

110TH CONGRESS
1ST SESSION

S. 347

To amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2007

Mr. VOINOVICH (for himself and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage, 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 “Minimum Wage Act
5 of 2007”.

6 **TITLE I—MINIMUM WAGE**

7 **SEC. 101. MINIMUM WAGE.**

8 (a) IN GENERAL.—Section 6(a)(1) of the Fair Labor
9 Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended
10 to read as follows:

1 “(1) except as otherwise provided in this sec-
2 tion, not less than—

3 “(A) \$5.85 an hour, beginning on the 60th
4 day after the date of enactment of the Min-
5 imum Wage Act of 2007;

6 “(B) \$6.55 an hour, beginning 12 months
7 after that 60th day; and

8 “(C) \$7.25 an hour, beginning 24 months
9 after that 60th day;”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 subsection (a) shall take effect 60 days after the date of
12 enactment of this Act.

13 **TITLE II—TAX PROVISIONS**

14 **SEC. 200. AMENDMENT OF CODE.**

15 Except as otherwise expressly provided, whenever in
16 this title an amendment or repeal is expressed in terms
17 of an amendment to, or repeal of, a section or other provi-
18 sion, the reference shall be considered to be made to a
19 section or other provision of the Internal Revenue Code
20 of 1986.

1 “(1) IN GENERAL.—An eligible taxpayer shall
2 not be required to use an accrual method of account-
3 ing for any taxable year.

4 “(2) ELIGIBLE TAXPAYER.—For purposes of
5 this subsection, a taxpayer is an eligible taxpayer
6 with respect to any taxable year if—

7 “(A) for all prior taxable years beginning
8 after December 31, 2006, the taxpayer (or any
9 predecessor) met the gross receipts test of sec-
10 tion 448(c), and

11 “(B) the taxpayer is not subject to section
12 447 or 448.”.

13 (2) EXPANSION OF GROSS RECEIPTS TEST.—

14 (A) IN GENERAL.—Paragraph (3) of sec-
15 tion 448(b) of such Code (relating to entities
16 with gross receipts of not more than
17 \$5,000,000) is amended by striking
18 “\$5,000,000” in the text and in the heading
19 and inserting “\$10,000,000”.

20 (B) CONFORMING AMENDMENTS.—Section
21 448(c) of such Code is amended—

22 (i) by striking “\$5,000,000” each
23 place it appears in the text and in the
24 heading of paragraph (1) and inserting
25 “\$10,000,000”, and

1 (ii) by adding at the end the following
2 new paragraph:

3 “(4) INFLATION ADJUSTMENT.—In the case of
4 any taxable year beginning in a calendar year after
5 2007, the dollar amount contained in subsection
6 (b)(3) and paragraph (1) of this subsection shall be
7 increased by an amount equal to—

8 “(A) such dollar amount, multiplied by

9 “(B) the cost-of-living adjustment deter-
10 mined under section 1(f)(3) for the calendar
11 year in which the taxable year begins, by sub-
12 stituting ‘calendar year 2006’ for ‘calendar year
13 1992’ in subparagraph (B) thereof.

14 If any amount as adjusted under this subparagraph
15 is not a multiple of \$100,000, such amount shall be
16 rounded to the nearest multiple of \$100,000.”.

17 (b) CLARIFICATION OF INVENTORY RULES FOR
18 SMALL BUSINESS.—

19 (1) IN GENERAL.—Section 471 of the Internal
20 Revenue Code of 1986 (relating to general rule for
21 inventories) is amended by redesignating subsection
22 (c) as subsection (d) and by inserting after sub-
23 section (b) the following new subsection:

24 “(c) SMALL BUSINESS TAXPAYERS NOT REQUIRED
25 TO USE INVENTORIES.—

1 “(1) IN GENERAL.—A qualified taxpayer shall
2 not be required to use inventories under this section
3 for a taxable year.

