

116TH CONGRESS
1ST SESSION

S. 223

To amend the Internal Revenue Code of 1986 to provide a tax credit to Patriot employers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2019

Mr. DURBIN (for himself and Mr. BROWN) 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 provide a tax credit to Patriot employers, 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 “Patriot Employer Tax
5 Credit Act”.

6 **SEC. 2. PATRIOT EMPLOYER TAX CREDIT.**

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

1 **“SEC. 45T. PATRIOT EMPLOYER TAX CREDIT.**

2 “(a) DETERMINATION OF AMOUNT.—

3 “(1) IN GENERAL.—For purposes of section 38,
4 the Patriot employer credit determined under this
5 section with respect to any taxpayer who is a Patriot
6 employer for any taxable year shall be equal to 10
7 percent of the qualified wages paid or incurred by
8 the Patriot employer.

9 “(2) LIMITATION.—The amount of qualified
10 wages which may be taken into account under para-
11 graph (1) with respect to any employee for any tax-
12 able year shall not exceed \$15,000.

13 “(b) PATRIOT EMPLOYER.—

14 “(1) IN GENERAL.—For purposes of subsection
15 (a), the term ‘Patriot employer’ means, with respect
16 to any taxable year, any taxpayer—

17 “(A) which—

18 “(i) maintains its headquarters in the
19 United States if the taxpayer (or any pred-
20 ecessor) has ever been headquartered in
21 the United States, and

22 “(ii) is not (and no predecessor of
23 which is) an expatriated entity (as defined
24 in section 7874(a)(2)) for the taxable year
25 or any preceding taxable year ending after
26 March 4, 2003,

1 “(B) with respect to which no assessable
2 payment has been imposed under section
3 4980H with respect to any month occurring
4 during the taxable year,

5 “(C) provides employees with—

6 “(i) paid sick leave, or

7 “(ii) paid family and medical leave,

8 and

9 “(D) in the case of—

10 “(i) a taxpayer which employs an av-
11 erage of more than 50 employees on busi-
12 ness days during the taxable year, which—

13 “(I) provides compensation for at
14 least 90 percent of its employees for
15 services provided by such employees
16 during the taxable year at an hourly
17 rate (or equivalent thereof) not less
18 than an amount equal to 218 percent
19 of the Federal poverty level for an in-
20 dividual for the calendar year in which
21 the taxable year begins divided by
22 1,750,

23 “(II) meets the retirement plan
24 requirements of subsection (c) with
25 respect to at least 90 percent of its

1 employees providing services during
2 the taxable year who are not highly
3 compensated employees, and

4 “(III) meets the additional re-
5 quirements of subparagraphs (A) and
6 (B) of paragraph (2), or

7 “(ii) any other taxpayer, which meets
8 the requirements of either subclause (I) or
9 (II) of clause (i) for the taxable year.

10 “(2) ADDITIONAL REQUIREMENTS FOR LARGE
11 EMPLOYERS.—

12 “(A) UNITED STATES EMPLOYMENT.—The
13 requirements of this subparagraph are met for
14 any taxable year if—

15 “(i) in any case in which the taxpayer
16 increases the number of employees per-
17 forming substantially all of their services
18 for the taxable year outside the United
19 States, the taxpayer either—

20 “(I) increases the number of em-
21 ployees performing substantially all of
22 their services inside the United States
23 by an amount not less than the in-
24 crease in such number for employees
25 outside the United States, or

1 “(II) has a percentage increase
2 in such employees inside the United
3 States which is not less than the per-
4 centage increase in such employees
5 outside the United States,

6 “(ii) in any case in which the taxpayer
7 decreases the number of employees per-
8 forming substantially all of their services
9 for the taxable year inside the United
10 States, the taxpayer either—

11 “(I) decreases the number of em-
12 ployees performing substantially all of
13 their services outside the United
14 States by an amount not less than the
15 decrease in such number for employ-
16 ees inside the United States, or

17 “(II) has a percentage decrease
18 in employees outside the United
19 States which is not less than the per-
20 centage decrease in such employees
21 inside the United States, and

22 “(iii) there is not a decrease in the
23 number of employees performing substan-
24 tially all of their services for the taxable
25 year inside the United States by reason of

1 the taxpayer contracting out such services
2 to persons who are not employees of the
3 taxpayer.

