

108TH CONGRESS
1ST SESSION

H. R. 2399

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 reserve components and to allow a comparable credit for participating reserve component self-employed individuals.

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 2003

Mr. BARRETT of South Carolina (for himself and Mr. WILSON of South Carolina) 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 reserve components and to allow a comparable credit for participating reserve component self-employed individuals.

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 “Guardsmen and Re-
5 servist Employer Tax Act of 2003”.

1 **SEC. 2. CREDIT FOR EMPLOYMENT OF RESERVE COMPO-**
2 **NENT PERSONNEL.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-
4 chapter A of chapter 1 of the Internal Revenue Code of
5 1986 (relating to business-related credits) is amended by
6 adding at the end the following new section:

7 **“SEC. 45G. RESERVE COMPONENT EMPLOYMENT CREDIT.**

8 “(a) GENERAL RULE.—For purposes of section 38,
9 the reserve component employment credit determined
10 under this section is an amount equal to the sum of—

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

13 “(2) the self-employment credit of a qualified
14 self-employed taxpayer.

15 “(b) EMPLOYMENT CREDIT.—For purposes of this
16 section—

17 “(1) IN GENERAL.—The employment credit
18 with respect to a qualified employee of the taxpayer
19 for any taxable year is equal to the excess, if any,
20 of—

21 “(A) the qualified employee’s average daily
22 qualified compensation for the taxable year,
23 over

24 “(B) the average daily military pay and al-
25 lowances received by the qualified employee
26 during the taxable year,

1 while participating in qualified reserve component
2 duty to the exclusion of the qualified employee's nor-
3 mal employment duties for the number of days the
4 qualified employee participates in qualified reserve
5 component duty during the taxable year, including
6 time spent in a travel status. The employment cred-
7 it, with respect to all qualified employees, is equal to
8 the sum of the employment credits for each qualified
9 employee under this subsection.

10 “(2) AVERAGE DAILY QUALIFIED COMPENSA-
11 TION AND AVERAGE DAILY MILITARY PAY AND AL-
12 LOWANCES.—As used with respect to a qualified em-
13 ployee—

14 “(A) the term ‘average daily qualified com-
15 pensation’ means the qualified compensation of
16 the qualified employee for the taxable year di-
17 vided by the difference between—

18 “(i) 365, and

19 “(ii) the number of days the qualified
20 employee participates in qualified reserve
21 component duty during the taxable year,
22 including time spent in a travel status, and

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

1 “(i) the amount paid to the qualified
2 employee during the taxable year as mili-
3 tary pay and allowances on account of the
4 qualified employee’s participation in quali-
5 fied reserve component duty, divided by

6 “(ii) the total number of days the
7 qualified employee participates in qualified
8 reserve component duty, including time
9 spent in travel status.

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

16 “(A) compensation which is normally con-
17 tingent on the qualified employee’s presence for
18 work and which would be deductible from the
19 taxpayer’s gross income under section 162(a)(1)
20 if the qualified employee were present and re-
21 ceiving such compensation,

22 “(B) compensation which is not character-
23 ized by the taxpayer as vacation or holiday pay,
24 or as sick leave or pay, or as any other form
25 of pay for a nonspecific leave of absence, and

1 with respect to which the number of days the
2 qualified employee participates in qualified re-
3 serve component duty does not result in any re-
4 duction in the amount of vacation time, sick
5 leave, or other nonspecific leave previously cred-
6 ited to or earned by the qualified employee, and

7 “(C) group health plan costs (if any) with
8 respect to the qualified employee.

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

11 “(A) has been an employee of the taxpayer
12 for the 21-day period immediately preceding the
13 period during which the employee participates
14 in qualified reserve component duty, and

15 “(B) is a member of the Ready Reserve of
16 a reserve component of an Armed Force of the
17 United States as defined in sections 10142 and
18 10101 of title 10, United States Code.

