

111TH CONGRESS  
2D SESSION

# S. 3892

To amend the Internal Revenue Code of 1986 to provide tax benefits to individuals who have been wrongfully incarcerated.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2010

Mr. SCHUMER (for himself and Mr. CORNYN) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide tax benefits to individuals who have been wrongfully incarcerated.

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 “Wrongful Convictions  
5       Tax Relief Act of 2010”.

6       **SEC. 2. EXCLUSION FOR WRONGFULLY INCARCERATED IN-**  
7       **DIVIDUALS.**

8       (a) IN GENERAL.—Part III of subchapter B of chap-  
9       ter 1 of the Internal Revenue Code of 1986 is amended  
10      by inserting after section 139C the following new section:

1 **“SEC. 139D. CERTAIN AMOUNTS RECEIVED BY WRONG-**  
 2 **FULLY INCARCERATED INDIVIDUALS.**

3 “(a) EXCLUSION FROM GROSS INCOME.—Gross in-  
 4 come shall not include—

5 “(1) in the case of any wrongfully incarcerated  
 6 individual, any civil damages, restitution, or other  
 7 monetary award (including compensatory or statu-  
 8 tory damages and restitution imposed in a criminal  
 9 matter) relating to the incarceration of such indi-  
 10 vidual for the covered offense for which such indi-  
 11 vidual was convicted, and

12 “(2) in the case of a qualified wrongfully incar-  
 13 cerated individual, the first \$50,000 of income re-  
 14 ceived by such individual in any taxable year begin-  
 15 ning after December 31, 2009.

16 “(b) LIMITATION RELATING TO INCOME EXCLU-  
 17 SION.—

18 “(1) IN GENERAL.—The exclusion under sub-  
 19 section (a)(2) shall not apply to any qualified wrong-  
 20 fully incarcerated individual for any taxable year  
 21 other than a taxable year in the qualified benefit pe-  
 22 riod with respect to such individual.

23 “(2) QUALIFIED BENEFIT PERIOD.—For pur-  
 24 poses of paragraph (1), the term ‘qualified benefit  
 25 period’ means, with respect to any qualified wrong-  
 26 fully incarcerated individual, the first 15 taxable

1 years ending after the first date on which such indi-  
2 vidual is a wrongfully incarcerated individual.

3 “(3) LIMITATION BASED ON YEARS OF INCAR-  
4 CERATION.—In the case of a qualified wrongfully in-  
5 carcerated individual who served a sentence of im-  
6 prisonment of less than 15 years for the covered of-  
7 fense with respect to which such individual is a  
8 qualified wrongfully incarcerated individual, the  
9 number of full years that such individual was so im-  
10 prisoned shall be substituted for ‘15’ in paragraph  
11 (2).

12 “(4) TERMINATION OF EXCLUSION UPON CON-  
13 VICTION OF SUBSEQUENT OFFENSE.—If a qualified  
14 wrongfully incarcerated individual is convicted of a  
15 criminal offense under Federal or State law that is  
16 punishable by more than 1 year imprisonment at  
17 any time during the qualified benefit period, sub-  
18 section (a)(2) shall not apply to the taxable year  
19 which includes the date of such conviction and all  
20 subsequent taxable years.

21 “(c) WRONGFULLY INCARCERATED INDIVIDUAL.—

22 For purposes of this section—

23 “(1) IN GENERAL.—The term ‘wrongfully incar-  
24 cerated individual’ means an individual—

1           “(A) who was convicted of a covered of-  
2           fense,

3           “(B) who served all or part of a sentence  
4           of imprisonment relating to that covered of-  
5           fense, and

6           “(C)(i) who was pardoned, granted clem-  
7           ency, or granted amnesty for that covered of-  
8           fense because that individual was innocent of  
9           that covered offense, or

10          “(ii)(I) for whom the judgment of convic-  
11          tion for that covered offense was reversed or va-  
12          cated, and

13          “(II) for whom the indictment, informa-  
14          tion, or other accusatory instrument for that  
15          covered offense was dismissed or who was found  
16          not guilty at a new trial after the judgment of  
17          conviction for that covered offense was reversed  
18          or vacated.

19          “(2) COVERED OFFENSE.—The term ‘covered  
20          offense’ means any criminal offense under Federal  
21          or State law, and includes any criminal offense aris-  
22          ing from the same course of conduct as that crimi-  
23          nal offense.

