

117TH CONGRESS
2D SESSION

H. R. 8448

To amend the Internal Revenue Code of 1986 to end the tax subsidy for employer efforts to influence their workers' exercise of their rights around labor organizations and engaging in collective action.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2022

Mr. NORCROSS (for himself, Mr. SCHIFF, Mr. SMITH of Washington, Mr. ESPAILLAT, Mr. GREEN of Texas, Mr. LOWENTHAL, Ms. OCASIO-CORTEZ, Mr. CARSON, Mr. KIM of New Jersey, Mr. LEVIN of Michigan, Ms. KUSTER, Mr. BROWN of Maryland, Ms. PRESSLEY, Ms. LEE of California, Ms. MCCOLLUM, Mrs. WATSON COLEMAN, Mr. SHERMAN, Mrs. LAWRENCE, Mr. FITZPATRICK, Mrs. CAROLYN B. MALONEY of New York, Ms. PINGREE, Mrs. AXNE, Mr. LAMB, Mr. DANNY K. DAVIS of Illinois, Mr. SOTO, Mr. CICILLINE, Mrs. DINGELL, Ms. TITUS, Mr. PAYNE, Mr. EVANS, Ms. NORTON, Ms. SLOTKIN, Mr. MRVAN, Mr. PALLONE, Ms. WILSON of Florida, Mr. CONNOLLY, Mrs. NAPOLITANO, Ms. MENG, Ms. STEVENS, Ms. OMAR, Mr. BOWMAN, Mr. MCGOVERN, Mr. RASKIN, Ms. SCHAKOWSKY, Mr. GOLDEN, Mr. CROW, Mr. NADLER, Mr. GARCÍA of Illinois, Mr. GOMEZ, Mr. PANETTA, Mr. COURTNEY, Mr. NEGUSE, Mr. LARSON of Connecticut, Mr. GARAMENDI, Mr. SARBANES, Mrs. BEATTY, Mr. VARGAS, Ms. CHU, Ms. BASS, Ms. PORTER, Ms. UNDERWOOD, Ms. BLUNT ROCHESTER, Mr. DOGETT, Mrs. TRAHAN, Ms. DEAN, Ms. NEWMAN, Mr. DESAULNIER, Mr. POCAN, Mr. TAKANO, Ms. SCANLON, Ms. STANSBURY, Mr. MICHAEL F. DOYLE of Pennsylvania, Ms. SHERRILL, Mr. JONES, Ms. BARRAGÁN, Mr. TONKO, Mr. AGUILAR, Mr. WELCH, Ms. JAYAPAL, Mr. KRISHNAMOORTHY, Ms. TLAIB, Ms. VELÁZQUEZ, Mr. GRIJALVA, Mr. LARSEN of Washington, Mr. KHANNA, Ms. DELAURO, Mr. GALLEGOS, Mr. CASTEN, Mrs. CHERFILUS-McCORMICK, Ms. JACKSON LEE, Ms. BROWN of Ohio, Mr. LYNCH, Mr. COHEN, Ms. WILD, Ms. BONAMICI, Ms. GARCIA of Texas, Mr. SUOZZI, Mr. RYAN, Mr. MALINOWSKI, Mr. CÁRDENAS, Mrs. DEMINGS, Ms. CLARKE of New York, and Ms. LOFGREN) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to end the tax subsidy for employer efforts to influence their workers’ exercise of their rights around labor organizations and engaging in collective action.

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 “No Tax Breaks for
 5 Union Busting (NTBUB) Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The National Labor Relations Act (29
 9 U.S.C. 151 et seq.) declares that it is the right of
 10 employees to form, join, or assist labor organiza-
 11 tions.

12 (2) The National Labor Relations Act further
 13 declares that it is “the policy of the United States
 14 to eliminate the causes of certain substantial ob-
 15 structions to the free flow of commerce and to miti-
 16 gate and eliminate these obstructions when they
 17 have occurred by encouraging the practice and pro-
 18 cedure of collective bargaining and by protecting the
 19 exercise by workers of full freedom of association,
 20 self-organization, and designation of representatives
 21 of their own choosing . . .”.

