

119TH CONGRESS
1ST SESSION

S. _____

To amend the Internal Revenue Code of 1986 to repeal the inclusion in gross income of social security benefits, and for other purposes.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To amend the Internal Revenue Code of 1986 to repeal the inclusion in gross income of social security benefits, 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 “You Earned It, You
5 Keep It Act”.

6 **SEC. 2. REPEAL OF INCLUSION IN GROSS INCOME OF SO-**
7 **CIAL SECURITY BENEFITS.**

8 (a) IN GENERAL.—Section 86 of the Internal Rev-
9 enue Code of 1986 (relating to social security benefits)

1 is amended by adding at the end the following new sub-
2 section:

3 “(g) TERMINATION.—This section shall not apply to
4 any taxable year beginning after the date of the enactment
5 of this subsection.”.

6 (b) SOCIAL SECURITY TRUST FUNDS HELD HARM-
7 LESS.—There are hereby appropriated (out of any money
8 in the Treasury not otherwise appropriated) for each fiscal
9 year to each fund under the Social Security Act (including
10 the Federal Hospital Insurance Trust Fund) or the Rail-
11 road Retirement Act of 1974 an amount equal to the re-
12 duction in the transfers to such fund for such fiscal year
13 by reason of section 86(g) of the Internal Revenue Code
14 of 1986.

15 **SEC. 3. DETERMINING WAGES AND SELF-EMPLOYMENT IN-**
16 **COME ABOVE CONTRIBUTION AND BENEFIT**
17 **BASE AFTER 2025.**

18 (a) DETERMINATION OF WAGES ABOVE CONTRIBU-
19 TION AND BENEFIT BASE AFTER 2025.—

20 (1) AMENDMENTS TO THE INTERNAL REVENUE
21 CODE OF 1986.—

22 (A) REPEAL OF PRESENT LAW LIMITA-
23 TION.—Section 3121(a) of the Internal Revenue
24 Code of 1986 is amended by striking paragraph
25 (1).

1 (B) LIMITATION ON AMOUNT OF WAGES.—

2 Section 3121 of the Internal Revenue Code of
3 1986 is amended by adding at the end the fol-
4 lowing:

5 “(aa) LIMITATION ON AMOUNT OF WAGES.—

6 “(1) IN GENERAL.—In the case of any calendar
7 year in which the contribution and benefit base (as
8 determined under section 230 of the Social Security
9 Act) is less than \$250,000, for purposes of the taxes
10 imposed by sections 3101(a) and 3111(a), the term
11 ‘wages’ does not include that part of the remunera-
12 tion which, after remuneration equal to such con-
13 tribution and benefit base with respect to employ-
14 ment has been paid to an individual by an employer
15 during the calendar year with respect to which such
16 contribution and benefit base is effective, is paid to
17 such individual by such employer during the cal-
18 endar year. The preceding sentence shall not apply
19 to that part of the remuneration paid to an indi-
20 vidual after remuneration of \$250,000 with respect
21 to employment has been paid to such individual by
22 an employer (or any person related to, or acting on
23 behalf of, such employer, as determined by the Sec-
24 retary) during the calendar year.

1 “(2) SUCCESSOR EMPLOYER.—If an employer
2 (hereinafter referred to as successor employer) dur-
3 ing any calendar year, acquires substantially all the
4 property used in a trade or business of another em-
5 ployer (hereinafter referred to as a predecessor), or
6 used in a separate unit of a trade or business of a
7 predecessor, and immediately after the acquisition
8 employs in his trade or business an individual who
9 immediately prior to the acquisition was employed in
10 the trade or business of such predecessor, then, for
11 the purpose of determining whether the successor
12 employer has paid remuneration with respect to em-
13 ployment equal to the contribution and benefit base
14 (as determined under section 230 of the Social Secu-
15 rity Act) to such individual during such calendar
16 year, any remuneration with respect to employment
17 paid (or considered under this paragraph as having
18 been paid) to such individual by such predecessor
19 during such calendar year and prior to such acquisi-
20 tion shall be considered as having been paid by such
21 successor employer.

