

107TH CONGRESS
1ST SESSION

H. R. 394

To amend the Internal Revenue Code of 1986 to allow employers a credit against income tax with respect to employees who participate in the military reserves, to allow a comparable credit for participating self-employed individuals, and to restore the pre-1986 status of deductions incurred in connection with services performed as a member of a Reserve component of the Armed Forces.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2001

Mr. NETHERCUTT (for himself, Mr. FOLEY, Mr. REYES, Ms. DUNN, Mr. WATKINS, Mr. DOYLE, Mrs. EMERSON, Mr. ENGLISH, and Mrs. THURMAN) 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 allow employers a credit against income tax with respect to employees who participate in the military reserves, to allow a comparable credit for participating self-employed individuals, and to restore the pre-1986 status of deductions incurred in connection with services performed as a member of a Reserve component of the Armed Forces.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Reserve Employer Tax
3 Credit Act of 2001”.

4 **SEC. 2. TAX CREDIT FOR RESERVE FORCES PARTICIPA-**
5 **TION.**

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

10 **“SEC. 45E. RESERVE FORCE PARTICIPATION CREDIT.**

11 “(a) GENERAL RULE.—For purposes of section 38,
12 the reserve force participation credit determined under
13 this section is an amount equal to the sum of—

14 “(1) the employment credit with respect to all
15 qualified employees of the taxpayer, plus

16 “(2) the self-employment credit of a qualified
17 self-employed taxpayer.

18 “(b) EMPLOYMENT CREDIT.—For purposes of this
19 section—

20 “(1) IN GENERAL.—The employment credit
21 with respect to a qualified employee of the taxpayer
22 for any taxable year is equal to 50 percent of the
23 amount of qualified compensation that would have
24 been paid to the employee with respect to all periods
25 during which the employee participates in qualified
26 reserve duty to the exclusion of normal employment

1 duties, including time spent in a travel status had
2 the employee not been participating in qualified re-
3 serve duty. The employment credit, with respect to
4 all qualified employees, is equal to the sum of the
5 employment credits for each qualified employee
6 under this subsection.

7 “(2) QUALIFIED COMPENSATION.—When used
8 with respect to the compensation paid or that would
9 have been paid to a qualified employee for any pe-
10 riod during which the employee participates in quali-
11 fied reserve duty, the term ‘qualified compensation’
12 means compensation—

13 “(A) which is normally contingent on the
14 employee’s presence for work and which would
15 be deductible from the taxpayer’s gross income
16 under section 162(a)(1) if the employee were
17 present and receiving such compensation, and

18 “(B) which is not characterized by the tax-
19 payer as vacation or holiday pay, or as sick
20 leave or pay, or as any other form of pay for
21 a nonspecific leave of absence, and with respect
22 to which the number of days the employee par-
23 ticipates in qualified reserve duty does not re-
24 sult in any reduction in the amount of vacation

1 time, sick leave, or other nonspecific leave pre-
2 viously credited to or earned by the employee.

3 “(3) QUALIFIED EMPLOYEE.—The term ‘quali-
4 fied employee’ means a person who—

5 “(A) has been an employee of the taxpayer
6 for the 21-day period immediately preceding the
7 period during which the employee participates
8 in qualified reserve duty, and

9 “(B) is a member of the Ready Reserve of
10 a reserve component of an Armed Force of the
11 United States as defined in sections 10142 and
12 10101 of title 10, United States Code.

13 “(c) SELF-EMPLOYMENT CREDIT.—

14 “(1) IN GENERAL.—The self-employment credit
15 of a qualified self-employed taxpayer for any taxable
16 year is equal to 50 percent of the excess, if any, of—

17 “(A) the self-employed taxpayer’s average
18 daily self-employment income for the taxable
19 year over

20 “(B) the average daily military pay and al-
21 lowances received by the taxpayer during the
22 taxable year, while participating in qualified re-
23 serve duty to the exclusion of the taxpayer’s
24 normal self-employment duties for the number
25 of days the taxpayer participates in qualified re-

1 serve duty during the taxable year, including
2 time spent in a travel status.

