

116TH CONGRESS  
1ST SESSION

# S. 538

To amend the Internal Revenue Code of 1986 to provide a credit for employer-provided worker training.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2019

Mr. WARNER (for himself, Ms. STABENOW, and Mr. CASEY) 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 a credit for employer-provided worker training.

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 “Investing in American  
5       Workers Act”.

**6 SEC. 2. EMPLOYER-PROVIDED WORKER TRAINING CREDIT.**

7       (a) IN GENERAL.—

8                   (1) DETERMINATION OF CREDIT.—Subpart D  
9       of part IV of subchapter A of chapter 1 of the Inter-

1       nal Revenue Code of 1986 is amended by adding at  
2       the end the following new section:

5       “(a) IN GENERAL.—For purposes of section 38, the  
6 employer-provided worker training credit under this sec-  
7 tion for the taxable year is an amount equal to 20 percent  
8 of the excess (if any) of—

9               “(1) the qualified training expenditures for the  
10              taxable year, over

11               “(2) the average of the adjusted qualified train-  
12       ing expenditures for the 3 taxable years preceding  
13       the taxable year for which the credit is being deter-  
14       mined.

15        "(b) QUALIFIED TRAINING EXPENDITURES.—For  
16 purposes of this section—

17                   “(1) IN GENERAL.—The term ‘qualified train-  
18                   ing expenditures’ means any expenditures for the  
19                   qualified training of any non-highly compensated  
20                   employee. Such term shall not include any amounts  
21                   paid for meals, lodging, transportation, or other  
22                   services incidental to such qualified training.

23                   “(2) QUALIFIED TRAINING.—

24                             “(A) IN GENERAL.—For purposes of para-  
25                             graph (1), the term ‘qualified training’ means

1                   training which results in the attainment of a  
2                   recognized postsecondary credential and which  
3                   is provided through—

4                   “(i) an apprenticeship program reg-  
5                   istered under the Act of August 16, 1937  
6                   (commonly known as the ‘National Ap-  
7                   prenticeship Act’; 50 Stat. 664, chapter  
8                   663; 29 U.S.C. 50 et seq.);

9                   “(ii)(I) a program of training services  
10                  which is listed under section 122(d) of the  
11                  Workforce Innovation and Opportunity Act  
12                  (29 U.S.C. 3152(d)); or

13                  “(II) an apprenticeship program  
14                  which is registered or approved by a recog-  
15                  nized State apprenticeship agency (which  
16                  uses a State apprenticeship council) in ac-  
17                  cordance with section 1 of the Act referred  
18                  to in clause (i);

19                  “(iii) a program which is conducted  
20                  by an area career and technical education  
21                  school, a community college, or a labor or-  
22                  ganization; or

23                  “(iv) a program which is sponsored  
24                  and administered by an employer, industry

1 trade association, industry or sector part-  
2 nership, or labor organization.

3                           “(B) RELATED DEFINITIONS.—In sub-  
4                           paragraph (A):

1                             “(iii) INDUSTRY OR SECTOR PARTNER-  
2                             SHIP.—The term ‘industry or sector part-  
3                             nership’ has the meaning given such term  
4                             under section 3 of the Workforce Innova-  
5                             tion and Opportunity Act (29 U.S.C.  
6                             3102).

7                             “(iv) INDUSTRY TRADE ASSOCIA-  
8                             TION.—The term ‘industry trade associa-  
9                             tion’ means an organization which—

10                             “(I) is described in paragraph (3)  
11                             or (6) of section 501(c) of the Inter-  
12                             nal Revenue Code of 1986 and exempt  
13                             from taxation under section 501(a) of  
14                             such Code; and

15                             “(II) is representing an industry.

16                             “(v) LABOR ORGANIZATION.—The  
17                             term ‘labor organization’ means a labor or-  
18                             ganization, within the meaning of the term  
19                             in section 501(c)(5) of the Internal Rev-  
20                             enue Code of 1986.