22 “(3) REMUNERATION.—For purposes of this
23 subsection, the term ‘remuneration’ does not include
24 remuneration referred to in any paragraph of sub-
25 section (a).”.

1 (C) APPLICATION TO RAILROAD RETIRE-
2 MENT.—

3 (i) IN GENERAL.—Section
4 3231(e)(2)(A) of the Internal Revenue
5 Code of 1986 is amended by adding at the
6 end the following new clause:

7 “(iv) LIMITATION ON EXCLUSION.—
8 For purposes of so much of the taxes im-
9 posed by sections 3201(a), 3211(a), and
10 3221(a) as are determined by reference to
11 the rate in effect under section 3101(a) or
12 3111(a)—

13 “(I) in the case of any calendar
14 year in which the contribution and
15 benefit base (as determined under sec-
16 tion 230 of the Social Security Act) is
17 less than \$250,000, clause (i) shall
18 not apply to that part of the remu-
19 neration paid to an individual after
20 remuneration of \$250,000 for services
21 rendered as an employee has been
22 paid to such individual by an em-
23 ployer (or any person related to, or
24 acting on behalf of, such employer, as

1 determined by the Secretary) during
2 the calendar year, and

3 “(II) in the case of any calendar
4 year in which such contribution and
5 benefit base equals or exceeds
6 \$250,000, clause (i) shall not apply.”.

7 (ii) EXCLUSION OF REMUNERATION
8 WHICH IS NOT TREATED AS COMPENSA-
9 TION.—Section 3231(e)(2)(A)(ii) of the In-
10 ternal Revenue Code of 1986 is amended
11 by inserting “or (iv)” after “under clause
12 (i)”.

13 (D) CONFORMING AMENDMENT.—Section
14 3231(e)(2)(C) of the Internal Revenue Code of
15 1986 is amended by striking “the second sen-
16 tence of section 3121(a)(1)” and inserting “sec-
17 tion 3121(aa)(2)”.

18 (2) AMENDMENT TO THE SOCIAL SECURITY
19 ACT.—Section 209(a)(1)(I) of the Social Security
20 Act (42 U.S.C. 409(a)(1)(I)) is amended by insert-
21 ing before the semicolon at the end the following:
22 “except that this subparagraph shall apply only to
23 calendar years for which the contribution and ben-
24 efit base (as so determined) is less than \$250,000,
25 and, for such calendar years, only to the extent that

1 remuneration with respect to employment paid to
2 such employee does not exceed \$250,000”.

3 (b) DETERMINATION OF SELF-EMPLOYMENT IN-
4 COME ABOVE CONTRIBUTION AND BENEFIT BASE AFTER
5 2025.—

6 (1) AMENDMENTS TO INTERNAL REVENUE
7 CODE OF 1986.—

8 (A) IN GENERAL.—Section 1402(b) of the
9 Internal Revenue Code of 1986 is amended to
10 read as follows:

11 “(b) SELF-EMPLOYMENT INCOME.—

12 “(1) IN GENERAL.—The term ‘self-employment
13 income’ means the net earnings from self-employ-
14 ment derived by an individual, except that such term
15 shall not include net earnings from self-employment
16 if such net earnings for the taxable year are less
17 than \$400.

18 “(2) LIMITATION ON OASDI TAX.—For purposes
19 of section 1401(a), the term ‘self employment in-
20 come’ shall not exceed the sum of—

21 “(A) the total compensation not in excess
22 of the contribution and benefit base (as deter-
23 mined under section 230 of the Social Security
24 Act) which is effective for the calendar year in
25 which such taxable year begins, reduced by the

1 amount of wages not in excess of such base
2 paid to such individual during the taxable year,
3 plus

4 “(B) the total compensation in excess of
5 the greater of—

6 “(i) \$250,000, or

7 “(ii) the amount of wages paid to
8 such individual during the taxable year.

