

107TH CONGRESS  
1ST SESSION

S. 1710

To amend the Internal Revenue Code of 1986 to provide that tips received for certain services shall not be subject to income or employment taxes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2001

Mr. SMITH of New Hampshire 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 that tips received for certain services shall not be subject to income or employment taxes.

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: TIPS RECEIVED FOR CERTAIN SERVICES NOT

4 SUBJECT TO INCOME OR EMPLOYMENT  
5 TAXES.

6 (a) IN GENERAL.—Section 102 of the Internal Rev-  
7 enue Code of 1986 (relating to gifts and inheritances) is  
8 amended by adding at the end the following new sub-  
9 section:

10        "(d) TIPS RECEIVED FOR CERTAIN SERVICES.—

1           “(1) IN GENERAL.—For purposes of subsection  
2           (a), tips received by an individual for qualified serv-  
3           ices performed by such individual shall be treated as  
4           property transferred by gift.

5           “(2) QUALIFIED SERVICES.—For purposes of  
6           this subsection, the term ‘qualified services’ means  
7           cosmetology, hospitality (including lodging and food  
8           and beverage services), recreation, baggage handling,  
9           transportation, delivery, shoe shine, and other serv-  
10           ices where tips are customary.

11           “(3) ANNUAL LIMIT.—The amount excluded  
12           from gross income for the taxable year by reason of  
13           paragraph (1) with respect to each service provider  
14           shall not exceed \$10,000.

15           “(4) EMPLOYEE TAXABLE ON AT LEAST MIN-  
16           IMUM WAGE.—Paragraph (1) shall not apply to tips  
17           received by an employee during any month to the ex-  
18           tent that such tips—

19           “(A) are deemed to have been paid by the  
20           employer to the employee pursuant to section  
21           3121(q) (without regard to whether such tips  
22           are reported under section 6053), and

23           “(B) do not exceed the excess of—

24           “(i) the minimum wage rate applica-  
25           ble to such individual under section 6(a)(1)

1 of the Fair Labor Standards Act of 1938  
2 (determined without regard to section 3(m))  
3 of such Act), over

7       “(5) TIPS.—For purposes of this title, the term  
8       ‘tip’ means a gratuity paid by an individual for serv-  
9       ices performed for such individual (or for a group  
10      which includes such individual) by another individual  
11      if such services are not provided pursuant to an em-  
12      ployment or similar contractual relationship between  
13      such individual.”

14 (b) EXCLUSION FROM SOCIAL SECURITY TAXES.—

17               “(12)(A) tips paid in any medium other than  
18               cash;

19           “(B) cash tips received by an employee in any  
20           calendar month in the course of his employment by  
21           an employer unless the amount of such cash tips is  
22           \$20 or more and then only to the extent includible  
23           in gross income after the application of section  
24           102(d).”;

3                   “(10)((A) tips paid in any medium other than  
4                   cash;

5           “(B) cash tips received by an employee in any  
6        calendar month in the course of his employment by  
7        an employer unless the amount of such cash tips is  
8        \$20 or more and then only to the extent includible  
9        in gross income after the application of section  
10      102(d) of the Internal Revenue Code of 1986 of  
11      such month.”; and

14                 “(3) Solely for purposes of the taxes imposed  
15         by section 3201 and other provisions of this chapter  
16         insofar as they relate to such taxes, the term ‘com-  
17         pensation’ also includes cash tips received by an em-  
18         ployee in any calendar month in the course of his  
19         employment by an employer if the amount of such  
20         cash tips is \$20 or more and then only to the extent  
21         includible in gross income after the application of  
22         section 102(d).”.

23 (c) EXCLUSION FROM UNEMPLOYMENT COMPENSA-  
24 TION TAXES.—Submission (s) of section 3306 of such  
25 Code is amended to read as follows:

1        “(s) TIPS NOT TREATED AS WAGES.—For purposes  
2 of this chapter, the term ‘wages’ shall include tips received  
3 in any month only to the extent includable in gross income  
4 after the application of section 102(d) of such month.”.

5        (d) EXCLUSION FROM WAGE WITHHOLDING.—Para-  
6 graph (16) of section 3401(a) of such Code is amended  
7 to read as follows:

8            “(16)(A) as tips in any medium other than  
9 cash;

10           “(B) as cash tips to an employee in any cal-  
11 endar month in the course of his employment by an  
12 employer unless the amount of such cash tips is \$20  
13 or more and then only to the extent includable in  
14 gross income after the application of section  
15 102(d).”

16        (e) CONFORMING AMENDMENT.—Sections  
17 32(c)(2)(A)(i) and 220(b)(4)(A) of such Code are each  
18 amended by striking “tips” and inserting “tips to the ex-  
19 tent includable in gross income after the application of  
20 section 102(d)).”.

21        (f) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to tips received after the calendar  
23 month which includes the date of the enactment of this  
24 Act.

