

116TH CONGRESS  
1ST SESSION

# S. 219

To amend the Internal Revenue Code of 1986 to impose an excise tax on employers with low-wage employees.

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IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2019

Mr. BROWN (for himself and Mr. DURBIN) 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 impose an excise tax on employers with low-wage employees.

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 “Corporate Freeloader  
5 Fee Act”.

6 **SEC. 2. IMPOSITION OF EXCISE TAX ON CORPORATIONS**

7 **WITH LOW-WAGE EMPLOYEES.**

8 (a) IN GENERAL.—Subtitle D of the Internal Rev-  
9 enue Code of 1986 is amended by adding after chapter  
10 36 the following new chapter:

1                   **“CHAPTER 37—CORPORATE**  
 2                   **RESPONSIBILITY TAX**

“Sec. 4511. Imposition of tax.

3   **“SEC. 4511. IMPOSITION OF TAX.**

4           “(a) IN GENERAL.—In the case of an applicable em-  
 5 ployer who employs a low-wage employee during the cal-  
 6 endar year, there is imposed a tax equal to the applicable  
 7 percentage of the aggregate amount of wages paid by the  
 8 applicable employer with respect to employment of all em-  
 9 ployees of the employer during the calendar year.

10          “(b) APPLICABLE EMPLOYER; LOW-WAGE EM-  
 11 PLOYEE.—For purposes of this section—

12           “(1) APPLICABLE EMPLOYER.—

13                  “(A) IN GENERAL.—The term ‘applicable  
 14 employer’ means, with respect to any calendar  
 15 year, any employer who was required to make  
 16 deposits of taxes under chapters 21 and 24 (or  
 17 who would have been required to make such de-  
 18 posits if the rules of subparagraph (C) applied  
 19 for such purposes) by the close of the next day  
 20 for periods aggregating more than 180 days  
 21 during the preceding calendar year.

22                  “(B) EXCEPTION.—Such term shall not in-  
 23 clude a Federal or other governmental entity or

1 a church or qualified church organization (as  
2 such terms are defined in section 3121(w)(3)).

3 “(C) AGGREGATION RULES.—The rules of  
4 subsections (b), (c), (m), and (o) of section 414  
5 shall apply for purposes of this section, except  
6 that in applying subsections (b) and (c) of such  
7 section, the phrase ‘more than 50 percent’ shall  
8 be substituted for the phrase ‘more than 80  
9 percent’ each place it appears.

10 “(2) LOW-WAGE EMPLOYEE.—

11 “(A) IN GENERAL.—The term ‘low-wage  
12 employee’ means any employee who receives  
13 wages from an applicable employer during the  
14 calendar year in an amount less than 218 per-  
15 cent of the Federal poverty line (within the  
16 meaning of section 2110(c)(5) of the Social Se-  
17 curity Act) for an individual. Rules similar to  
18 the rules of section 36B(d)(3)(B) shall apply  
19 for purposes of this subparagraph.

20 “(B) EMPLOYEES EMPLOYED FOR LESS  
21 THAN ENTIRE YEAR.—In the case of any em-  
22 ployee employed by an applicable taxpayer for  
23 less than the entire calendar year, the amount  
24 described in subparagraph (A) shall be reduced

1 by an amount which bears the same ratio to  
 2 such amount as—

3 “(i) the number of weeks during the  
 4 calendar year in which such individual was  
 5 not an employee of such applicable em-  
 6 ployer, bears to

7 “(ii) 52.

8 “(c) APPLICABLE PERCENTAGE.—For purposes of  
 9 subsection (a)—

10 “(1) IN GENERAL.—

11 “(A) DETERMINATION.—The applicable  
 12 percentage shall be determined as follows:

“In the case of an applicable employer with a low-wage employee ratio of:	The applicable percentage is:
25 percent or less .....	25 percent
Greater than 25 percent, but not greater than 50 percent .....	50 percent
Greater than 50 percent, but not greater than 75 percent .....	75 percent
Greater than 75 percent .....	100 percent.

13 “(B) LOW-WAGE EMPLOYEE RATIO.—For  
 14 purposes of subparagraph (A), the low-wage  
 15 employee ratio with respect to any applicable  
 16 employer is the ratio (expressed as a percent-  
 17 age) of—

18 “(i) the number of low-wage employ-  
 19 ees employed by the applicable employer  
 20 during the calendar year, to

1           “(ii) the total number of individuals  
2           employed by the applicable employer dur-  
3           ing such calendar year.

4           “(2) HEALTH AND RETIREMENT OFFSET.—

5           “(A) IN GENERAL.—In the case of an ap-  
6           plicable employer who meets the requirements  
7           of subparagraph (B), the applicable percentage  
8           shall be reduced (but not below zero) by 25 per-  
9           centage points.

10          “(B) REQUIREMENTS.—An applicable em-  
11          ployer meets the requirements of this subpara-  
12          graph if such applicable employer—

13               “(i) offers to all full-time low-wage  
14               employees (and their spouse and depend-  
15               ents) the opportunity to enroll for all  
16               months during the calendar year in min-  
17               imum essential coverage under an eligible  
18               employer sponsored health plan (as defined  
19               in section 5000A(f)(2)) for which—

20                       “(I) the plan’s share of the al-  
21                       lowed costs of benefits provided under  
22                       the plan is not less than 60 percent of  
23                       such costs, and

24                       “(II) the required contribution  
25                       (within the meaning of section

1           5000A(e)(1)(B)) of the employee does  
 2           not exceed the applicable percentage  
 3           of the annual wages paid to the em-  
 4           ployee by the applicable employer, and  
 5           “(ii) meets the retirement plan re-  
 6           quirements of subsection (d) for all em-  
 7           ployees who are low-wage employees.