9 “(3) DEFINITION AND SPECIAL RULES.—

10 “(A) TOTAL COMPENSATION.—For pur-
11 poses of paragraph (2), the term ‘total com-
12 pensation’ means the sum of the net earnings
13 from self-employment and the amount of wages
14 paid to such individual during the taxable year.

15 “(B) WAGES.—For purposes of this sub-
16 section, the term ‘wages’—

17 “(i) includes such remuneration paid
18 to an employee for services included under
19 an agreement entered into pursuant to the
20 provisions of section 3121(l) (relating to
21 coverage of citizens of the United States
22 who are employees of foreign affiliates of
23 American employers) as would be wages
24 under section 3121(a) if such services con-

1 stituted employment under section
2 3121(b), and

3 “(ii) includes compensation which is
4 subject to the tax imposed by section 3201
5 or 3211 (or would be so subject but for
6 paragraph (2) of section 3231(e)).

“(C) NONRESIDENT ALIENS.—A non-
resident alien individual shall not be treated as
an individual for purposes of paragraph (1), ex-
cept as provided by an agreement under section
233 of the Social Security Act. An individual
who is not a citizen of the United States but
who is a resident of the Commonwealth of
Puerto Rico, the Virgin Islands, Guam, or
American Samoa shall not, for purposes of this
chapter, be considered to be a nonresident alien
individual.

18 “(D) CHURCH EMPLOYEE.—In the case of
19 church employee income, the special rules of
20 subsection (j)(2) shall apply for purposes of
21 paragraph (1).”.

22 (B) CONFORMING AMENDMENTS.—

(i) Section 1402(j)(2)(A) of the Internal Revenue Code of 1986 is amended by

1 striking all that precedes “shall be ap-
2 plied” and inserting:

3 “(A) SEPARATE APPLICATION OF DE MINI-
4 MIS RULE.—Subsection (b)(1)”.

5 (ii) Section 1402(j)(2)(B) of such
6 Code is amended by striking “paragraph
7 (2) of subsection (b)” and inserting “sub-
8 section (b)(1)”.

9 (2) AMENDMENTS TO THE SOCIAL SECURITY
10 ACT.—

11 (A) IN GENERAL.—Section 211(b)(1) of
12 the Social Security Act (42 U.S.C. 411(b)) is
13 amended—

14 (i) in subparagraph (I)—

15 (I) by inserting “and before
16 2026” after “1974”; and

17 (II) by striking “or” at the end;
18 and

19 (ii) by adding at the end the fol-
20 lowing:

21 “(J) For any taxable year beginning in any
22 calendar year after 2025, an amount equal to—

23 “(i) \$250,000, reduced (but not below
24 zero) by

25 “(ii) the sum of—

11

1 “(I) the part of the net earnings
2 from self-employment (if any) which is
3 not in excess of—

4 “(aa) the amount equal to
5 the contribution and benefit base
6 (as determined under section
7 230) which is effective for the
8 calendar year in which such tax-
9 able year begins, minus

10 “(bb) the amount of the
11 wages paid to such individual
12 during such taxable year, plus

13 “(II) the amount of the wages
14 paid to such individual during such
15 taxable year which is in excess of the
16 amount in subclause (I)(aa); or”.

17 (B) PHASEOUT.—Section 211(b) of the
18 Social Security Act (42 U.S.C. 411(b)) is
19 amended by adding at the end the following:
20 “Paragraph (1) shall apply only to taxable
21 years beginning in calendar years for which the
22 contribution and benefit base (as determined
23 under section 230) is less than \$250,000.”.

