

103D CONGRESS  
1ST SESSION

# S. 573

To amend the Internal Revenue Code of 1986 to provide for a credit for the portion of employer social security taxes paid with respect to employee cash tips.

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## IN THE SENATE OF THE UNITED STATES

MARCH 11 (legislative day, MARCH 3), 1993

Mr. BREAU (for himself, Mr. DORGAN, Mr. CONRAD, Mr. DURENBERGER, Mr. BOREN, Mr. DANFORTH, and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for a credit for the portion of employer social security taxes paid with respect to employee cash tips.

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. CREDIT FOR PORTION OF EMPLOYER SOCIAL**  
4 **SECURITY TAXES PAID WITH RESPECT TO**  
5 **EMPLOYEE CASH TIPS.**

6 (a) IN GENERAL.—Subpart D of part IV of sub-  
7 chapter A of chapter 1 of the Internal Revenue Code of  
8 1986 (relating to business related credits) is amended by  
9 adding at the end the following new section:

1 **“SEC. 45. CREDIT FOR PORTION OF EMPLOYER SOCIAL SE-**  
2 **CURITY TAXES PAID WITH RESPECT TO EM-**  
3 **PLOYEE CASH TIPS.**

4 “(a) GENERAL RULE.—For purposes of section 38,  
5 the employer social security credit determined under this  
6 section for the taxable year is an amount equal to the ex-  
7 cess employer social security tax paid or incurred by the  
8 taxpayer during the taxable year.

9 “(b) EXCESS EMPLOYER SOCIAL SECURITY TAX.—  
10 For purposes of this section, the term ‘excess employer  
11 social security tax’ means any tax paid by an employer  
12 under section 3111 with respect to tips received by an  
13 employee during any month, to the extent such tips—

14 “(1) are deemed to have been paid by the em-  
15 ployer to the employee pursuant to section 3121(q),  
16 and

17 “(2) exceed the amount by which the wages (ex-  
18 cluding tips) paid by the employer to the employee  
19 during such month are less than the total amount  
20 which would be payable (with respect to such em-  
21 ployment) at the minimum wage rate applicable to  
22 such individual under section 6(a)(1) of the Fair  
23 Labor Standards Act of 1938 (determined without  
24 regard to section 3(m) of such Act).

1       “(c) DENIAL OF DOUBLE BENEFIT.—No deduction  
2 shall be allowed under this chapter for any amount taken  
3 into account in determining the credit under this section.”.

4       (b) CREDIT TO BE PART OF GENERAL BUSINESS  
5 CREDIT.—

6           (1) IN GENERAL.—Subsection (b) of section 38  
7 of the Internal Revenue Code of 1986 (relating to  
8 current year business credit) is amended by striking  
9 “plus” at the end of paragraph (7), by striking the  
10 period at the end of paragraph (8) and inserting “,  
11 plus”, and by adding at the end the following new  
12 paragraph:

13           “(9) the employer social security credit deter-  
14 mined under section 45(a).”.

15           (2) LIMITATION ON CARRYBACKS.—Subsection  
16 (d) of section 39 of such Code (relating to transi-  
17 tional rules) is amended by adding at the end the  
18 following new paragraph:

19           “(4) NO CARRYBACK OF SECTION 45 CREDIT  
20 BEFORE ENACTMENT.—No portion of the unused  
21 business credit for any taxable year which is attrib-  
22 utable to the employer social security credit deter-  
23 mined under section 45 may be carried back to a  
24 taxable year ending before the date of the enactment  
25 of section 45.”.

1       (c) CLERICAL AMENDMENT.—The table of sections  
2 for subpart D of part IV of subchapter A of chapter 1  
3 of the Internal Revenue Code of 1986 is amended by add-  
4 ing at the end the following new item:

“Sec. 45. Employer social security credit.”.

5       (d) EFFECTIVE DATE.—The amendments made by  
6 this section shall apply with respect to taxes paid after  
7 December 31, 1993.

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