

**Calendar No. 238**112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION**S. 1917**

To create jobs by providing payroll tax relief for middle class families and businesses, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 28, 2011

Mr. CASEY (for himself, Mr. MENENDEZ, Mr. BROWN of Ohio, Ms. STABENOW, Mr. REID, Mr. SCHUMER, Mr. BLUMENTHAL, Mr. DURBIN, Mr. LAUTENBERG, Mr. LEAHY, and Mr. WHITEHOUSE) introduced the following bill; which was read the first time

NOVEMBER 29, 2011

Read the second time and placed on the calendar

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**A BILL**

To create jobs by providing payroll tax relief for middle class families and businesses, 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 “Middle Class Tax Cut  
5 Act of 2011”.

1 **TITLE I—PAYROLL TAX RELIEF**

2 **SEC. 101. TEMPORARY PAYROLL TAX CUT FOR EMPLOYERS,**  
3 **EMPLOYEES AND THE SELF-EMPLOYED.**

4 (a) WAGES.—Notwithstanding any other provision of  
5 law—

6 (1) with respect to remuneration received dur-  
7 ing the payroll tax holiday period, the rate of tax  
8 under 3101(a) of the Internal Revenue Code of 1986  
9 shall be 3.1 percent (including for purposes of deter-  
10 mining the applicable percentage under sections  
11 3201(a) and 3211(a) of such Code), and

12 (2) with respect to remuneration paid during  
13 the payroll tax holiday period, the rate of tax under  
14 3111(a) of such Code shall be 3.1 percent (including  
15 for purposes of determining the applicable percent-  
16 age under sections 3221(a) and 3211(a) of such  
17 Code).

18 (3) Subsection (a)(2) shall only apply to—

19 (A) employees performing services in a  
20 trade or business of a qualified employer, or

21 (B) in the case of a qualified employer ex-  
22 empt from tax under section 501(a), in further-  
23 ance of the activities related to the purpose or  
24 function constituting the basis of the employer's  
25 exemption under section 501.

1           (4) Subsection (a)(2) shall apply only to the  
2 first \$5 million of remuneration or compensation  
3 paid by a qualified employer subject to section  
4 3111(a) or a corresponding amount of compensation  
5 subject to 3221(a).

6           (b) SELF-EMPLOYMENT TAXES.—

7           (1) IN GENERAL.—Notwithstanding any other  
8 provision of law, with respect to any taxable year  
9 which begins in the payroll tax holiday period, the  
10 rate of tax under section 1401(a) of the Internal  
11 Revenue Code of 1986 shall be—

12                   (A) 6.2 percent on the portion of net earn-  
13 ings from self-employment subject to 1401(a)  
14 during the payroll tax period that does not ex-  
15 ceed the amount of the excess of \$5 million over  
16 total remuneration, if any, subject to section  
17 3111(a) paid during the payroll tax holiday pe-  
18 riod to employees of the self-employed person,  
19 and

20                   (B) 9.3 percent for any portion of net  
21 earnings from self-employment not subject to  
22 subsection (b)(1)(A).

23           (2) COORDINATION WITH DEDUCTIONS FOR EM-  
24 PLOYMENT TAXES.—For purposes of the Internal

1 Revenue Code of 1986, in the case of any taxable  
2 year which begins in the payroll tax holiday period—

3 (A) DEDUCTION IN COMPUTING NET EARN-  
4 INGS FROM SELF-EMPLOYMENT.—The deduc-  
5 tion allowed under section 1402(a)(12) of such  
6 Code shall be the sum of (i) 4.55 percent times  
7 the amount of the taxpayer's net earnings from  
8 self-employment for the taxable year subject to  
9 paragraph (b)(1)(A) of this section, plus (ii)  
10 7.65 percent of the taxpayer's net earnings  
11 from self-employment in excess of that amount.

12 (B) INDIVIDUAL DEDUCTION.—The deduc-  
13 tion under section 164(f) of such Code shall be  
14 equal to the sum of (i) one-half of the taxes im-  
15 posed by section 1401 (after the application of  
16 this section) with respect to the taxpayer's net  
17 earnings from self-employment for the taxable  
18 year subject to paragraph (b)(1)(A) of this sec-  
19 tion plus (ii) 62.7 percent of the taxes imposed  
20 by section 1401 (after the application of this  
21 section) with respect to the excess.

