II

117TH CONGRESS
2D SESSION

S. 4192

To amend the Internal Revenue Code of 1986 to end the tax subsidy for employer efforts to influence their workers' exercise of their rights around labor organizations and engaging in collective action.

IN THE SENATE OF THE UNITED STATES

MAY 12, 2022

Mr. CASEY (for himself, Mr. WYDEN, Mrs. MURRAY, Mr. BOOKER, Mr. VAN HOLLEN, Mr. PADILLA, Mr. MARKEY, Ms. BALDWIN, Ms. WARREN, Mr. REED, Mr. BROWN, Mr. CARDIN, Ms. KLOBUCHAR, Mrs. GILLIBRAND, Mr. SANDERS, Mr. WHITEHOUSE, Ms. CORTEZ MASTO, Ms. SMITH, Mr. BLUMENTHAL, and Mr. MERKLEY) 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 end the tax subsidy for employer efforts to influence their workers' exercise of their rights around labor organizations and engaging in collective action.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "No Tax Breaks for Union Busting (NTBUB) Act".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The National Labor Relations Act (29 U.S.C. 151 et seq.) declares that it is the right of employees to form, join, or assist labor organizations.

(2) The National Labor Relations Act further declares that it is ‘‘the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing . . .’’.

(3) Despite Congress' intention to give workers full agency in these matters, many employers regularly choose to involve themselves, lawfully or unlawfully, in the decisions of their employees about whether to avail themselves of their rights under the National Labor Relations Act and the Railway Labor Act (45 U.S.C. 151 et seq.).

(4) Employers frequently violate labor laws around organizing and collective action. The Economic Policy Institute finds that in approximately 4

of 10 labor organization elections in 2016–2017 employers were charged with committing an unfair labor practice. Among larger bargaining units of 61 employees or more, over 54 percent of elections have an unfair labor practice charge.

(5) In practice, these unfair labor practices often include charges such as employees being illegally fired for labor organization activity, refusal to bargain in good faith with labor organizations, or coercion and intimidation. Employers also frequently use captive audience meetings, workplace surveillance, and other lawful or unlawful tactics to sway labor organization elections.

(6) Whether or not there are charges of unlawful behavior, employers spend millions of dollars to sway the opinions of their employees with respect to whether or how to exercise their rights under the National Labor Relations Act and the Railway Labor Act. According to the Economic Policy Institute, companies spent $340,000,000 yearly on outside consultants to sway their workers' opinions about labor organization activities. This and other spending interfere with the United States goal of "encouraging the practice and procedure of collective bargaining".

(7) The Internal Revenue Code of 1986 has long recognized that spending by businesses with the purpose of influencing the general public with respect to elections, while it may be lawful, is not tax deductible. Congress should extend that principle to spending done by employers to influence workers' elections and collective bargaining decisions. These free choices to exercise the rights to engage in collective bargaining, labor organization representation, and other lawful collective activities should be made without taxpayer subsidies of undue outside influence from employers.

SEC. 3. DENIAL OF DEDUCTION FOR ATTEMPTING TO INFLUENCE EMPLOYEES WITH RESPECT TO LABOR ORGANIZATIONS OR LABOR ORGANIZATION ACTIVITIES.

(a) IN GENERAL.—Section 162(e)(1) of the Internal Revenue Code of 1986 is amended by striking ''or'' at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting '', or'', and by adding at the end the following new subparagraph:

''(E) any attempt to influence the taxpayer's employees with respect to labor organizations or labor organization activities, including with respect to the opinion of such employees regarding such organizations or activities.''.

(b) LABOR ORGANIZATIONS; LABOR ORGANIZATION ACTIVITIES DEFINED.—Section 162(e) of the Internal Revenue Code of 1986 is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

''(6) LABOR ORGANIZATIONS AND LABOR ORGANIZATION ACTIVITY DEFINED.—For purposes of this subsection—

''(A) LABOR ORGANIZATION.—The term 'labor organization' has the meaning given such term in section 3 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 402).

''(B) LABOR ORGANIZATION ACTIVITY.—

''(i) IN GENERAL.—The term 'labor organization activity' includes labor organization elections, labor disputes, and collective actions.

''(ii) OTHER TERMS.—For purposes of clause (i)—

''(I) COLLECTIVE ACTION.—The term 'collective action' means any action, including collective bargaining, described in section 7 of the National Labor Relations Act (29 U.S.C. 157) or any action that is a right of employees or labor organizations under the Railway Labor Act (45 U.S.C. 151 et seq.).

"(II) LABOR DISPUTE.—The term 'labor dispute' has the meaning given such term under section 3 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 402).

"(III) LABOR ORGANIZATION ELECTION.—The term 'labor organization election' means any election described in section 9 of the National Labor Relations Act (29 U.S.C. 159) or section 2 of the Railway Labor Act (45 U.S.C. 152).".

