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H. R. 1919

To amend the Internal Revenue Code of 1986 to repeal the withholding of income and social security taxes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2009

Ms. FOXX (for herself, Mr. PAUL, Mr. BURTON of Indiana, Mr. FRANKS of Arizona, Mr. DUNCAN, Mr. GARRETT of New Jersey, Mr. BARTLETT, Mrs. MYRICK, Mrs. BLACKBURN, Mr. PENCE, Mr. KINGSTON, and Mr. WILSON of South Carolina) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to repeal the withholding of income and social security taxes.

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 “Federal Withholding
5 Tax Repeal Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) At the onset of the Civil War, Congress
9 passed the Revenue Act of 1861, which imposed a

1 tax on personal incomes and to assure timely collec-
2 tion, taxes were “withheld at the source” by employ-
3 ers.

4 (2) The need for Federal revenue declined
5 sharply after the war and in 1872, the income tax
6 was abolished and along with it, the Federal with-
7 holding mandate.

8 (3) With passage of the 16th amendment to the
9 Constitution, Congress swiftly passed legislation cre-
10 ating a Federal income tax, withheld before em-
11 ployee salaries were paid.

12 (4) In response to growing taxpayer criticism of
13 the withholding mandate, Treasury Secretary Wil-
14 liam G. McAdoo stated that “it would be very ad-
15 vantageous to . . . do away with the withholding of
16 income tax at the source” because it would “elimi-
17 nate a great deal of criticism which has been di-
18 rected against the law”; a statement reflecting the
19 sentiment which ultimately led to the repeal of Fed-
20 eral withholding authority in 1917.

21 (5) In the 1920s and 1930s, income taxes were
22 due on March 15 following the end of the tax year
23 and could be paid either in one lump sum on that
24 date or in quarterly installments.

1 (6) With the onset of World War II, fearing
2 that taxpayers might refuse to pay the higher tax
3 rates and surcharges associated with funding the
4 war effort, Federal officials, lawmakers, and political
5 leaders such as President Franklin D. Roosevelt
6 used the military crisis to draw on Americans' sense
7 of patriotism and resurrect the Federal withholding
8 authority as a "temporary wartime measure".

9 (7) The campaign to reinstitute a permanent
10 system of withholding overcame public hostility with
11 the passage of the Withholding Tax Act of 1943
12 which incorporated suggestions proffered by Beard-
13 ley Ruml to eliminate individuals' 1942 tax liabilities
14 by counting amounts paid or withheld in 1943 as
15 tax payments for that year.

16 (8) Since that time, Congress has stubbornly
17 refused to repeal the Federal withholdings mandate
18 contained in the Withholding Tax Act.

19 (9) In fiscal year 2007, the Internal Revenue
20 Service refunded overpayments amounting to over
21 \$248,625,001,000 more than actual individual in-
22 come tax liabilities, effectively denying interest pay-
23 ments otherwise owed to taxpayers and amounting
24 to a hidden tax.

1 (10) These overpayments are returned annually
2 in the form of tax refunds to taxpayers who often
3 confuse the payments as a reward.

4 (11) According to an April 2007 report released
5 by the Joint Economic Committee, millions of fami-
6 lies, many in the bottom fifth income percentile,
7 have either zero tax liability or receive a net transfer
8 from the Government due to the refundable portion
9 of the Earned Income Tax Credit or the Child Tax
10 Credit. Those without Federal tax liability would
11 benefit the most from keeping their entire paycheck,
12 rather than temporarily surrendering portions to the
13 Government.

14 (12) The absence of the Federal withholdings
15 mandate leaves employers and employees free to ne-
16 gotiate alternative, private means of collecting and
17 paying Federal income taxes, thereby allowing indi-
18 viduals to voluntarily earn interest on their
19 withholdings.

20 (13) The Federal withholdings mandate allows
21 the Federal Government to disguise tax increases
22 and hampers Federal accountability and trans-
23 parency by requiring the assistance of an inter-
24 mediary tax collector.