24          “(d) QUALIFIED WRONGFULLY INCARCERATED INDIV-  
25          IDUAL.—For purposes of this section, the term ‘qualified

1 wrongfully incarcerated individual’ means a wrongfully in-  
 2 carcerated individual who, except for the covered offense  
 3 described in subsection (c)(1)(A), has never been convicted  
 4 of a criminal offense (other than a juvenile offense) under  
 5 Federal or State law that is punishable by more than 1  
 6 year imprisonment.

7 “(e) REPORTING REQUIREMENTS.—For purposes of  
 8 this section and section 36B, the Secretary shall impose  
 9 such reporting requirements as the Secretary determines  
 10 necessary or appropriate to carry out this section, includ-  
 11 ing a requirement that the individual include with the re-  
 12 turn of tax for the taxable year a statement or attestation  
 13 that the individual has not been subsequently convicted  
 14 of a crime within the meaning of subsection (b)(4).”.

15 (b) CONFORMING AMENDMENT.—The table of sec-  
 16 tions for part III of subchapter B of chapter 1 of the In-  
 17 ternal Revenue Code of 1986 is amended by inserting  
 18 after the item relating to section 139B the following new  
 19 item:

“Sec. 139D. Certain amounts received by wrongfully incarcerated individuals.”.

20 (c) EFFECTIVE DATE.—The amendments made by  
 21 this section shall apply to taxable years beginning before,  
 22 on, or after the date of the enactment of this Act.

1 **SEC. 3. REFUNDABLE CREDIT FOR EMPLOYMENT TAXES**  
 2 **PAID BY WRONGFULLY INCARCERATED INDIVIDUALS.**  
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4 (a) ALLOWANCE OF REFUNDABLE CREDIT.—Sub-  
 5 part C of part IV of subchapter A of chapter 1 of the  
 6 Internal Revenue Code of 1986 (relating to refundable  
 7 credits) is amended by inserting after section 36A the fol-  
 8 lowing new section:

9 **“SEC. 36B. EMPLOYMENT TAXES OF WRONGFULLY INCAR-**  
 10 **CERATED INDIVIDUALS.**

11 “(a) IN GENERAL.—In the case of a qualified wrong-  
 12 fully incarcerated individual, there shall be allowed as a  
 13 credit against the tax imposed by this subtitle for the tax-  
 14 able year an amount equal to the sum of—

15 “(1) 50 percent of the taxes imposed on the  
 16 self-employment income of such individual under  
 17 subsections (a) and (b) of section 1401 during the  
 18 taxable year, plus

19 “(2) the taxes imposed on the wages received by  
 20 such individual with respect to employment under  
 21 subsections (a) and (b) of section 3101 during the  
 22 taxable year.

23 “(b) LIMITATIONS.—

24 “(1) DOLLAR LIMITATION.—The total amount  
 25 of wages and self-employment income taken into ac-

1 count under subsection (a) with respect to any indi-  
 2 vidual for any taxable year shall not exceed \$50,000.

3 “(2) TAXABLE YEAR LIMITATION.—The credit  
 4 under subsection (a) shall not be allowed to any  
 5 qualified wrongfully incarcerated individual for any  
 6 taxable year other than a taxable year in the quali-  
 7 fied benefit period determined with respect to such  
 8 individual under paragraphs (2) and (3) of section  
 9 139D(b).

10 “(3) TERMINATION OF CREDIT UPON CONVIC-  
 11 TION OF SUBSEQUENT OFFENSE.—If a qualified  
 12 wrongfully incarcerated individual is convicted of a  
 13 criminal offense under Federal or State law that is  
 14 punishable by more than 1 year imprisonment at  
 15 any time during the qualified benefit period (as so  
 16 determined), subsection (a) shall not apply to the  
 17 taxable year which includes the date of such convic-  
 18 tion and all subsequent taxable years.

19 “(c) QUALIFIED WRONGFULLY INCARCERATED INDIV-  
 20 VIDUAL.—For purposes of this section, the term ‘qualified  
 21 wrongfully incarcerated individual’ has the meaning given  
 22 to such term under section 139D(d).

23 “(d) REFERENCE.—For reporting requirement, see  
 24 section 139D(e).”.

25 (b) CONFORMING AMENDMENTS.—

1           (1) Section 1324(b)(2) of title 31, United  
2       States Code, is amended by inserting “, 36B,” after  
3       “36A,”.

4           (2) The table of sections for subpart C of part  
5       IV of subchapter A of chapter 1 of the Internal Rev-  
6       enue Code of 1986 is amended by inserting after the  
7       item relating to section 36A the following new item:  
      “Sec. 36B. Employment taxes of wrongfully incarcerated individuals.”.

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

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