

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.

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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

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## 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

4 “(ii) the amount of the wages (exclud-  
 5 ing tips) paid by the employer to the em-  
 6 ployee during such month.

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.—

15 (1) Paragraph (12) of section 3121(a) of such  
 16 Code is amended to read as follows:

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).”;

1           (2) Paragraph (10) of section 209(a) of the So-  
2           cial Security Act is amended to read as follows:

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

12          (3) Paragraph (3) of section 3231(e) of such  
13          Code is amended to read as follows:

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 includible 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 includible 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.

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