

110TH CONGRESS
2D SESSION

S. 3190

To amend the Internal Revenue Code of 1986 to require employers to notify their employees of the availability of the earned income credit.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2008

Mr. SCHUMER 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 require employers to notify their employees of the availability of the earned income credit.

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 “Earned Income Credit
5 Information Act of 2008”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress hereby finds:

8 (1) President Gerald Ford and Congress cre-
9 ated the earned income credit (EIC) in 1975 to off-
10 set the adverse effects of Social Security and Medi-

1 care payroll taxes on working poor families and to
2 encourage low-income workers to seek employment
3 rather than welfare.

4 (2) President Ronald Reagan described the
5 earned income credit as “the best anti-poverty, the
6 best pro-family, the best job-creation measure to
7 come out of Congress.”

8 (3) Over the last 30 years, the EIC program
9 has grown into the largest Federal anti-poverty pro-
10 gram in the United States. In 2005, 22.8 million tax
11 filers received \$42.4 billion in tax credits through
12 the EIC program.

13 (4) In 2007, the EIC provided a maximum
14 Federal benefit of \$4,716 for families with 2 or
15 more children, \$2,853 for families with a single
16 child, and \$428 for a taxpayer with no qualifying
17 children.

18 (5) Based on analysis conducted by the General
19 Accountability Office, 25 percent of those eligible to
20 receive the EIC do not take advantage of the tax
21 benefit.

22 (6) Based on analysis conducted by the Joint
23 Economic Committee, working Americans may have
24 lost out on approximately \$8 billion in unclaimed
25 earned income credits in 2004.

1 (7) In response to a study by the California
2 Franchise Tax Board that found that there were ap-
3 proximately 460,000 California families that quali-
4 fied, but did not file, for the EIC, Governor Arnold
5 Schwarzenegger signed into law Assembly Bill 650,
6 the Earned Income Tax Credit Information Act, on
7 October 13, 2007. The law requires that California
8 employers notify employees of their potential eligi-
9 bility for the EIC.

10 (8) In order to ensure that tax benefits de-
11 signed to assist working Americans reach the max-
12 imum number of people, the Federal Government
13 should enact a similar law.

14 (b) PURPOSE.—The purpose of this Act is to inform
15 the greatest possible number of Americans about their po-
16 tential eligibility for the earned income credit in a way
17 that is neither costly nor burdensome for employers or the
18 Government.

19 **SEC. 3. EMPLOYER NOTIFICATION OF AVAILABILITY OF**
20 **EARNED INCOME CREDIT.**

21 (a) IN GENERAL.—Chapter 77 of the Internal Rev-
22 enue Code of 1986 (relating to miscellaneous provisions)
23 is amended by adding at the end the following new section:

1 **“SEC. 7529. EMPLOYER NOTIFICATION OF AVAILABILITY OF**
2 **EARNED INCOME CREDIT.**

3 “(a) IN GENERAL.—Every employer required to pro-
4 vide a statement under section 6051 (relating to W-2
5 statements) to a potential EIC-eligible employee shall pro-
6 vide to such employee the notice described in subsection
7 (c).

8 “(b) POTENTIAL EIC-ELIGIBLE EMPLOYEE.—For
9 purposes of this section, the term ‘potential EIC-eligible
10 employee’ means any individual whose annual wages from
11 the employer are less than the amount of earned income
12 (as defined in section 32(c)(2)) at which the credit under
13 section 32(a) phases out for an individual described in sec-
14 tion 32(c)(1)(A)(ii) (or such other amount as may be pre-
15 scribed by the Secretary).

16 “(c) CONTENTS OF NOTICE.—

17 “(1) IN GENERAL.—The notice required by sub-
18 section (a) shall be—

19 “(A) a copy of Internal Revenue Service
20 Notice 797 or any successor notice, or

21 “(B) a notice stating: ‘Based on your an-
22 nual earnings, you may be eligible to receive the
23 earned income credit from the Federal Govern-
24 ment. The earned income credit is a tax credit
25 for certain working individuals and families. In
26 2008, earned income credit benefits are avail-