8           For purposes of clause (i)(II), the applicable  
 9           percentage is the percentage in effect under  
 10          section 36B(b)(2)(B)(ii) for the plan year.

11          “(d) RETIREMENT PLAN REQUIREMENTS.—

12           “(1) IN GENERAL.—The requirements of this  
 13          subsection are met for any calendar year with re-  
 14          spect to an employee of the applicable employer who  
 15          is a low-wage employee if the employee is eligible to  
 16          participate in one or more applicable eligible retire-  
 17          ment plans maintained by the applicable employer  
 18          (or any member of the group of employers treated  
 19          as an applicable employer under subsection  
 20          (b)(1)(C)) for a plan year ending with or within the  
 21          calendar year.

22           “(2) APPLICABLE ELIGIBLE RETIREMENT  
 23          PLAN.—For purposes of this subsection, the term  
 24          ‘applicable eligible retirement plan’ means an eligible

1 retirement plan which, with respect to the plan year  
2 described in paragraph (1), is either—

3 “(A) a defined contribution plan which re-  
4 quires the employer to make nonelective con-  
5 tributions of at least 5 percent of the com-  
6 pensation of the employee, or

7 “(B) a defined benefit plan—

8 “(i) with respect to which the accrued  
9 benefit of the employee derived from em-  
10 ployer contributions, when expressed as an  
11 annual retirement benefit, is not less than  
12 the product of—

13 “(I) the lesser of 2 percent multi-  
14 plied by the employee’s years of serv-  
15 ice (determined under the rules of  
16 paragraphs (4), (5), and (6) of section  
17 411(a)) with the employer or 20 per-  
18 cent, multiplied by

19 “(II) the employee’s final average  
20 pay, or

21 “(ii) which is an applicable defined  
22 benefit plan (as defined in section  
23 411(a)(13)(B))—

24 “(I) which meets the interest  
25 credit requirements of section

1                   411(b)(5)(B)(i) with respect to the  
2                   plan year, and

3                   “(II) under which the employee  
4                   receives a pay credit for the plan year  
5                   which is not less than 5 percent of  
6                   compensation.

7                   “(3) DEFINITIONS AND SPECIAL RULES.—For  
8                   purposes of this subsection—

9                   “(A) ELIGIBLE RETIREMENT PLAN.—The  
10                  term ‘eligible retirement plan’ has the meaning  
11                  given such term by section 402(c)(8)(B), except  
12                  that in the case of an account or annuity de-  
13                  scribed in clause (i) or (ii) thereof, such term  
14                  shall only include an account or annuity which  
15                  is a simplified employee pension (as defined in  
16                  section 408(k)).

17                  “(B) FINAL AVERAGE PAY.—For purposes  
18                  of paragraph (2)(B)(i)(II), final average pay  
19                  shall be determined using the period of consecu-  
20                  tive years (not exceeding 5) during which the  
21                  employee had the greatest compensation from  
22                  the applicable employer.

23                  “(C) ALTERNATIVE PLAN DESIGNS.—The  
24                  Secretary may prescribe regulations for an ap-  
25                  plicable employer to meet the requirements of



1 this subsection through a combination of de-  
2 fined contribution plans or defined benefit plans  
3 described in paragraph (1) or through a com-  
4 bination of both such types of plans.

5 “(D) PLANS MUST MEET REQUIREMENTS  
6 WITHOUT TAKING INTO ACCOUNT SOCIAL SECUR-  
7 ITY AND SIMILAR CONTRIBUTIONS AND BENE-  
8 FITS.—A rule similar to the rule of section  
9 416(e) shall apply.

10 “(E) CERTAIN EMPLOYEES MAY BE EX-  
11 CLUDED.—For purposes of paragraph  
12 (2)(B)(ii), an employer shall not be treated as  
13 failing to meet the requirements of this sub-  
14 section with respect to employees—

15 “(i) who have not attained the age of  
16 21 before the close of a plan year,

17 “(ii) who have less than 1 year of  
18 service with the employer as of any day  
19 during the plan year,

20 “(iii) who are covered under an agree-  
21 ment which the Secretary of Labor finds to  
22 be a collective bargaining agreement if  
23 there is evidence that the benefits covered  
24 under the plan were the subject of good

1           faith bargaining between employee rep-  
2           resentatives and the employer, or

3                   “(iv) who are described in section  
4           410(b)(3)(C) (relating to nonresident  
5           aliens working outside the United States).

6           “(e) DEFINITIONS AND SPECIAL RULES.—For pur-  
7 poses of this section—

8                   “(1) WAGES.—The term ‘wages’ has the mean-  
9           ing given such term by section 3121(a) (determined  
10          without regard to any dollar limitation contained in  
11          such section).

12                   “(2) ALLOCATION OF TAX.—The Secretary  
13          shall prescribe such rules as necessary for the alloca-  
14          tion of the tax imposed by subsection (a) among dif-  
15          ferent entities treated as a single employer under  
16          subsection (b)(1)(C).”.

17          (b) CONFORMING AMENDMENT.—The table of chap-  
18          ters of the Internal Revenue Code of 1986 is amended by  
19          inserting after the item relating to chapter 36 the fol-  
20          lowing new item:

                  “CHAPTER 37—CORPORATE RESPONSIBILITY TAX”.

21          (c) EFFECTIVE DATE.—The amendments made by  
22          this section shall apply to calendar years beginning after  
23          the date of the enactment of this Act.

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