

HR 1779 EAS

*In the Senate of the United States,
October 11, 2004.*

Resolved, That the bill from the House of Representatives (H.R. 1779) entitled `An Act to amend the Internal Revenue Code of 1986 to allow penalty-free withdrawals from retirement plans during the period that a military reservist or national guardsman is called to active duty for an extended period, and for other purposes.', do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the `Guardsmen and Reservists Financial Relief Act of 2004'.

SEC. 2. PENALTY-FREE WITHDRAWALS FROM RETIREMENT PLANS FOR INDIVIDUALS CALLED TO ACTIVE DUTY FOR AT LEAST 179 DAYS.

(a) IN GENERAL- Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new subparagraph:

(G) DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY-

(i) IN GENERAL- Any qualified reservist distribution.

(ii) QUALIFIED RESERVIST DISTRIBUTION- For purposes of this subparagraph, the term `qualified reservist distribution' means any distribution to an individual if--

(I) such distribution is from any qualified retirement plan (as defined in section 4974(c)),

(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)), ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

“(iii) APPLICATION OF SUBPARAGRAPH- This subparagraph applies to individuals ordered or called to active duty after September 11, 2001, and before September 12, 2005.”

(b) EFFECTIVE DATE- The amendment made by this section shall apply to distributions after September 11, 2001.

SEC. 3. INCOME TAX WITHHOLDING ON DIFFERENTIAL WAGE PAYMENTS.

(a) IN GENERAL- Section 3401 of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end the following new subsection:

“(i) DIFFERENTIAL WAGE PAYMENTS TO ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES-

“(1) IN GENERAL- For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

“(2) DIFFERENTIAL WAGE PAYMENT- For purposes of paragraph (1), the term ‘differential wage payment’ means any payment which--

“(A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services while on active duty for a period of more than 30 days, and

“(B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.”

(b) EFFECTIVE DATE- The amendment made by this section shall apply to remuneration paid after December 31, 2004.

SEC. 4. TREATMENT OF DIFFERENTIAL WAGE PAYMENTS FOR RETIREMENT PLAN PURPOSES.

(a) PENSION PLANS-

(1) IN GENERAL- Section 414(u) of the Internal Revenue Code of 1986 (relating to special rules relating to veterans' reemployment rights under USERRA) is amended by adding at the end the following new paragraph:

“(11) TREATMENT OF DIFFERENTIAL WAGE PAYMENTS-

“(A) IN GENERAL- Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies--

“(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

“(ii) the differential wage payment shall be treated as compensation, and

“(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of any contribution which is based on the differential wage payment.

“(B) SPECIAL RULE FOR DISTRIBUTIONS-

“(i) IN GENERAL- Notwithstanding subparagraph (A)(i), for purposes of section 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(i)(2)(A).

“(ii) LIMITATION- If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

“(C) NONDISCRIMINATION REQUIREMENT- Subparagraph (A)(iii) shall apply only if all employees of an employer performing service in the uniformed services described in section 3401(i)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5), of section 410(b) shall apply.

“(D) DIFFERENTIAL WAGE PAYMENT- For purposes of this paragraph, the term ‘differential wage payment’ has the meaning given such term by section 3401(i)(2).’.

(2) CONFORMING AMENDMENT- The heading for section 414(u) of such Code is amended by inserting ‘AND TO DIFFERENTIAL WAGE PAYMENTS TO MEMBERS ON ACTIVE DUTY’ after ‘USERRA’.

(b) DIFFERENTIAL WAGE PAYMENTS TREATED AS COMPENSATION FOR INDIVIDUAL RETIREMENT PLANS- Section 219(f)(1) of the Internal Revenue Code of 1986 (defining compensation) is amended by adding at the end the following new sentence: ‘The term ‘compensation’ includes any differential wage payment (as defined in section 3401(i)(2)).’.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to plan years beginning after December 31, 2004.

(d) PROVISIONS RELATING TO PLAN AMENDMENTS-

(1) IN GENERAL- If this subsection applies to any plan or annuity contract amendment--

(A) such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i), and

(B) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of the Internal Revenue Code of 1986 or the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(2) AMENDMENTS TO WHICH SECTION APPLIES-

(A) IN GENERAL- This subsection shall apply to any amendment to any plan or annuity contract which is made--

(i) pursuant to any amendment made by this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2007.

(B) *CONDITIONS-* This subsection shall not apply to any plan or annuity contract amendment unless--

(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and
(ii) such plan or contract amendment applies retroactively for such period.

SEC. 5. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT AND READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.

(a) *READY RESERVE-NATIONAL GUARD CREDIT-*

(1) *IN GENERAL-* Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-related credits) is amended by inserting after section 45I the following new section:

SEC. 45J. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT.