21                             “(vi) RECOGNIZED POSTSECONDARY  
22                             CREDENTIAL.—The term ‘recognized post-  
23                             secondary credential’ means a credential  
24                             consisting of an industry-recognized certifi-  
25                             cate or certification, a certificate of com-

1                   pletion of an apprenticeship, a license rec-  
2                   ognized by the State involved or Federal  
3                   Government, or an associate or bacca-  
4                   laureate degree.

5                   “(3) NON-HIGHLY COMPENSATED EMPLOYEE.—  
6                   For purposes of paragraph (1), the term ‘non-highly  
7                   compensated employee’ means an employee of the  
8                   taxpayer whose remuneration for the taxable year  
9                   for services provided to the taxpayer does not exceed  
10                  \$82,000.

11                  “(c) ADJUSTED QUALIFIED TRAINING EXPENDI-  
12                  TURES.—For purposes of this section, the term ‘adjusted  
13                  qualified training expenses’ means, with respect to any  
14                  taxable year—

15                  “(1) the qualified training expenses for such  
16                  taxable year, multiplied by

17                  “(2) the cost-of-living adjustment determined  
18                  under section 1(f)(3) for the calendar year in which  
19                  the taxable year for which the credit is being deter-  
20                  mined begins, except that section 1(f)(3)(A)(ii) shall  
21                  be applied by using the CPI for the calendar year  
22                  in which the taxable year in which qualified training  
23                  expenses were paid or incurred begins in lieu of the  
24                  CPI for calendar year 1982.

1       “(d) SPECIAL RULES.—For purposes of this sec-  
2 tion—

3           “(1) SPECIAL RULE IN CASE OF NO QUALIFIED  
4           TRAINING EXPENDITURES IN ANY OF 3 PRECEDING  
5           TAXABLE YEARS.—

6           “(A) TAXPAYERS TO WHICH PARAGRAPH  
7           APPLIES.—The credit under this section shall  
8           be determined under this paragraph if the tax-  
9           payer has no qualified training expenditures in  
10           any one of the 3 taxable years preceding the  
11           taxable year for which the credit is being deter-  
12           mined.

13           “(B) CREDIT RATE.—The credit deter-  
14           mined under this paragraph shall be equal to  
15           10 percent of the adjusted qualified training ex-  
16           penditures for the taxable year.

17           “(2) AGGREGATION AND ALLOCATION OF EX-  
18           PENDITURES, ETC.—Rules similar to the rules of  
19           paragraphs (1), (2), (3), (4), and (5) of section  
20           41(f) shall apply.

21           “(e) ELECTION TO APPLY CREDIT AGAINST PAY-  
22 ROLL TAXES.—

23           “(1) IN GENERAL.—At the election of a qual-  
24           fied small business or a qualified tax-exempt organi-  
25           zation (as defined in section 3111(e)(5)(A)) for any

1       taxable year, section 3111(g) shall apply to the pay-  
2       roll tax credit portion of the credit otherwise deter-  
3       mined under subsection (a) for the taxable year and  
4       such portion shall not be treated (other than for  
5       purposes of section 280C) as a credit determined  
6       under subsection (a).

7               “(2) PAYROLL TAX CREDIT PORTION.—For  
8       purposes of this subsection, the payroll tax credit  
9       portion of the credit determined under subsection  
10      (a) with respect to any qualified small business or  
11      qualified tax-exempt organization for any taxable  
12      year is the least of—

13               “(A) the amount specified in the election  
14       made under this subsection,

15               “(B) the credit determined under sub-  
16       section (a) for the taxable year (determined be-  
17       fore the application of this subsection), or

18               “(C) in the case of a qualified small busi-  
19       ness other than a partnership or S corporation,  
20       the amount of the business credit carryforward  
21       under section 39 carried from the taxable year  
22       (determined before the application of this sub-  
23       section to the taxable year).