1 (3) Despite Congress' intention to give workers
2 full agency in these matters, many employers regu-
3 larly choose to involve themselves, lawfully or unlaw-
4 fully, in the decisions of their employees about
5 whether to avail themselves of their rights under the
6 National Labor Relations Act and the Railway
7 Labor Act (45 U.S.C. 151 et seq.).

8 (4) Employers frequently violate labor laws
9 around organizing and collective action. The Eco-
10 nomic Policy Institute finds that in approximately 4
11 of 10 labor organization elections in 2016–2017 em-
12 ployers were charged with committing an unfair
13 labor practice. Among larger bargaining units of 61
14 employees or more, over 54 percent of elections have
15 an unfair labor practice charge.

16 (5) In practice, these unfair labor practices
17 often include charges such as employees being ille-
18 gally fired for labor organization activity, refusal to
19 bargain in good faith with labor organizations, or co-
20 ercion and intimidation. Employers also frequently
21 use captive audience meetings, workplace surveil-
22 lance, and other lawful or unlawful tactics to sway
23 labor organization elections.

24 (6) Whether or not there are charges of unlaw-
25 ful behavior, employers spend millions of dollars to

1 sway the opinions of their employees with respect to
2 whether or how to exercise their rights under the
3 National Labor Relations Act and the Railway
4 Labor Act. According to the Economic Policy Insti-
5 tute report, companies spent \$340,000,000 yearly on
6 outside consultants to sway their workers' opinions
7 about labor organization activities. This and other
8 spending interfere with the United States goal of
9 “encouraging the practice and procedure of collective
10 bargaining”.

11 (7) The Internal Revenue Code of 1986 has
12 long recognized that spending by businesses with the
13 purpose of influencing the general public with re-
14 spect to elections, while it may be lawful, is not tax
15 deductible. Congress should extend that principle to
16 spending done by employers to influence workers'
17 elections and collective bargaining decisions. These
18 free choices to exercise the rights to engage in collec-
19 tive bargaining, labor organization representation,
20 and other lawful collective activities should be made
21 without taxpayer subsidies of undue outside influ-
22 ence from employers.

1 **SEC. 3. DENIAL OF DEDUCTION FOR ATTEMPTING TO IN-**
2 **FLUENCE EMPLOYEES WITH RESPECT TO**
3 **LABOR ORGANIZATIONS OR LABOR ORGANI-**
4 **ZATION ACTIVITIES.**

5 (a) IN GENERAL.—Section 162(e)(1) of the Internal
6 Revenue Code of 1986 is amended by striking “or” at the
7 end of subparagraph (C), by striking the period at the end
8 of subparagraph (D) and inserting “, or”, and by adding
9 at the end the following new subparagraph:

10 “(E) any attempt to influence the tax-
11 payer’s employees with respect to labor organi-
12 zations or labor organization activities, includ-
13 ing with respect to the opinion of such employ-
14 ees regarding such organizations or activities.”.

15 (b) LABOR ORGANIZATIONS; LABOR ORGANIZATION
16 ACTIVITIES DEFINED.—Section 162(e) of the Internal
17 Revenue Code of 1986 is amended by redesignating para-
18 graph (6) as paragraph (7) and by inserting after para-
19 graph (5) the following new paragraph:

20 “(6) LABOR ORGANIZATIONS AND LABOR ORGA-
21 NIZATION ACTIVITY DEFINED.—For purposes of this
22 subsection—

23 “(A) LABOR ORGANIZATION.—The term
24 ‘labor organization’ has the meaning given such
25 term in section 3 of the Labor-Management Re-

1 porting and Disclosure Act of 1959 (29 U.S.C.
2 402).

3 “(B) LABOR ORGANIZATION ACTIVITY.—

4 “(i) IN GENERAL.—The term ‘labor
5 organization activity’ includes labor organi-
6 zation elections, labor disputes, and collec-
7 tive actions.

