

116TH CONGRESS
1ST SESSION

S. 219

To amend the Internal Revenue Code of 1986 to impose an excise tax
on employers with low-wage employees.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2019

Mr. BROWN (for himself and Mr. DURBIN) 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 impose
an excise tax on employers with low-wage employees.

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 “Corporate Freeloader
5 Fee Act”.

6 **SEC. 2. IMPOSITION OF EXCISE TAX ON CORPORATIONS**
7 **WITH LOW-WAGE EMPLOYEES.**

8 (a) IN GENERAL.—Subtitle D of the Internal Rev-
9 enue Code of 1986 is amended by adding after chapter
10 36 the following new chapter:

1 **“CHAPTER 37—CORPORATE**
 2 **RESPONSIBILITY TAX**

“Sec. 4511. Imposition of tax.

3 **“SEC. 4511. IMPOSITION OF TAX.**

4 “(a) IN GENERAL.—In the case of an applicable em-
 5 ployer who employs a low-wage employee during the cal-
 6 endar year, there is imposed a tax equal to the applicable
 7 percentage of the aggregate amount of wages paid by the
 8 applicable employer with respect to employment of all em-
 9 ployees of the employer during the calendar year.

10 “(b) APPLICABLE EMPLOYER; LOW-WAGE EM-
 11 PLOYEE.—For purposes of this section—

12 “(1) APPLICABLE EMPLOYER.—

13 “(A) IN GENERAL.—The term ‘applicable
 14 employer’ means, with respect to any calendar
 15 year, any employer who was required to make
 16 deposits of taxes under chapters 21 and 24 (or
 17 who would have been required to make such de-
 18 posits if the rules of subparagraph (C) applied
 19 for such purposes) by the close of the next day
 20 for periods aggregating more than 180 days
 21 during the preceding calendar year.

22 “(B) EXCEPTION.—Such term shall not in-
 23 clude a Federal or other governmental entity or

1 a church or qualified church organization (as
2 such terms are defined in section 3121(w)(3)).

3 “(C) AGGREGATION RULES.—The rules of
4 subsections (b), (c), (m), and (o) of section 414
5 shall apply for purposes of this section, except
6 that in applying subsections (b) and (c) of such
7 section, the phrase ‘more than 50 percent’ shall
8 be substituted for the phrase ‘more than 80
9 percent’ each place it appears.

10 “(2) LOW-WAGE EMPLOYEE.—

11 “(A) IN GENERAL.—The term ‘low-wage
12 employee’ means any employee who receives
13 wages from an applicable employer during the
14 calendar year in an amount less than 218 per-
15 cent of the Federal poverty line (within the
16 meaning of section 2110(c)(5) of the Social Se-
17 curity Act) for an individual. Rules similar to
18 the rules of section 36B(d)(3)(B) shall apply
19 for purposes of this subparagraph.

20 “(B) EMPLOYEES EMPLOYED FOR LESS
21 THAN ENTIRE YEAR.—In the case of any em-
22 ployee employed by an applicable taxpayer for
23 less than the entire calendar year, the amount
24 described in subparagraph (A) shall be reduced

1 by an amount which bears the same ratio to
2 such amount as—

3 “(i) the number of weeks during the
4 calendar year in which such individual was
5 not an employee of such applicable em-
6 ployer, bears to

7 “(ii) 52.

8 “(c) APPLICABLE PERCENTAGE.—For purposes of
9 subsection (a)—

10 “(1) IN GENERAL.—

11 “(A) DETERMINATION.—The applicable
12 percentage shall be determined as follows:

“In the case of an applicable employer with a low-wage employee ratio of:	The applicable percentage is:
25 percent or less	25 percent
Greater than 25 percent, but not greater than 50 percent	50 percent
Greater than 50 percent, but not greater than 75 percent	75 percent
Greater than 75 percent	100 percent.

13 “(B) LOW-WAGE EMPLOYEE RATIO.—For
14 purposes of subparagraph (A), the low-wage
15 employee ratio with respect to any applicable
16 employer is the ratio (expressed as a percent-
17 age) of—

18 “(i) the number of low-wage employ-
19 ees employed by the applicable employer
20 during the calendar year, to

1 “(ii) the total number of individuals
 2 employed by the applicable employer dur-
 3 ing such calendar year.

4 “(2) HEALTH AND RETIREMENT OFFSET.—

5 “(A) IN GENERAL.—In the case of an ap-
 6 plicable employer who meets the requirements
 7 of subparagraph (B), the applicable percentage
 8 shall be reduced (but not below zero) by 25 per-
 9 centage points.

10 “(B) REQUIREMENTS.—An applicable em-
 11 ployer meets the requirements of this subpara-
 12 graph if such applicable employer—

13 “(i) offers to all full-time low-wage
 14 employees (and their spouse and depend-
 15 ents) the opportunity to enroll for all
 16 months during the calendar year in min-
 17 imum essential coverage under an eligible
 18 employer sponsored health plan (as defined
 19 in section 5000A(f)(2)) for which—

20 “(I) the plan’s share of the al-
 21 lowed costs of benefits provided under
 22 the plan is not less than 60 percent of
 23 such costs, and

24 “(II) the required contribution
 25 (within the meaning of section

1 5000A(e)(1)(B)) of the employee does
 2 not exceed the applicable percentage
 3 of the annual wages paid to the em-
 4 ployee by the applicable employer, and
 5 “(ii) meets the retirement plan re-
 6 quirements of subsection (d) for all em-
 7 ployees who are low-wage employees.