24               “(3) QUALIFIED SMALL BUSINESS.—For pur-  
25       poses of this subsection—

1                   “(A) IN GENERAL.—The term ‘qualified  
2                   small business’ means, with respect to any tax-  
3                   able year—

4                   “(i) a corporation or partnership, if—

5                   “(I) the gross receipts (as deter-  
6                   mined under the rules of section  
7                   448(c)(3), without regard to subpara-  
8                   graph (A) thereof) of such entity for  
9                   the taxable year is less than  
10                   \$5,000,000, and

11                   “(II) such entity did not have  
12                   gross receipts (as so determined) for  
13                   any taxable year preceding the 5-tax-  
14                   able-year period ending with such tax-  
15                   able year, and

16                   “(ii) any person (other than a cor-  
17                   poration or partnership) who meets the re-  
18                   quirements of subclauses (I) and (II) of  
19                   clause (i), determined—

20                   “(I) by substituting ‘person’ for  
21                   ‘entity’ each place it appears, and

22                   “(II) by only taking into account  
23                   the aggregate gross receipts received  
24                   by such person in carrying on all  
25                   trades or businesses of such person.

1                   “(B) LIMITATION.—Such term shall not  
2                   include an organization which is exempt from  
3                   taxation under section 501.

4                   “(4) ELECTION.—

5                   “(A) IN GENERAL.—Any election under  
6                   this subsection for any taxable year—

7                   “(i) shall specify the amount of the  
8                   credit to which such election applies,

9                   “(ii) shall be made on or before the  
10                   due date (including extensions) of—

11                   “(I) in the case of a partnership,  
12                   the return required to be filed under  
13                   section 6031,

14                   “(II) in the case of an S corpora-  
15                   tion, the return required to be filed  
16                   under section 6037, and

17                   “(III) in the case of any other  
18                   qualified small business or qualified  
19                   tax-exempt organization, the return of  
20                   tax for the taxable year, and

21                   “(iii) may be revoked only with the  
22                   consent of the Secretary.

23                   “(B) LIMITATIONS.—

1                     “(i) AMOUNT.—The amount specified  
2                     in any election made under this subsection  
3                     shall not exceed \$250,000.

4                     “(ii) NUMBER OF TAXABLE YEARS.—  
5                     A person may not make an election under  
6                     this subsection if such person (or any other  
7                     person treated as a single taxpayer with  
8                     such person under paragraph (5)(A)) has  
9                     made an election under this subsection for  
10                     five or more preceding taxable years.

11                     “(C) SPECIAL RULE FOR PARTNERSHIPS  
12                     AND S CORPORATIONS.—In the case of a part-  
13                     nership or S corporation, the election made  
14                     under this subsection shall be made at the enti-  
15                     ty level.

16                     “(5) AGGREGATION RULES.—

17                     “(A) IN GENERAL.—Except as provided in  
18                     subparagraph (B)—

19                     “(i) all members of the same con-  
20                     trolled group of corporations shall be treat-  
21                     ed as a single taxpayer, and

22                     “(ii) all trades or businesses (whether  
23                     or not incorporated) which are under com-  
24                     mon control shall be treated as a single  
25                     taxpayer.

1                   “(B) SPECIAL RULES.—For purposes of  
2                   this subsection and section 3111(g)—

3                   “(i) each of the persons treated as a  
4                   single taxpayer under subparagraph (A)  
5                   may separately make the election under  
6                   paragraph (1) for any taxable year, and

7                   “(ii) the \$250,000 amount under  
8                   paragraph (3)(B)(i) shall be allocated  
9                   among all persons treated as a single tax-  
10                   payer under subparagraph (A) in the man-  
11                   ner provided by the Secretary which is  
12                   similar to the manner provided under sec-  
13                   tion 41(f)(1).

14                   “(6) REGULATIONS.—The Secretary shall pre-  
15                   scribe such regulations as may be necessary to carry  
16                   out the purposes of this subsection, including—

17                   “(A) regulations to prevent the avoidance  
18                   of the purposes of the limitations and aggrega-  
19                   tion rules under this subsection,

20                   “(B) regulations to minimize compliance  
21                   and recordkeeping burdens under this sub-  
22                   section, and

23                   “(C) regulations for recapturing the ben-  
24                   efit of credits determined under section 3111(g)  
25                   in cases where there is a recapture or a subse-

1           quent adjustment to the payroll tax credit por-  
2           tion of the credit determined under subsection  
3           (a), including requiring amended income tax re-  
4           turns in the cases where there is such an ad-  
5           justment.”.