19 “(c) SELF-EMPLOYMENT CREDIT.—

20 “(1) IN GENERAL.—The self-employment credit
21 of a qualified self-employed taxpayer for any taxable
22 year is equal to the excess, if any, of—

23 “(A) the self-employed taxpayer’s average
24 daily self-employment income for the taxable
25 year over, and

1 “(B) the average daily military pay and al-
2 lowances received by the taxpayer during the
3 taxable year, while participating in qualified re-
4 serve component duty to the exclusion of the
5 taxpayer’s normal self-employment duties for
6 the number of days the taxpayer participates in
7 qualified reserve component duty during the
8 taxable year, including time spent in a travel
9 status.

10 “(2) AVERAGE DAILY SELF-EMPLOYMENT IN-
11 COME AND AVERAGE DAILY MILITARY PAY AND AL-
12 LOWANCES.—As used with respect to a self-em-
13 ployed taxpayer—

14 “(A) the term ‘average daily self-employ-
15 ment income’ means the self-employment in-
16 come (as defined in section 1402) of the tax-
17 payer for the taxable year plus the amount paid
18 for insurance which constitutes medical care for
19 the taxpayer for such year (within the meaning
20 of section 162(l)) divided by the difference be-
21 tween—

22 “(i) 365, and

23 “(ii) the number of days the taxpayer
24 participates in qualified reserve component

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

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

5 “(i) the amount paid to the taxpayer
6 during the taxable year as military pay
7 and allowances on account of the tax-
8 payer’s participation in qualified reserve
9 component duty, divided by

10 “(ii) the total number of days the tax-
11 payer participates in qualified reserve com-
12 ponent duty, including time spent in travel
13 status.

14 “(3) QUALIFIED SELF-EMPLOYED TAXPAYER.—
15 The term ‘qualified self-employed taxpayer’ means a
16 taxpayer who—

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

20 “(B) is a member of the Ready Reserve of
21 a reserve component of an Armed Force of the
22 United States.

23 “(d) CREDIT IN ADDITION TO DEDUCTION.—The
24 employment credit provided in this section is in addition
25 to any deduction otherwise allowable with respect to com-

1 pension actually paid to a qualified employee during any
2 period the qualified employee participates in qualified re-
3 serve component duty to the exclusion of normal employ-
4 ment duties.

5 “(e) LIMITATIONS.—

6 “(1) MAXIMUM CREDIT.—

7 “(A) IN GENERAL.—The credit allowed by
8 subsection (a) for the taxable year shall not ex-
9 ceed \$25,000 with respect to each qualified em-
10 ployee.

11 “(B) CONTROLLED GROUPS.—For pur-
12 poses of applying the limitation in subpara-
13 graph (A)—

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

16 “(ii) such limitations shall be allo-
17 cated among the members of such group in
18 such manner as the Secretary may pre-
19 scribe.

20 For purposes of this subparagraph, all persons
21 treated as a single employer under subsection
22 (a) or (b) of section 52 or subsection (m) or (o)
23 of section 414 shall be treated as members of
24 a controlled group.

1 “(2) DISALLOWANCE FOR FAILURE TO COMPLY
2 WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF
3 MEMBERS OF THE RESERVE COMPONENTS OF THE
4 ARMED FORCES OF THE UNITED STATES.—No credit
5 shall be allowed under subsection (a) to a taxpayer
6 for—

7 “(A) any taxable year in which the tax-
8 payer is under a final order, judgment, or other
9 process issued or required by a district court of
10 the United States under section 4323 of title 38
11 of the United States Code with respect to a vio-
12 lation of chapter 43 of such title, and

13 “(B) the 2 succeeding taxable years.

14 “(3) DISALLOWANCE WITH RESPECT TO PER-
15 SONS ORDERED TO ACTIVE DUTY FOR TRAINING.—
16 No credit shall be allowed under subsection (a) to a
17 taxpayer with respect to any period for which the
18 person on whose behalf the credit would otherwise be
19 allowable is called or ordered to active duty for any
20 of the following types of duty:

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

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

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

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

5 “(1) MILITARY PAY AND ALLOWANCES.—The
6 term ‘military pay’ means pay as that term is de-
7 fined in section 101(21) of title 37, United States
8 Code, and the term ‘allowances’ means the allow-
9 ances payable to a member of the Armed Forces of
10 the United States under chapter 7 of that title.

