code, including regula-
2 tions describing the information, records, and data
3 that employers and employees are required to pro-
4 vide the Secretary to substantiate compliance with
5 the requirements of this section and section 30B of
6 such Code. Until the Secretary prescribes such regu-
7 lations, employers and employees may base such de-
8 terminations on any reasonable method that is con-
9 sistent with the purposes of section 30B of such
10 Code.

11 (e) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to taxable years beginning after
13 December 31, 2001.

14 **SEC. 3. SMALL BUSINESS TELECOMMUTING PILOT PRO-**
15 **GRAM.**

16 (a) IN GENERAL.—In accordance with this section,
17 the Administrator shall conduct, in not more than 5 of
18 the Small Business Administration's regions, a pilot pro-
19 gram to raise awareness about telecommuting among
20 small business employers and to encourage such employers
21 to offer telecommuting options to employees.

22 (b) SPECIAL OUTREACH TO INDIVIDUALS WITH DIS-
23 ABILITIES.—In carrying out subsection (a), the Adminis-
24 trator shall make special efforts to do outreach to—

1 (1) businesses owned by or employing individ-
2 uals with disabilities, and disabled American vet-
3 erans in particular;

4 (2) Federal, State, and local agencies having
5 knowledge and expertise in assisting individuals with
6 disabilities or disabled American veterans; and

7 (3) any group or organization, the primary pur-
8 pose of which is to aid individuals with disabilities
9 or disabled American veterans.

10 (c) PERMISSIBLE ACTIVITIES.—In carrying out the
11 pilot program, the Administrator may only—

12 (1) produce educational materials and conduct
13 presentations designed to raise awareness in the
14 small business community of the benefits and the
15 ease of telecommuting;

16 (2) conduct outreach—

17 (A) to small business concerns that are
18 considering offering telecommuting options; and

19 (B) as provided in subsection (b); and

20 (3) acquire telecommuting technologies and
21 equipment to be used for demonstration purposes.

22 (d) SELECTION OF REGIONS.—In determining which
23 regions will participate in the pilot program, the Adminis-
24 trator shall give priority consideration to regions in which

1 Federal agencies and private-sector employers have dem-
2 onstrated a strong regional commitment to telecommuting.

3 (e) REPORT TO CONGRESS.—Not later than 2 years
4 after the first date on which funds are appropriated to
5 carry out this section, the Administrator shall transmit to
6 the Committee on Small Business of the House of Rep-
7 resentatives and the Committee on Small Business of the
8 Senate a report containing the results of an evaluation of
9 the pilot program and any recommendations as to whether
10 the pilot program, with or without modification, should be
11 extended to include the participation of all Small Business
12 Administration regions.

13 (f) DEFINITIONS.—In this section—

14 (1) the term “Administrator” means the Ad-
15 ministrator of the Small Business Administration;

16 (2) the term “disability” has the same meaning
17 as in section 3 of the Americans with Disabilities
18 Act of 1990 (42 U.S.C. 12102);

19 (3) the term “pilot program” means the pro-
20 gram established under this section; and

21 (4) the term “telecommuting” means the use of
22 telecommunications to perform work functions under
23 circumstances which reduce or eliminate the need to
24 commute.

1 (g) TERMINATION.—The pilot program shall termi-
2 nate 2 years after the first date on which funds are appro-
3 priated to carry out this section.

4 (h) AUTHORIZATION OF APPROPRIATIONS.—There is
5 authorized to be appropriated to the Small Business Ad-
6 ministration \$5,000,000 to carry out this section.

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