

109TH CONGRESS
1ST SESSION

S. 327

To amend the Internal Revenue Code of 1986 to expand the tip credit to certain employers and to promote tax compliance.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2005

Mr. SANTORUM (for himself and Mrs. LINCOLN) 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 expand the tip credit to certain employers and to promote tax compliance.

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 “Small Business Tax
5 Equalization and Compliance Act of 2005”.

1 **SEC. 2. EXPANSION OF CREDIT FOR PORTION OF SOCIAL**
 2 **SECURITY TAXES PAID WITH RESPECT TO**
 3 **EMPLOYEE TIPS.**

4 (a) **EXPANSION OF CREDIT TO OTHER LINES OF**
 5 **BUSINESS.**—Paragraph (2) of section 45B(b) of the Inter-
 6 nal Revenue Code of 1986 is amended to read as follows:

7 “(2) **APPLICATION ONLY TO CERTAIN LINES OF**
 8 **BUSINESS.**—In applying paragraph (1), there shall
 9 be taken into account only tips received from cus-
 10 tomers or clients in connection with—

11 “(A) the providing, delivering, or serving
 12 of food or beverages for consumption if the tip-
 13 ping of employees delivering or serving food or
 14 beverages by customers is customary, or

15 “(B) the providing of any cosmetology
 16 service for customers or clients at a facility li-
 17 censed to provide such service if the tipping of
 18 employees providing such service is cus-
 19 tomary.”.

20 (b) **DEFINITION OF COSMETOLOGY SERVICE.**—Sec-
 21 tion 45B of such Code is amended by redesignating sub-
 22 sections (c) and (d) as subsections (d) and (e), respec-
 23 tively, and by inserting after subsection (b) the following
 24 new subsection:

25 “(c) **COSMETOLOGY SERVICE.**—For purposes of this
 26 section, the term ‘cosmetology service’ means—

1 “(1) hairdressing,
 2 “(2) haircutting,
 3 “(3) manicures and pedicures,
 4 “(4) body waxing, facials, mud packs, wraps,
 5 and other similar skin treatments, and
 6 “(5) any other beauty related service provided
 7 at a facility at which a majority of the services pro-
 8 vided (as determined on the basis of gross revenue)
 9 are described in paragraphs (1) through (4).”.

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to tips received for services per-
 12 formed after December 31, 2004.

13 **SEC. 3. INFORMATION REPORTING AND TAXPAYER EDU-**
 14 **CATION FOR PROVIDERS OF COSMETOLOGY**
 15 **SERVICES.**

16 (a) IN GENERAL.—Subpart B of part III of sub-
 17 chapter A of chapter 61 of the Internal Revenue Code of
 18 1986 is amended by inserting after section 6050T the fol-
 19 lowing new section:

20 **“SEC. 6050U. RETURNS RELATING TO COSMETOLOGY SERV-**
 21 **ICES AND INFORMATION TO BE PROVIDED TO**
 22 **COSMETOLOGISTS.**

23 “(a) IN GENERAL.—Every person (referred to in this
 24 section as a ‘reporting person’) who—

1 “(1) employs 1 or more cosmetologists to pro-
2 vide any cosmetology service,

3 “(2) rents a chair to 1 or more cosmetologists
4 to provide any cosmetology service on at least 5 cal-
5 endar days during a calendar year, or

6 “(3) in connection with its trade or business or
7 rental activity, otherwise receives compensation
8 from, or pays compensation to, 1 or more cosmetolo-
9 gists for the right to provide cosmetology services to,
10 or for cosmetology services provided to, third-party
11 patrons, shall comply with the return requirements
12 of subsection (b) and the taxpayer education require-
13 ments of subsection (c).

14 “(b) RETURN REQUIREMENTS.—The return require-
15 ments of this subsection are met by a reporting person
16 if the requirements of each of the following paragraphs
17 applicable to such person are met.

18 “(1) EMPLOYEES.—In the case of a reporting
19 person who employs 1 or more cosmetologists to pro-
20 vide cosmetology services, the requirements of this
21 paragraph are met if such person meets the require-
22 ments of sections 6051 (relating to receipts for em-
23 ployees) and 6053(b) (relating to tip reporting) with
24 respect to each such employee.

1 “(2) INDEPENDENT CONTRACTORS.—In the
2 case of a reporting person who pays compensation to
3 1 or more cosmetologists (other than as employees)
4 for cosmetology services provided to third-party pa-
5 trons, the requirements of this paragraph are met if
6 such person meets the applicable requirements of
7 section 6041 (relating to returns filed by persons
8 making payments of \$600 or more in the course of
9 a trade or business), section 6041A (relating to re-
10 turns to be filed by service-recipients who pay more
11 than \$600 in a calendar year for services from a
12 service provider), and each other provision of this
13 subpart that may be applicable to such compensa-
14 tion.