4 “(2) TREATMENT OF TAXPAYERS NOT USING
5 INVENTORIES.—If a qualified taxpayer does not use
6 inventories with respect to any property for any tax-
7 able year beginning after December 31, 2006, such
8 property shall be treated as a material or supply
9 which is not incidental.

10 “(3) QUALIFIED TAXPAYER.—For purposes of
11 this subsection, the term ‘qualified taxpayer’
12 means—

13 “(A) any eligible taxpayer (as defined in
14 section 446(g)(2)), and

15 “(B) any taxpayer described in section
16 448(b)(3).”.

17 (2) CONFORMING AMENDMENTS.—

18 (A) Subpart D of part II of subchapter E
19 of chapter 1 of such Code is amended by strik-
20 ing section 474.

21 (B) The table of sections for subpart D of
22 part II of subchapter E of chapter 1 of such
23 Code is amended by striking the item relating
24 to section 474.

25 (c) EFFECTIVE DATE AND SPECIAL RULES.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply to taxable years beginning
3 after December 31, 2006.

4 (2) CHANGE IN METHOD OF ACCOUNTING.—In
5 the case of any taxpayer changing the taxpayer’s
6 method of accounting for any taxable year under the
7 amendments made by this section—

8 (A) such change shall be treated as initi-
9 ated by the taxpayer;

10 (B) such change shall be treated as made
11 with the consent of the Secretary of the Treas-
12 ury; and

13 (C) the net amount of the adjustments re-
14 quired to be taken into account by the taxpayer
15 under section 481 of the Internal Revenue Code
16 of 1986 shall be taken into account over a pe-
17 riod (not greater than 4 taxable years) begin-
18 ning with such taxable year.

19 **SEC. 203. EXTENSION OF WORK OPPORTUNITY TAX CREDIT**
20 **TO QUALIFIED RESTAURANT EMPLOYEES.**

21 (a) IN GENERAL.—Section 51(d)(1) is amended by
22 striking “or” at the end of subparagraph (H), by striking
23 the period at the end of subparagraph (I) and inserting
24 “, or”, and by adding at the end the following new sub-
25 paragraph:

1 “(J) a qualified restaurant employee.”.

2 (b) QUALIFIED RESTAURANT EMPLOYEE.—Section
3 51(d) is amended by redesignating paragraphs (11)
4 through (13) as paragraphs (12) through (14), respec-
5 tively, and by inserting after paragraph (10) the following
6 new paragraph:

7 “(11) QUALIFIED RESTAURANT EMPLOYEE.—

8 “(A) IN GENERAL.—The term ‘qualified
9 restaurant employee’ means any individual—

10 “(i) who performs services in a res-
11 taurant where tipping is not customary,

12 “(ii) who is not exempt under the
13 Fair Labor Standards Act and earns at
14 least the Federal minimum wage, and

15 “(iii) who is certified by the employer
16 during the hiring process as having at-
17 tained age 16 but not 20 on the hiring
18 date.

19 “(B) SPECIAL RULE FOR DETERMINING
20 AMOUNT OF CREDIT.—For purposes of applying
21 this subpart to wages paid or incurred to any
22 qualified restaurant employee, subsection (b)(3)
23 shall be applied by substituting ‘\$3,000’ for
24 ‘\$6,000’.”.

1 (c) SPECIAL RULE FOR CERTIFICATIONS.—Subpara-
2 graph (A) of section 51(d)(14), as redesignated by sub-
3 section (b), is amended by inserting “, other than an indi-
4 vidual described in paragraph (11),” after “An indi-
5 vidual”.

6 (d) NONQUALIFYING REHIRES.—Paragraph (2) of
7 section 51(i) is amended to read as follows:

8 “(2) NONQUALIFYING REHIRES.—

9 “(A) IN GENERAL.—No wages shall be
10 taken into account under subsection (a) with re-
11 spect to any individual, other than an individual
12 described in subsection (d)(11), if, prior to the
13 hiring date of such individual, such individual
14 had been employed by the employer at any
15 time.