22 (c) REGULATORY AUTHORITY.—The Secretary may  
23 prescribe any such regulations or other guidance necessary  
24 or appropriate to carry out this section, including the allo-  
25 cation of the excess of \$5 million over total remuneration

1 subject to section 3111(a) paid during the payroll tax holi-  
2 day period among related taxpayers treated as a single  
3 qualified employer.

4 (d) DEFINITIONS.—

5 (1) PAYROLL TAX HOLIDAY PERIOD.—The term  
6 “payroll tax holiday period” means calendar year  
7 2012.

8 (2) QUALIFIED EMPLOYER.—For purposes of  
9 this paragraph,

10 (A) IN GENERAL.—The term “qualified  
11 employer” means any employer other than the  
12 United States, any State or possession of the  
13 United States, or any political subdivision  
14 thereof, or any instrumentality of the foregoing.

15 (B) TREATMENT OF EMPLOYEES OF POST-  
16 SECONDARY EDUCATIONAL INSTITUTIONS.—  
17 Notwithstanding paragraph (A), the term  
18 “qualified employer” includes any employer  
19 which is a public institution of higher education  
20 (as defined in section 101 of the Higher Edu-  
21 cation Act of 1965).

22 (3) AGGREGATION RULES.—For purposes of  
23 this subsection rules similar to sections 414(b),  
24 414(c), 414(m) and 414(o) shall apply to determine  
25 when multiple entities shall be treated as a single

1 employer, and rules with respect to predecessor and  
2 successor employers may be applied, in such manner  
3 as may be prescribed by the Secretary.

4 (e) TRANSFERS OF FUNDS.—

5 (1) TRANSFERS TO FEDERAL OLD-AGE AND  
6 SURVIVORS INSURANCE TRUST FUND.—There are  
7 hereby appropriated to the Federal Old-Age and  
8 Survivors Trust Fund and the Federal Disability In-  
9 surance Trust Fund established under section 201  
10 of the Social Security Act (42 U.S.C. 401) amounts  
11 equal to the reduction in revenues to the Treasury  
12 by reason of the application of subsections (a) and  
13 (b) to employers other than those described in  
14 (e)(2). Amounts appropriated by the preceding sen-  
15 tence shall be transferred from the general fund at  
16 such times and in such manner as to replicate to the  
17 extent possible the transfers which would have oc-  
18 curred to such Trust Fund had such amendments  
19 not been enacted.

20 (2) TRANSFERS TO SOCIAL SECURITY EQUIVA-  
21 LENT BENEFIT ACCOUNT.—There are hereby appro-  
22 priated to the Social Security Equivalent Benefit Ac-  
23 count established under section 15A(a) of the Rail-  
24 road Retirement Act of 1974 (45 U.S.C. 231n–1(a))  
25 amounts equal to the reduction in revenues to the

1 Treasury by reason of the application of subsection  
2 (a) to employers subject to the Railroad Retirement  
3 Tax. Amounts appropriated by the preceding sen-  
4 tence shall be transferred from the general fund at  
5 such times and in such manner as to replicate to the  
6 extent possible the transfers which would have oc-  
7 curred to such Account had such amendments not  
8 been enacted.

9 (f) COORDINATION WITH OTHER FEDERAL LAWS.—  
10 For purposes of applying any provision of Federal law  
11 other than the provisions of the Internal Revenue Code  
12 of 1986, the rate of tax in effect under section 3101(a)  
13 of such Code shall be determined without regard to the  
14 reduction in such rate under this section.

15 **SEC. 102. TEMPORARY TAX CREDIT FOR INCREASED PAY-**  
16 **ROLL.**

17 (a) IN GENERAL.—Notwithstanding any other provi-  
18 sion of law, each qualified employer shall be allowed, with  
19 respect to wages for services performed for such qualified  
20 employer, a payroll increase credit determined as follows:

21 (1) With respect to the period from October 1,  
22 2011 through December 31, 2011, 6.2 percent of  
23 the excess, if any, (but not more than \$12.5 million  
24 of the excess) of the wages subject to tax under sec-  
25 tion 3111(a) of the Internal Revenue Code of 1986

1 for such period over such wages for the cor-  
2 responding period of 2010.

