

116TH CONGRESS  
1ST SESSION

# S. 538

To amend the Internal Revenue Code of 1986 to provide a credit for employer-provided worker training.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2019

Mr. WARNER (for himself, Ms. STABENOW, and Mr. CASEY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide a credit for employer-provided worker training.

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 “Investing in American  
5 Workers Act”.

6 **SEC. 2. EMPLOYER-PROVIDED WORKER TRAINING CREDIT.**

7 (a) IN GENERAL.—

8 (1) DETERMINATION OF CREDIT.—Subpart D  
9 of part IV of subchapter A of chapter 1 of the Inter-

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

3   **“SEC. 45T. EMPLOYER-PROVIDED WORKER TRAINING**  
4       **CREDIT.**

5       “(a) IN GENERAL.—For purposes of section 38, the  
6   employer-provided worker training credit under this sec-  
7   tion for the taxable year is an amount equal to 20 percent  
8   of the excess (if any) of—

9               “(1) the qualified training expenditures for the  
10   taxable year, over

11              “(2) the average of the adjusted qualified train-  
12   ing expenditures for the 3 taxable years preceding  
13   the taxable year for which the credit is being deter-  
14   mined.

15       “(b) QUALIFIED TRAINING EXPENDITURES.—For  
16   purposes of this section—

17              “(1) IN GENERAL.—The term ‘qualified train-  
18   ing expenditures’ means any expenditures for the  
19   qualified training of any non-highly compensated  
20   employee. Such term shall not include any amounts  
21   paid for meals, lodging, transportation, or other  
22   services incidental to such qualified training.

23              “(2) QUALIFIED TRAINING.—

24                   “(A) IN GENERAL.—For purposes of para-  
25   graph (1), the term ‘qualified training’ means

1 training which results in the attainment of a  
2 recognized postsecondary credential and which  
3 is provided through—

4 “(i) an apprenticeship program reg-  
5 istered under the Act of August 16, 1937  
6 (commonly known as the ‘National Ap-  
7 prenticeship Act’; 50 Stat. 664, chapter  
8 663; 29 U.S.C. 50 et seq.);

9 “(ii)(I) a program of training services  
10 which is listed under section 122(d) of the  
11 Workforce Innovation and Opportunity Act  
12 (29 U.S.C. 3152(d)); or

13 “(II) an apprenticeship program  
14 which is registered or approved by a recog-  
15 nized State apprenticeship agency (which  
16 uses a State apprenticeship council) in ac-  
17 cordance with section 1 of the Act referred  
18 to in clause (i);

19 “(iii) a program which is conducted  
20 by an area career and technical education  
21 school, a community college, or a labor or-  
22 ganization; or

23 “(iv) a program which is sponsored  
24 and administered by an employer, industry

1 trade association, industry or sector part-  
2 nership, or labor organization.

3 “(B) RELATED DEFINITIONS.—In sub-  
4 paragraph (A):

5 “(i) AREA CAREER AND TECHNICAL  
6 EDUCATION SCHOOL.—The term ‘area ca-  
7 reer and technical education school’ means  
8 such a school, as defined in section 3 of  
9 the Carl D. Perkins Career and Technical  
10 Education Act of 2006 (20 U.S.C. 2302),  
11 which participates in a program under that  
12 Act (20 U.S.C. 2301 et seq.).

13 “(ii) COMMUNITY COLLEGE.—The  
14 term ‘community college’ means an institu-  
15 tion which—

16 “(I) is a junior or community col-  
17 lege as defined in section 312(f) of the  
18 Higher Education Act of 1965 (20  
19 U.S.C. 1058(f)), except that the insti-  
20 tution need not meet the requirements  
21 of paragraph (1) of that section; and

22 “(II) participates in a program  
23 under title IV of that Act (20 U.S.C.  
24 1070 et seq.).

1 “(iii) INDUSTRY OR SECTOR PARTNER-  
 2 SHIP.—The term ‘industry or sector part-  
 3 nership’ has the meaning given such term  
 4 under section 3 of the Workforce Innova-  
 5 tion and Opportunity Act (29 U.S.C.  
 6 3102).

7 “(iv) INDUSTRY TRADE ASSOCIA-  
 8 TION.—The term ‘industry trade associa-  
 9 tion’ means an organization which—

10 “(I) is described in paragraph (3)  
 11 or (6) of section 501(c) of the Inter-  
 12 nal Revenue Code of 1986 and exempt  
 13 from taxation under section 501(a) of  
 14 such Code; and

15 “(II) is representing an industry.

