

111TH CONGRESS
1ST SESSION

H. R. 779

To amend the Internal Revenue Code of 1986 to provide that tips shall not be subject to income or employment taxes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 2009

Mr. PAUL 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 that tips 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. SHORT TITLE.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Tax Free Tips Act of 2009”.

6 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of , a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
2 sion of the Internal Revenue Code of 1986.

3 **SEC. 2. TIPS NOT SUBJECT TO INCOME OR EMPLOYMENT**
4 **TAXES.**

5 (a) IN GENERAL.—Section 102 (relating to gifts and
6 inheritances) is amended by adding at the end the fol-
7 lowing new subsection:

8 “(d) TIPS.—For purposes of subsection (a), tips shall
9 be treated as property transferred by gift.”.

10 (b) EXCLUSION FROM SOCIAL SECURITY TAXES.—

11 (1) SOCIAL SECURITY TAXES.—

12 (A) Paragraph (12) of section 3121(a) is
13 amended to read as follows:

14 “(12) tips;”.

15 (B) Section 3121 is amended by striking
16 subsection (q) (relating to tips included for both
17 employee and employer taxes).

18 (C) Subsection (a) of section 3102 is
19 amended by striking “; and an employer who is
20 furnished by an employee a written statement
21 of tips (received in a calendar month) pursuant
22 to section 6053(a) to which paragraph (12)(B)
23 of section 3121(a) is applicable may deduct an
24 amount equivalent to such tax with respect to
25 such tips from any wages of the employee (ex-

1 clusive of tips) under his control, even though
2 at the time such statement is furnished the
3 total amount of the tips included in statements
4 furnished to the employer as having been re-
5 ceived by the employee in such calendar month
6 in the course of his employment by such em-
7 ployer is less than \$20”.

8 (D) Section 3102 is amended by striking
9 subsection (c) (relating to special rule for tips).

10 (E) Subsection (a) of section 3202 is
11 amended by striking the second sentence.

12 (2) TIER 1 RAILROAD RETIREMENT.—

13 (A) Section 3202 is amended by striking
14 subsection (c).

15 (B) Paragraph (3) of section 3231(e) is
16 amended to read as follows:

17 “(3) Solely for purposes of the taxes imposed
18 by section 3201 and other provisions of this chapter
19 insofar as they relate to such taxes, the term ‘com-
20 pensation’ shall not include tips.”.

21 (C) Section 3231 is amended by striking
22 subsection (h).

23 (c) EXCLUSION FROM UNEMPLOYMENT COMPENSA-
24 TION TAXES.—Subsection (s) of section 3306 is amended
25 to read as follows:

1 “(s) TIPS NOT TREATED AS WAGES.—For purposes
2 of this chapter, the term ‘wages’ shall not include tips.”.

3 (d) EXCLUSION FROM WAGE WITHHOLDING.—

4 (1) Paragraph (16) of section 3401(a) is
5 amended to read as follows:

6 “(16) tips;”.

7 (2) Section 3401 is amended by striking sub-
8 section (f).

9 (3) Section 3402 is amended by striking sub-
10 section (k).

11 (e) TIPS DEFINED.—Subsection (a) of section 7701
12 (relating to definitions) is amended by adding at the end
13 the following new paragraph:

14 “(51) TIPS.—The term ‘tips’ includes any gra-
15 tuity provided to a salaried employee by a customer
16 or client of the employer’s business.”.

17 (f) CONFORMING AMENDMENTS.—

18 (1) Clause (i) of section 32(e)(2)(A) (defining
19 earned income) is amended by striking “tips,”.

20 (2)(A) Section 45B (relating to credit for por-
21 tion of employer social security taxes paid with re-
22 spect to employee cash tips) is hereby repealed.

23 (B) The table of sections for subpart D of part
24 IV of subchapter A of chapter 1 is amended by
25 striking the item relating to section 45B.

1 (C) Subsection (b) of section 38 is amended by
2 striking paragraph (11) and by redesignating the
3 succeeding paragraphs accordingly.

4 (D) Subsection (c) of section 196 is amended
5 by striking paragraph (8) and by redesignating the
6 succeeding paragraphs accordingly.

7 (E) Subsection (m) of section 6501 is amended
8 by striking “45B,”.

9 (3) Section 220(b)(4)(A) is amended by strik-
10 ing “tips,”.

11 (4) Section 451 is amended by striking sub-
12 section (c).

13 (5) Section 6001 is amended by striking the
14 last sentence.

15 (6) Section 6041 is amended by striking sub-
16 section (e).

17 (7) Subsection (c) of section 6041A is amended
18 by striking “, 6052, or 6053” and inserting “or
19 6052”.

20 (8) Subsection (a) of section 6051 is amended
21 by striking “In the case of tips received by an em-
22 ployee in the course of his employment, the amounts
23 required to be shown by paragraphs (3) and (5)
24 shall include only such tips as are included in state-

1 ments furnished to the employer pursuant to section
2 6053(a).”.

3 (9) Section 6053 (relating to tip reporting) is
4 hereby repealed.

5 (10) The table of sections for subpart C of part
6 III of subchapter A of chapter 61 is amended by
7 striking the item relating to section 6053.

8 (11) Section 6652 is amended by striking sub-
9 section (b) (relating to failure to report tips).

10 (12) Section 6674 (relating to fraudulent state-
11 ment or failure to furnish statement to employee) is
12 amended by striking “or 6053(b)” each place it ap-
13 pears.

14 (13) Subparagraph (B) of section 6724(d)(1) is
15 amended by striking clause (xvi) and redesignating
16 the succeeding clauses accordingly.

17 (14) Paragraph (2) of section 6724(d) is
18 amended by striking subparagraph (X) and redesignig-
19 nating the succeeding subparagraphs accordingly.

20 (g) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to tips received in calendar months
22 beginning after the date of the enactment of this Act.

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