8 “(ii) OTHER TERMS.—For purposes of
9 clause (i)—

10 “(I) COLLECTIVE ACTION.—The
11 term ‘collective action’ means any ac-
12 tion, including collective bargaining,
13 described in section 7 of the National
14 Labor Relations Act (29 U.S.C. 157)
15 or any action that is a right of em-
16 ployees or labor organizations under
17 the Railway Labor Act (45 U.S.C.
18 151 et seq.).

19 “(II) LABOR DISPUTE.—The
20 term ‘labor dispute’ has the meaning
21 given such term under section 3 of the
22 Labor-Management Reporting and
23 Disclosure Act of 1959 (29 U.S.C.
24 402).

1 “(III) LABOR ORGANIZATION
 2 ELECTION.—The term ‘labor organi-
 3 zation election’ means any election de-
 4 scribed in section 9 of the National
 5 Labor Relations Act (29 U.S.C. 159)
 6 or section 2 of the Railway Labor Act
 7 (45 U.S.C. 152).”.

8 (c) SPECIAL RULES.—Section 162(e)(4) of the Inter-
 9 nal Revenue Code of 1986 is amended by adding at the
 10 end the following new subparagraph:

11 “(D) EXPENSES RELATING TO LABOR OR-
 12 GANIZATIONS OR LABOR ORGANIZATION ACTIVI-
 13 TIES.—

14 “(i) IN GENERAL.—For purposes of
 15 paragraph (1)(E), amounts paid or in-
 16 curred in connection with attempting to in-
 17 fluence the taxpayer’s employees with re-
 18 spect to labor organizations or labor orga-
 19 nization activities include—

20 “(I) any amount paid or incurred
 21 by the taxpayer in connection with an
 22 action that results in—

23 “(aa) a complaint issued
 24 under section 10 of the National
 25 Labor Relations Act (29 U.S.C.

1 160) against the taxpayer for an
2 unfair labor practice under sec-
3 tion 8(a) of such Act (29 U.S.C.
4 158(a)), unless an order of the
5 National Labor Relations Board
6 related to such complaint is set
7 aside in full in accordance with
8 subsection (e) or (f) of section 10
9 of such Act,

10 “(bb) a settlement offer re-
11 lated to an investigation by the
12 National Labor Relations Board
13 of a charge of an unfair labor
14 practice under section 8(a) of
15 such Act (29 U.S.C. 158(a)) that
16 results in a settlement of such
17 charge without issuance of a
18 complaint under section 10 of
19 such Act (29 U.S.C. 160), or

20 “(cc) a finding of inter-
21 ference, influence, or coercion by
22 a Federal court under section 2
23 of the Railway Labor Act (45
24 U.S.C. 152),

1 “(II) any amount paid or in-
2 curred (including wages) in producing,
3 conducting, or attending any meeting
4 or training—

5 “(aa) which includes employ-
6 ees of the taxpayer who are or
7 who could become bargaining
8 unit members or members of a
9 craft or class under the Railway
10 Labor Act, and

11 “(bb) at which labor organi-
12 zations or a labor organization
13 activity is discussed, and

14 “(III) any amount which is re-
15 quired to be reported under the
16 Labor-Management Reporting and
17 Disclosure Act of 1959 (29 U.S.C.
18 401 et seq.).

19 “(ii) EXCEPTIONS.—The following
20 amounts shall not be treated as amounts
21 paid or incurred in connection with at-
22 tempting to influence the taxpayer’s em-
23 ployees with respect to labor organizations
24 or labor organization activities under para-
25 graph (1)(E):

1 “(I) Amounts paid or incurred
2 for communications or negotiations di-
3 rectly with the designated or selected
4 representative of the employees of the
5 taxpayer described in section 9(a) of
6 the National Labor Relations Act (29
7 U.S.C. 159(a)) or under the Railway
8 Labor Act (45 U.S.C. 151 et seq.).

9 “(II) Amounts paid or incurred
10 for communications directly with
11 shareholders, as may be required
12 under section 13 of the Securities Ex-
13 change Act of 1934 (15 U.S.C. 78m).

