

113TH CONGRESS
2D SESSION

S. 2540

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

JUNE 26, 2014

Mr. DURBIN (for himself, Mr. BROWN, Mr. REED, Ms. WARREN, Ms. BALDWIN, and Mr. SANDERS) 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. 45S. 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, and

5 “(C) in the case of—

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

9 “(I) provides compensation for at
10 least 90 percent of its employees for
11 services provided by such employees
12 during the taxable year at an hourly
13 rate (or equivalent thereof) not less
14 than an amount equal to 150 percent
15 of the Federal poverty level for a fam-
16 ily of three for the calendar year in
17 which the taxable year begins divided
18 by 2,080,

19 “(II) meets the retirement plan
20 requirements of subsection (c) with
21 respect to at least 90 percent of its
22 employees providing services during
23 the taxable year who are not highly
24 compensated employees, and

1 “(III) meets the additional re-
2 quirements of subparagraphs (A) and
3 (B) of paragraph (2), or

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

7 “(2) ADDITIONAL REQUIREMENTS FOR LARGE
8 EMPLOYERS.—

9 “(A) UNITED STATES EMPLOYMENT.—The
10 requirements of this subparagraph are met for
11 any taxable year if—

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

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

23 “(II) has a percentage increase
24 in such employees inside the United
25 States which is not less than the per-

1 centage increase in such employees
2 outside the United States,

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

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

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

19 “(iii) there is not a decrease in the
20 number of employees performing substan-
21 tially all of their services for the taxable
22 year inside the United States by reason of
23 the taxpayer contracting out such services
24 to persons who are not employees of the
25 taxpayer.

1 “(B) TREATMENT OF INDIVIDUALS IN THE
2 UNIFORMED SERVICES AND THE DISABLED.—
3 The requirements of this subparagraph are met
4 for any taxable year if—

5 “(i) the taxpayer provides differential
6 wage payments (as defined in section
7 3401(h)(2)) to each employee described in
8 section 3401(h)(2)(A) for any period dur-
9 ing the taxable year in an amount not less
10 than the difference between the wages
11 which would have been received from the
12 employer during such period and the
13 amount of pay and allowances which the
14 employee receives for service in the uni-
15 formed services during such period, and

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

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

24 “(A) MINIMUM WAGE.—In determining
25 whether the minimum wage requirements of

1 paragraph (1)(C)(i)(I) are met with respect to
2 90 percent of a taxpayer's employees for any
3 taxable year—

4 “(i) a taxpayer may elect to exclude
5 from such determination apprentices or
6 learners that an employer may exclude
7 under the regulations under section 14(a)
8 of the Fair Labor Standards Act of 1938,
9 and

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

22 “(B) RETIREMENT PLAN.—In determining
23 whether the retirement plan requirements of
24 paragraph (1)(C)(i)(II) are met with respect to
25 90 percent of a taxpayer's employees for any

1 taxable year, a taxpayer may elect to exclude
2 from such determination—

3 “(i) employees not meeting the age or
4 service requirements under section
5 410(a)(1) (or such lower age or service re-
6 quirements as the employer provides), and

7 “(ii) employees described in section
8 410(b)(3).

9 “(c) RETIREMENT PLAN REQUIREMENTS.—

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

17 “(2) APPLICABLE ELIGIBLE RETIREMENT
18 PLAN.—For purposes of this subsection, the term
19 ‘applicable eligible retirement plan’ means an eligible
20 retirement plan which, with respect to the plan year
21 described in paragraph (1), is either—

22 “(A) a defined contribution plan which—

23 “(i) requires the employer to make
24 nonelective contributions of at least 5 per-

1 cent of the compensation of the employee,
2 or

3 “(ii) both—

4 “(I) includes an eligible auto-
5 matic contribution arrangement (as
6 defined in section 414(w)(3)) under
7 which the uniform percentage de-
8 scribed in section 414(w)(3)(B) is at
9 least 5 percent, and

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

19 “(B) a defined benefit plan—

20 “(i) with respect to which the accrued
21 benefit of the employee derived from em-
22 ployer contributions, when expressed as an
23 annual retirement benefit, is not less than
24 the product of—

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

7 “(II) the employee’s final average
8 pay, or

9 “(ii) which is an applicable defined
10 benefit plan (as defined in section
11 411(a)(13)(B))—

12 “(I) which meets the interest
13 credit requirements of section
14 411(b)(5)(B)(i) with respect to the
15 plan year, and

16 “(II) under which the employee
17 receives a pay credit for the plan year
18 which is not less than 5 percent of
19 compensation.

20 “(3) DEFINITIONS AND SPECIAL RULES.—For
21 purposes of this subsection—

22 “(A) ELIGIBLE RETIREMENT PLAN.—The
23 term ‘eligible retirement plan’ has the meaning
24 given such term by section 402(c)(8)(B), except
25 that in the case of an account or annuity de-

1 scribed in clause (i) or (ii) thereof, such term
2 shall only include an account or annuity which
3 is a simplified employee pension (as defined in
4 section 408(k)).