16 “(B) QUALIFIED RESTAURANT EMPLOY-
17 EES.—In the case of an individual described in
18 subsection (d)(11), no wages shall be taken into
19 account under subsection (a) if, prior to the hir-
20 ing date of such individual, such individual had
21 been employed by the employer within the prior
22 90 day period.”.

23 (e) MINIMUM EMPLOYMENT PERIODS.—Section
24 51(i)(3) is amended by adding at the end the following
25 new subparagraph:

1 “(C) NONAPPLICATION TO QUALIFIED RES-
 2 TAURANT EMPLOYEES.—Subparagraphs (A)
 3 and (B) shall not apply to an individual de-
 4 scribed in subsection (d)(11).”.

5 (f) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to individuals who begin work for
 7 the employer after the date of the enactment of this Act.

8 **Subtitle B—Revenue Offset**
 9 **Provisions**

10 **SEC. 211. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**
 11 **TRINE.**

12 (a) IN GENERAL.—Section 7701 is amended by re-
 13 designating subsection (p) as subsection (q) and by insert-
 14 ing after subsection (o) the following new subsection:

15 “(p) CLARIFICATION OF ECONOMIC SUBSTANCE
 16 DOCTRINE; ETC.—

17 “(1) GENERAL RULES.—

18 “(A) IN GENERAL.—In any case in which
 19 a court determines that the economic substance
 20 doctrine is relevant for purposes of this title to
 21 a transaction (or series of transactions), such
 22 transaction (or series of transactions) shall have
 23 economic substance only if the requirements of
 24 this paragraph are met.

1 “(B) DEFINITION OF ECONOMIC SUB-
2 STANCE.—For purposes of subparagraph (A)—

3 “(i) IN GENERAL.—A transaction has
4 economic substance only if—

5 “(I) the transaction changes in a
6 meaningful way (apart from Federal
7 tax effects) the taxpayer’s economic
8 position, and

9 “(II) the taxpayer has a substan-
10 tial nontax purpose for entering into
11 such transaction and the transaction
12 is a reasonable means of accom-
13 plishing such purpose.

14 In applying subclause (II), a purpose of
15 achieving a financial accounting benefit
16 shall not be taken into account in deter-
17 mining whether a transaction has a sub-
18 stantial nontax purpose if the origin of
19 such financial accounting benefit is a re-
20 duction of income tax.

21 “(ii) SPECIAL RULE WHERE TAX-
22 PAYER RELIES ON PROFIT POTENTIAL.—A
23 transaction shall not be treated as having
24 economic substance by reason of having a
25 potential for profit unless—

1 “(I) the present value of the rea-
2 sonably expected pre-tax profit from
3 the transaction is substantial in rela-
4 tion to the present value of the ex-
5 pected net tax benefits that would be
6 allowed if the transaction were re-
7 spected, and

8 “(II) the reasonably expected
9 pre-tax profit from the transaction ex-
10 ceeds a risk-free rate of return.

11 “(C) TREATMENT OF FEES AND FOREIGN
12 TAXES.—Fees and other transaction expenses
13 and foreign taxes shall be taken into account as
14 expenses in determining pre-tax profit under
15 subparagraph (B)(ii).

16 “(2) SPECIAL RULES FOR TRANSACTIONS WITH
17 TAX-INDIFFERENT PARTIES.—

18 “(A) SPECIAL RULES FOR FINANCING
19 TRANSACTIONS.—The form of a transaction
20 which is in substance the borrowing of money
21 or the acquisition of financial capital directly or
22 indirectly from a tax-indifferent party shall not
23 be respected if the present value of the deduc-
24 tions to be claimed with respect to the trans-
25 action is substantially in excess of the present

1 value of the anticipated economic returns of the
2 person lending the money or providing the fi-
3 nancial capital. A public offering shall be treat-
4 ed as a borrowing, or an acquisition of financial
5 capital, from a tax-indifferent party if it is rea-
6 sonably expected that at least 50 percent of the
7 offering will be placed with tax-indifferent par-
8 ties.