24 (c) SPECIAL RULE FOR WAGES FROM MULTIPLE
25 EMPLOYERS WHICH TOTAL IN EXCESS OF \$250,000.—

1 (1) IN GENERAL.—Subchapter A of chapter 21
2 of the Internal Revenue Code of 1986 is amended by
3 adding at the end the following new section:

4 **“SEC. 3103. SPECIAL RULES FOR REMUNERATION FROM**
5 **MULTIPLE EMPLOYERS.**

6 “(a) IN GENERAL.—In the case of an employee re-
7 ceiving wages from more than one employer during a cal-
8 endar year, there is hereby imposed a tax on such em-
9 ployee (for the last taxable year beginning in the calendar
10 year the wages are received) equal to the excess (if any)
11 of—

12 “(1) the tax that would have been imposed by
13 section 3101(a) if such wages had been received
14 from one employer, over

15 “(2) the aggregate tax imposed by such section
16 with respect to such wages.

17 “(b) COORDINATION WITH SPECIAL REFUND PROVI-
18 SION.—No credit shall be determined under section 31(b)
19 with respect to any employee for any taxable year unless
20 the amount described in subsection (a)(1) with respect to
21 wages received during the calendar year in which such tax-
22 able year begins exceeds the amount described in sub-
23 section (a)(2) with respect to such wages, and the amount
24 of such credit so determined shall not exceed such excess.

1 “(c) WAGES.—For purposes of this section, the term
2 ‘wages’ shall have the same meaning as when used in sec-
3 tion 1402(b).

4 “(d) APPLICATION TO TIER I RAILROAD RETIRE-
5 MENT TAX.—In the case of compensation (as defined in
6 section 3231(e)), for purposes of applying subsections (a)
7 and (b), the reference to the tax that would have been
8 imposed by section 3101(a) shall be treated as including
9 a reference to so much of the tax that would have been
10 imposed on such compensation under section 3201(a) or
11 3211(a) (or would have been so imposed but for paragraph
12 (2) of section 3231(e)) as is determined by reference to
13 the rate of tax in effect under section 3101(a).”.

14 (2) FAILURE BY INDIVIDUAL TO PAY ESTI-
15 MATED INCOME TAX.—Subsection (m) of section
16 6654 of the Internal Revenue Code of 1986 is
17 amended to read as follows:

18 “(m) SPECIAL RULE FOR CERTAIN EMPLOYMENT
19 TAXES.—For purposes of this section, the tax imposed by
20 sections 3101(b)(2) (to the extent not withheld) and the
21 tax imposed by section 3103 shall be treated as taxes im-
22 posed by chapter 2.”.

23 (3) CLERICAL AMENDMENT.—The table of sec-
24 tions for subchapter A of chapter 21 of the Internal

1 Revenue Code of 1986 is amended by adding at the
2 end the following new item:

“Sec. 3103. Special rules for remuneration from multiple employers.”.

3 (d) CONFORMING CHANGE TO NATIONAL AVERAGE
4 WAGE INDEX.—Section 209(k) of the Social Security Act
5 (42 U.S.C. 409(k)) is amended—

6 (1) in paragraph (1), by inserting “and to para-
7 graph (4)” after “paragraph (2)”; and

8 (2) by adding at the end the following:

9 “(4) For each calendar year after 2025, the national
10 average wage index as defined in this section for such cal-
11 endar year shall be deemed to be the national average
12 wage index determined under the preceding paragraphs of
13 this section increased by the following percentage:

14 “(A) For calendar years 2026 through 2030,
15 0.7 percent.

16 “(B) For calendar years 2032 through 2036,
17 0.8 percent.

18 “(C) For calendar years after 2038, 0.9 per-
19 cent.”.

20 (e) EFFECTIVE DATES.—

21 (1) IN GENERAL.—The amendments made by
22 subsections (a) and (c) shall apply to remuneration
23 paid in calendar years after 2025.

1 (2) SELF-EMPLOYMENT INCOME.—The amend-
2 ments made by subsection (b) shall apply to taxable
3 years beginning after December 31, 2025.

