

108TH CONGRESS
2D SESSION

H. R. 4655

To amend the Internal Revenue Code of 1986 to provide to employers a tax credit for compensation paid during the period employees are performing service as members of the Ready Reserve or the National Guard.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2004

Mr. MCGOVERN (for himself and Mr. LANTOS) 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 provide to employers a tax credit for compensation paid during the period employees are performing service as members of the Ready Reserve or the National Guard.

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 “Patriotic Employers
5 of Guard and Reservists Act of 2004”.

1 **SEC. 2. READY RESERVE-NATIONAL GUARD EMPLOYEE**
2 **CREDIT AND READY RESERVE-NATIONAL**
3 **GUARD REPLACEMENT EMPLOYEE CREDIT.**

4 (a) READY RESERVE-NATIONAL GUARD CREDIT.—

5 (1) IN GENERAL.—Subpart D of part IV of
6 subchapter A of chapter 1 of the Internal Revenue
7 Code of 1986 (relating to business-related credits) is
8 amended by adding at the end the following:

9 **“SEC. 45G. READY RESERVE-NATIONAL GUARD EMPLOYEE**
10 **CREDIT.**

11 “(a) GENERAL RULE.—For purposes of section 38,
12 the Ready Reserve-National Guard employee credit deter-
13 mined under this section for any taxable year with respect
14 to each Ready Reserve-National Guard employee of an em-
15 ployer is an amount equal to 50 percent of the lesser of—

16 “(1) the actual compensation amount with re-
17 spect to such employee for such taxable year, or

18 “(2) \$30,000.

19 “(b) DEFINITION OF ACTUAL COMPENSATION
20 AMOUNT.—For purposes of this section, the term ‘actual
21 compensation amount’ means the amount of compensation
22 paid or incurred by an employer with respect to a Ready
23 Reserve-National Guard employee on any day when the
24 employee was absent from employment for the purpose of
25 performing qualified active duty.

1 “(c) LIMITATIONS.—No credit shall be allowed with
2 respect to any day that a Ready Reserve-National Guard
3 employee who performs qualified active duty was not
4 scheduled to work (for reason other than to participate
5 in qualified active duty).

6 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
7 poses of this section—

8 “(1) QUALIFIED ACTIVE DUTY.—The term
9 ‘qualified active duty’ means—

10 “(A) active duty, other than the training
11 duty specified in section 10147 of title 10,
12 United States Code (relating to training re-
13 quirements for the Ready Reserve), or section
14 502(a) of title 32, United States Code (relating
15 to required drills and field exercises for the Na-
16 tional Guard), in connection with which an em-
17 ployee is entitled to reemployment rights and
18 other benefits or to a leave of absence from em-
19 ployment under chapter 43 of title 38, United
20 States Code, and

21 “(B) hospitalization incident to such duty.

22 “(2) COMPENSATION.—The term ‘compensa-
23 tion’ means any remuneration for employment,
24 whether in cash or in kind, which is paid or incurred

1 by a taxpayer and which is deductible from the tax-
 2 payer's gross income under section 162(a)(1).

3 “(3) READY RESERVE-NATIONAL GUARD EM-
 4 PLOYEE.—The term ‘Ready Reserve-National Guard
 5 employee’ means an employee who is a member of
 6 the Ready Reserve of a reserve component of an
 7 Armed Force of the United States as described in
 8 sections 10142 and 10101 of title 10, United States
 9 Code.

10 “(4) CERTAIN RULES TO APPLY.—Rules similar
 11 to the rules of section 52 shall apply.

12 “(e) PORTION OF CREDIT REFUNDABLE.—

13 “(1) IN GENERAL.—In the case of an employer
 14 of a qualified first responder, the aggregate credits
 15 allowed to a taxpayer under subpart C shall be in-
 16 creased by the lesser of—

17 “(A) the credit which would be allowed
 18 under this section without regard to this sub-
 19 section and the limitation under section 38(c),
 20 or

21 “(B) the amount by which the aggregate
 22 amount of credits allowed by this subpart (de-
 23 termined without regard to this subsection)
 24 would increase if the limitation imposed by sec-
 25 tion 38(c) for any taxable year were increased

1 by the amount of employer payroll taxes imposed
2 on the taxpayer during the calendar year in
3 which the taxable year begins.

4 The amount of the credit allowed under this sub-
5 section shall not be treated as a credit allowed under
6 this subpart and shall reduce the amount of the
7 credit otherwise allowable under subsection (a) with-
8 out regard to section 38(c).

9 “(2) EMPLOYER PAYROLL TAXES.—For pur-
10 poses of this subsection—

11 “(A) IN GENERAL.—The term ‘employer
12 payroll taxes’ means the taxes imposed by—

13 “(i) section 3111(b), and

14 “(ii) sections 3211(a) and 3221(a)
15 (determined at a rate equal to the rate
16 under section 3111(b)).

