

111TH CONGRESS
1ST SESSION

S. 1360

To amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2009

Mr. BINGAMAN (for himself and Ms. COLLINS) 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 exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

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 “Civil Rights Tax Relief
5 Act of 2009”.

1 **SEC. 2. EXCLUSION FROM GROSS INCOME FOR AMOUNTS**
 2 **RECEIVED ON ACCOUNT OF CERTAIN UNLAW-**
 3 **FUL DISCRIMINATION.**

4 (a) IN GENERAL.—Part III of subchapter B of chap-
 5 ter 1 of the Internal Revenue Code of 1986 (relating to
 6 items specifically excluded from gross income) is amended
 7 by inserting after section 139C the following new section:

8 **“SEC. 139D. AMOUNTS RECEIVED ON ACCOUNT OF CERTAIN**
 9 **UNLAWFUL DISCRIMINATION.**

10 “(a) IN GENERAL.—

11 “(1) EXCLUSION.—Gross income does not in-
 12 clude amounts received by a claimant (whether by
 13 suit or agreement and whether as lump sums or
 14 periodic payments) on account of a claim of unlawful
 15 discrimination.

16 “(2) AMOUNTS COVERED.—For purposes of
 17 paragraph (1), the term ‘amounts’ does not in-
 18 clude—

19 “(A) backpay or frontpay, as defined in
 20 section 1302(b),

21 “(B) punitive damages, or

22 “(C) such amounts allowed as a deduction
 23 under this chapter.

24 “(b) UNLAWFUL DISCRIMINATION DEFINED.—For
 25 purposes of this section, the term ‘unlawful discrimination’
 26 has the meaning given such term by section 62(e).”.

1 (b) CLERICAL AMENDMENT.—The table of sections
 2 for part III of subchapter B of chapter 1 of the Internal
 3 Revenue Code of 1986 is amended by inserting after the
 4 item relating to section 139C the following new item:

“Sec. 139D. Amounts received on account of certain unlawful discrimination.”.

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to amounts received in taxable
 7 years beginning after December 31, 2009.

8 **SEC. 3. LIMITATION ON TAX BASED ON INCOME AVER-**
 9 **AGING FOR BACKPAY AND FRONTPAY RE-**
 10 **CEIVED ON ACCOUNT OF CERTAIN UNLAW-**
 11 **FUL EMPLOYMENT DISCRIMINATION.**

12 (a) IN GENERAL.—Part I of subchapter Q of chapter
 13 1 of the Internal Revenue Code of 1986 (relating to in-
 14 come averaging) is amended by adding at the end the fol-
 15 lowing new section:

16 **“SEC. 1302. INCOME FROM BACKPAY AND FRONTPAY RE-**
 17 **CEIVED ON ACCOUNT OF CERTAIN UNLAW-**
 18 **FUL EMPLOYMENT DISCRIMINATION.**

19 “(a) GENERAL RULE.—If employment discrimination
 20 backpay or frontpay is received by a taxpayer during a
 21 taxable year, the tax imposed by this chapter for such tax-
 22 able year shall not exceed the sum of—

23 “(1) the tax which would be so imposed if—

1 “(A) no amount of such backpay or
2 frontpay were included in gross income for such
3 year, and

4 “(B) no deduction were allowed for such
5 year for expenses (otherwise allowable as a de-
6 duction to the taxpayer for such year) in con-
7 nection with making or prosecuting any claim
8 of unlawful employment discrimination by or on
9 behalf of the taxpayer, plus

10 “(2) the product of—

11 “(A) the number of years in the backpay
12 period and frontpay period, and

13 “(B) the amount by which the tax deter-
14 mined under paragraph (1) would increase if
15 the amount on which such tax is determined
16 were increased by the average annual net back-
17 pay and frontpay amount.

