

106TH CONGRESS
2D SESSION

S. 2887

To amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 18, 2000

Mr. GRASSLEY (for himself, Mr. ROBB, Ms. COLLINS, and Mr. DASCHLE) 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 exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, 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 “Civil Rights Tax Fair-
5 ness Act of 2000”.

1 **SEC. 2. EXCLUSION FROM GROSS INCOME FOR AMOUNTS**
 2 **RECEIVED ON ACCOUNT OF CERTAIN UNLAW-**
 3 **FUL DISCRIMINATION.**

4 (a) IN GENERAL.—Part III of subchapter B of chap-
 5 ter 1 of the Internal Revenue Code of 1986 (relating to
 6 items specifically excluded from gross income) is amended
 7 by redesignating section 139 as section 140 and by insert-
 8 ing after section 138 the following new section:

9 **“SEC. 139. AMOUNTS RECEIVED ON ACCOUNT OF CERTAIN**
 10 **UNLAWFUL DISCRIMINATION.**

11 “(a) IN GENERAL.—

12 “(1) EXCLUSION.—Gross income does not in-
 13 clude amounts received by a claimant (whether by
 14 suit or agreement and whether as lump sums or
 15 periodic payments) on account of a claim of unlawful
 16 discrimination.

17 “(2) AMOUNTS COVERED.—For purposes of
 18 paragraph (1), the term ‘amounts’ does not
 19 include—

20 “(A) backpay or frontpay, as defined in
 21 section 1302(b), or

22 “(B) punitive damages.

23 “(b) UNLAWFUL DISCRIMINATION DEFINED.—For
 24 purposes of this section, the term ‘unlawful discrimination’
 25 means an act that is unlawful under any of the following:

1 “(1) Section 302 of the Civil Rights Act of
2 1991 (2 U.S.C. 1202).

3 “(2) Section 201, 202, 203, 204, 205, 206, or
4 207 of the Congressional Accountability Act of 1995
5 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or
6 1317).

7 “(3) The Fair Labor Standards Act of 1938
8 (29 U.S.C. 201 et seq.).

9 “(4) Section 4 or 15 of the Age Discrimination
10 in Employment Act of 1967 (29 U.S.C. 623 or
11 633a).

12 “(5) Section 501 or 504 of the Rehabilitation
13 Act of 1973 (29 U.S.C. 791 or 794).

14 “(6) Section 510 of the Employee Retirement
15 Income Security Act of 1974 (29 U.S.C. 1140).

16 “(7) Title IX of the Education Amendments of
17 1972 (29 U.S.C. 1681 et seq.).

18 “(8) The Employee Polygraph Protection Act of
19 1988 (29 U.S.C. 201 et seq.).

20 “(9) The Worker Adjustment and Retraining
21 Notification Act (29 U.S.C. 2102 et seq.).

22 “(10) Section 105 of the Family and Medical
23 Leave Act of 1993 (29 U.S.C. 2615).

1 “(11) Chapter 43 of title 38, United States
2 Code (relating to employment and reemployment
3 rights of members of the uniformed services).

4 “(12) Section 1977, 1979, or 1980 of the Re-
5 vised Statutes (42 U.S.C. 1981, 1983, or 1985).

6 “(13) Section 703, 704, or 717 of the Civil
7 Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3,
8 or 2000e–16).

9 “(14) Section 804, 805, 806, 808, or 818 of the
10 Fair Housing Act (42 U.S.C. 3604, 3605, 3606,
11 3608, or 3617).

12 “(15) Section 102, 202, 302, or 503 of the
13 Americans with Disabilities Act of 1990 (42 U.S.C.
14 12112, 12132, 12182, or 12203).

15 “(16) Section 40302 of the Violence Against
16 Women Act of 1994 (42 U.S.C. 13981).

17 “(17) Any provision of Federal law (popularly
18 known as whistleblower protection provisions) pro-
19 hibiting the discharge of an employee, the discrimi-
20 nation against an employee, or any other form of re-
21 taliation or reprisal against an employee for assert-
22 ing rights or taking other actions permitted under
23 Federal law.

1 “(18) Any provision of State or local law, or
 2 common law claims permitted under Federal, State,
 3 or local law—

4 “(A) providing for the enforcement of civil
 5 rights, or

6 “(B) regulating any aspect of the employ-
 7 ment relationship, including prohibiting the dis-
 8 charge of an employee, the discrimination
 9 against an employee, or any other form of retal-
 10 iation or reprisal against an employee for as-
 11 serting rights or taking other actions permitted
 12 by law.”

13 (b) CLERICAL AMENDMENT.—The table of sections
 14 for part III of subchapter B of chapter 1 of such Code
 15 is amended by inserting after the item relating to section
 16 138 the following new item:

 “Sec. 139. Amounts received on account of certain unlawful dis-
 crimination.”

17 (c) EFFECTIVE DATE.—The amendment made by
 18 this section shall apply to damages received in taxable
 19 years beginning after December 31, 1999.