9 “(B) ARTIFICIAL INCOME SHIFTING AND
10 BASIS ADJUSTMENTS.—The form of a trans-
11 action with a tax-indifferent party shall not be
12 respected if—

13 “(i) it results in an allocation of in-
14 come or gain to the tax-indifferent party in
15 excess of such party’s economic income or
16 gain, or

17 “(ii) it results in a basis adjustment
18 or shifting of basis on account of over-
19 stating the income or gain of the tax-indif-
20 ferent party.

21 “(3) DEFINITIONS AND SPECIAL RULES.—For
22 purposes of this subsection—

23 “(A) ECONOMIC SUBSTANCE DOCTRINE.—
24 The term ‘economic substance doctrine’ means
25 the common law doctrine under which tax bene-

1 fits under subtitle A with respect to a trans-
2 action are not allowable if the transaction does
3 not have economic substance or lacks a business
4 purpose.

5 “(B) TAX-INDIFFERENT PARTY.—The
6 term ‘tax-indifferent party’ means any person
7 or entity not subject to tax imposed by subtitle
8 A. A person shall be treated as a tax-indifferent
9 party with respect to a transaction if the items
10 taken into account with respect to the trans-
11 action have no substantial impact on such per-
12 son’s liability under subtitle A.

13 “(C) EXCEPTION FOR PERSONAL TRANS-
14 ACTIONS OF INDIVIDUALS.—In the case of an
15 individual, this subsection shall apply only to
16 transactions entered into in connection with a
17 trade or business or an activity engaged in for
18 the production of income.

19 “(D) TREATMENT OF LESSORS.—In apply-
20 ing paragraph (1)(B)(ii) to the lessor of tan-
21 gible property subject to a lease—

22 “(i) the expected net tax benefits with
23 respect to the leased property shall not in-
24 clude the benefits of—

25 “(I) depreciation,

1 “(II) any tax credit, or

2 “(III) any other deduction as
3 provided in guidance by the Secretary,
4 and

5 “(ii) subclause (II) of paragraph
6 (1)(B)(ii) shall be disregarded in deter-
7 mining whether any of such benefits are al-
8 lowable.

9 “(4) OTHER COMMON LAW DOCTRINES NOT AF-
10 FECTED.—Except as specifically provided in this
11 subsection, the provisions of this subsection shall not
12 be construed as altering or supplanting any other
13 rule of law, and the requirements of this subsection
14 shall be construed as being in addition to any such
15 other rule of law.

16 “(5) REGULATIONS.—The Secretary shall pre-
17 scribe such regulations as may be necessary or ap-
18 propriate to carry out the purposes of this sub-
19 section. Such regulations may include exemptions
20 from the application of this subsection.”.

21 (b) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to transactions entered into after
23 the date of the enactment of this Act.

1 **SEC. 212. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
 2 **UTABLE TO TRANSACTIONS LACKING ECO-**
 3 **NOMIC SUBSTANCE, ETC.**

4 (a) IN GENERAL.—Subchapter A of chapter 68 is
 5 amended by inserting after section 6662A the following
 6 new section:

7 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
 8 **UTABLE TO TRANSACTIONS LACKING ECO-**
 9 **NOMIC SUBSTANCE, ETC.**

10 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an
 11 noneconomic substance transaction understatement for
 12 any taxable year, there shall be added to the tax an
 13 amount equal to 40 percent of the amount of such under-
 14 statement.

15 “(b) REDUCTION OF PENALTY FOR DISCLOSED
 16 TRANSACTIONS.—Subsection (a) shall be applied by sub-
 17 stituting ‘20 percent’ for ‘40 percent’ with respect to the
 18 portion of any noneconomic substance transaction under-
 19 statement with respect to which the relevant facts affect-
 20 ing the tax treatment of the item are adequately disclosed
 21 in the return or a statement attached to the return.

22 “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-
 23 DERSTATEMENT.—For purposes of this section—

24 “(1) IN GENERAL.—The term ‘noneconomic
 25 substance transaction understatement’ means any
 26 amount which would be an understatement under

1 section 6662A(b)(1) if section 6662A were applied
2 by taking into account items attributable to non-
3 economic substance transactions rather than items
4 to which section 6662A would apply without regard
5 to this paragraph.