(c) SPECIAL RULES.—Section 162(e)(4) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(D) EXPENSES RELATING TO LABOR ORGANIZATIONS OR LABOR ORGANIZATION ACTIVITIES.—

"(i) IN GENERAL.—For purposes of paragraph (1)(E), amounts paid or incurred in connection with attempting to influence the taxpayer's employees with respect to labor organizations or labor organization activities include—

"(I) any amount paid or incurred by the taxpayer in connection with an action that results in—

"(aa) a complaint issued under section 10 of the National Labor Relations Act (29 U.S.C. 160) against the taxpayer for an unfair labor practice under section 8(a) of such Act (29 U.S.C. 158(a)), unless an order of the National Labor Relations Board related to such complaint is set aside in full in accordance with subsection (e) or (f) of section 10 of such Act,

"(bb) a settlement offer related to an investigation by the National Labor Relations Board of a charge of an unfair labor practice under section 8(a) of such Act (29 U.S.C. 158(a)) that results in a settlement of such charge without issuance of a complaint under section 10 of such Act (29 U.S.C. 160), or

"(cc) a finding of interference, influence, or coercion by a Federal court under section 2 of the Railway Labor Act (45 U.S.C. 152),

"(II) any amount paid or incurred (including wages) in producing, conducting, or attending any meeting or training—

"(aa) which includes employees of the taxpayer who are or who could become bargaining unit members or members of a craft or class under the Railway Labor Act, and

"(bb) at which labor organizations or a labor organization activity is discussed, and

"(III) any amount which is required to be reported under the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401 et seq.).

"(ii) EXCEPTIONS.—The following amounts shall not be treated as amounts paid or incurred in connection with attempting to influence the taxpayer's employees with respect to labor organizations or labor organization activities under paragraph (1)(E):

"(I) Amounts paid or incurred for communications or negotiations directly with the designated or selected representative of the employees of the taxpayer described in section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)) or under the Railway Labor Act (45 U.S.C. 151 et seq.).

"(II) Amounts paid or incurred for communications directly with shareholders, as may be required under section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m).

"(III) Amounts paid or incurred for communications or consultations by the taxpayer in the process of voluntarily recognizing a labor organization as a representative in accordance with section 9 of the National Labor Relations Act (29 U.S.C. 159).

"(IV) Amounts paid or incurred for communications or consultations related to the operation of a labor-management partnership described in a collective bargaining agreement in effect between a representative of employees of the taxpayer and the taxpayer.

"(V) Amounts paid or incurred for communications or consultations related to the operation of a grievance procedure described in a collective bargaining agreement in effect between a representative of employees of the taxpayer and the taxpayer.

"(VI) Amounts paid or incurred by a labor organization.

"(VII) Amounts paid or incurred for communication materials, including visual or audio media, required to be posted for, or provided to, employees of the taxpayer by law, including under the National Labor Relations Act (29 U.S.C. 151 et seq.) or the Railway Labor Act (45 U.S.C. 151 et seq.).".

(d) INFORMATION REPORTING.—

(1) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by inserting after section 6039J the following new section:

"SEC. 6039K. INFORMATION WITH RESPECT TO CERTAIN EMPLOYER ACTIVITIES RELATING TO LABOR ORGANIZATIONS.

"(a) IN GENERAL.—Any employer who attempts to influence the employer's employees with respect to labor organizations or labor organization activities as described in section 162(e)(1)(E) shall file a return (at such time and in such manner as the Secretary may by regulations prescribe, not more frequently than each quarter in which such an attempt occurs and not less frequently than each year in which such an attempt occurs) which includes the information described in subsection (b).

"(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

"(1) the dates that such activities described in subsection (a) took place,

"(2) a statement indicating whether the activity was an activity described in item (aa), (bb), or (cc) of section 162(e)(4)(D)(i)(I),

"(3) the amounts paid or incurred for such activities,

"(4) a copy of any disclosures which are required to be reported under the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401 et seq.), and

"(5) such other information as the Secretary may prescribe.".

(2) PENALTY.—Subparagraph (B) of section 6724(d)(1) of such Code is amended—

(A) by striking the comma at the end of clause (xxvii), as added by the Infrastructure Investment and Jobs Act, and inserting ", or", and

(B) by adding at the end the following new clause:

"(xxviii) section 6039K (relating to information with respect to certain employer activities relating to labor organizations), and".

(3) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6039J the following new item:

"Sec. 6039K. Information with respect to certain employer activities relating to labor organizations.".

(e) CONFORMING AMENDMENTS.—

(1) The heading for subsection (e) of section 162 of the Internal Revenue Code of 1986 is amended by striking "AND POLITICAL EXPENDITURES" and inserting ", POLITICAL EXPENDITURES, AND LABOR ORGANIZATION EXPENDITURES".

(2) The heading of subparagraph (C) of section 162(e)(4) of such Code is amended by striking "AND POLITICAL ACTIVITIES" and inserting ", POLITICAL, AND LABOR ORGANIZATION ACTIVITIES".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

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