

108TH CONGRESS
1ST SESSION

S. 557

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

MARCH 6, 2003

Ms. COLLINS (for herself, Mr. GRASSLEY, Mr. BINGAMAN, Mr. COCHRAN, Mr. DASCHLE, Mr. SARBANES, and Mr. SMITH) 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 Relief
5 Act of 2003”.

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 140 as section 140A and by in-
 8 serting after section 139 the following new section:

9 **“SEC. 140. 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 in-
 19 clude—

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 National Labor Relations Act (29
8 U.S.C. 151 et seq.).

9 “(4) The Fair Labor Standards Act of 1938
10 (29 U.S.C. 201 et seq.).

11 “(5) Section 4 or 15 of the Age Discrimination
12 in Employment Act of 1967 (29 U.S.C. 623 or
13 633a).

14 “(6) Section 501 or 504 of the Rehabilitation
15 Act of 1973 (29 U.S.C. 791 or 794).

16 “(7) Section 510 of the Employee Retirement
17 Income Security Act of 1974 (29 U.S.C. 1140).

18 “(8) Title IX of the Education Amendments of
19 1972 (29 U.S.C. 1681 et seq.).

20 “(9) The Employee Polygraph Protection Act of
21 1988 (29 U.S.C. 201 et seq.).

22 “(10) The Worker Adjustment and Retraining
23 Notification Act (29 U.S.C. 2102 et seq.).

24 “(11) Section 105 of the Family and Medical
25 Leave Act of 1993 (29 U.S.C. 2615).

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

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

6 “(14) 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 “(15) 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 “(16) 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 “(17) Any provision of Federal law (popularly
16 known as whistleblower protection provisions) pro-
17 hibiting the discharge of an employee, the discrimi-
18 nation against an employee, or any other form of re-
19 taliation or reprisal against an employee for assert-
20 ing rights or taking other actions permitted under
21 Federal law.

22 “(18) Any provision of State or local law, or
23 common law claims permitted under Federal, State,
24 or local law—

1 “(A) providing for the enforcement of civil
2 rights, or

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

10 (b) CLERICAL AMENDMENT.—The table of sections
11 for part III of subchapter B of chapter 1 of such Code
12 is amended by striking the last item and inserting the fol-
13 lowing:

“Sec. 140. Amounts received on account of certain unlawful dis-
crimination.

“Sec. 140. Cross references to other Acts.”

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to damages received in taxable
16 years beginning after December 31, 2000.

17 **SEC. 3. LIMITATION ON TAX BASED ON INCOME AVER-**
18 **AGING FOR BACKPAY AND FRONTPAY RE-**
19 **CEIVED ON ACCOUNT OF CERTAIN UNLAW-**
20 **FUL EMPLOYMENT DISCRIMINATION.**

21 (a) IN GENERAL.—Part I of subchapter Q of chapter
22 1 of the Internal Revenue Code of 1986 (relating to in-
23 come averaging) is amended by adding at the end the fol-
24 lowing new section:

1 **“SEC. 1302. INCOME FROM BACKPAY AND FRONTPAY RE-**
 2 **CEIVED ON ACCOUNT OF CERTAIN UNLAW-**
 3 **FUL EMPLOYMENT DISCRIMINATION.**

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

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

9 “(A) no amount of such backpay or
 10 frontpay were included in gross income for such
 11 year, and

12 “(B) no deduction were allowed for such
 13 year for expenses (otherwise allowable as a de-
 14 duction to the taxpayer for such year) in con-
 15 nection with making or prosecuting any claim
 16 of unlawful employment discrimination by or on
 17 behalf of the taxpayer, plus

18 “(2) the product of—

19 “(A) the number of years in the backpay
 20 period and frontpay period, and

21 “(B) the amount by which the tax deter-
 22 mined under paragraph (1) would increase if
 23 the amount on which such tax is determined
 24 were increased by the average annual net back-
 25 pay and frontpay amount.

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

1 “(1) EMPLOYMENT DISCRIMINATION BACKPAY
 2 OR FRONTPAY.—The term ‘employment discrimina-
 3 tion backpay or frontpay’ means backpay or
 4 frontpay receivable (whether as lump sums or peri-
 5 odic payments) on account of a claim of unlawful
 6 employment discrimination.

7 “(2) UNLAWFUL EMPLOYMENT DISCRIMINA-
 8 TION.—The term ‘unlawful employment discrimina-
 9 tion’ has the meaning provided the term ‘unlawful
 10 discrimination’ in section 140(b).

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

14 “(A) as compensation which is attrib-
 15 utable—

16 “(i) in the case of backpay, to services
 17 performed, or that would have been per-
 18 formed but for a claimed violation of law,
 19 as an employee, former employee, or pro-
 20 spective employee before such taxable year
 21 for the taxpayer’s employer, former em-
 22 ployer, or prospective employer; and

23 “(ii) in the case of frontpay, to em-
 24 ployment that would have been performed
 25 but for a claimed violation of law, in a tax-

1 able year or taxable years following the
2 taxable year; and

3 “(B) which are—

4 “(i) ordered, recommended, or ap-
5 proved by any governmental entity to sat-
6 isfy a claim for a violation of law, or

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

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

16 “(5) FRONTPAY PERIOD.—The term ‘frontpay
17 period’ means the period of foregone employment to
18 which frontpay is attributable. If such period is not
19 equal to a whole number of taxable years, such pe-
20 riod shall be increased to the next highest number
21 of whole taxable years.

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

1 “(A) the excess of—

2 “(i) employment discrimination back-
3 pay and frontpay, over

4 “(ii) the amount of deductions that
5 would have been allowable but for sub-
6 section (a)(1)(B), divided by

7 “(B) the number of years in the backpay
8 period and frontpay period.”.

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

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

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to amounts received in taxable
15 years beginning after December 31, 2000.

16 **SEC. 3. INCOME AVERAGING FOR BACKPAY AND FRONTPAY**
17 **RECEIVED ON ACCOUNT OF CERTAIN UNLAW-**
18 **FUL EMPLOYMENT DISCRIMINATION NOT TO**
19 **INCREASE ALTERNATIVE MINIMUM TAX LI-**
20 **ABILITY.**

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

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

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to taxable years beginning after
10 December 31, 2000.

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