6 “(2) NONECONOMIC SUBSTANCE TRANS-
7 ACTION.—The term ‘noneconomic substance trans-
8 action’ means any transaction if—

9 “(A) there is a lack of economic substance
10 (within the meaning of section 7701(p)(1)) for
11 the transaction giving rise to the claimed ben-
12 efit or the transaction was not respected under
13 section 7701(p)(2), or

14 “(B) the transaction fails to meet the re-
15 quirements of any similar rule of law.

16 “(d) RULES APPLICABLE TO COMPROMISE OF PEN-
17 ALTY.—

18 “(1) IN GENERAL.—If the 1st letter of pro-
19 posed deficiency which allows the taxpayer an oppor-
20 tunity for administrative review in the Internal Rev-
21 enue Service Office of Appeals has been sent with
22 respect to a penalty to which this section applies,
23 only the Commissioner of Internal Revenue may
24 compromise all or any portion of such penalty.

1 “(2) APPLICABLE RULES.—The rules of para-
2 graphs (2) and (3) of section 6707A(d) shall apply
3 for purposes of paragraph (1).

4 “(e) COORDINATION WITH OTHER PENALTIES.—Ex-
5 cept as otherwise provided in this part, the penalty im-
6 posed by this section shall be in addition to any other pen-
7 alty imposed by this title.

8 “(f) CROSS REFERENCES.—

 “(1) For coordination of penalty with understatements
 under section 6662 and other special rules, see section
 6662A(e).

 “(2) For reporting of penalty imposed under this section
 to the Securities and Exchange Commission, see section
 6707A(e).”.

9 (b) COORDINATION WITH OTHER UNDERSTATE-
10 MENTS AND PENALTIES.—

11 (1) The second sentence of section
12 6662(d)(2)(A) is amended by inserting “and without
13 regard to items with respect to which a penalty is
14 imposed by section 6662B” before the period at the
15 end.

16 (2) Subsection (e) of section 6662A is amend-
17 ed—

18 (A) in paragraph (1), by inserting “and
19 noneconomic substance transaction understatement-
20 ments” after “reportable transaction under-
21 statements” both places it appears,

1 (B) in paragraph (2)(A), by inserting “and
2 a noneconomic substance transaction under-
3 statement” after “reportable transaction under-
4 statement”,

5 (C) in paragraph (2)(B), by inserting
6 “6662B or” before “6663”,

7 (D) in paragraph (2)(C)(i), by inserting
8 “or section 6662B” before the period at the
9 end,

10 (E) in paragraph (2)(C)(ii), by inserting
11 “and section 6662B” after “This section”,

12 (F) in paragraph (3), by inserting “or non-
13 economic substance transaction understatement”
14 after “reportable transaction understatement”
15 and

16 (G) by adding at the end the following new
17 paragraph:

18 “(4) NONECONOMIC SUBSTANCE TRANSACTION
19 UNDERSTATEMENT.—For purposes of this sub-
20 section, the term ‘noneconomic substance trans-
21 action understatement’ has the meaning given such
22 term by section 6662B(c).”.

23 (3) Subsection (e) of section 6707A is amend-
24 ed—

1 (A) by striking “or” at the end of subpara-
2 graph (B), and

3 (B) by striking subparagraph (C) and in-
4 serting the following new subparagraphs:

5 “(C) is required to pay a penalty under
6 section 6662B with respect to any noneconomic
7 substance transaction, or

8 “(D) is required to pay a penalty under
9 section 6662(h) with respect to any transaction
10 and would (but for section 6662A(e)(2)(C))
11 have been subject to penalty under section
12 6662A at a rate prescribed under section
13 6662A(c) or under section 6662B.”.