5 “(B) FINAL AVERAGE PAY.—For purposes
6 of paragraph (2)(B)(i)(II), final average pay
7 shall be determined using the period of consecu-
8 tive years (not exceeding 5) during which the
9 employee had the greatest compensation from
10 the taxpayer.

11 “(C) ALTERNATIVE PLAN DESIGNS.—The
12 Secretary may prescribe regulations for a tax-
13 payer to meet the requirements of this sub-
14 section through a combination of defined con-
15 tribution plans or defined benefit plans de-
16 scribed in paragraph (1) or through a combina-
17 tion of both such types of plans.

18 “(D) PLANS MUST MEET REQUIREMENTS
19 WITHOUT TAKING INTO ACCOUNT SOCIAL SECUR-
20 ITY AND SIMILAR CONTRIBUTIONS AND BENE-
21 FITS.—A rule similar to the rule of section
22 416(e) shall apply.

23 “(d) QUALIFIED WAGES AND COMPENSATION.—For
24 purposes of this section—

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

6 “(A) who perform substantially all of their
7 services for such Patriot employer inside the
8 United States, and

9 “(B) with respect to whom—

10 “(i) in the case of a Patriot employer
11 which employs an average of more than 50
12 employees on business days during the tax-
13 able year, the requirements of subclauses
14 (I) and (II) of subsection (b)(1)(C)(i) are
15 met, and

16 “(ii) in the case of any other Patriot
17 employer, the requirements of either sub-
18 clause (I) or (II) of subsection (b)(1)(C)(i)
19 are met.

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

23 “(3) COMPENSATION.—For purposes of sub-
24 sections (b)(1)(C)(i)(I) and (c), the term ‘compensa-
25 tion’ has the same meaning as qualified wages, ex-

1 cept that section 51(c)(2) shall be disregarded in de-
2 termining the amount of such wages.

3 “(e) AGGREGATION RULES.—For purposes of this
4 section—

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

8 “(2) SPECIAL RULES FOR CERTAIN REQUIRE-
9 MENTS.—For purposes of applying paragraphs
10 (1)(A) and (2)(A) of subsection (b)—

11 “(A) the determination under subsections
12 (a) and (b) of section 52 for purposes of para-
13 graph (1) shall be made without regard to sec-
14 tion 1563(b)(2)(C) (relating to exclusion of for-
15 eign corporations), and

16 “(B) if any person treated as a single tax-
17 payer under this subsection (after application of
18 subparagraph (A)), or any predecessor of such
19 person, was an expatriated entity (as defined in
20 section 7874(a)(2)) for any taxable year ending
21 after March 4, 2003, then all persons treated
22 as a single taxpayer with such person shall be
23 treated as expatriated entities.

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

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

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

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

13 (b) ALLOWANCE AS GENERAL BUSINESS CREDIT.—
14 Section 38(b) of the Internal Revenue Code of 1986 is
15 amended by striking “plus” at the end of paragraph (35),
16 by striking the period at the end of paragraph (36) and
17 inserting “, plus”, and by adding at the end the following:

18 “(37) in the case of a Patriot employer (as de-
19 fined in section 45S(b)) for any taxable year, the
20 Patriot employer credit determined under section
21 45S(a).”.

22 (c) DENIAL OF DOUBLE BENEFIT.—Subsection (a)
23 of section 280C of the Internal Revenue Code of 1986 is
24 amended by inserting “45S(a),” after “45P(a)”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2014.

4 **SEC. 3. DEFER DEDUCTION OF INTEREST EXPENSE RE-**
5 **LATED TO DEFERRED INCOME.**

6 (a) IN GENERAL.—Section 163 of the Internal Rev-
7 enue Code of 1986 (relating to deductions for interest ex-
8 pense) is amended by redesignating subsection (n) as sub-
9 section (o) and by inserting after subsection (m) the fol-
10 lowing new subsection:

11 “(n) DEFERRAL OF DEDUCTION FOR INTEREST EX-
12 PENSE RELATED TO DEFERRED INCOME.—

13 “(1) GENERAL RULE.—The amount of foreign-
14 related interest expense of any taxpayer allowed as
15 a deduction under this chapter for any taxable year
16 shall not exceed an amount equal to the applicable
17 percentage of the sum of—

18 “(A) the taxpayer’s foreign-related interest
19 expense for the taxable year, plus

20 “(B) the taxpayer’s deferred foreign-re-
21 lated interest expense.

22 For purposes of the paragraph, the applicable per-
23 centage is the percentage equal to the current inclu-
24 sion ratio.

1 “(2) TREATMENT OF DEFERRED DEDUC-
2 TIONS.—If, for any taxable year, the amount of the
3 limitation determined under paragraph (1) exceeds
4 the taxpayer’s foreign-related interest expense for
5 the taxable year, there shall be allowed as a deduc-
6 tion for the taxable year an amount equal to the
7 lesser of—

8 “(A) such excess, or

9 “(B) the taxpayer’s deferred foreign-re-
10 lated interest expense.

