

118TH CONGRESS
1ST SESSION

H. R. 5428

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

SEPTEMBER 13, 2023

Mr. NORCROSS (for himself, Ms. BARRAGÁN, Mrs. BEATTY, Ms. BLUNT ROCHESTER, Ms. BONAMICI, Mr. BOWMAN, Ms. BUDZINSKI, Mr. CARSON, Mr. CASAR, Mr. CASTEN, Ms. CLARKE of New York, Mr. CLEAVER, Mr. CONNOLLY, Mr. COURTNEY, Ms. CRAIG, Mr. CROW, Mr. CUELLAR, Mr. DAVIS of Illinois, Ms. DEAN of Pennsylvania, Ms. DELAURO, Mr. DELUZIO, Mr. DESAULNIER, Mrs. DINGELL, Mr. DOGGETT, Mr. ESPAILLAT, Mr. EVANS, Mr. FOSTER, Mr. FROST, Mr. GALLEGU, Mr. GARAMENDI, Ms. GARCIA of Texas, Mr. GARCÍA of Illinois, Mr. ROBERT GARCIA of California, Mr. GOLDEN of Maine, Mr. GOLDMAN of New York, Mr. GOMEZ, Mr. GOTTHEIMER, Mr. GREEN of Texas, Ms. HOYLE of Oregon, Ms. JACKSON LEE, Ms. JAYAPAL, Ms. KAPTUR, Mr. KHANNA, Mr. KILDEE, Mr. KIM of New Jersey, Mr. KRISHNAMOORTHY, Ms. KUSTER, Mr. LARSEN of Washington, Ms. LEE of California, Ms. LOFGREN, Mr. LYNCH, Mr. MAGAZINER, Ms. MCCOLLUM, Mr. MCGARVEY, Mr. MCGOVERN, Mr. MENENDEZ, Mr. MOULTON, Mr. MRVAN, Mr. MULLIN, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEGUSE, Mr. NICKEL, Ms. NORTON, Ms. OCASIO-CORTEZ, Ms. OMAR, Mr. PALLONE, Mr. PANETTA, Mr. PASCRELL, Mr. PHILLIPS, Ms. PINGREE, Mr. POCAN, Ms. PORTER, Ms. PRESSLEY, Mr. QUIGLEY, Mr. RASKIN, Ms. SÁNCHEZ, Mr. SARBANES, Ms. SCANLON, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SHERMAN, Ms. SHERRILL, Ms. SLOTKIN, Mr. SMITH of Washington, Mr. SORENSEN, Mr. SOTO, Ms. STANSBURY, Mrs. SYKES, Mr. TAKANO, Ms. TITUS, Ms. TLAIB, Ms. TOKUDA, Mr. TONKO, Mrs. TRAHAN, Mr. TRONE, Ms. UNDERWOOD, Mr. VEASEY, Ms. VELÁZQUEZ, Ms. WATERS, Mrs. WATSON COLEMAN, Ms. WILD, Ms. WILLIAMS of Georgia, Ms. WILSON of Florida, Mr. TORRES of New York, Mrs. FOUSHEE, Ms. LOIS FRANKEL of Florida, Ms. WASSERMAN SCHULTZ, and Mr. FITZPATRICK) 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, companies spent \$340,000,000 yearly on out-
6 side 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’ means labor organi-
6 zation elections, labor disputes, collective
7 actions, and such other related activities
8 identified by the Secretary.

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

11 “(I) COLLECTIVE ACTION.—The
12 term ‘collective action’ means any ac-
13 tion, including collective bargaining,
14 described in section 7 of the National
15 Labor Relations Act (29 U.S.C. 157)
16 or any action that is a right of em-
17 ployees or labor organizations under
18 the Railway Labor Act (45 U.S.C.
19 151 et seq.).

20 “(II) LABOR DISPUTE.—The
21 term ‘labor dispute’ has the meaning
22 given such term under section 3 of the
23 Labor-Management Reporting and
24 Disclosure Act of 1959 (29 U.S.C.
25 402).

