

112TH CONGRESS
2D SESSION

S. 3660

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2012

Mr. CASEY introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To extend the payroll tax holiday and 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 “Middle Class & Small
5 Business Tax Cut Act of 2012”.

6 **SEC. 2. EXTENSION OF PAYROLL TAX REDUCTION.**

7 (a) IN GENERAL.—Subsection (c) of section 601 of
8 the Tax Relief, Unemployment Insurance Reauthorization,

1 and Job Creation Act of 2010 is amended by striking “and
2 2012” and inserting “, 2012, and 2013”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to remuneration received, and tax-
5 able years beginning, after December 31, 2012.

6 **SEC. 3. 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:

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

11 “(a) IN GENERAL.—Each qualified employer shall be
12 treated as having made a payment against the tax imposed
13 by section 3111(a) or section 3221(a), whichever is appli-
14 cable, for each qualified quarter in an amount equal to
15 the credit amount.

16 “(b) CREDIT AMOUNT.—For purposes of this section,
17 the credit amount with respect to any qualified quarter
18 is equal to the 10 percent of the qualified payroll increase
19 of such employer for such qualified quarter.

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

23 “(d) QUALIFIED EMPLOYER.—For purposes of this
24 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 that employs 100 or
5 more employees during the qualified quarter, no
6 qualified payroll increase shall be taken into account
7 for such qualified quarter unless the qualified pay-
8 roll increase with respect to such qualified quarter
9 exceeds 3 percent of the qualified payroll for such
10 quarter of the calendar year preceding the year in
11 which such qualified quarter falls.

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

14 “(1) the calendar quarter which includes the
15 date of the enactment of the Middle Class & Small
16 Business Tax Cut Act of 2012, and

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

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

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

1 “(1) EMPLOYEE.—The term ‘employee’ includes
2 only individuals who are citizens or lawful residents
3 of the United States who receive wages, remunera-
4 tion, compensation, or tips from an employer for
5 work performed within a State or a possession of the
6 United States.

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

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

22 “(4) NEW EMPLOYERS.—

23 “(A) IN GENERAL.—In the case of a quali-
24 fied employer which comes into existence after
25 the date of the enactment of the Middle Class

1 & Small Business Tax Cut Act of 2012 and be-
2 fore January 1, 2014—

3 “(i) the term ‘qualified quarter’
4 means—

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

8 “(II) each of the 3 quarters fol-
9 lowing such quarter,

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

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

21 “(B) TRANSITION RULE.—

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

1 “(I) after the last day of the cal-
 2 endar quarter which is 5 calendar
 3 quarters before the date of the enact-
 4 ment of the Middle Class & Small
 5 Business Tax Cut Act of 2012, and

6 “(II) before such date of enact-
 7 ment,

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

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

23 (b) CLERICAL AMENDMENT.—The table of sections
 24 for subchapter B of chapter 65 of the Internal Revenue

1 Code of 1986 is amended by adding at the end the fol-
 2 lowing new item:

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

3 (c) NOTIFICATION.—Not later than 30 days after the
 4 date of the enactment of this Act, the Commissioner of
 5 Internal Revenue shall notify all employers required to
 6 withhold employment taxes under chapter 21 or 22 of the
 7 Internal Revenue Code of 1986 of the enactment and ap-
 8 plicability of section 6433 of the Internal Revenue Code
 9 of 1986, as added by this Act.

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

19 (1) general statistics related to the application
 20 of such section,

21 (2) cases of fraud, and

22 (3) the status of investigatory and prosecutorial
 23 actions related to such cases.

24 (e) EFFECTIVE DATE.—The amendments made by
 25 subsections (a) and (b) shall apply to calendar quarters

- 1 beginning with the calendar quarter which includes the
- 2 date of the enactment of this Act.

○