17 “(B) SPECIAL RULE.—A rule similar to
18 the rule of section 24(d)(2)(C) shall apply for
19 purposes of subparagraph (A).

20 “(3) QUALIFIED FIRST RESPONDER.—For pur-
21 poses of this subsection, the term ‘qualified first re-
22 sponder’ means any person who is—

23 “(A) employed as a law enforcement offi-
24 cial, a firefighter, or a paramedic, and

1 “(B) a Ready Reserve-National Guard em-
2 ployee.”.

3 (2) CREDIT TO BE PART OF GENERAL BUSI-
4 NESS CREDIT.—Subsection (b) of section 38 of such
5 Code (relating to general business credit) is amend-
6 ed by striking “plus” at the end of paragraph (14),
7 by striking the period at the end of paragraph (15)
8 and inserting “, plus”, and by adding at the end the
9 following:

10 “(16) the Ready Reserve-National Guard em-
11 ployee credit determined under section 45G(a).”.

12 (3) DENIAL OF DOUBLE BENEFIT.—Section
13 280C(a) of such Code (relating to rule for employ-
14 ment credits) is amended by inserting “45G(a),”
15 after “45A(a),”.

16 (4) CONFORMING AMENDMENT.—The table of
17 sections for subpart D of part IV of subchapter A
18 of chapter 1 of such Code is amended by inserting
19 after the item relating to section 45F the following:

 “Sec. 45G. Ready Reserve-National Guard employee credit.”.

20 (5) EFFECTIVE DATE.—The amendments made
21 by this subsection shall apply to amounts paid or in-
22 curred after September 30, 2004, in taxable years
23 ending after such date.

24 (b) READY RESERVE-NATIONAL GUARD REPLACE-
25 MENT EMPLOYEE CREDIT.—

1 (1) IN GENERAL.—Subpart B of part IV of
 2 subchapter A of chapter 1 of such Code (relating to
 3 foreign tax credit, etc.) is amended by adding after
 4 section 30A the following new section:

5 **“SEC. 30B. READY RESERVE-NATIONAL GUARD REPLACE-**
 6 **MENT EMPLOYEE CREDIT.**

7 “(a) ALLOWANCE OF CREDIT.—

8 “(1) IN GENERAL.—In the case of an eligible
 9 taxpayer, there shall be allowed as a credit against
 10 the tax imposed by this chapter for the taxable year
 11 the sum of the employment credits for each qualified
 12 replacement employee under this section.

13 “(2) EMPLOYMENT CREDIT.—The employment
 14 credit with respect to a qualified replacement em-
 15 ployee of the taxpayer for any taxable year is equal
 16 to 50 percent of the lesser of—

17 “(A) the individual’s qualified compensa-
 18 tion attributable to service rendered as a quali-
 19 fied replacement employee, or

20 “(B) \$12,000.

21 “(b) QUALIFIED COMPENSATION.—The term ‘quali-
 22 fied compensation’ means—

23 “(1) compensation which is normally contingent
 24 on the qualified replacement employee’s presence for

1 work and which is deductible from the taxpayer's
2 gross income under section 162(a)(1),

3 “(2) compensation which is not characterized
4 by the taxpayer as vacation or holiday pay, or as
5 sick leave or pay, or as any other form of pay for
6 a nonspecific leave of absence, and

7 “(3) group health plan costs (if any) with re-
8 spect to the qualified replacement employee.

9 “(c) QUALIFIED REPLACEMENT EMPLOYEE.—For
10 purposes of this section—

11 “(1) IN GENERAL.—The term ‘qualified re-
12 placement employee’ means an individual who is
13 hired to replace a Ready Reserve-National Guard
14 employee or a Ready Reserve-National Guard self-
15 employed taxpayer, but only with respect to the pe-
16 riod during which such Ready Reserve-National
17 Guard employee or Ready Reserve-National Guard
18 self-employed taxpayer participates in qualified ac-
19 tive duty, including time spent in travel status.

20 “(2) READY RESERVE-NATIONAL GUARD EM-
21 PLOYEE.—The term ‘Ready Reserve-National Guard
22 employee’ has the meaning given such term by sec-
23 tion 45G(d)(3).

24 “(3) READY RESERVE-NATIONAL GUARD SELF-
25 EMPLOYED TAXPAYER.—The term ‘Ready Reserve-

1 National Guard self-employed taxpayer’ means a tax-
2 payer who—

3 “(A) has net earnings from self-employ-
4 ment (as defined in section 1402(a)) for the
5 taxable year, and

6 “(B) is a member of the Ready Reserve of
7 a reserve component of an Armed Force of the
8 United States as described in section 10142
9 and 10101 of title 10, United States Code.