14 “(III) Amounts paid or incurred
15 for communications or consultations
16 by the taxpayer in the process of vol-
17 untarily recognizing a labor organiza-
18 tion as a representative in accordance
19 with section 9 of the National Labor
20 Relations Act (29 U.S.C. 159).

21 “(IV) Amounts paid or incurred
22 for communications or consultations
23 related to the operation of a labor-
24 management partnership described in
25 a collective bargaining agreement in

1 effect between a representative of em-
2 ployees of the taxpayer and the tax-
3 payer.

4 “(V) Amounts paid or incurred
5 for communications or consultations
6 related to the operation of a grievance
7 procedure described in a collective
8 bargaining agreement in effect be-
9 tween a representative of employees of
10 the taxpayer and the taxpayer.

11 “(VI) Amounts paid or incurred
12 by a labor organization.

13 “(VII) Amounts paid or incurred
14 for communication materials, includ-
15 ing visual or audio media, required to
16 be posted for, or provided to, employ-
17 ees of the taxpayer by law, including
18 under the National Labor Relations
19 Act (29 U.S.C. 151 et seq.) or the
20 Railway Labor Act (45 U.S.C. 151 et
21 seq.).”.

22 (d) INFORMATION REPORTING.—

23 (1) IN GENERAL.—Subpart A of part III of
24 subchapter A of chapter 61 of the Internal Revenue

1 Code of 1986 is amended by inserting after section
2 6039J the following new section:

3 **“SEC. 6039K. INFORMATION WITH RESPECT TO CERTAIN**
4 **EMPLOYER ACTIVITIES RELATING TO LABOR**
5 **ORGANIZATIONS.**

6 “(a) IN GENERAL.—Any employer who attempts to
7 influence the employer’s employees with respect to labor
8 organizations or labor organization activities as described
9 in section 162(e)(1)(E) shall file a return (at such time
10 and in such manner as the Secretary may by regulations
11 prescribe, not more frequently than each quarter in which
12 such an attempt occurs and not less frequently than each
13 year in which such an attempt occurs) which includes the
14 information described in subsection (b).

15 “(b) INFORMATION TO BE PROVIDED.—Information
16 required under subsection (a) shall include—

17 “(1) the dates that such activities described in
18 subsection (a) took place,

19 “(2) a statement indicating whether the activity
20 was an activity described in item (aa), (bb), or (cc)
21 of section 162(e)(4)(D)(i)(I),

22 “(3) the amounts paid or incurred for such ac-
23 tivities,

24 “(4) a copy of any disclosures which are re-
25 quired to be reported under the Labor-Management

1 Reporting and Disclosure Act of 1959 (29 U.S.C.
2 401 et seq.), and

3 “(5) such other information as the Secretary
4 may prescribe.”.

5 (2) PENALTY.—Subparagraph (B) of section
6 6724(d)(1) of such Code is amended—

7 (A) by striking the comma at the end of
8 clause (xxvii), as added by the Infrastructure
9 Investment and Jobs Act, and inserting “, or”,
10 and

11 (B) by adding at the end the following new
12 clause:

13 “(xxviii) section 6039K (relating to
14 information with respect to certain em-
15 ployer activities relating to labor organiza-
16 tions), and”.

17 (3) CLERICAL AMENDMENT.—The table of sec-
18 tions for subpart A of part III of subchapter A of
19 chapter 61 of such Code is amended by inserting
20 after the item relating to section 6039J the fol-
21 lowing new item:

“Sec. 6039K. Information with respect to certain employer activities relating to
labor organizations.”.

22 (e) CONFORMING AMENDMENTS.—

23 (1) The heading for subsection (e) of section
24 162 of the Internal Revenue Code of 1986 is amend-

1 ed by striking “AND POLITICAL EXPENDITURES”
2 and inserting “, POLITICAL EXPENDITURES, AND
3 LABOR ORGANIZATION EXPENDITURES”.

4 (2) The heading of subparagraph (C) of section
5 162(e)(4) of such Code is amended by striking “AND
6 POLITICAL ACTIVITIES” and inserting “, POLITICAL,
7 AND LABOR ORGANIZATION ACTIVITIES”.

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

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