3 (2) With respect to the period from January 1,  
4 2012 through December 31, 2012,

5 (A) 6.2 percent of the excess, if any, (but  
6 not more than \$50 million of the excess) of the  
7 wages subject to tax under section 3111(a) of  
8 the Internal Revenue Code of 1986 for such pe-  
9 riod over such wages for calendar year 2011,  
10 minus

11 (B) 3.1 percent of the excess (if any) of—

12 (i) the lesser of \$5,000,000 or such  
13 wages for calendar year 2012, over

14 (ii) such wages for calendar year  
15 2011.

16 (3) In the case of a qualified employer for  
17 which the wages subject to tax under section  
18 3111(a) of the Internal Revenue Code of 1986 (a)  
19 were zero for the corresponding period of 2010 re-  
20 ferred to in subsection (a)(1), the amount of such  
21 wages shall be deemed to be 80 percent of the  
22 amount of wages taken into account for the period  
23 from October 1, 2011 through December 31, 2011  
24 and (b) were zero for the calendar year 2011 re-  
25 ferred to in subsection (a)(2), then the amount of

1 such wages shall be deemed to be 80 percent of the  
2 amount of wages taken into account for 2012.

3 (4) This subsection (a) shall only apply with re-  
4 spect to the wages of employees performing services  
5 in a trade or business of a qualified employer or, in  
6 the case of a qualified employer exempt from tax  
7 under section 501(a) of the Internal Revenue Code  
8 of 1986, in furtherance of the activities related to  
9 the purpose or function constituting the basis of the  
10 employer's exemption under section 501.

11 (b) QUALIFIED EMPLOYERS.—For purposes of this  
12 section—

13 (1) IN GENERAL.—The term “qualified em-  
14 ployer” means any employer other than the United  
15 States, any State or possession of the United States,  
16 or any political subdivision thereof, or any instru-  
17 mentality of the foregoing.

18 (2) TREATMENT OF EMPLOYEES OF POST-SEC-  
19 ONDARY EDUCATIONAL INSTITUTIONS.—Notwith-  
20 standing subparagraph (1), the term “qualified em-  
21 ployer” includes any employer which is a public in-  
22 stitution of higher education (as defined in section  
23 101 of the Higher Education Act of 1965).

24 (c) AGGREGATION RULES.—For purposes of this sub-  
25 section rules similar to sections 414(b), 414(e), 414(m)

1 and 414(o) of the Internal Revenue Code of 1986 shall  
2 apply to determine when multiple entities shall be treated  
3 as a single employer, and rules with respect to predecessor  
4 and successor employers may be applied, in such manner  
5 as may be prescribed by the Secretary.

6 (d) APPLICATION OF CREDITS.—The payroll increase  
7 credit shall be treated as a credit allowable under Subtitle  
8 C of the Internal Revenue Code of 1986 under rules pre-  
9 scribed by the Secretary of the Treasury, provided that  
10 the amount so treated for the period described in sub-  
11 section (a)(1) or subsection (a)(2) shall not exceed the  
12 amount of tax imposed on the qualified employer under  
13 section 3111(a) of such Code for the relevant period. Any  
14 income tax deduction by a qualified employer for amounts  
15 paid under section 3111(a) of such Code or similar Rail-  
16 road Retirement Tax provisions shall be reduced by the  
17 amounts so credited.

18 (e) TRANSFERS TO FEDERAL OLD-AGE AND SUR-  
19 VIVORS INSURANCE TRUST FUND.—There are hereby ap-  
20 propriated to the Federal Old-Age and Survivors Trust  
21 Fund and the Federal Disability Insurance Trust Fund  
22 established under section 201 of the Social Security Act  
23 (42 U.S.C. 401) amounts equal to the reduction in reve-  
24 nues to the Treasury by reason of the amendments made  
25 by subsection (d). Amounts appropriated by the preceding

1 sentence shall be transferred from the general fund at  
 2 such times and in such manner as to replicate to the ex-  
 3 tent possible the transfers which would have occurred to  
 4 such Trust Fund had such amendments not been enacted.

5 (f) APPLICATION TO RAILROAD RETIREMENT  
 6 TAXES.—For purposes of qualified employers that are em-  
 7 ployers under section 3231(a) of the Internal Revenue  
 8 Code of 1986, subsections (a)(1) and (a)(2) of this section  
 9 shall apply by substituting section 3221 for section 3111,  
 10 and substituting the term “compensation” for “wages” as  
 11 appropriate.