16 “(v) LABOR ORGANIZATION.—The  
 17 term ‘labor organization’ means a labor or-  
 18 ganization, within the meaning of the term  
 19 in section 501(c)(5) of the Internal Rev-  
 20 enue Code of 1986.

21 “(vi) RECOGNIZED POSTSECONDARY  
 22 CREDENTIAL.—The term ‘recognized post-  
 23 secondary credential’ means a credential  
 24 consisting of an industry-recognized certifi-  
 25 cate or certification, a certificate of com-

pletion of an apprenticeship, a license recognized by the State involved or Federal Government, or an associate or baccalaureate degree.

“(3) NON-HIGHLY COMPENSATED EMPLOYEE.—

For purposes of paragraph (1), the term ‘non-highly compensated employee’ means an employee of the taxpayer whose remuneration for the taxable year for services provided to the taxpayer does not exceed \$82,000.

“(c) ADJUSTED QUALIFIED TRAINING EXPENDI-

TURES.—For purposes of this section, the term ‘adjusted qualified training expenses’ means, with respect to any taxable year—

“(1) the qualified training expenses for such taxable year, multiplied by

“(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year for which the credit is being determined begins, except that section 1(f)(3)(A)(ii) shall be applied by using the CPI for the calendar year in which the taxable year in which qualified training expenses were paid or incurred begins in lieu of the CPI for calendar year 1982.

1       “(d) SPECIAL RULES.—For purposes of this sec-  
2 tion—

3               “(1) SPECIAL RULE IN CASE OF NO QUALIFIED  
4 TRAINING EXPENDITURES IN ANY OF 3 PRECEDING  
5 TAXABLE YEARS.—

6               “(A) TAXPAYERS TO WHICH PARAGRAPH  
7 APPLIES.—The credit under this section shall  
8 be determined under this paragraph if the tax-  
9 payer has no qualified training expenditures in  
10 any one of the 3 taxable years preceding the  
11 taxable year for which the credit is being deter-  
12 mined.

13              “(B) CREDIT RATE.—The credit deter-  
14 mined under this paragraph shall be equal to  
15 10 percent of the adjusted qualified training ex-  
16 penditures for the taxable year.

17              “(2) AGGREGATION AND ALLOCATION OF EX-  
18 PENDITURES, ETC.—Rules similar to the rules of  
19 paragraphs (1), (2), (3), (4), and (5) of section  
20 41(f) shall apply.

21       “(e) ELECTION TO APPLY CREDIT AGAINST PAY-  
22 ROLL TAXES.—

23              “(1) IN GENERAL.—At the election of a quali-  
24 fied small business or a qualified tax-exempt organi-  
25 zation (as defined in section 3111(e)(5)(A)) for any

1 taxable year, section 3111(g) shall apply to the pay-  
 2 roll tax credit portion of the credit otherwise deter-  
 3 mined under subsection (a) for the taxable year and  
 4 such portion shall not be treated (other than for  
 5 purposes of section 280C) as a credit determined  
 6 under subsection (a).

7 “(2) PAYROLL TAX CREDIT PORTION.—For  
 8 purposes of this subsection, the payroll tax credit  
 9 portion of the credit determined under subsection  
 10 (a) with respect to any qualified small business or  
 11 qualified tax-exempt organization for any taxable  
 12 year is the least of—

13 “(A) the amount specified in the election  
 14 made under this subsection,

15 “(B) the credit determined under sub-  
 16 section (a) for the taxable year (determined be-  
 17 fore the application of this subsection), or

18 “(C) in the case of a qualified small busi-  
 19 ness other than a partnership or S corporation,  
 20 the amount of the business credit carryforward  
 21 under section 39 carried from the taxable year  
 22 (determined before the application of this sub-  
 23 section to the taxable year).