(a) *GENERAL RULE-* For purposes of section 38, in the case of an eligible taxpayer, the Ready Reserve-National Guard employee credit determined under this section for any taxable year with respect to each Ready Reserve-National Guard employee of such taxpayer is an amount equal to 50 percent of the lesser of--

(1) the actual compensation amount with respect to such employee for such taxable year, or

(2) \$30,000.

(b) *DEFINITION OF ACTUAL COMPENSATION AMOUNT-* For purposes of this section, the term 'actual compensation amount' means the amount of compensation paid or incurred by an eligible taxpayer with respect to a Ready Reserve-National Guard employee on any day when the employee was absent from employment for the purpose of performing qualified active duty.

(c) *LIMITATIONS-* No credit shall be allowed with respect to any day that a Ready Reserve-National Guard employee who performs qualified active duty was not scheduled to work (for reason other than to participate in qualified active duty).

(d) *DEFINITIONS AND SPECIAL RULES-* For purposes of this section--

(1) *ELIGIBLE TAXPAYER-*

(A) *IN GENERAL-* The term 'eligible taxpayer' means a small business employer.

(B) *SMALL BUSINESS EMPLOYER-*

‘(i) IN GENERAL- The term ‘small business employer’ means, with respect to any taxable year, any employer who employed an average of 50 or fewer employees on business days during such taxable year.

‘(ii) CONTROLLED GROUPS- For purposes of clause (i), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

‘(2) QUALIFIED ACTIVE DUTY- The term ‘qualified active duty’ means--

‘(A) active duty under an order or call for a period in excess of 179 days or for an indefinite period, other than the training duty specified in section 10147 of title 10, United States Code (relating to training requirements for the Ready Reserve), or section 502(a) of title 32, United States Code (relating to required drills and field exercises for the National Guard), in connection with which an employee is entitled to reemployment rights and other benefits or to a leave of absence from employment under chapter 43 of title 38, United States Code, and

‘(B) hospitalization incident to such duty.

‘(3) COMPENSATION- The term ‘compensation’ means any remuneration for employment, whether in cash or in kind, which is paid or incurred by a taxpayer and which is deductible from the taxpayer’s gross income under section 162(a)(1).

‘(4) READY RESERVE-NATIONAL GUARD EMPLOYEE- The term ‘Ready Reserve-National Guard employee’ means an employee who is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as described in sections 10142 and 10101 of title 10, United States Code.

‘(5) CERTAIN RULES TO APPLY- Rules similar to the rules of section 52 shall apply.

‘(e) TERMINATION- This section shall not apply to any amount paid or incurred after December 31, 2005.’.

(2) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT- Subsection (b) of section 38 of the Internal Revenue Code of 1986 (relating to general business credit) is amended by striking ‘plus’ at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting ‘, plus’, and by adding at the end the following:

‘(20) the Ready Reserve-National Guard employee credit determined under section 45J(a).’.

(3) DENIAL OF DOUBLE BENEFIT- Section 280C(a) of the Internal Revenue Code of 1986 (relating to rule for employment credits) is amended by inserting ‘45J(a),’ after ‘45A(a),’.

(4) CONFORMING AMENDMENT- The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 45I the following:

‘Sec. 45J. Ready Reserve-National Guard employee credit.’.

(5) EFFECTIVE DATE- The amendments made by this subsection shall apply to amounts paid or incurred after September 30, 2004, in taxable years ending after such date.

(b) READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT-

(1) IN GENERAL- Paragraph (1) of section 51(d) of the Internal Revenue Code of 1986 (relating to members of targeted groups) is amended by striking `or' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting `, or' and by adding at the end the following new subparagraph:

`(I) a qualified replacement employee.'

(2) QUALIFIED REPLACEMENT EMPLOYEE- Section 51(d) of the Internal Revenue Code of 1986 is amended by redesignating paragraphs (10), (11), and (12) as paragraphs (11), (12), and (13), respectively, and by inserting after paragraph (9) the following new paragraph:

`(10) QUALIFIED REPLACEMENT EMPLOYEE-

`(A) IN GENERAL- The term `qualified replacement employee' means an individual who is certified by the designated local agency as being hired by an eligible taxpayer to replace a Ready Reserve-National Guard employee of such taxpayer, but only with respect to the period during which such Ready Reserve-National Guard employee participates in qualified active duty, including time spent in travel status.

`(B) GENERAL DEFINITIONS AND SPECIAL RULES- For purposes of this paragraph--

`(i) ELIGIBLE TAXPAYER- The term `eligible taxpayer' means a small business employer.