4 “(B) TREATMENT OF INDIVIDUALS IN THE
5 UNIFORMED SERVICES AND THE DISABLED.—

6 The requirements of this subparagraph are met
7 for any taxable year if—

8 “(i) the taxpayer provides differential
9 wage payments (as defined in section
10 3401(h)(2)) to each employee described in
11 section 3401(h)(2)(A) for any period dur-
12 ing the taxable year in an amount not less
13 than the difference between the wages
14 which would have been received from the
15 employer during such period and the
16 amount of pay and allowances which the
17 employee receives for service in the uni-
18 formed services during such period, and

19 “(ii) the taxpayer has in place at all
20 times during the taxable year a written
21 policy for the recruitment of employees
22 who have served in the uniformed services
23 or who are disabled.

1 “(3) SPECIAL RULES FOR APPLYING THE MIN-
2 IMUM WAGE AND RETIREMENT PLAN REQUIRE-
3 MENTS.—

4 “(A) MINIMUM WAGE.—In determining
5 whether the minimum wage requirements of
6 paragraph (1)(D)(i)(I) are met with respect to
7 90 percent of a taxpayer’s employees for any
8 taxable year—

9 “(i) a taxpayer may elect to exclude
10 from such determination apprentices or
11 learners that an employer may exclude
12 under the regulations under section 14(a)
13 of the Fair Labor Standards Act of 1938,
14 and

15 “(ii) if a taxpayer meets the require-
16 ments of paragraph (2)(B)(i) with respect
17 to providing differential wage payments to
18 any employee for any period (without re-
19 gard to whether such requirements apply
20 to the taxpayer), the hourly rate (or equiv-
21 alent thereof) for such payments shall be
22 determined on the basis of the wages which
23 would have been paid by the employer dur-
24 ing such period if the employee had not

1 been providing service in the uniformed
2 services.

3 “(B) RETIREMENT PLAN.—In determining
4 whether the retirement plan requirements of
5 paragraph (1)(D)(i)(II) are met with respect to
6 90 percent of a taxpayer’s employees for any
7 taxable year, a taxpayer may elect to exclude
8 from such determination—

9 “(i) employees not meeting the age or
10 service requirements under section
11 410(a)(1) (or such lower age or service re-
12 quirements as the employer provides), and

13 “(ii) employees described in section
14 410(b)(3).

15 “(c) RETIREMENT PLAN REQUIREMENTS.—

16 “(1) IN GENERAL.—The requirements of this
17 subsection are met for any taxable year with respect
18 to an employee of the taxpayer who is not a highly
19 compensated employee if the employee is eligible to
20 participate in 1 or more applicable eligible retire-
21 ment plans maintained by the employer for a plan
22 year ending with or within the taxable year.

23 “(2) APPLICABLE ELIGIBLE RETIREMENT
24 PLAN.—For purposes of this subsection, the term
25 ‘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—

4 “(i) requires the employer to make
5 nonelective contributions of at least 5 per-
6 cent of the compensation of the employee,
7 or

8 “(ii) both—

9 “(I) includes an eligible auto-
10 matic contribution arrangement (as
11 defined in section 414(w)(3)) under
12 which the uniform percentage de-
13 scribed in section 414(w)(3)(B) is at
14 least 5 percent, and

15 “(II) requires the employer to
16 make matching contributions of 100
17 percent of the elective deferrals (as
18 defined in section 414(u)(2)(C)) of
19 the employee to the extent such defer-
20 rals do not exceed the percentage
21 specified by the plan (not less than 5
22 percent) of the employee’s compensa-
23 tion, or

24 “(B) a defined benefit plan—

1 “(i) with respect to which the accrued
2 benefit of the employee derived from em-
3 ployer contributions, when expressed as an
4 annual retirement benefit, is not less than
5 the product of—

6 “(I) the lesser of 2 percent multi-
7 plied by the employee’s years of serv-
8 ice (determined under the rules of
9 paragraphs (4), (5), and (6) of section
10 411(a)) with the employer or 20 per-
11 cent, multiplied by

12 “(II) the employee’s final average
13 pay, or

14 “(ii) which is an applicable defined
15 benefit plan (as defined in section
16 411(a)(13)(C))—

17 “(I) which meets the interest
18 credit requirements of section
19 411(b)(5)(B)(i) with respect to the
20 plan year, and

21 “(II) under which the employee
22 receives a pay credit for the plan year
23 which is not less than 5 percent of
24 compensation.

1 “(3) DEFINITIONS AND SPECIAL RULES.—For
2 purposes of this subsection—

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

11 “(B) FINAL AVERAGE PAY.—For purposes
12 of paragraph (2)(B)(i)(II), final average pay
13 shall be determined using the period of consecu-
14 tive years (not exceeding 5) during which the
15 employee had the greatest compensation from
16 the taxpayer.