10 “(d) COORDINATION WITH OTHER CREDITS.—The
11 amount of credit otherwise allowable under sections 51(a)
12 and 1396(a) with respect to any employee shall be reduced
13 by the credit allowed by this section with respect to such
14 employee.

15 “(e) LIMITATIONS.—

16 “(1) APPLICATION WITH OTHER CREDITS.—
17 The credit allowed under subsection (a) for any tax-
18 able year shall not exceed the excess (if any) of—

19 “(A) the regular tax for the taxable year
20 reduced by the sum of the credits allowable
21 under subpart A and sections 27, 29, and 30,
22 over

23 “(B) the tentative minimum tax for the
24 taxable year.

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, beginning after the
8 date of the enactment of this section, in which
9 the taxpayer is under a final order, judgment,
10 or other process issued or required by a district
11 court of the United States under section 4323
12 of title 38 of the United States Code with re-
13 spect to a violation of chapter 43 of such title,
14 and

15 “(B) the 2 succeeding taxable years.

16 “(f) GENERAL DEFINITIONS AND SPECIAL RULES.—
17 For purposes of this section—

18 “(1) ELIGIBLE TAXPAYER.—The term ‘eligible
19 taxpayer’ means a small business employer or a
20 Ready Reserve-National Guard self-employed tax-
21 payer.

22 “(2) SMALL BUSINESS EMPLOYER.—

23 “(A) IN GENERAL.—The term ‘small busi-
24 ness employer’ means, with respect to any tax-
25 able year, any employer who employed an aver-

1 age of 50 or fewer employees on business days
2 during such taxable year.

3 “(B) CONTROLLED GROUPS.—For pur-
4 poses of subparagraph (A), all persons treated
5 as a single employer under subsection (b), (c),
6 (m), or (o) of section 414 shall be treated as a
7 single employer.

8 “(3) QUALIFIED ACTIVE DUTY.—The term
9 ‘qualified active duty’ has the meaning given such
10 term by section 45G(d)(1).

11 “(4) SPECIAL RULES FOR CERTAIN MANUFAC-
12 TURERS.—

13 “(A) IN GENERAL.—In the case of any
14 qualified manufacturer—

15 “(i) subsection (a)(2)(B) shall be ap-
16 plied by substituting ‘\$20,000’ for
17 ‘\$12,000’, and

18 “(ii) paragraph (2)(A) of this sub-
19 section shall be applied by substituting
20 ‘100’ for ‘50’.

21 “(B) QUALIFIED MANUFACTURER.—For
22 purposes of this paragraph, the term ‘qualified
23 manufacturer’ means any person if—

24 “(i) the primary business of such per-
25 son is classified in sector 31, 32, or 33 of

1 the North American Industrial Classifica-
2 tion System, and

3 “(ii) all of such person’s facilities
4 which are used for production in such busi-
5 ness are located in the United States.

6 “(5) CARRYBACK AND CARRYFORWARD AL-
7 LOWED.—

8 “(A) IN GENERAL.—If the credit allowable
9 under subsection (a) for a taxable year exceeds
10 the amount of the limitation under subsection
11 (e)(1) for such taxable year (in this paragraph
12 referred to as the ‘unused credit year’), such
13 excess shall be a credit carryback to each of the
14 3 taxable years preceding the unused credit
15 year and a credit carryforward to each of the
16 20 taxable years following the unused credit
17 year.

18 “(B) RULES.—Rules similar to the rules of
19 section 39 shall apply with respect to the credit
20 carryback and credit carryforward under sub-
21 paragraph (A).

22 “(6) CERTAIN RULES TO APPLY.—Rules similar
23 to the rules of subsections (c), (d), and (e) of section
24 52 shall apply.”.

1 (2) NO DEDUCTION FOR COMPENSATION TAKEN
2 INTO ACCOUNT FOR CREDIT.—Section 280C(a) of
3 such Code (relating to rule for employment credits)
4 is amended—

5 (A) by inserting “or compensation” after
6 “salaries”, and

7 (B) by inserting “30B,” before “45A(a),”.

8 (3) CONFORMING AMENDMENT.—Section
9 55(c)(2) of such Code is amended by inserting
10 “30B(e)(1),” after “30(b)(3),”.

11 (4) CLERICAL AMENDMENT.—The table of sec-
12 tions for subpart B of part IV of subchapter A of
13 chapter 1 of such Code is amended by adding after
14 the item relating to section 30A the following new
15 item:

“Sec. 30B. Ready Reserve-National Guard replacement employee
credit.”.

16 (5) EFFECTIVE DATE.—The amendments made
17 by this subsection shall apply to amounts paid or in-
18 curred after September 30, 2004, in taxable years
19 ending after such date.

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