

108TH CONGRESS
2D SESSION

H. R. 4732

To amend the Internal Revenue Code of 1986 to exclude from gross income amounts received as damages and attorneys fees and costs under Federal whistleblower protection laws and to allow income averaging for amounts received as lost income.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2004

Mr. GERLACH (for himself, Mr. UDALL of Colorado, Mr. HOLDEN, Mr. OTTER, Mr. MILLER of Florida, and Mr. HOSTETTLER) 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 exclude from gross income amounts received as damages and attorneys fees and costs under Federal whistleblower protection laws and to allow income averaging for amounts received as lost income.

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 “Federal Whistleblower
5 Protection Tax Act of 2004”.

1 **SEC. 2. EXCLUSION FROM GROSS INCOME FOR CERTAIN**
 2 **AMOUNTS RECEIVED ON ACCOUNT OF FED-**
 3 **ERAL WHISTLEBLOWER PROTECTION LAWS.**

4 (a) IN GENERAL.—Subsection (a) of section 104 of
 5 the Internal Revenue Code of 1986 (relating to compensa-
 6 tion for injuries or sickness) is amended by striking “and”
 7 at the end of paragraph (4), by striking the period at the
 8 end of paragraph (5) and inserting “; and”, and by insert-
 9 ing after paragraph (5) the following new paragraph:

10 “(6) in the case of a claim under any provision
 11 of Federal law (popularly known as whistleblower
 12 protection provisions) prohibiting the discharge of an
 13 employee, the discrimination against an employee, or
 14 any other form of retaliation or reprisal against an
 15 employee for asserting rights or taking other actions
 16 permitted under Federal law—

17 “(A) the amount of any damages (other
 18 than punitive damages and other than damages
 19 on account of lost income), and

20 “(B) the amount awarded for attorneys
 21 fees and costs in pursuing such claim to the ex-
 22 tent the taxpayer elects not to claim any deduc-
 23 tion for such fees and costs.”

24 (b) AVERAGING OF LOST INCOME.—

25 (1) IN GENERAL.—Part I of subchapter Q of
 26 chapter 1 of such Code (relating to income aver-

1 aging) is amended by adding at the end the fol-
2 lowing new section:

3 **“SEC. 1302. AVERAGING OF WHISTLEBLOWER LOST IN-**
4 **COME.**

5 “(a) IN GENERAL.—In the case of an individual who
6 receives a whistleblower award during any taxable year,
7 the tax imposed by section 1 for such taxable year shall
8 be equal to the sum of—

9 “(1) a tax computed under such section on tax-
10 able income reduced by elected whistleblower lost in-
11 come, plus

12 “(2) the increase in tax imposed by section 1
13 which would result if taxable income for each of the
14 taxable years to which such income is attributable
15 were increased by the amount of such income attrib-
16 utable to such year.

17 Any adjustment under this section for any taxable year
18 shall be taken into account in applying this section for
19 any subsequent taxable year.

20 “(b) DEFINITIONS.—For purposes of this section—

21 “(1) WHISTLEBLOWER AWARD.—The term
22 ‘whistleblower award’ mean any amount which is ex-
23 cluded from gross income under paragraph (6) of
24 section 104(a).

1 “(2) ELECTED WHISTLEBLOWER LOST IN-
 2 COME.—The term ‘elected whistleblower lost income’
 3 means income—

4 “(A) which would be excluded from gross
 5 income under such paragraph if such paragraph
 6 were applied without regard to ‘other than dam-
 7 ages on account of lost income’, and

8 “(B) which is specified in the election
 9 under subsection (a).

10 If the election under subsection (a) applies to less
 11 than all such income, such election shall be treated
 12 as applying to a ratable portion of each year’s in-
 13 come for purposes of subsection (a)(2).

14 “(c) REGULATIONS.—The regulations under section
 15 1301(c) shall apply for purposes of this section.”

16 (2) CONFORMING AMENDMENT.—Subsection (c)
 17 of section 55 (defining regular tax) is amended by
 18 redesignating paragraph (2) as paragraph (3) and
 19 by inserting after paragraph (1) the following new
 20 paragraph:

21 “(2) COORDINATION WITH INCOME AVERAGING
 22 FOR WHISTLEBLOWER LOST INCOME.—Solely for
 23 purposes of this section, section 1302 (relating to
 24 averaging of whistleblower lost income) shall not
 25 apply in computing the regular tax liability.”.

1 (3) CLERICAL AMENDMENT.—The table of sec-
2 tions for such part I is amended by adding at the
3 end the following new item:

 “Sec. 1302. Averaging of whistleblower lost income.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect as if included in the amend-
6 ments made by section 1605 of the Small Business Job
7 Protection Act of 1996.

8 (d) WAIVER OF STATUTE OF LIMITATIONS.—If re-
9 fund or credit of any overpayment of tax resulting from
10 the amendment made by subsection (a) or (b) is prevented
11 at any time before the close of the 1-year period beginning
12 on the date of the enactment of this Act by the operation
13 of any law or rule of law (including res judicata), refund
14 or credit of such overpayment (to the extent attributable
15 to such amendment) may, nevertheless, be made or al-
16 lowed if claim therefor is filed before the close of such
17 1-year period.

○