14 (c) CLERICAL AMENDMENT.—The table of sections
15 for part II of subchapter A of chapter 68 is amended by
16 inserting after the item relating to section 6662A the fol-
17 lowing new item:

“Sec. 6662B. Penalty for understatements attributable to transactions lacking
economic substance, etc.”.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to transactions entered into after
20 the date of the enactment of this Act.

1 **SEC. 213. APPLICATION OF RULES TREATING INVERTED**
 2 **CORPORATIONS AS DOMESTIC CORPORA-**
 3 **TIONS TO CERTAIN TRANSACTIONS OCCUR-**
 4 **RING AFTER MARCH 20, 2002.**

5 (a) IN GENERAL.—Section 7874(b) (relating to in-
 6 verted corporations treated as domestic corporations) is
 7 amended to read as follows:

8 “(b) INVERTED CORPORATIONS TREATED AS DO-
 9 MESTIC CORPORATIONS.—

10 “(1) IN GENERAL.—Notwithstanding section
 11 7701(a)(4), a foreign corporation shall be treated for
 12 purposes of this title as a domestic corporation if
 13 such corporation would be a surrogate foreign cor-
 14 poration if subsection (a)(2) were applied by sub-
 15 stituting ‘80 percent’ for ‘60 percent’.

16 “(2) SPECIAL RULE FOR CERTAIN TRANS-
 17 ACTIONS OCCURRING AFTER MARCH 20, 2002.—

18 “(A) IN GENERAL.—If—

19 “(i) paragraph (1) does not apply to
 20 a foreign corporation, but

21 “(ii) paragraph (1) would apply to
 22 such corporation if, in addition to the sub-
 23 stitution under paragraph (1), subsection
 24 (a)(2) were applied by substituting ‘March
 25 20, 2002’ for ‘March 4, 2003’ each place
 26 it appears,

1 then paragraph (1) shall apply to such corpora-
2 tion but only with respect to taxable years of
3 such corporation beginning after December 31,
4 2006.

5 “(B) SPECIAL RULES.—Subject to such
6 rules as the Secretary may prescribe, in the
7 case of a corporation to which paragraph (1)
8 applies by reason of this paragraph—

9 “(i) the corporation shall be treated,
10 as of the close of its last taxable year be-
11 ginning before January 1, 2007, as having
12 transferred all of its assets, liabilities, and
13 earnings and profits to a domestic corpora-
14 tion in a transaction with respect to which
15 no tax is imposed under this title,

16 “(ii) the bases of the assets trans-
17 ferred in the transaction to the domestic
18 corporation shall be the same as the bases
19 of the assets in the hands of the foreign
20 corporation, subject to any adjustments
21 under this title for built-in losses,

22 “(iii) the basis of the stock of any
23 shareholder in the domestic corporation
24 shall be the same as the basis of the stock
25 of the shareholder in the foreign corpora-

1 tion for which it is treated as exchanged,
2 and

3 “(iv) the transfer of any earnings and
4 profits by reason of clause (i) shall be dis-
5 regarded in determining any deemed divi-
6 dend or foreign tax creditable to the do-
7 mestic corporation with respect to such
8 transfer.

9 “(C) REGULATIONS.—The Secretary may
10 prescribe such regulations as may be necessary
11 or appropriate to carry out this paragraph, in-
12 cluding regulations to prevent the avoidance of
13 the purposes of this paragraph.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to taxable years beginning after
16 December 31, 2006.

17 **SEC. 214. MODIFICATION OF COLLECTION DUE PROCESS**

18 **PROCEDURES FOR EMPLOYMENT TAX LI-**

19 **ABILITIES.**

20 (a) IN GENERAL.—Section 6330(f) (relating to jeop-
21 ardy and State refund collection) is amended—

22 (1) by striking “; or” at the end of paragraph

23 (1) and inserting a comma,

24 (2) by adding “or” at the end of paragraph (2),

25 and

1 (3) by inserting after paragraph (2) the fol-
2 lowing new paragraph:

3 “(3) the Secretary has served a levy in connec-
4 tion with the collection of taxes under chapter 21,
5 22, 23, or 24.”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to levies issued after December 31,
8 2006.

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