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

19 “(1) EMPLOYMENT DISCRIMINATION BACKPAY
20 OR FRONTPAY.—The term ‘employment discrimina-
21 tion backpay or frontpay’ means backpay or
22 frontpay receivable (whether as lump sums or peri-
23 odic payments) on account of a claim of unlawful
24 employment discrimination.

1 “(2) UNLAWFUL EMPLOYMENT DISCRIMINA-
 2 TION.—The term ‘unlawful employment discrimina-
 3 tion’ has the meaning provided the term ‘unlawful
 4 discrimination’ in section 139D(b).

5 “(3) BACKPAY AND FRONTPAY.—The terms
 6 ‘backpay’ and ‘frontpay’ mean amounts includible in
 7 gross income in the taxable year—

8 “(A) as compensation which is attrib-
 9 utable—

10 “(i) in the case of backpay, to services
 11 performed, or that would have been per-
 12 formed but for a claimed violation of law,
 13 as an employee, former employee, or pro-
 14 spective employee before such taxable year
 15 for the taxpayer’s employer, former em-
 16 ployer, or prospective employer; and

17 “(ii) in the case of frontpay, to em-
 18 ployment that would have been performed
 19 but for a claimed violation of law, in a tax-
 20 able year or taxable years following the
 21 taxable year; and

22 “(B) which are—

23 “(i) ordered, recommended, or ap-
 24 proved by any governmental entity to sat-
 25 isfy a claim for a violation of law, or

1 “(ii) received from the settlement of
2 such a claim.

3 “(4) BACKPAY PERIOD.—The term ‘backpay pe-
4 riod’ means the period during which services are
5 performed (or would have been performed) to which
6 backpay is attributable. If such period is not equal
7 to a whole number of taxable years, such period
8 shall be increased to the next highest number of
9 whole taxable years.

10 “(5) FRONTPAY PERIOD.—The term ‘frontpay
11 period’ means the period of foregone employment to
12 which frontpay is attributable. If such period is not
13 equal to a whole number of taxable years, such pe-
14 riod shall be increased to the next highest number
15 of whole taxable years.

16 “(6) AVERAGE ANNUAL NET BACKPAY AND
17 FRONTPAY AMOUNT.—The term ‘average annual net
18 backpay and frontpay amount’ means the amount
19 equal to—

20 “(A) the excess of—

21 “(i) employment discrimination back-
22 pay and frontpay, over

23 “(ii) the amount of deductions that
24 would have been allowable but for sub-
25 section (a)(1)(B), divided by

1 “(B) the number of years in the backpay
2 period and frontpay period.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for part I of subchapter Q of chapter 1 of the Internal
5 Revenue Code of 1986 is amended by inserting after sec-
6 tion 1301 the following new item:

“Sec. 1302. Income from backpay and frontpay received on account of certain
unlawful employment discrimination.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to amounts received in taxable
9 years beginning after December 31, 2009.

10 **SEC. 4. INCOME AVERAGING FOR BACKPAY AND FRONTPAY**
11 **RECEIVED ON ACCOUNT OF CERTAIN UNLAW-**
12 **FUL EMPLOYMENT DISCRIMINATION NOT TO**
13 **INCREASE ALTERNATIVE MINIMUM TAX LI-**
14 **ABILITY.**

15 (a) IN GENERAL.—Section 55(c) of the Internal Rev-
16 enue Code of 1986 (defining regular tax) is amended by
17 redesignating paragraph (3) as paragraph (4) and by in-
18 serting after paragraph (2) the following:

19 “(3) COORDINATION WITH INCOME AVERAGING
20 FOR AMOUNTS RECEIVED ON ACCOUNT OF EMPLOY-
21 MENT DISCRIMINATION.—Solely for purposes of this
22 section, section 1302 (relating to averaging of in-
23 come from backpay or frontpay received on account

1 of certain unlawful employment discrimination) shall
2 not apply in computing the regular tax.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to taxable years beginning after
5 December 31, 2009.

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