17 “(C) ALTERNATIVE PLAN DESIGNS.—The
18 Secretary may prescribe regulations for a tax-
19 payer to meet the requirements of this sub-
20 section through a combination of defined con-
21 tribution plans or defined benefit plans de-
22 scribed in paragraph (1) or through a combina-
23 tion of both such types of plans.

24 “(D) PLANS MUST MEET REQUIREMENTS
25 WITHOUT TAKING INTO ACCOUNT SOCIAL SECU-

1 RITY AND SIMILAR CONTRIBUTIONS AND BENE-
2 FITS.—A rule similar to the rule of section
3 416(e) shall apply.

4 “(d) QUALIFIED WAGES AND COMPENSATION.—For
5 purposes of this section—

6 “(1) IN GENERAL.—The term ‘qualified wages’
7 means wages (as defined in section 51(c), deter-
8 mined without regard to paragraph (4) thereof) paid
9 or incurred by the Patriot employer during the tax-
10 able year to employees—

11 “(A) who perform substantially all of their
12 services for such Patriot employer inside the
13 United States, and

14 “(B) with respect to whom—

15 “(i) in the case of a Patriot employer
16 which employs an average of more than 50
17 employees on business days during the tax-
18 able year, the requirements of subclauses
19 (I) and (II) of subsection (b)(1)(D)(i) are
20 met, and

21 “(ii) in the case of any other Patriot
22 employer, the requirements of either sub-
23 clause (I) or (II) of subsection (b)(1)(D)(i)
24 are met.

1 “(2) SPECIAL RULES FOR AGRICULTURAL
2 LABOR AND RAILWAY LABOR.—Rules similar to the
3 rules of section 51(h) shall apply.

4 “(3) COMPENSATION.—For purposes of sub-
5 sections (b)(1)(D)(i)(I) and (c), the term ‘compensa-
6 tion’ has the same meaning as qualified wages, ex-
7 cept that section 51(c)(2) shall be disregarded in de-
8 termining the amount of such wages.

9 “(e) AGGREGATION RULES.—For purposes of this
10 section—

11 “(1) IN GENERAL.—All persons treated as a
12 single employer under subsection (a) or (b) of sec-
13 tion 52 shall be treated as a single taxpayer.

14 “(2) SPECIAL RULES FOR CERTAIN REQUIRE-
15 MENTS.—For purposes of applying paragraphs
16 (1)(A) and (2)(A) of subsection (b)—

17 “(A) the determination under subsections
18 (a) and (b) of section 52 for purposes of para-
19 graph (1) shall be made without regard to sec-
20 tion 1563(b)(2)(C) (relating to exclusion of for-
21 eign corporations), and

22 “(B) if any person treated as a single tax-
23 payer under this subsection (after application of
24 subparagraph (A)), or any predecessor of such
25 person, was an expatriated entity (as defined in

1 section 7874(a)(2)) for any taxable year ending
2 after March 4, 2003, then all persons treated
3 as a single taxpayer with such person shall be
4 treated as expatriated entities.

5 “(f) ELECTION TO HAVE CREDIT NOT APPLY.—

6 “(1) IN GENERAL.—A taxpayer may elect to
7 have this section not apply for any taxable year.

8 “(2) TIME FOR MAKING ELECTION.—An elec-
9 tion under paragraph (1) for any taxable year may
10 be made (or revoked) at any time before the expira-
11 tion of the 3-year period beginning on the last date
12 prescribed by law for filing the return for such tax-
13 able year (determined without regard to extensions).

14 “(3) MANNER OF MAKING ELECTION.—An elec-
15 tion under paragraph (1) (or revocation thereof)
16 shall be made in such manner as the Secretary may
17 by regulations prescribe.”.

18 (b) ALLOWANCE AS GENERAL BUSINESS CREDIT.—
19 Section 38(b) of the Internal Revenue Code of 1986 is
20 amended by striking “plus” at the end of paragraph (31),
21 by striking the period at the end of paragraph (32) and
22 inserting “, plus”, and by adding at the end the following:

23 “(33) in the case of a Patriot employer (as de-
24 fined in section 45T(b)) for any taxable year, the

1 Patriot employer credit determined under section
2 45T(a).”.

3 (c) DENIAL OF DOUBLE BENEFIT.—Subsection (a)
4 of section 280C of the Internal Revenue Code of 1986 is
5 amended by inserting “45T(a),” after “45S(a)”.

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to taxable years beginning after
8 December 31, 2019.

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