15 “(3) CHAIR RENTERS.—

16 “(A) IN GENERAL.—In the case of a re-
17 porting person who receives rent or other fees
18 or compensation from 1 or more cosmetologists
19 for use of a chair or for rights to provide any
20 cosmetology service at a salon or other similar
21 facility for more than 5 days in a calendar year,
22 the requirements of this paragraph are met if
23 such person—

24 “(i) makes a return, according to the
25 forms or regulations prescribed by the Sec-

1 retary, setting forth the name, address,
2 and TIN of each such cosmetologist and
3 the amount received from each such cos-
4 metologist, and

5 “(ii) furnishes to each cosmetologist
6 whose name is required to be set forth on
7 such return a written statement showing—

8 “(I) the name, address, and
9 phone number of the information con-
10 tact of the reporting person,

11 “(II) the amount received from
12 such cosmetologist, and

13 “(III) a statement informing
14 such cosmetologist that (as required
15 by this section), the reporting person
16 has advised the Internal Revenue
17 Service that the cosmetologist pro-
18 vided cosmetology services during the
19 calendar year to which the statement
20 relates.

21 “(B) METHOD AND TIME FOR PROVIDING
22 STATEMENT.—The written statement required
23 by clause (ii) of subparagraph (A) shall be fur-
24 nished (either in person or by first-class mail
25 which includes adequate notice that the state-

1 ment or information is enclosed) to the person
2 on or before January 31 of the year following
3 the calendar year for which the return under
4 clause (i) of subparagraph (A) is to be made.

5 “(c) TAXPAYER EDUCATION REQUIREMENTS.—In
6 the case of a reporting person who is required to provide
7 a statement pursuant to subsection (b), the requirements
8 of this subsection are met if such person provides to each
9 such cosmetologist annually a publication, as designated
10 by the Secretary, describing—

11 “(1) in the case of an employee, the tax and tip
12 reporting obligations of employees, and

13 “(2) in the case of a cosmetologist who is not
14 an employee of the reporting person, the tax obliga-
15 tions of independent contractors or proprietorships.

16 The publications shall be furnished either in person or by
17 first-class mail which includes adequate notice that the
18 publication is enclosed.

19 “(d) DEFINITIONS.—For purposes of this section—

20 “(1) COSMETOLOGIST.—

21 “(A) IN GENERAL.—The term ‘cosmetolo-
22 gist’ means an individual who provides any cos-
23 metology service.

24 “(B) ANTI-AVOIDANCE RULE.—The Sec-
25 retary may by regulation or ruling expand the

1 term ‘cosmetologist’ to include any entity or ar-
2 rangement if the Secretary determines that en-
3 tities are being formed to circumvent the re-
4 porting requirements of this section.

5 “(2) COSMETOLOGY SERVICE.—The term ‘cos-
6 metology service’ has the meaning given to such
7 term by section 45B(c).

8 “(3) CHAIR.—The term ‘chair’ includes a chair,
9 booth, or other furniture or equipment from which
10 an individual provides a cosmetology service (deter-
11 mined without regard to whether the cosmetologist
12 is entitled to use a specific chair, booth, or other
13 similar furniture or equipment or has an exclusive
14 right to use any such chair, booth, or other similar
15 furniture or equipment).

16 “(e) EXCEPTIONS FOR CERTAIN EMPLOYEES.—Sub-
17 section (e) shall not apply to a reporting person with re-
18 spect to an employee who is employed in a capacity for
19 which tipping (or sharing tips) is not customary.”.

20 (b) CONFORMING AMENDMENTS.—

21 (1) Section 6724(d)(1)(B) of such Code (relat-
22 ing to the definition of information returns) is
23 amended by redesignating clauses (xiii) through
24 (xviii) as clauses (xiv) through (xix), respectively and

1 by inserting after clause (xii) the following new
 2 clause:

3 “(xiii) section 6050U(a) (relating to
 4 returns by cosmetology service pro-
 5 viders).”.

6 (2) Section 6724(d)(2) of such Code is amend-
 7 ed—

8 (A) by striking “or” at the end of subpara-
 9 graph (AA),

10 (B) by striking the period at the end of
 11 subparagraph (BB) and inserting “, or”, and

12 (C) by inserting after subparagraph (BB)
 13 the following new subparagraph:

14 “(CC) subsections (b)(3)(A)(ii) and (c) of
 15 section 6050U (relating to cosmetology service
 16 providers) even if the recipient is not a payee.”.

17 (3) The table of sections for subpart B of part
 18 III of subchapter A of chapter 61 of the Internal
 19 Revenue Code of 1986 is amended by adding after
 20 section 6050T the following new item:

“Sec. 6050U. Returns relating to cosmetology services and information to be
 provided to cosmetologists.”.

21 (c) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to calendar years after 2004.

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