8 For purposes of clause (i)(II), the applicable
 9 percentage is the percentage in effect under
 10 section 36B(b)(2)(B)(ii) for the plan year.

11 “(d) RETIREMENT PLAN REQUIREMENTS.—

12 “(1) IN GENERAL.—The requirements of this
 13 subsection are met for any calendar year with re-
 14 spect to an employee of the applicable employer who
 15 is a low-wage employee if the employee is eligible to
 16 participate in one or more applicable eligible retire-
 17 ment plans maintained by the applicable employer
 18 (or any member of the group of employers treated
 19 as an applicable employer under subsection
 20 (b)(1)(C)) for a plan year ending with or within the
 21 calendar year.

22 “(2) APPLICABLE ELIGIBLE RETIREMENT
 23 PLAN.—For purposes of this subsection, the term
 24 ‘applicable eligible retirement plan’ means an eligible

1 retirement plan which, with respect to the plan year
2 described in paragraph (1), is either—

3 “(A) a defined contribution plan which re-
4 quires the employer to make nonelective con-
5 tributions of at least 5 percent of the com-
6 pensation of the employee, or

7 “(B) a defined benefit plan—

8 “(i) with respect to which the accrued
9 benefit of the employee derived from em-
10 ployer contributions, when expressed as an
11 annual retirement benefit, is not less than
12 the product of—

13 “(I) the lesser of 2 percent multi-
14 plied by the employee’s years of serv-
15 ice (determined under the rules of
16 paragraphs (4), (5), and (6) of section
17 411(a)) with the employer or 20 per-
18 cent, multiplied by

19 “(II) the employee’s final average
20 pay, or

21 “(ii) which is an applicable defined
22 benefit plan (as defined in section
23 411(a)(13)(B))—

24 “(I) which meets the interest
25 credit requirements of section

1 411(b)(5)(B)(i) with respect to the
2 plan year, and

3 “(II) under which the employee
4 receives a pay credit for the plan year
5 which is not less than 5 percent of
6 compensation.

7 “(3) DEFINITIONS AND SPECIAL RULES.—For
8 purposes of this subsection—

9 “(A) ELIGIBLE RETIREMENT PLAN.—The
10 term ‘eligible retirement plan’ has the meaning
11 given such term by section 402(c)(8)(B), except
12 that in the case of an account or annuity de-
13 scribed in clause (i) or (ii) thereof, such term
14 shall only include an account or annuity which
15 is a simplified employee pension (as defined in
16 section 408(k)).

17 “(B) FINAL AVERAGE PAY.—For purposes
18 of paragraph (2)(B)(i)(II), final average pay
19 shall be determined using the period of consec-
20 utive years (not exceeding 5) during which the
21 employee had the greatest compensation from
22 the applicable employer.

23 “(C) ALTERNATIVE PLAN DESIGNS.—The
24 Secretary may prescribe regulations for an ap-
25 plicable employer to meet the requirements of

1 this subsection through a combination of de-
 2 fined contribution plans or defined benefit plans
 3 described in paragraph (1) or through a com-
 4 bination of both such types of plans.

5 “(D) PLANS MUST MEET REQUIREMENTS
 6 WITHOUT TAKING INTO ACCOUNT SOCIAL SECU-
 7 RITY AND SIMILAR CONTRIBUTIONS AND BENE-
 8 FITS.—A rule similar to the rule of section
 9 416(e) shall apply.

10 “(E) CERTAIN EMPLOYEES MAY BE EX-
 11 CLUDED.—For purposes of paragraph
 12 (2)(B)(ii), an employer shall not be treated as
 13 failing to meet the requirements of this sub-
 14 section with respect to employees—

15 “(i) who have not attained the age of
 16 21 before the close of a plan year,

17 “(ii) who have less than 1 year of
 18 service with the employer as of any day
 19 during the plan year,

20 “(iii) who are covered under an agree-
 21 ment which the Secretary of Labor finds to
 22 be a collective bargaining agreement if
 23 there is evidence that the benefits covered
 24 under the plan were the subject of good

1 faith bargaining between employee rep-
2 resentatives and the employer, or

3 “(iv) who are described in section
4 410(b)(3)(C) (relating to nonresident
5 aliens working outside the United States).

6 “(e) DEFINITIONS AND SPECIAL RULES.—For pur-
7 poses of this section—

8 “(1) WAGES.—The term ‘wages’ has the mean-
9 ing given such term by section 3121(a) (determined
10 without regard to any dollar limitation contained in
11 such section).

12 “(2) ALLOCATION OF TAX.—The Secretary
13 shall prescribe such rules as necessary for the alloca-
14 tion of the tax imposed by subsection (a) among dif-
15 ferent entities treated as a single employer under
16 subsection (b)(1)(C).”.

17 (b) CONFORMING AMENDMENT.—The table of chap-
18 ters of the Internal Revenue Code of 1986 is amended by
19 inserting after the item relating to chapter 36 the fol-
20 lowing new item:

 “CHAPTER 37—CORPORATE RESPONSIBILITY TAX”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to calendar years beginning after
23 the date of the enactment of this Act.

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