11 “(2) QUALIFIED RESERVE COMPONENT
12 DUTY.—The term ‘qualified reserve component duty’
13 includes only active duty performed, as designated in
14 the reservist’s military orders, in support of a con-
15 tingency operation as defined in section 101(a)(13)
16 of title 10, United States Code.

17 “(3) NORMAL EMPLOYMENT AND SELF-EM-
18 PLOYMENT DUTIES.—A person shall be deemed to
19 be participating in qualified reserve component duty
20 to the exclusion of normal employment or self-em-
21 ployment duties if the person does not engage in or
22 undertake any substantial activity related to the per-
23 son’s normal employment or self-employment duties
24 while participating in qualified reserve component
25 duty unless in an authorized leave status or other

1 authorized absence from military duties. If a person
2 engages in or undertakes any substantial activity re-
3 lated to the person’s normal employment or self-em-
4 ployment duties at any time while participating in a
5 period of qualified reserve component duty, unless
6 during a period of authorized leave or other author-
7 ized absence from military duties, the person shall
8 be deemed to have engaged in or undertaken such
9 activity for the entire period of qualified reserve
10 component duty.

11 “(4) CERTAIN RULES TO APPLY.—Rules similar
12 to the rules of subsections (c), (d), and (e) of section
13 52 shall apply for purposes of this section.”.

14 (b) CONFORMING AMENDMENT.—Section 38(b) (re-
15 lating to general business credit) is amended—

16 (1) by striking “plus” at the end of paragraph
17 (14),

18 (2) by striking the period at the end of para-
19 graph (15) and inserting “, plus”, and

20 (3) by adding at the end the following new
21 paragraph:

22 “(16) the reserve component employment credit
23 determined under section 45G(a).”.

24 (c) CLERICAL AMENDMENT.—The table of sections
25 for subpart D of part IV of subchapter A of chapter 1

1 is amended by inserting after the item relating to section
2 45F the following new item:

“ 45G. Reserve component employment credit.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2002.

○

1 **SEC. 2. CREDIT FOR EMPLOYMENT OF RESERVE COMPO-**
2 **NENT PERSONNEL.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-
4 chapter A of chapter 1 of the Internal Revenue Code of
5 1986 (relating to business-related credits) is amended by
6 adding at the end the following new section:

7 **“SEC. 45G. RESERVE COMPONENT EMPLOYMENT CREDIT.**

8 “(a) GENERAL RULE.—For purposes of section 38,
9 the reserve component employment credit determined
10 under this section is an amount equal to the sum of—

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

13 “(2) the self-employment credit of a qualified
14 self-employed taxpayer.

15 “(b) EMPLOYMENT CREDIT.—For purposes of this
16 section—

17 “(1) IN GENERAL.—The employment credit
18 with respect to a qualified employee of the taxpayer
19 for any taxable year is equal to the excess, if any,
20 of—

21 “(A) the qualified employee’s average daily
22 qualified compensation for the taxable year,
23 over

24 “(B) the average daily military pay and al-
25 lowances received by the qualified employee
26 during the taxable year,

1 while participating in qualified reserve component
2 duty to the exclusion of the qualified employee's nor-
3 mal employment duties for the number of days the
4 qualified employee participates in qualified reserve
5 component duty during the taxable year, including
6 time spent in a travel status. The employment cred-
7 it, with respect to all qualified employees, is equal to
8 the sum of the employment credits for each qualified
9 employee under this subsection.

