

111TH CONGRESS  
2D SESSION

# S. 2973

To amend the Internal Revenue Code of 1986 to provide a temporary payroll increase tax credit for certain employers.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 1, 2010

Mr. CASEY (for himself, Mrs. GILLIBRAND, Mr. LEVIN, and Mr. BEGICH) 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 temporary payroll increase tax credit for certain employers.

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 Job  
5 Creation Tax Act of 2010”.

6 **SEC. 2. EMPLOYER PAYROLL INCREASE CREDIT.**

7 (a) IN GENERAL.—Subchapter B of chapter 65 of the  
8 Internal Revenue Code of 1986 is amended by adding at  
9 the end the following new section:

1 **“SEC. 6433. EMPLOYER PAYROLL INCREASE CREDITS.**

2 “(a) IN GENERAL.—Each qualified employer shall be  
3 treated as having made a payment against the tax imposed  
4 by section 3111(a) or section 3221(a), whichever is appli-  
5 cable, for each qualified quarter an amount equal to the  
6 credit amount.

7 “(b) CREDIT AMOUNT.—

8 “(1) IN GENERAL.—For purposes of this sec-  
9 tion, the credit amount with respect to any qualified  
10 quarter is equal to the applicable percentage of the  
11 qualified payroll increase of such employer for such  
12 qualified quarter.

13 “(2) APPLICABLE PERCENTAGE.—For purposes  
14 of paragraph (1), the applicable percentage with re-  
15 spect to any qualified quarter is—

16 “(A) in the case of an employer that em-  
17 ploys fewer than 100 employees during such  
18 quarter, 20 percent, and

19 “(B) in the case of an employer that em-  
20 ploys 100 or more employees during such quar-  
21 ter, 15 percent.

22 “(c) DOLLAR LIMITATION.—The total credit amount  
23 with respect to any employer shall not exceed \$500,000  
24 for all qualified quarters.

25 “(d) QUALIFIED EMPLOYER.—For purposes of this  
26 section, the term ‘qualified employer’ means any American

1 employer other than the United States, any State, or any  
2 instrumentality thereof.

3 “(e) QUALIFIED PAYROLL INCREASE.—For purposes  
4 of this section—

5 “(1) IN GENERAL.—The term ‘qualified payroll  
6 increase’ with respect to any qualified quarter means  
7 the amount, if any, by which a qualified employer’s  
8 qualified payroll for such quarter exceeds the quali-  
9 fied payroll for such quarter of the calendar year  
10 preceding the year in which such qualified quarter  
11 falls.

12 “(2) QUALIFIED PAYROLL.—The term ‘quali-  
13 fied payroll’ means the amount of all wages (within  
14 the meaning of section 3121(a)) paid or incurred by  
15 a qualified employer to the employees of such em-  
16 ployer, except that, with respect to each such em-  
17 ployee for any quarter of the employer, such wages  
18 shall be taken into account only to the extent that  
19 such wages do not exceed the contribution and ben-  
20 efit base as determined under section 230 of the So-  
21 cial Security Act.

22 “(3) RAILWAY LABOR.—In the case of remu-  
23 neration subject to the tax imposed by section  
24 3221(a), paragraph (1) shall be applied by sub-  
25 stituting ‘all compensation (within the meaning of

1 section 3231(e))’ for ‘all wages (within the meaning  
2 of section 3121(a))’.

3 “(4) SPECIAL RULE FOR LARGE EMPLOYERS.—

4 In the case of an employer described in subsection  
5 (b)(2)(B), no qualified payroll increase shall be  
6 taken into account for any qualified quarter unless  
7 the qualified payroll increase with respect to such  
8 qualified quarter exceeds 3 percent of the qualified  
9 payroll for such quarter of the calendar year pre-  
10 ceding the year in which such qualified quarter falls.

11 “(f) QUALIFIED QUARTER.—For purposes of this  
12 section, the term ‘qualified quarter’ means—

13 “(1) the calendar quarter which includes the  
14 date of the enactment of the Small Business Job  
15 Creation Tax Act of 2010, and

16 “(2) each of the 3 calendar quarters following  
17 such quarter.

18 “(g) DEFINITIONS.—Except as provided in sub-  
19 section (h)(1), any term used in this section which is also  
20 used in section 3111 has the same meaning as when used  
21 in such section.

22 “(h) SPECIAL RULES.—For purposes of this sec-  
23 tion—

24 “(1) EMPLOYEE.—The term ‘employee’ includes  
25 only individuals who are citizens or lawful residents

1 of the United States who receive wages, remunera-  
2 tion, compensation, or tips from an employer for  
3 work performed within a State or a possession of the  
4 United States.