3 “(2) AVERAGE DAILY SELF-EMPLOYMENT IN-
4 COME AND AVERAGE DAILY MILITARY PAY AND AL-
5 LOWANCES.—As used with respect to a self-em-
6 ployed taxpayer—

7 “(A) the term ‘average daily self-employ-
8 ment income’ means the self-employment in-
9 come (as defined in section 1402) of the tax-
10 payer for the taxable year divided by the dif-
11 ference between—

12 “(i) 365, and

13 “(ii) the number of days the taxpayer
14 participates in qualified reserve duty dur-
15 ing the taxable year, including time spent
16 in a travel status, and

17 “(B) the term ‘average daily military pay
18 and allowances’ means—

19 “(i) the amount paid to the taxpayer
20 during the taxable year as military pay
21 and allowances on account of the tax-
22 payer’s participation in qualified reserve
23 duty, divided by

1 “(ii) the total number of days the tax-
2 payer participates in qualified reserve duty,
3 including time spent in travel status.

4 “(3) QUALIFIED SELF-EMPLOYED TAXPAYER.—
5 The term ‘qualified self-employed taxpayer’ means a
6 taxpayer who—

7 “(A) has net earnings from self-employ-
8 ment (as defined in section 1402) for the tax-
9 able year, and

10 “(B) is a member of the Ready Reserve of
11 a reserve component of an Armed Force of the
12 United States.

13 “(d) CREDIT IN ADDITION TO DEDUCTION.—The
14 employment credit provided in this section is in addition
15 to any deduction otherwise allowable with respect to com-
16 pensation actually paid to a qualified employee during any
17 period the employee participates in qualified reserve duty
18 to the exclusion of normal employment duties.

19 “(e) LIMITATIONS.—

20 “(1) MAXIMUM CREDIT.—

21 “(A) IN GENERAL.—The credit allowed by
22 subsection (a) for the taxable year—

23 “(i) shall not exceed \$7,500 in the ag-
24 gregate, and

1 “(ii) shall not exceed \$2,000 with re-
 2 spect to each qualified employee.

3 “(B) CONTROLLED GROUPS.—For pur-
 4 poses of applying the limitations in subpara-
 5 graph (A)—

6 “(i) all members of a controlled group
 7 shall be treated as one taxpayer, and

8 “(ii) such limitations shall be allo-
 9 cated among the members of such group in
 10 such manner as the Secretary may pre-
 11 scribe.

12 For purposes of this subparagraph, all persons
 13 treated as a single employer under subsection
 14 (a) or (b) of section 52 or subsection (m) or (o)
 15 of section 414 shall be treated as members of
 16 a controlled group.

17 “(2) DISALLOWANCE FOR FAILURE TO COMPLY
 18 WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF
 19 MEMBERS OF THE RESERVE COMPONENTS OF THE
 20 ARMED FORCES OF THE UNITED STATES.—No credit
 21 shall be allowed under subsection (a) to a taxpayer
 22 for—

23 “(A) any taxable year in which the tax-
 24 payer is under a final order, judgment, or other
 25 process issued or required by a district court of

1 the United States under section 4323 of title 38
2 of the United States Code with respect to a vio-
3 lation of chapter 43 of such title, and

4 “(B) the two succeeding taxable years.

5 “(3) DISALLOWANCE WITH RESPECT TO PER-
6 SONS ORDERED TO ACTIVE DUTY FOR TRAINING.—
7 No credit shall be allowed under subsection (a) to a
8 taxpayer with respect to any period for which the
9 person on whose behalf the credit would otherwise be
10 allowable is called or ordered to active duty for any
11 of the following types of duty:

12 “(A) active duty for training under any
13 provision of title 10, United States Code,

14 “(B) training at encampments, maneuvers,
15 outdoor target practice, or other exercises under
16 chapter 5 of title 32, United States Code, or

17 “(C) full-time National Guard duty, as de-
18 fined in section 101(d)(5) of title 10, United
19 States Code.

20 “(f) GENERAL DEFINITIONS AND SPECIAL RULES.—

21 “(1) MILITARY PAY AND ALLOWANCES.—The
22 term ‘military pay’ means pay as that term is de-
23 fined in section 101(21) of title 37, United States
24 Code, and the term ‘allowances’ means the allow-

ances payable to a member of the Armed Forces of the United States under chapter 7 of that title.

“(2) QUALIFIED RESERVE DUTY.—The term ‘qualified reserve duty’ includes only active duty performed, as designated in the reservist’s military orders, in support of a contingency operation as defined in section 101(a)(13) of title 10, United States Code.