10 “(2) AVERAGE DAILY QUALIFIED COMPENSA-
11 TION AND AVERAGE DAILY MILITARY PAY AND AL-
12 LOWANCES.—As used with respect to a qualified em-
13 ployee—

14 “(A) the term ‘average daily qualified com-
15 pensation’ means the qualified compensation of
16 the qualified employee for the taxable year di-
17 vided by the difference between—

18 “(i) 365, and

19 “(ii) the number of days the qualified
20 employee participates in qualified reserve
21 component duty during the taxable year,
22 including time spent in a travel status, and

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

1 “(i) the amount paid to the qualified
2 employee during the taxable year as mili-
3 tary pay and allowances on account of the
4 qualified employee’s participation in quali-
5 fied reserve component duty, divided by

6 “(ii) the total number of days the
7 qualified employee participates in qualified
8 reserve component duty, including time
9 spent in travel status.

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11 with respect to the compensation paid or that would
12 have been paid to a qualified employee for any pe-
13 riod during which the qualified employee participates
14 in qualified reserve component duty, the term ‘quali-
15 fied compensation’ means—

16 “(A) compensation which is normally con-
17 tingent on the qualified employee’s presence for
18 work and which would be deductible from the
19 taxpayer’s gross income under section 162(a)(1)
20 if the qualified employee were present and re-
21 ceiving such compensation,

22 “(B) compensation which is not character-
23 ized by the taxpayer as vacation or holiday pay,
24 or as sick leave or pay, or as any other form
25 of pay for a nonspecific leave of absence, and

1 with respect to which the number of days the
2 qualified employee participates in qualified re-
3 serve component duty does not result in any re-
4 duction in the amount of vacation time, sick
5 leave, or other nonspecific leave previously cred-
6 ited to or earned by the qualified employee, and

7 “(C) group health plan costs (if any) with
8 respect to the qualified employee.

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

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12 for the 21-day period immediately preceding the
13 period during which the employee participates
14 in qualified reserve component duty, and

15 “(B) is a member of the Ready Reserve of
16 a reserve component of an Armed Force of the
17 United States as defined in sections 10142 and
18 10101 of title 10, United States Code.

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21 of a qualified self-employed taxpayer for any taxable
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24 daily self-employment income for the taxable
25 year over, and

1 “(B) the average daily military pay and al-
2 lowances received by the taxpayer during the
3 taxable year, while participating in qualified re-
4 serve component duty to the exclusion of the
5 taxpayer’s normal self-employment duties for
6 the number of days the taxpayer participates in
7 qualified reserve component duty during the
8 taxable year, including time spent in a travel
9 status.

10 “(2) AVERAGE DAILY SELF-EMPLOYMENT IN-
11 COME AND AVERAGE DAILY MILITARY PAY AND AL-
12 LOWANCES.—As used with respect to a self-em-
13 ployed taxpayer—

14 “(A) the term ‘average daily self-employ-
15 ment income’ means the self-employment in-
16 come (as defined in section 1402) of the tax-
17 payer for the taxable year plus the amount paid
18 for insurance which constitutes medical care for
19 the taxpayer for such year (within the meaning
20 of section 162(l)) divided by the difference be-
21 tween—

22 “(i) 365, and

23 “(ii) the number of days the taxpayer
24 participates in qualified reserve component

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

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

5 “(i) the amount paid to the taxpayer
6 during the taxable year as military pay
7 and allowances on account of the tax-
8 payer’s participation in qualified reserve
9 component duty, divided by

10 “(ii) the total number of days the tax-
11 payer participates in qualified reserve com-
12 ponent duty, including time spent in travel
13 status.

14 “(3) QUALIFIED SELF-EMPLOYED TAXPAYER.—
15 The term ‘qualified self-employed taxpayer’ means a
16 taxpayer who—

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

20 “(B) is a member of the Ready Reserve of
21 a reserve component of an Armed Force of the
22 United States.

23 “(d) CREDIT IN ADDITION TO DEDUCTION.—The
24 employment credit provided in this section is in addition
25 to any deduction otherwise allowable with respect to com-

1 pension actually paid to a qualified employee during any
2 period the qualified employee participates in qualified re-
3 serve component duty to the exclusion of normal employ-
4 ment duties.