1 able for taxpayers with earnings up to \$38,646
2 (\$41,646 if married filing jointly). Eligibility
3 and benefit amounts vary according to filing
4 status (single or married), number of qualifying
5 children, and other sources of income. For ex-
6 ample, in 2008, earned income credit benefits
7 are available for childless taxpayers earning less
8 than \$15,880, taxpayers with 1 child earning
9 less than \$36,995, and taxpayers with 2 or
10 more children earning less than \$41,646. In
11 most cases, earned income credit payments will
12 not be used to determine eligibility for Med-
13 icaid, supplemental security income, food
14 stamps, low-income housing or most temporary
15 assistance for needy families programs. Even if
16 you do not owe Federal taxes, you may qualify,
17 but must file a tax return to receive the earned
18 income credit. For information regarding your
19 eligibility to receive the earned income credit,
20 contact the Internal Revenue Service by calling
21 1-800-829-1040 or through its web site at
22 www.irs.gov. The Volunteer Income Tax Assist-
23 ance (VITA) program provides free tax prepa-
24 ration assistance to individuals under the above

1 income limits. Call the IRS at 1–800–906–9887
2 to find sites in your area.’.

3 “(2) YEARS AFTER 2008.—In the case of the
4 notice in paragraph (1)(B) for taxable years begin-
5 ning in a calendar year after 2008—

6 “(A) such calendar year shall be sub-
7 stituted for ‘2008’,

8 “(B) the lowest amount of earned income
9 for a taxpayer with no qualifying children at
10 which the credit phases out under section
11 32(a)(2)(B) for taxable years beginning in such
12 calendar year shall be substituted for ‘\$15,880’,

13 “(C) the lowest amount of earned income
14 for a taxpayer with 1 qualifying child at which
15 the credit phases out under section 32(a)(2)(B)
16 for such taxable years shall be substituted for
17 ‘\$36,995’, and

18 “(D) the lowest amount of earned income
19 for a taxpayer with 2 or more qualifying chil-
20 dren at which the credit phases out under sec-
21 tion 32(a)(2)(B) for such taxable years shall be
22 substituted for ‘\$41,646’.

23 “(d) EXEMPTION FOR SMALL EMPLOYERS.—

24 “(1) IN GENERAL.—An employer shall not be
25 required to provide notices under this section during

1 any calendar year if the employer employed an aver-
2 age of 25 or fewer employees on business days dur-
3 ing the preceding calendar year. For purposes of the
4 preceding sentence, a preceding calendar year may
5 be taken into account only if the employer was in ex-
6 istence throughout such year.

7 “(2) EMPLOYERS NOT IN EXISTENCE IN PRE-
8 CEDING YEAR.—In the case of an employer which
9 was not in existence throughout the preceding cal-
10 endar year, the determination under paragraph (1)
11 shall be based on the average number of employees
12 that it is reasonably expected such employer will em-
13 ploy on business days in the current calendar year.

14 “(3) SPECIAL RULES.—

15 “(A) CONTROLLED GROUPS.—For pur-
16 poses of this subsection, all persons treated as
17 a single employer under subsection (b), (c),
18 (m), or (o) of section 414 shall be treated as 1
19 employer.

20 “(B) PREDECESSORS.—Any reference in
21 this subsection to an employer shall include a
22 reference to any predecessor of such employer.

23 “(e) TIMING OF NOTICE.—The notice required by
24 subsection (a) shall be provided to each employee at the

1 same time the employer statement is furnished to each
2 such employee under section 6051.

3 “(f) MANNER OF PROVIDING NOTICE.—The notice
4 required by subsection (a) shall be provided either by hand
5 or by mail to the address used to provide the statement
6 under section 6051 to the employee.”.

7 (b) PENALTY FOR FAILURE TO PROVIDE NOTICE.—
8 Section 6724(d)(2) of such Code is amended by striking
9 “or” at the end of subparagraph (BB), by striking the
10 period at the end of subparagraph (CC) and inserting “,
11 or”, and by inserting after subparagraph (CC) the fol-
12 lowing new subparagraph:

13 “(DD) section 7529 (relating to employer
14 notification of availability of earned income
15 credit).”.

16 (c) CLERICAL AMENDMENT.—The table of sections
17 for such chapter 77 is amended by adding at the end the
18 following new item:

“Sec. 7529. Employer notification of availability of earned income credit.”.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall apply with respect to statements required
21 to be provided under section 6051 of the Internal Revenue
22 Code of 1986 more than 180 days after the date of the
23 enactment of this Act.

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