4 **SEC. 4. INCLUDING EARNINGS OVER \$250,000 IN SOCIAL SE-**
5 **CURITY BENEFIT FORMULA.**

6 (a) INCLUSION OF EARNINGS OVER \$250,000 IN DE-
7 TERMINATION OF PRIMARY INSURANCE AMOUNTS.—Sec-
8 tion 215(a)(1)(A) of the Social Security Act (42 U.S.C.
9 415(a)(1)(A)) is amended—

10 (1) in clause (ii), by striking “and” at the end;

11 (2) in clause (iii), by inserting “and” at the
12 end; and

13 (3) by inserting after clause (iii) the following:

14 “(iv) 2 percent of the individual’s excess aver-
15 age indexed monthly earnings (as defined in sub-
16 section (b)(5)(A)).”.

17 (b) DEFINITION OF EXCESS AVERAGE INDEXED
18 MONTHLY EARNINGS.—Section 215(b) of the Social Secu-
19 rity Act (42 U.S.C. 415(b)) is amended—

20 (1) by striking “wages” and “self-employment
21 income” each place such terms appear and inserting
22 “basic wages” and “basic self-employment income”,
23 respectively; and

24 (2) by adding at the end the following:

1 “(5)(A) An individual’s excess average indexed
2 monthly earnings shall be equal to the amount of the indi-
3 vidual’s average indexed monthly earnings that would be
4 determined under this subsection by substituting ‘excess
5 wages’ for ‘basic wages’ and ‘excess self-employment in-
6 come’ for ‘basic self-employment income’ each place such
7 terms appear in this subsection (except in this paragraph).

8 “(B) For purposes of this subsection—

9 “(i) the term ‘basic wages’ means that portion
10 of the wages of an individual paid in a year that
11 does not exceed the contribution and benefit base for
12 the year;

13 “(ii) the term ‘basic self-employment income’
14 means that portion of the self-employment income of
15 an individual credited to a year that does not exceed
16 an amount equal to the contribution and benefit
17 base for the year minus the amount of the wages
18 paid to the individual in the year;

19 “(iii) the term ‘excess wages’ means that por-
20 tion of the wages of an individual paid in a year
21 after 2025 in excess of the higher of \$250,000 or
22 the contribution and benefit base for the year; and

23 “(iv) the term ‘excess self-employment income’
24 means that portion of the self-employment income of
25 an individual credited to a year after 2025 in excess

1 of the higher of \$250,000 or such contribution and
2 benefit base for the year.”.

3 (c) CONFORMING AMENDMENTS.—Title II of the So-
4 cial Security Act is amended—

5 (1) in section 203(a)(6)(A) (42 U.S.C.
6 403(a)(6)(A)), by striking “85 percent of such indi-
7 vidual’s average indexed monthly earnings” and in-
8 serting “the sum of 85 percent of such individual’s
9 average indexed monthly earnings and 1 percent of
10 such individual’s excess average indexed monthly
11 earnings (as defined in section 215(b)(5)(A))”;

12 (2) in section 212 (42 U.S.C. 412), by inserting
13 “excess average indexed monthly earnings,” after
14 “average indexed monthly earnings,” each place it
15 appears; and

16 (3) in section 215(e)(1) (42 U.S.C. 415(e)(1)),
17 by inserting “and before 2026” after “after 1974”.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall apply with respect to individuals who ini-
20 tially become eligible (within the meaning of section
21 215(a)(3)(B) of the Social Security Act) for old-age or dis-
22 ability insurance benefits under title II of the Social Secu-
23 rity Act, or who die (before becoming eligible for such ben-
24 efits), in any calendar year after 2025.

1 (e) HOLDING SSI, MEDICAID, AND CHIP BENE-
2 FICIARIES HARMLESS.—For purposes of determining the
3 income of an individual to establish eligibility for, and the
4 amount of, benefits payable under title XVI of the Social
5 Security Act, eligibility for medical assistance under the
6 State plan under title XIX (or a waiver of such plan), or
7 eligibility for child health assistance under the State child
8 health plan under title XXI (or a waiver of the plan), the
9 amount of any benefit to which the individual is entitled
10 under title II of such Act shall be deemed not to exceed
11 the amount of the benefit that would be determined for
12 such individual under such title as in effect on the day
13 before the date of the enactment of this Act.