`(ii) SMALL BUSINESS EMPLOYER-

`(I) IN GENERAL- The term `small business employer' means, with respect to any taxable year, any employer who employed an average of 50 or fewer employees on business days during such taxable year.

`(II) CONTROLLED GROUPS- For purposes of subclause (I), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

`(iii) READY RESERVE-NATIONAL GUARD EMPLOYEE- The term `Ready Reserve-National Guard employee' has the meaning given such term by section 45J(d)(3).

`(iv) QUALIFIED ACTIVE DUTY- The term `qualified active duty' has the meaning given such term by section 45J(d)(1).

`(C) DISALLOWANCE FOR FAILURE TO COMPLY WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES- No credit shall be allowed under subsection (a) by reason of paragraph (1)(I) to a taxpayer for--

`(i) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

`(ii) the 2 succeeding taxable years.'

(3) *EFFECTIVE DATE*- The amendments made by this subsection shall apply to amounts paid or incurred to an individual who begins work for the employer after September 30, 2004.

(c) *STUDY BY GAO*-

(1) *IN GENERAL*- The Comptroller General of the United States shall study the following:

(A) *What, if any, problems exist in recruiting individuals for a reserve component of an Armed Force of the United States.*

(B) *What, if any, problems exist as the result of providing differential wage payments (as defined in section 3401(i)(2) of the Internal Revenue Code of 1986 (as added by this Act)) to individuals described in subparagraph (A) in the recruitment and retention of individuals as regular members of the Armed Forces of the United States.*

(C) *Whether the credit allowed under section 45J of the Internal Revenue Code of 1986 (as added by this section) is an effective incentive for the hiring and retention of employees who are individuals described in subparagraph (A) and whether there exists any compliance problems in the administration of such credit.*

(2) *REPORT*- The Comptroller General of the United States shall report on the results of the study required under paragraph (1) to the Committee of Finance of the Senate and the Committee on Ways and Means of the House of Representatives before July 1, 2005.

SEC. 6. PENALTY FREE WITHDRAWALS FROM RETIREMENT PLANS FOR VICTIMS OF FEDERALLY DECLARED NATURAL DISASTERS.

(a) *IN GENERAL*- Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans), as amended by this Act, is amended by adding at the end the following new subparagraph:

(H) DISTRIBUTIONS FROM RETIREMENT PLANS TO VICTIMS OF FEDERALLY DECLARED NATURAL DISASTERS-

(i) IN GENERAL- Any qualified disaster-relief distribution.

(ii) QUALIFIED DISASTER-RELIEF DISTRIBUTION- For purposes of this subparagraph, the term 'qualified disaster-relief distribution' means any distribution to an individual who has sustained a loss in excess of \$100 as a result of a major disaster declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act--

(I) if such distribution is made from any qualified retirement plan (as defined in section 4974(c)) during the 1-year period beginning on the date such declaration is made, and

`(II) to the extent such distribution does not exceed the amount of such loss and is not compensated for by insurance or otherwise.

For purposes of subclause (II), the amount of any loss shall be determined using the greater of the fair market value of the property on the day before the date of such disaster or the adjusted basis of the property as provided in section 1011, less any compensation for such loss that the individual has received as of the date of such distribution and any compensation for such loss that the individual expects to receive, based on a reasonable estimate. Any difference between the amount of compensation that an individual expects to receive on the basis of such an estimate and actually receives shall not be included in the individual's gross income.'

(b) EXEMPTION OF DISTRIBUTIONS FROM WITHHOLDING- Paragraph (4) of section 402(c) of the Internal Revenue Code of 1986 (relating to eligible rollover distribution) is amended by striking `and' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting `, and', and by inserting at the end the following new subparagraph:

`(D) any qualified disaster-relief distribution (within the meaning of section 72(t)(2)(H)).'

(c) CONFORMING AMENDMENTS-

(1) Section 401(k)(2)(B)(i) of the Internal Revenue Code of 1986 is amended by striking `or' at the end of subclause (III), by striking `and' at the end of subclause (IV) and inserting `or', and by inserting after subclause (IV) the following new subclause:

`(V) the date on which a period referred to in section 72(t)(2)(H)(ii)(I) begins (but only to the extent provided in section 72(t)(2)(H)), and'

(2) Section 403(b)(7)(A)(ii) of such Code is amended by inserting `sustains a loss as a result of a major disaster declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (but only to the extent provided in section 72(t)(2)(H)), ' before `or'.

(3) Section 403(b)(11) of such Code is amended by striking `or' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting `, or', and by inserting after subparagraph (B) the following new subparagraph:

`(C) for distributions to which section 72(t)(2)(H) applies.'

(d) EFFECTIVE DATE- The amendments made by this section shall apply to distributions received in taxable years beginning after December 31, 2003.