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.—

9 (1) IN GENERAL.—Section 162(e)(4) of the In-
10 ternal Revenue Code of 1986 is amended by adding
11 at the end the following new subparagraph:

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

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

21 “(I) any amount paid or incurred
22 directly or indirectly by the taxpayer,
23 including wages and other general and
24 administrative costs, in connection
25 with an action that results in—

1 “(aa) a complaint issued
2 under section 10 of the National
3 Labor Relations Act (29 U.S.C.
4 160) against the taxpayer for an
5 unfair labor practice under sec-
6 tion 8(a) of such Act (29 U.S.C.
7 158(a)),

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

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

23 “(II) any amount paid or in-
24 curred directly or indirectly by the
25 taxpayer, including wages and other

1 general and administrative costs, in
2 producing, conducting, or attending
3 any meeting or training—

4 “(aa) which includes employ-
5 ees of the taxpayer who are or
6 who could become members of a
7 unit appropriate for the purposes
8 of collective bargaining, and

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

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

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

24 “(I) Amounts paid or incurred
25 for communications or negotiations di-

1 rectly with the designated or selected
2 representative of the employees of the
3 taxpayer described in section 9(a) of
4 the National Labor Relations Act (29
5 U.S.C. 159(a)) or under the Railway
6 Labor Act (45 U.S.C. 151 et seq.).

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

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

19 “(IV) Amounts paid or incurred
20 with respect to the operation of a
21 labor-management partnership de-
22 scribed in a collective bargaining
23 agreement in effect between a rep-
24 resentative of employees of the tax-
25 payer and the taxpayer, including a

1 labor management committee estab-
2 lished pursuant to section 205A(a) of
3 the Labor Management Relations Act,
4 1947 (29 U.S.C. 175a(a)).

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

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

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

23 “(VIII) Amounts paid or in-
24 curred relating to a complaint which
25 is issued by the National Labor Rela-

1 tions Board and which is set aside in
2 full in accordance with subsection (e)
3 or (f) of section 10 of such Act.”.

4 (2) REGULATORY AUTHORITY.—

5 (A) IN GENERAL.—Section 162(e) of such
6 Code, as amended by subsection (b), is amend-
7 ed by redesignating paragraph (7) as paragraph
8 (8) and by inserting after paragraph (6) the
9 following new paragraph:

10 “(7) REGULATIONS.—The Secretary shall pre-
11 scribe such guidance, rules, or regulations as are
12 necessary to carry out the purposes of this sub-
13 section, including rules relating to the timing of any
14 deductions in connection with amounts described in
15 paragraph (4)(D)(ii)(VIII).”.

16 (B) TIMING.—Not later than the date that
17 is 240 days after the date of the enactment of
18 this Act, the Secretary of the Treasury (or the
19 Secretary’s delegate) shall prescribe guidance,
20 rules, or regulations with respect to the applica-
21 tion of the amendments made by this Act.

22 (d) INFORMATION REPORTING.—

23 (1) CERTAIN INFORMATION INCLUDED IN TAX
24 RETURNS.—

1 (A) IN GENERAL.—Part I of subchapter B
2 of chapter 68 is amended by adding at the end
3 the following new section:

4 **“SEC. 6720D. FAILURE TO INCLUDE CERTAIN INFORMATION**
5 **WITH RESPECT TO EMPLOYER ACTIVITIES**
6 **RELATING TO LABOR ORGANIZATIONS.**

7 “(a) IN GENERAL.—If any taxpayer who makes ex-
8 penditures described in section 162(e)(1)(E) fails to pro-
9 vide with the return of tax for the taxable year to which
10 such expenditures relate the information provided in sub-
11 section (e) with respect to such expenditures, or who fails
12 to provide all of the information required under subsection
13 (b) or fails to provide correct information, shall pay a pen-
14 alty in the amount determined under subsection (b).

15 “(b) DETERMINATION OF PENALTY AMOUNT.—

16 “(1) IN GENERAL.—The amount of the penalty
17 under this section for any failure described in sub-
18 section (a) shall be the greater of—

19 “(A) \$10,000, or

20 “(B) the product of \$1,000 and the num-
21 ber of full time equivalent employees of the em-
22 ployer (as determined under section 45R(d)(2)).