5 “(e) LIMITATIONS.—

6 “(1) MAXIMUM CREDIT.—

7 “(A) IN GENERAL.—The credit allowed by
8 subsection (a) for the taxable year shall not ex-
9 ceed \$25,000 with respect to each qualified em-
10 ployee.

11 “(B) CONTROLLED GROUPS.—For pur-
12 poses of applying the limitation in subpara-
13 graph (A)—

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

16 “(ii) such limitations shall be allo-
17 cated among the members of such group in
18 such manner as the Secretary may pre-
19 scribe.

20 For purposes of this subparagraph, all persons
21 treated as a single employer under subsection
22 (a) or (b) of section 52 or subsection (m) or (o)
23 of section 414 shall be treated as members of
24 a controlled group.

1 “(2) DISALLOWANCE FOR FAILURE TO COMPLY
2 WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF
3 MEMBERS OF THE RESERVE COMPONENTS OF THE
4 ARMED FORCES OF THE UNITED STATES.—No credit
5 shall be allowed under subsection (a) to a taxpayer
6 for—

7 “(A) any taxable year in which the tax-
8 payer is under a final order, judgment, or other
9 process issued or required by a district court of
10 the United States under section 4323 of title 38
11 of the United States Code with respect to a vio-
12 lation of chapter 43 of such title, and

13 “(B) the 2 succeeding taxable years.

14 “(3) DISALLOWANCE WITH RESPECT TO PER-
15 SONS ORDERED TO ACTIVE DUTY FOR TRAINING.—
16 No credit shall be allowed under subsection (a) to a
17 taxpayer with respect to any period for which the
18 person on whose behalf the credit would otherwise be
19 allowable is called or ordered to active duty for any
20 of the following types of duty:

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

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

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

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

5 “(1) MILITARY PAY AND ALLOWANCES.—The
6 term ‘military pay’ means pay as that term is de-
7 fined in section 101(21) of title 37, United States
8 Code, and the term ‘allowances’ means the allow-
9 ances payable to a member of the Armed Forces of
10 the United States under chapter 7 of that title.

11 “(2) QUALIFIED RESERVE COMPONENT
12 DUTY.—The term ‘qualified reserve component duty’
13 includes only active duty performed, as designated in
14 the reservist’s military orders, in support of a con-
15 tingency operation as defined in section 101(a)(13)
16 of title 10, United States Code.

17 “(3) NORMAL EMPLOYMENT AND SELF-EM-
18 PLOYMENT DUTIES.—A person shall be deemed to
19 be participating in qualified reserve component duty
20 to the exclusion of normal employment or self-em-
21 ployment duties if the person does not engage in or
22 undertake any substantial activity related to the per-
23 son’s normal employment or self-employment duties
24 while participating in qualified reserve component
25 duty unless in an authorized leave status or other

1 authorized absence from military duties. If a person
2 engages in or undertakes any substantial activity re-
3 lated to the person's normal employment or self-em-
4 ployment duties at any time while participating in a
5 period of qualified reserve component duty, unless
6 during a period of authorized leave or other author-
7 ized absence from military duties, the person shall
8 be deemed to have engaged in or undertaken such
9 activity for the entire period of qualified reserve
10 component duty.

11 “(4) CERTAIN RULES TO APPLY.—Rules similar
12 to the rules of subsections (c), (d), and (e) of section
13 52 shall apply for purposes of this section.”.

14 (b) CONFORMING AMENDMENT.—Section 38(b) (re-
15 lating to general business credit) is amended—

16 (1) by striking “plus” at the end of paragraph
17 (14),

18 (2) by striking the period at the end of para-
19 graph (15) and inserting “, plus”, and

20 (3) by adding at the end the following new
21 paragraph:

22 “(16) the reserve component employment credit
23 determined under section 45G(a).”.

24 (c) CLERICAL AMENDMENT.—The table of sections
25 for subpart D of part IV of subchapter A of chapter 1

1 is amended by inserting after the item relating to section
2 45F the following new item:

“45G. Reserve component employment credit.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2002.”.

○