1 (14) Complying with the Federal withholdings
2 mandate imposes costly burdens and legal liabilities
3 on employers forced to act as de facto IRS agents,
4 without compensation for lost time and resources.

5 (15) Referring to the Federal withholding man-
6 date in his work *Public Finance in Democratic Proc-*
7 *ess: Fiscal Institutions and Individual Choice*, 1986
8 Nobel Prize winning economist James Buchanan
9 stated that “The individual who does not have pos-
10 session of income before paying it out cannot” sense
11 “the real cost of public services in a manner com-
12 parable to that experienced in a genuine act of
13 outpayment.”.

14 (16) In CATO Institute study, Charlotte
15 Twight has noted that “[W]ithholding is the para-
16 mount administrative mechanism enabling the Fed-
17 eral Government to collect, without significant pro-
18 test, sufficient private resources to fund a vastly ex-
19 panded welfare state.”

20 (17) The Federal tax withholding mandate was
21 listed by Human Events in 2005 as the fourth
22 “Most Harmful Government Program” and seventh
23 “Worst Tax Law” in 2006.

24 (18) The National Taxpayers Union notes that
25 the incremental nature of withholding masks the

1 true cost of Federal income taxes, which would be
2 much more apparent if individuals had to write
3 monthly, quarterly, or annual checks to the Federal
4 Government.

5 **SEC. 3. PURPOSE.**

6 The purposes of this Act are—

7 (1) to increase transparency and accountability
8 in the Federal tax system by providing the public
9 with a more accurate account of—

10 (A) the annual tax burden; and

11 (B) the Federal budget deficit;

12 (2) to decrease the overall tax burden and in-
13 crease the personal wealth of taxpayers by allowing
14 for the personal collection of interest during the fis-
15 cal year on overpayments that are otherwise used by
16 the Federal Government to partly avoid interest pay-
17 ments;

18 (3) to decrease the burden on employers by
19 freeing them from the task of collecting income tax
20 withholdings from their employees; and

21 (4) to end the deceptive practice of masking
22 higher tax rates from taxpayers.

1 **SEC. 4. REPEAL OF FEDERAL INCOME AND SOCIAL SECUR-**
2 **ITY TAX WITHHOLDING MANDATE.**

3 (a) IN GENERAL.—The following sections of the In-
4 ternal Revenue Code of 1986 are hereby repealed:

5 (1) Section 3102 (relating to deduction of social
6 security tax from wages).

7 (2) Section 3202 (relating to deduction of rail-
8 road retirement tax from compensation).

9 (3) Chapter 24 (relating to income tax with-
10 holding).

11 (b) REQUIREMENT OF ESTIMATED TAX PAYMENTS
12 FOR EMPLOYEE SOCIAL SECURITY TAXES.—Subsection
13 (f) of section 6654 of such Code is amended by striking
14 “minus” at the end of paragraph (2) and inserting “plus”,
15 by redesignating paragraph (3) as paragraph (4), and by
16 inserting after paragraph (2) the following new paragraph:

17 “(3) the taxes imposed by section 3101(a) and
18 3201(a), minus”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to amounts paid on or after the
21 first January 1 occurring after 1 year after the date of
22 the enactment of this Act.

23 **SEC. 5. CONTINUED VOLUNTARY TAX WITHHOLDING.**

24 (a) AUTHORITY OF THE IRS.—Nothing in this Act
25 may be construed to limit the authority of the Internal
26 Revenue Service to accept voluntary tax payments from

1 employers electing to continue collecting Federal income
2 taxes from employees.

3 (b) VOLUNTARY EMPLOYER PARTICIPATION.—Noth-
4 ing in this Act shall be construed to prevent voluntary em-
5 ployer sponsored withholding of Federal income taxes on
6 behalf of employees.

7 (c) VOLUNTARY EMPLOYEE PARTICIPATION.—Noth-
8 ing in this Act shall be construed—

9 (1) to require any employee to participate in an
10 employer Federal income tax withholding system, or

11 (2) to prevent any election of an employee to
12 opt in to an employer Federal income tax with-
13 holding system, with all terms and conditions for
14 participation being negotiable between the employee
15 and employer.

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