23 “(2) INCREASED PENALTY WHERE FAILURE
24 CONTINUES.—

1 “(A) IN GENERAL.—If any failure de-
2 scribed in subsection (a) (1) continues for more
3 than 90 days after the day on which the Sec-
4 retary mails notice of such failure to the tax-
5 payer, the taxpayer shall pay a penalty (in addi-
6 tion to the amount of any penalty under para-
7 graph (1)) equal to the amount determined
8 under paragraph (1) for each 30-day period (or
9 fraction thereof) during which such failure con-
10 tinues after the expiration of such 90-day pe-
11 riod.

12 “(B) LIMITATION.—The penalty imposed
13 under this paragraph with respect to any failure
14 shall not exceed \$100,000.

15 “(c) INFORMATION TO BE PROVIDED.—The infor-
16 mation required under this subsection shall include—

17 “(1) the dates that such activities described in
18 section 162(e)(1)(E) 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 “(d) REASONABLE CAUSE EXCEPTION.—No penalty
6 shall be imposed by this section on any failure which is
7 shown to be due to reasonable cause and not due to willful
8 neglect.”.

9 (B) CLERICAL AMENDMENT.—The table of
10 sections for part I of subchapter B of chapter
11 68 is amended by adding at the end the fol-
12 lowing new item:

“Sec. 6720D. Failure to include certain information with respect to employer
activities relating to labor organizations.”.

13 (2) THIRD-PARTY INFORMATION REPORTING.—

14 (A) IN GENERAL.—Subpart A of part III
15 of subchapter A of chapter 61 of the Internal
16 Revenue Code of 1986 is amended by inserting
17 after section 6039J the following new section:

18 **“SEC. 6039K. INFORMATION WITH RESPECT TO CERTAIN**
19 **EMPLOYER ACTIVITIES RELATING TO LABOR**
20 **ORGANIZATIONS.**

21 “(a) IN GENERAL.—Any person conducting activities
22 described in section 162(e)(1)(E) on behalf of another per-
23 son shall file a return (at such time and in such manner

1 as the Secretary may by regulations prescribe, which in-
2 cludes the information described in subsection (b).

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

5 “(1) the person on behalf of whom the activities
6 described in section 162(e)(1)(E) were performed,

7 “(2) the dates that such activities described in
8 such section took place,

9 “(3) a statement indicating whether the activity
10 was an activity described in item (aa), (bb), or (cc)
11 of section 162(e)(4)(D)(i)(I),

12 “(4) the amounts paid or incurred for such ac-
13 tivities, and

14 “(5) such other information as the Secretary
15 may prescribe.”.

16 (B) PENALTY.—Subparagraph (B) of sec-
17 tion 6724(d)(1) of such Code is amended—

18 (i) by striking the comma at the end
19 of clause (xxvii), as added by the Infra-
20 structure Investment and Jobs Act, and in-
21 serting “, or”, and

22 (ii) by adding at the end the following
23 new clause:

24 “(xxviii) section 6039K (relating to
25 information with respect to certain em-

1 ployer activities relating to labor organiza-
2 tions), and”.

3 (C) CLERICAL AMENDMENT.—The table of
4 sections for subpart A of part III of subchapter
5 A of chapter 61 of such Code is amended by in-
6 serting after the item relating to section 6039J
7 the following new item:

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

8 (e) CONFORMING AMENDMENTS.—

9 (1) The heading for subsection (e) of section
10 162 of the Internal Revenue Code of 1986 is amend-
11 ed by striking “AND POLITICAL EXPENDITURES”
12 and inserting “, POLITICAL EXPENDITURES, AND
13 LABOR ORGANIZATION EXPENDITURES”.

14 (2) The heading of subparagraph (C) of section
15 162(e)(4) of such Code is amended by striking “AND
16 POLITICAL ACTIVITIES” and inserting “, POLITICAL,
17 AND LABOR ORGANIZATION ACTIVITIES”.

18 (f) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to amounts paid or incurred in tax-
20 able years beginning after the date that is 240 days after
21 the date of the enactment of this Act.

○