1 **SEC. 3. LIMITATION ON TAX BASED ON INCOME AVER-**
 2 **AGING FOR BACKPAY AND FRONTPAY RE-**
 3 **CEIVED ON ACCOUNT OF CERTAIN UNLAW-**
 4 **FUL EMPLOYMENT DISCRIMINATION.**

5 (a) IN GENERAL.—Part I of subchapter Q of chapter
 6 1 of the Internal Revenue Code of 1986 (relating to in-
 7 come averaging) is amended by adding at the end the fol-
 8 lowing new section:

9 **“SEC. 1302. INCOME FROM BACKPAY AND FRONTPAY RE-**
 10 **CEIVED ON ACCOUNT OF CERTAIN UNLAW-**
 11 **FUL EMPLOYMENT DISCRIMINATION.**

12 “(a) GENERAL RULE.—If employment discrimination
 13 backpay or frontpay is received by a taxpayer during a
 14 taxable year, the tax imposed by this chapter for such tax-
 15 able year shall not exceed the sum of—

16 “(1) the tax which would be so imposed if—

17 “(A) no amount of such backpay or
 18 frontpay were included in gross income for such
 19 year, and

20 “(B) no deduction were allowed for such
 21 year for expenses (otherwise allowable as a de-
 22 duction to the taxpayer for such year) in con-
 23 nection with making or prosecuting any claim
 24 of unlawful employment discrimination by or on
 25 behalf of the taxpayer, plus

26 “(2) the product of—

1 “(A) the number of years in the backpay
2 period and frontpay period, and

3 “(B) the amount by which the tax deter-
4 mined under paragraph (1) would increase if
5 the amount on which such tax is determined
6 were increased by the average annual net back-
7 pay and frontpay amount.

8 “(b) DEFINITIONS.—For purposes of this section—

9 “(1) EMPLOYMENT DISCRIMINATION BACKPAY
10 OR FRONTPAY.—The term ‘employment discrimina-
11 tion backpay or frontpay’ means backpay or
12 frontpay receivable (whether as lump sums or peri-
13 odic payments) on account of a claim of unlawful
14 employment discrimination.

15 “(2) UNLAWFUL EMPLOYMENT DISCRIMINA-
16 TION.—The term ‘unlawful employment discrimina-
17 tion’ has the meaning provided the term ‘unlawful
18 discrimination’ in section 139(b).

19 “(3) BACKPAY AND FRONTPAY.—The terms
20 ‘backpay’ and ‘frontpay’ mean amounts includible in
21 gross income in the taxable year—

22 “(A) as compensation which is
23 attributable—

24 “(i) in the case of backpay, to services
25 performed, or that would have been per-

formed but for a claimed violation of law,
 as an employee, former employee, or prospective employee before such taxable year for the taxpayer's employer, former employer, or prospective employer; and

“(ii) in the case of frontpay, to employment that would have been performed but for a claimed violation of law, in a taxable year or taxable years following the taxable year; and

“(B) which are—

“(i) ordered, recommended, or approved by any governmental entity to satisfy a claim for a violation of law, or

“(ii) received from the settlement of such a claim.

“(4) BACKPAY PERIOD.—The term ‘backpay period’ means the period during which services are performed (or would have been performed) to which backpay is attributable. If such period is not equal to a whole number of taxable years, such period shall be increased to the next highest number of whole taxable years.

“(5) FRONTPAY PERIOD.—The term ‘frontpay period’ means the period of foregone employment to

5 “(6) AVERAGE ANNUAL NET BACKPAY AND
6 FRONTPAY AMOUNT.—The term ‘average annual net
7 backpay and frontpay amount’ means the amount
8 equal to—

10 “(i) employment discrimination back-
11 pay and frontpay, over

15 “(B) the number of years in the backpay
16 period and frontpay period.”

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter Q of chapter 1 of such Code is amended by inserting after section 1301 the following new item:

“Sec. 1302. Income from backpay or frontpay received on account of certain unlawful employment discrimination.”

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1 **SEC. 3. INCOME AVERAGING FOR BACKPAY AND FRONTPAY**
 2 **RECEIVED ON ACCOUNT OF CERTAIN UNLAW-**
 3 **FUL EMPLOYMENT DISCRIMINATION NOT TO**
 4 **INCREASE ALTERNATIVE MINIMUM TAX LI-**
 5 **ABILITY.**

6 (a) IN GENERAL.—Section 55(c) of the Internal Rev-
 7 enue Code of 1986 (defining regular tax) is amended by
 8 redesignating paragraph (2) as paragraph (3) and by in-
 9 serting after paragraph (1) the following:

10 “(2) COORDINATION WITH INCOME AVERAGING
 11 FOR AMOUNTS RECEIVED ON ACCOUNT OF EMPLOY-
 12 MENT DISCRIMINATION.—Solely for purposes of this
 13 section, section 1302 (relating to averaging of in-
 14 come from backpay or frontpay received on account
 15 of certain unlawful employment discrimination) shall
 16 not apply in computing the regular tax.”

17 (b) EFFECTIVE DATE.—The amendment made by
 18 this section shall apply to taxable years beginning after
 19 December 31, 1999.