## 12 **TITLE II—SURTAX ON** 13 **MILLIONAIRES**

### 14 **SEC. 201. SURTAX ON MILLIONAIRES.**

15 (a) IN GENERAL.—Subchapter A of chapter 1 of the  
 16 Internal Revenue Code of 1986 is amended by adding at  
 17 the end the following new part:

### 18 **“PART VIII—SURTAX ON MILLIONAIRES**

“Sec. 59B. Surtax on millionaires.

### 19 **“SEC. 59B. SURTAX ON MILLIONAIRES.**

20 “(a) GENERAL RULE.—In the case of a taxpayer  
 21 other than a corporation for any taxable year beginning  
 22 after 2012, there is hereby imposed (in addition to any  
 23 other tax imposed by this subtitle) a tax equal to 3.25  
 24 percent of so much of the modified adjusted gross income

1 of the taxpayer for such taxable year as exceeds  
2 \$1,000,000 (\$500,000, in the case of a married individual  
3 filing a separate return).

4 “(b) INFLATION ADJUSTMENT.—

5 “(1) IN GENERAL.—In the case of any taxable  
6 year beginning after 2013, each dollar amount under  
7 subsection (a) shall be increased by an amount equal  
8 to—

9 “(A) such dollar amount, multiplied by

10 “(B) the cost-of-living adjustment deter-  
11 mined under section 1(f)(3) for the calendar  
12 year in which the taxable year begins, deter-  
13 mined by substituting ‘calendar year 2011’ for  
14 ‘calendar year 1992’ in subparagraph (B)  
15 thereof.

16 “(2) ROUNDING.—If any amount as adjusted  
17 under paragraph (1) is not a multiple of \$10,000,  
18 such amount shall be rounded to the next highest  
19 multiple of \$10,000.

20 “(c) MODIFIED ADJUSTED GROSS INCOME.—For  
21 purposes of this section, the term ‘modified adjusted gross  
22 income’ means adjusted gross income reduced by any de-  
23 duction (not taken into account in determining adjusted  
24 gross income) allowed for investment interest (as defined  
25 in section 163(d)). In the case of an estate or trust, ad-

1 justed gross income shall be determined as provided in sec-  
2 tion 67(e).

3 “(d) SPECIAL RULES.—

4 “(1) NONRESIDENT ALIEN.—In the case of a  
5 nonresident alien individual, only amounts taken  
6 into account in connection with the tax imposed  
7 under section 871(b) shall be taken into account  
8 under this section.

9 “(2) CITIZENS AND RESIDENTS LIVING  
10 ABROAD.—The dollar amount in effect under sub-  
11 section (a) shall be decreased by the excess of—

12 “(A) the amounts excluded from the tax-  
13 payer’s gross income under section 911, over

14 “(B) the amounts of any deductions or ex-  
15 clusions disallowed under section 911(d)(6)  
16 with respect to the amounts described in sub-  
17 paragraph (A).

18 “(3) CHARITABLE TRUSTS.—Subsection (a)  
19 shall not apply to a trust all the unexpired interests  
20 in which are devoted to one or more of the purposes  
21 described in section 170(c)(2)(B).

22 “(4) NOT TREATED AS TAX IMPOSED BY THIS  
23 CHAPTER FOR CERTAIN PURPOSES.—The tax im-  
24 posed under this section shall not be treated as tax  
25 imposed by this chapter for purposes of determining

1 the amount of any credit under this chapter or for  
2 purposes of section 55.”.

3 (b) CLERICAL AMENDMENT.—The table of parts for  
4 subchapter A of chapter 1 of the Internal Revenue Code  
5 of 1986 is amended by adding at the end the following  
6 new item:

“PART VIII. SURTAX ON MILLIONAIRES.”.

7 (c) SECTION 15 NOT TO APPLY.—The amendment  
8 made by subsection (a) shall not be treated as a change  
9 in a rate of tax for purposes of section 15 of the Internal  
10 Revenue Code of 1986.

11 (d) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to taxable years beginning after  
13 December 31, 2012.



**Calendar No. 238**

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 1917**

**A BILL**

To create jobs by providing payroll tax relief for middle class families and businesses, and for other purposes.

NOVEMBER 29, 2011

Read the second time and placed on the calendar