24 “(3) QUALIFIED SMALL BUSINESS.—For pur-  
 25 poses of this subsection—



1           “(A) IN GENERAL.—The term ‘qualified  
2           small business’ means, with respect to any tax-  
3           able year—

4                   “(i) a corporation or partnership, if—

5                           “(I) the gross receipts (as deter-  
6                           mined under the rules of section  
7                           448(c)(3), without regard to subpara-  
8                           graph (A) thereof) of such entity for  
9                           the taxable year is less than  
10                          \$5,000,000, and

11                          “(II) such entity did not have  
12                          gross receipts (as so determined) for  
13                          any taxable year preceding the 5-tax-  
14                          able-year period ending with such tax-  
15                          able year, and

16                          “(ii) any person (other than a cor-  
17                          poration or partnership) who meets the re-  
18                          quirements of subclauses (I) and (II) of  
19                          clause (i), determined—

20                           “(I) by substituting ‘person’ for  
21                           ‘entity’ each place it appears, and

22                           “(II) by only taking into account  
23                           the aggregate gross receipts received  
24                           by such person in carrying on all  
25                           trades or businesses of such person.

1           “(B) LIMITATION.—Such term shall not  
2 include an organization which is exempt from  
3 taxation under section 501.

4           “(4) ELECTION.—

5           “(A) IN GENERAL.—Any election under  
6 this subsection for any taxable year—

7           “(i) shall specify the amount of the  
8 credit to which such election applies,

9           “(ii) shall be made on or before the  
10 due date (including extensions) of—

11           “(I) in the case of a partnership,  
12 the return required to be filed under  
13 section 6031,

14           “(II) in the case of an S corpora-  
15 tion, the return required to be filed  
16 under section 6037, and

17           “(III) in the case of any other  
18 qualified small business or qualified  
19 tax-exempt organization, the return of  
20 tax for the taxable year, and

21           “(iii) may be revoked only with the  
22 consent of the Secretary.

23           “(B) LIMITATIONS.—

1           “(i) AMOUNT.—The amount specified  
2           in any election made under this subsection  
3           shall not exceed \$250,000.

4           “(ii) NUMBER OF TAXABLE YEARS.—  
5           A person may not make an election under  
6           this subsection if such person (or any other  
7           person treated as a single taxpayer with  
8           such person under paragraph (5)(A)) has  
9           made an election under this subsection for  
10          five or more preceding taxable years.

11          “(C) SPECIAL RULE FOR PARTNERSHIPS  
12          AND S CORPORATIONS.—In the case of a part-  
13          nership or S corporation, the election made  
14          under this subsection shall be made at the enti-  
15          ty level.

16          “(5) AGGREGATION RULES.—

17               “(A) IN GENERAL.—Except as provided in  
18               subparagraph (B)—

19                   “(i) all members of the same con-  
20                   trolled group of corporations shall be treat-  
21                   ed as a single taxpayer, and

22                   “(ii) all trades or businesses (whether  
23                   or not incorporated) which are under com-  
24                   mon control shall be treated as a single  
25                   taxpayer.

1           “(B) SPECIAL RULES.—For purposes of  
2 this subsection and section 3111(g)—

3           “(i) each of the persons treated as a  
4 single taxpayer under subparagraph (A)  
5 may separately make the election under  
6 paragraph (1) for any taxable year, and

7           “(ii) the \$250,000 amount under  
8 paragraph (3)(B)(i) shall be allocated  
9 among all persons treated as a single tax-  
10 payer under subparagraph (A) in the man-  
11 ner provided by the Secretary which is  
12 similar to the manner provided under sec-  
13 tion 41(f)(1).

14           “(6) REGULATIONS.—The Secretary shall pre-  
15 scribe such regulations as may be necessary to carry  
16 out the purposes of this subsection, including—

17           “(A) regulations to prevent the avoidance  
18 of the purposes of the limitations and aggrega-  
19 tion rules under this subsection,

20           “(B) regulations to minimize compliance  
21 and recordkeeping burdens under this sub-  
22 section, and

23           “(C) regulations for recapturing the ben-  
24 efit of credits determined under section 3111(g)  
25 in cases where there is a recapture or a subse-

1           quent adjustment to the payroll tax credit por-  
 2           tion of the credit determined under subsection  
 3           (a), including requiring amended income tax re-  
 4           turns in the cases where there is such an ad-  
 5           justment.”.

6           (2) CREDIT PART OF GENERAL BUSINESS  
 7           CREDIT.—Section 38(b) of the Internal Revenue  
 8           Code of 1986 is amended by striking “plus” at the  
 9           end of paragraph (31), by striking the period at the  
 10          end of paragraph (32) and inserting “, plus”, and  
 11          by adding at the end the following new paragraph:  
 12          “(33) the employer-provided worker training  
 13          credit determined under section 45T(a).”.