5 “(2) MAINTENANCE OF BASE EMPLOYMENT RE-  
6 QUIREMENT.—This section shall not apply to any  
7 qualified employer for any qualified quarter if the  
8 total number of employees of such employer during  
9 such quarter is less than the total number of such  
10 employees during the quarter preceding such quar-  
11 ter, determined by not taking into account any em-  
12 ployee who is a seasonal employee during such pre-  
13 ceding quarter.

14 “(3) CONTROLLED GROUPS.—All employers  
15 treated as a single employer under section (a) or (b)  
16 of section 52 shall be treated as a single employer  
17 for purposes of the dollar limitation under sub-  
18 section (c), except that any employer which is not an  
19 American employer shall not be taken into account.

20 “(4) NEW EMPLOYERS.—

21 “(A) IN GENERAL.—In the case of a quali-  
22 fied employer which comes into existence after  
23 the date of the enactment of the Small Business  
24 Job Creation Tax Act of 2010 and before Janu-  
25 ary 1, 2012—

1           “(i) the term ‘qualified quarter’  
2 means—

3                   “(I) the first calendar quarter for  
4 which such qualified employer is in  
5 existence, and

6                   “(II) each of the 3 quarters fol-  
7 lowing such quarter,

8           “(ii) the qualified payroll increase of  
9 such employer for the quarter described in  
10 clause (i)(I) shall be equal to the amount  
11 of the employer’s qualified payroll for such  
12 quarter, and

13           “(iii) the qualified payroll increase of  
14 such employer for any quarter described in  
15 clause (i)(II) shall be the amount, if any,  
16 by which the employer’s qualified payroll  
17 for such quarter exceeds the qualified pay-  
18 roll of the quarter preceding such quarter.

19           “(B) TRANSITION RULE.—

20           “(i) IN GENERAL.—In the case of a  
21 qualified employer which comes into exist-  
22 ence—

23                   “(I) after the last day of the cal-  
24 endar quarter which is 5 calendar  
25 quarters before the date of the enact-

1                   ment of the Small Business Job Cre-  
2                   ation Tax Act of 2010, and

3                   “**(II)** before such date of enact-  
4                   ment,

5                   the qualified payroll increase of such em-  
6                   ployer for any transition quarter shall be  
7                   the amount, if any, by which the employ-  
8                   er’s qualified payroll for such quarter ex-  
9                   ceeds the qualified payroll of the quarter  
10                  preceding such quarter.

11                  “(ii) **TRANSITION QUARTER.**—For  
12                  purposes of clause (i), the term ‘transition  
13                  quarter’ means a qualified quarter with re-  
14                  spect to which the qualified payroll in-  
15                  crease cannot be determined under sub-  
16                  section (e)(1) solely because the employer  
17                  was not in existence during such quarter of  
18                  the calendar year preceding the year in  
19                  which such qualified quarter falls.”.

20                  **(b) CLERICAL AMENDMENT.**—The table of sections  
21                  for subchapter B of chapter 65 of the Internal Revenue  
22                  Code of 1986 is amended by adding at the end the fol-  
23                  lowing new item:

“Sec. 6433. Employer payroll increase credits.”.

24                  **(c) NOTIFICATION.**—Not later than 30 days after the  
25                  date of the enactment of this Act, the Commissioner of

1 Internal Revenue shall notify all employers required to  
2 withhold employment taxes under chapter 21 or 22 of the  
3 Internal Revenue Code of 1986 of the enactment and ap-  
4 plicability of section 6433 of the Internal Revenue Code  
5 of 1986, as added by this Act.

6 (d) INVESTIGATION AND REPORT ON ENFORCEMENT  
7 ACTIONS.—Not later than 6 months after the date of the  
8 enactment of this Act, and quarterly thereafter, the Com-  
9 missioner of Internal Revenue shall submit a report to the  
10 Committee on Finance of the Senate and the Committee  
11 on Ways and Means of the House of Representatives on  
12 the enforcement measures taken to prevent and penalize  
13 fraud related to section 6433 of the Internal Revenue  
14 Code of 1986, including such information as—

15 (1) general statistics related to the application  
16 of such section,

17 (2) cases of fraud, and

18 (3) the status of investigatory and prosecutorial  
19 actions related to such cases.

20 (e) EFFECTIVE DATE.—The amendments made by  
21 subsections (a) and (b) shall apply to calendar quarters  
22 beginning with the calendar quarter which includes the  
23 date of the enactment of this Act.

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