6           (2) CREDIT PART OF GENERAL BUSINESS  
7           CREDIT.—Section 38(b) of the Internal Revenue  
8           Code of 1986 is amended by striking “plus” at the  
9           end of paragraph (31), by striking the period at the  
10           end of paragraph (32) and inserting “, plus”, and  
11           by adding at the end the following new paragraph:  
12           “(33) the employer-provided worker training  
13           credit determined under section 45T(a).”.

14           (3) COORDINATION WITH DEDUCTIONS.—Sec-  
15           tion 280C of the Internal Revenue Code of 1986 is  
16           amended by adding at the end the following new  
17           subsection:

18           “(i) EMPLOYER-PROVIDED WORKER TRAINING  
19           CREDIT.—No deduction shall be allowed for that portion  
20           of the expenses otherwise allowable as a deduction taken  
21           into account in determining the credit under section 45T  
22           for the taxable year which is equal to the amount of the  
23           credit determined for such taxable year under section  
24           45T(a).”.

“Sec. 45T. Employer-provided worker training credit.”.

6 (b) CREDIT ALLOWED AGAINST ALTERNATIVE MIN-  
7 IMUM TAX.—Subparagraph (B) of section 38(c)(4) of the  
8 Internal Revenue Code of 1986 is amended—

9 (1) by redesignating clauses (x), (xi), and (xii)  
10 as clauses (xi), (xii), and (xiii), respectively, and  
11 (2) by inserting after clause (ix) the following  
12 new clause

18 (c) PAYROLL TAX CREDIT.—Section 3111 of the In-  
19 ternal Revenue Code of 1986 is amended by adding at the  
20 end the following new subsection:

21       “(g) CREDIT FOR WORKER TRAINING EXPENSES.—  
22           “(1) IN GENERAL.—In the case of a taxpayer  
23        who has made an election under section 45T(e) for  
24        a taxable year, there shall be allowed as a credit  
25        against the tax imposed by subsection (a) for the

1       first calendar quarter which begins after the date on  
2       which the taxpayer files the return specified in sec-  
3       tion 45T(e)(4)(A)(ii) an amount equal to the payroll  
4       tax credit portion determined under section  
5       45T(e)(2).

6       “(2) LIMITATION.—The credit allowed by para-  
7       graph (1) shall not exceed the tax imposed by sub-  
8       section (a) for any calendar quarter on the wages  
9       paid with respect to the employment of all individ-  
10       uals in the employ of the employer.

11       “(3) CARRYOVER OF UNUSED CREDIT.—If the  
12       amount of the credit under paragraph (1) exceeds  
13       the limitation of paragraph (2) for any calendar  
14       quarter, such excess shall be carried to the suc-  
15       ceeding calendar quarter and allowed as a credit  
16       under paragraph (1) for such quarter.

17       “(4) DEDUCTION ALLOWED FOR CREDITED  
18       AMOUNTS.—The credit allowed under paragraph (1)  
19       shall not be taken into account for purposes of de-  
20       termining the amount of any deduction allowed  
21       under chapter 1 for taxes imposed under subsection  
22       (a).”.

23       (d) SIMPLIFIED FILING FOR CERTAIN SMALL BUSI-  
24       NESSES.—The Secretary of the Treasury shall provide for  
25       a method of filing returns of tax and information returns

1 required under the Internal Revenue Code of 1986 in a  
2 simplified format, to the extent possible, for employers  
3 with less than \$5,000,000 in annual gross receipts (as de-  
4 termined under guidance provided by the Secretary).

5 (e) REGULATIONS RELATING TO POSTSECONDARY  
6 CREDENTIALS.—Not later than 1 year after the date of  
7 the enactment of this Act, the Secretary of Labor, in con-  
8 sultation with the Secretary of the Treasury, shall issue  
9 regulations or other guidance applying the definition of  
10 the term “recognized postsecondary credential” as pro-  
11 vided in section 3 of the Workforce Innovation and Oppor-  
12 tunity Act (29 U.S.C. 3102).

13 (f) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to taxable years beginning after  
15 the date of the enactment of this Act.

○