14          (3) COORDINATION WITH DEDUCTIONS.—Sec-  
 15          tion 280C of the Internal Revenue Code of 1986 is  
 16          amended by adding at the end the following new  
 17          subsection:

18          “(i) EMPLOYER-PROVIDED WORKER TRAINING  
 19          CREDIT.—No deduction shall be allowed for that portion  
 20          of the expenses otherwise allowable as a deduction taken  
 21          into account in determining the credit under section 45T  
 22          for the taxable year which is equal to the amount of the  
 23          credit determined for such taxable year under section  
 24          45T(a).”.

1           (4) CLERICAL AMENDMENT.—The table of sec-  
 2           tions for subpart D of part IV of subchapter A of  
 3           chapter 1 of the Internal Revenue Code of 1986 is  
 4           amended by adding at the end the following new  
 5           item:

“Sec. 45T. Employer-provided worker training credit.”.

6           (b) CREDIT ALLOWED AGAINST ALTERNATIVE MIN-  
 7           IMUM TAX.—Subparagraph (B) of section 38(c)(4) of the  
 8           Internal Revenue Code of 1986 is amended—

9           (1) by redesignating clauses (x), (xi), and (xii)  
 10          as clauses (xi), (xii), and (xiii), respectively, and

11          (2) by inserting after clause (ix) the following  
 12          new clause:

13                       “(x) the credit determined under sec-  
 14                       tion 45T with respect to an eligible small  
 15                       business (as defined in paragraph (5)(C),  
 16                       after application of rules similar to the  
 17                       rules of paragraph (5)(D)),”.

18          (c) PAYROLL TAX CREDIT.—Section 3111 of the In-  
 19          ternal Revenue Code of 1986 is amended by adding at the  
 20          end the following new subsection:

21          “(g) CREDIT FOR WORKER TRAINING EXPENSES.—

22               “(1) IN GENERAL.—In the case of a taxpayer  
 23          who has made an election under section 45T(e) for  
 24          a taxable year, there shall be allowed as a credit  
 25          against the tax imposed by subsection (a) for the

1 first calendar quarter which begins after the date on  
 2 which the taxpayer files the return specified in sec-  
 3 tion 45T(e)(4)(A)(ii) an amount equal to the payroll  
 4 tax credit portion determined under section  
 5 45T(e)(2).

6 “(2) LIMITATION.—The credit allowed by para-  
 7 graph (1) shall not exceed the tax imposed by sub-  
 8 section (a) for any calendar quarter on the wages  
 9 paid with respect to the employment of all individ-  
 10 uals in the employ of the employer.

11 “(3) CARRYOVER OF UNUSED CREDIT.—If the  
 12 amount of the credit under paragraph (1) exceeds  
 13 the limitation of paragraph (2) for any calendar  
 14 quarter, such excess shall be carried to the suc-  
 15 ceeding calendar quarter and allowed as a credit  
 16 under paragraph (1) for such quarter.

17 “(4) DEDUCTION ALLOWED FOR CREDITED  
 18 AMOUNTS.—The credit allowed under paragraph (1)  
 19 shall not be taken into account for purposes of de-  
 20 termining the amount of any deduction allowed  
 21 under chapter 1 for taxes imposed under subsection  
 22 (a).”.

23 (d) SIMPLIFIED FILING FOR CERTAIN SMALL BUSI-  
 24 NESSES.—The Secretary of the Treasury shall provide for  
 25 a method of filing returns of tax and information returns

1 required under the Internal Revenue Code of 1986 in a  
2 simplified format, to the extent possible, for employers  
3 with less than \$5,000,000 in annual gross receipts (as de-  
4 termined under guidance provided by the Secretary).

5 (e) REGULATIONS RELATING TO POSTSECONDARY  
6 CREDENTIALS.—Not later than 1 year after the date of  
7 the enactment of this Act, the Secretary of Labor, in con-  
8 sultation with the Secretary of the Treasury, shall issue  
9 regulations or other guidance applying the definition of  
10 the term “recognized postsecondary credential” as pro-  
11 vided in section 3 of the Workforce Innovation and Oppor-  
12 tunity Act (29 U.S.C. 3102).

13 (f) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to taxable years beginning after  
15 the date of the enactment of this Act.

○