“(3) NORMAL EMPLOYMENT AND SELF-EMPLOYMENT DUTIES.—A person shall be deemed to be participating in qualified reserve duty to the exclusion of normal employment or self-employment duties if the person does not engage in or undertake any substantial activity related to the person’s normal employment or self-employment duties while participating in qualified reserve duty unless in an authorized leave status or other authorized absence from military duties. If a person engages in or undertakes any substantial activity related to the person’s normal employment or self-employment duties at any time while participating in a period of qualified reserve duty, unless during a period of authorized leave or other authorized absence from military duties, the person shall be deemed to have engaged

1 in or undertaken such activity for the entire period
2 of qualified reserve duty.

3 “(4) CERTAIN RULES TO APPLY.—Rules similar
4 to the rules of subsections (c), (d), and (e) of section
5 52 shall apply for purposes of this section.”

6 (b) CONFORMING AMENDMENT.—Section 38(b) of
7 the Internal Revenue Code of 1986 (relating to general
8 business credit) is amended—

9 (1) by striking “plus” at the end of paragraph
10 (12),

11 (2) by striking the period at the end of para-
12 graph (13) and inserting “, plus”, and

13 (3) by adding at the end the following new
14 paragraph:

15 “(14) the reserve force participation credit de-
16 termined under section 45E(a).”.

17 (c) CLERICAL AMENDMENT.—The table of sections
18 for subpart D of part IV of subchapter A of chapter 1
19 of the Internal Revenue Code of 1986 is amended by in-
20 serting after the item relating to section 45D the following
21 new item:

“Sec. 45E. Reserve force participation credit.”.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning after
24 the calendar year which includes the date of the enactment
25 of this Act.

1 **SEC. 3. DEDUCTION OF CERTAIN EXPENSES PAID OR IN-**
2 **CURRED BY MEMBERS OF THE RESERVE**
3 **COMPONENTS OF THE ARMED FORCES.**

4 (a) IN GENERAL.—Paragraph (2) of section 62(a) of
5 the Internal Revenue Code of 1986 (defining adjusted
6 gross income) is amended by adding at the end the fol-
7 lowing new subparagraph:

8 “(D) CERTAIN EXPENSES OF MEMBERS OF
9 RESERVE COMPONENTS OF THE ARMED FORCES
10 OF THE UNITED STATES.—The deductions al-
11 lowed by part VI (section 161 and following)
12 which consist of—

13 “(i) expenses of travel, meals, and
14 lodging while away from home, and

15 “(ii) expenses of transportation,
16 paid or incurred by the taxpayer in connection
17 with the performance of services by such tax-
18 payer as a member of a Reserve component of
19 the Armed Forces (as defined in section 10101
20 of title 10, United States Code).”.

21 (b) TWO PERCENT FLOOR ON ITEMIZED DEDUC-
22 TIONS NOT TO APPLY.—Subsection (b) of section 67 of
23 such Code is amended by striking “and” at the end of
24 paragraph (11), by striking the period at the end of para-
25 graph (12) and inserting “, and”, and by adding at the
26 end the following new paragraph:

1 “(13) the deductions under part VI (section
 2 161 and following) for expenses paid or incurred by
 3 the taxpayer in connection with the performance of
 4 services by such taxpayer as a member of a Reserve
 5 component of the Armed Forces (as defined in sec-
 6 tion 10101 of title 10, United States Code).”.

7 (c) 50-PERCENT CEILING ON DEDUCTION FOR MEAL
 8 AND ENTERTAINMENT, ETC., EXPENSES NOT TO
 9 APPLY.—Paragraph (2) of section 274(n) of such Code
 10 is amended by striking “or” at the end of subparagraph
 11 (D), by striking the period at the end of subparagraph
 12 (E) and inserting “, or”, and by inserting after subpara-
 13 graph (E) the following new subparagraph:

14 “(F) any expense in connection with the
 15 performance of services by the taxpayer as a
 16 member of a Reserve component of the Armed
 17 Forces (as defined in section 10101 of title 10,
 18 United States Code).”.

19 (d) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to taxable years beginning after
 21 the calendar year which includes the date of the enactment
 22 of this Act.

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