11 “(3) DEFINITIONS AND SPECIAL RULE.—For
12 purposes of this subsection—

13 “(A) FOREIGN-RELATED INTEREST EX-
14 PENSE.—The term ‘foreign-related interest ex-
15 pense’ means, with respect to any taxpayer for
16 any taxable year, the amount which bears the
17 same ratio to the amount of interest expense
18 for such taxable year allocated and apportioned
19 under sections 861, 864(e), and 864(f) to in-
20 come from sources outside the United States
21 as—

22 “(i) the value of all stock held by the
23 taxpayer in all section 902 corporations
24 with respect to which the taxpayer meets

1 the ownership requirements of subsection
2 (a) or (b) of section 902, bears to

3 “(ii) the value of all assets of the tax-
4 payer which generate gross income from
5 sources outside the United States.

6 “(B) DEFERRED FOREIGN-RELATED IN-
7 TEREST EXPENSE.—The term ‘deferred foreign-
8 related interest expense’ means the excess, if
9 any, of the aggregate foreign-related interest
10 expense for all prior taxable years beginning
11 after December 31, 2014, over the aggregate
12 amount allowed as a deduction under para-
13 graphs (1) and (2) for all such prior taxable
14 years.

15 “(C) VALUE OF ASSETS.—Except as other-
16 wise provided by the Secretary, for purposes of
17 subparagraph (A)(ii), the value of any asset
18 shall be the amount with respect to such asset
19 determined for purposes of allocating and ap-
20 portioning interest expense under sections 861,
21 864(e), and 864(f).

22 “(D) CURRENT INCLUSION RATIO.—The
23 term ‘current inclusion ratio’ means, with re-
24 spect to any domestic corporation which meets
25 the ownership requirements of subsection (a) or

1 (b) of section 902 with respect to one or more
2 section 902 corporations for any taxable year,
3 the ratio (expressed as a percentage) of—

4 “(i) the sum of all dividends received
5 by the domestic corporation from all such
6 section 902 corporations during the taxable
7 year plus amounts includible in gross in-
8 come under section 951(a) from all such
9 section 902 corporations, in each case com-
10 puted without regard to section 78, divided
11 by

12 “(ii) the aggregate amount of post-
13 1986 undistributed earnings.

14 “(E) AGGREGATE AMOUNT OF POST-1986
15 UNDISTRIBUTED EARNINGS.—The term ‘aggre-
16 gate amount of post-1986 undistributed earn-
17 ings’ means, with respect to any domestic cor-
18 poration which meets the ownership require-
19 ments of subsection (a) or (b) of section 902
20 with respect to one or more section 902 cor-
21 porations, the domestic corporation’s pro rata
22 share of the post-1986 undistributed earnings
23 (as defined in section 902(c)(1)) of all such sec-
24 tion 902 corporations.

1 “(F) FOREIGN CURRENCY CONVERSION.—
2 For purposes of determining the current inclu-
3 sion ratio, and except as otherwise provided by
4 the Secretary, the aggregate amount of post-
5 1986 undistributed earnings for the taxable
6 year shall be determined by translating each
7 section 902 corporation’s post-1986 undistrib-
8 uted earnings into dollars using the average ex-
9 change rate for such year.

10 “(G) SECTION 902 CORPORATION.—The
11 term ‘section 902 corporation’ has the meaning
12 given to such term by section 909(d)(5).

13 “(4) TREATMENT OF AFFILIATED GROUPS.—
14 The current inclusion ratio of each member of an af-
15 filiated group (as defined in section 864(e)(5)(A))
16 shall be determined as if all members of such group
17 were a single corporation.

18 “(5) APPLICATION TO SEPARATE CATEGORIES
19 OF INCOME.—This subsection shall be applied sepa-
20 rately with respect to the categories of income speci-
21 fied in section 904(d)(1).

22 “(6) REGULATIONS.—The Secretary may pre-
23 scribe such regulations or other guidance as is nec-
24 essary or appropriate to carry out the purposes of

1 this subsection, including regulations or other guid-
2 ance providing—

3 “(A) for the proper application of this sub-
4 section with respect to changes in ownership of
5 a section 902 corporation,

6 “(B) that certain corporations that other-
7 wise would not be members of the affiliated
8 group will be treated as members of the affili-
9 ated group for purposes of this subsection,

10 “(C) for the proper application of this sub-
11 section with respect to the taxpayer’s share of
12 a deficit in earnings and profits of a section
13 902 corporation,

14 “(D) for appropriate adjustments to the
15 determination of the value of stock in any sec-
16 tion 902 corporation for purposes of this sub-
17 section or to the foreign-related interest expense
18 to account for income that is subject to tax
19 under section 882(a)(1), and

20 “(E) for the proper application of this sub-
21 section with respect to interest expense that is
22 directly allocable to income with respect to cer-
23 tain assets.”.

1 (b) **EFFECTIVE DATE.**—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2014.

○