

118TH CONGRESS  
2D SESSION

# H. R. 8401

To amend the Internal Revenue Code of 1986 to allow a credit for a portion of employer social security taxes paid with respect to service charges paid by the employer to an employee in the form of wages, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2024

Mr. BLUMENAUER introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to allow a credit for a portion of employer social security taxes paid with respect to service charges paid by the employer to an employee in the form of wages, 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 “Restaurant Service  
5 Charge Fairness Act”.

1 **SEC. 2. CREDIT FOR PORTION OF EMPLOYER SOCIAL SECUR-**  
2 **RITY TAXES PAID WITH RESPECT TO SERVICE**  
3 **CHARGES.**

4 (a) IN GENERAL.—Section 45B(b) of the Internal  
5 Revenue Code of 1986 is amended—

6 (1) in paragraph (1)—

7 (A) by striking “with respect to tips re-  
8 ceived by an employee” and inserting “with re-  
9 spect to either—

10 “(A) tips received by an employee”,

11 (B) by redesignating subparagraphs (A)  
12 and (B) as clauses (i) and (ii),

13 (C) by striking the period at the end and  
14 inserting “, or”, and

15 (D) by adding at the end the following new  
16 subparagraph:

17 “(B) service charges received by an em-  
18 ployee during any month, to the extent that  
19 such service charges—

20 “(i) are deemed to have been paid by  
21 the employer to the employee in the form  
22 of wages, and that such payment is only  
23 provided to non-management employees,  
24 and

25 “(ii) exceed the amount by which the  
26 wages (excluding payments from service

1 charges) paid by the employer to the em-  
2 ployee during such month are less than the  
3 total amount which would be payable (with  
4 respect to such employment) at the min-  
5 imum wage rate applicable to such indi-  
6 vidual under section 6(a)(1) of the Fair  
7 Labor Standards Act of 1938 (determined  
8 without regard to section 3(m) of such  
9 Act).”,

10 (2) in paragraph (2), by striking “paragraph  
11 (1)” and inserting “paragraph (1)(A)”, and

12 (3) by adding at the end the following new  
13 paragraphs:

14 “(3) ONLY ONE CATEGORY OF EXCESS EM-  
15 PLOYER SOCIAL SECURITY TAX TAKEN INTO AC-  
16 COUNT DURING THE TAXABLE YEAR.—In applying  
17 paragraph (1), an employer may elect to claim a  
18 credit with respect to either tax paid with respect to  
19 tips described in subparagraph (A) of such para-  
20 graph or tax paid with respect to service charges de-  
21 scribed in subparagraph (B) of such paragraph, but  
22 not both.

23 “(4) LIMITATION ON SERVICE CHARGES TAKEN  
24 INTO ACCOUNT.—In applying paragraph (1)(B),  
25 there shall be taken into account only so much of

1 the service charges as does not exceed 25 percent of  
2 the gross receipts of the employer for the taxable  
3 year.

4 “(5) NON-MANAGEMENT EMPLOYEE.—For pur-  
5 poses of this section, the term ‘non-management em-  
6 ployee’ means any employee who does not qualify for  
7 an exemption under section 13 of the Fair Labor  
8 Standards Act of 1938 (29 U.S.C. 213).

9 “(6) WAGES.—For purposes of this section, the  
10 term ‘wages’ has the meaning given such term in  
11 section 3121(a).”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) Section 3102(c) of such Code is amended—

14 (A) in the heading, by inserting “OR SERV-  
15 ICE CHARGES” after “TIPS”, and

16 (B) by striking “tips” each place it ap-  
17 pears and inserting “tips or service charges”.

18 (2) Section 6053 of such Code is amended by  
19 striking “tips” each place it appears and inserting  
20 “tips or service charges”.

21 (c) EFFECTIVE DATE.—The amendment made by  
22 this section shall apply to taxes paid in taxable years be-  
23 ginning after December 31, 2024.

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