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Analysis of S. 1352 - 115th Congress (2017-2018)

Apprenticeship and Jobs Training Act of 2017

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Introduction

A survey by the National Association of Manufacturers revealed that 67 percent of manufacturers reported a shortage in their workforce.¹ S.1352, *Apprenticeship and Jobs Training Act of 2017*, introduced by U.S. Senators Maria Cantwell (D-WA) and Susan Collins (R-ME) in June 2017, attempts to address this shortage by enacting a \$5,000 tax credit for up to three years for qualified employers who add new apprentices to apprenticeship programs. Apprenticeship programs are registered programs approved by the U.S. Department of Labor and can be sponsored by an individual, joint employer and by employer associations. Employers, who are registered under the apprenticeship system, which satisfy the criteria stated in the bill will receive a tax benefit for up to three years and on a per employee basis, therefore encouraging employers to invest in employees' on-the-job skill development and a quality workforce. This tax credit will reimburse the employers' cost to provide the training.

The senators have chosen the apprenticeship programs as a vehicle for the credit because data from the Department of Labor shows that such programs benefit both the employer and employees who can continue working while upgrading their skills. Such workers purportedly average "\$240,000 more in wages over a lifetime" than non-apprentice workers.² In addition, the Urban Institute, a Washington D.C.-based think tank, states that "more than 80 percent of U.S. companies that registered apprenticeship programs met their demand for skilled labor" and that 94 percent of employers would recommend apprenticeship programs as a strategy to increase skilled labor.³

¹ Senators Maria Cantwell and Susan Collins (2017). *Cantwell, Collins Introduce Bill to Kickstart American Apprenticeship Legislation would create \$5,000 tax credit, hundreds of thousands of new apprenticeships*. Retrieved from: <https://www.cantwell.senate.gov/news/press-releases/cantwell-collins-introduce-bill-to-kickstart-american-apprenticeship>

² *Ibid.*

³ *Ibid.*

Principles of Good Tax Policy

The following section will briefly analyze S.1352 using the *Guiding Principles of Good Tax Policy* outlined in the AICPA Tax Policy Concept Statement No. 1.⁴

Criteria	Does the proposal satisfy the criteria? (explain)	Result
<p><i>Equity and Fairness</i> – Are similarly situated taxpayers taxed similarly? Consider the tax effect as a percentage of the taxpayer’s income for different income levels of taxpayers.</p>	<p>This proposal provides a tax credit to eligible employers for a qualified apprenticeship program with non-seasonal employees who are not highly compensated. This satisfies the standard for vertical equity, since the bill aims to increase the skills for average workers.</p> <p>In addition, this policy also satisfies the concept of horizontal equity presuming the workers benefiting from the bill are at a similar income levels. Other than the limitation of “highly-compensated” workers as defined under Section 414(q), the bill does not have further limitations. Overall, employers’ out-of-pocket expense on training would decrease by the credit. Also, because the benefit is provided via a tax credit, the benefit is not greater for employers in higher tax brackets.</p>	<p>+/-</p>
<p><i>Certainty</i> – Does the rule clearly specify when the tax is owed and how the amount is determined? Are taxpayers likely to have confidence that</p>	<p>The bill does not specify how a taxpayer can take the credit, leaving it to the Treasury to provide the appropriate regulations.</p> <p>The following criteria must be satisfied to be eligible for the credit:</p>	<p>-</p>

⁴American Institute of Certified Public Accountants (AICPA) Tax Division (January 2017). *Tax Policy Concept Statement 1 - Guiding Principles of Good Tax Policy: A Framework for Evaluating Tax Proposals*. Retrieved from: <https://www.aicpa.org/ADVOACACY/TAX/downloadabledocuments/tax-policy-concept-statement-no-1-global.pdf>

<p>they have applied the rule correctly.</p>	<ol style="list-style-type: none"> 1. The employer must be eligible for the credit by being either a Qualified Apprenticeship Program (QAP) or Qualified Multi-Employer Apprenticeship Program (QMEAP); 2. The individual must be a Qualified Individual (QI); 3. The number of QIs should exceed the apprenticeship participation average (APA). <p>The proposal appears to be straightforward. However, the use of multiple terms such as QAP, QMEAP, QI, APA, and the calculations used in determining the eligibility of the taxpayer negate the principle of certainty. The employee may not know whether he or she is truly an eligible QI. In addition, if the program fails to qualify for either a QAP or QMEAP, the bill states that the QI can be moved to another eligible program.</p> <p>In practice, this may be harder to achieve, and existing employers may be hindered by such revolving workers and increased education expenses. After determining eligibility, a calculation is implemented, being either the lesser of the \$5,000 or another formula-derived amount. The use of such formulas can lead to computation errors, which make the proposal more ambiguous and violates the certainty principle.</p>	
<p><i>Convenience of payment</i> – Does the rule result in tax being paid at a time that is convenient for the payor?</p>	<p>The credit is claimed on the employer’s return. However, this principle also relates to the simplicity and certainty principles, which have not been fulfilled. The calculation of the credit, as previously stated under the certainty principle, is error-prone due to the ambiguities involved in the calculation. It would be inconvenient for employers to be registered and constantly keep track of their eligibility with the program in order to remain eligible for this credit. Companies may decide that the costs outweigh the benefits of the program. Additional time is</p>	<p>-</p>

	needed to disseminate the information required to the qualifying apprenticeship programs, and this may lead to delays in return preparation, adding fees and liabilities to already overburdened taxpayers.	
<i>Effective Tax Administration</i> – Are the costs to administer and comply with this rule at minimum level for both the government and taxpayers?	Both finances and time value of money should be considered with respect to cost. The potential time taken to apply this credit to an employer’s tax return could be costly. Calculations needed to determine the eligibility of the credit, and its associated calculations are, as previously stated, complicated and the additional time required to ascertain the calculation could outweigh the benefits of the credit. The cost is increased by the need to complete additional forms and hire eligible employees. In addition, any penalty that would be imposed on a taxpayer for improperly taking this credit should also be considered. Because this credit is difficult to compute, it is likely that there will be errors resulting in penalties. These will potentially increase the cost to both taxpayers and the IRS.	-
<i>Information Security</i> – Will taxpayer information be protected from both unintended and improper disclosure?	When it comes to information security, this proposal is neutral. The credit would be given to employers based on their current employees for whom they already have information. There should be no additional risk to taxpayer information security. In addition, individuals would claim the credit with additional tax forms along with their annual tax filing, and there would be no additional risk to their information either. The risk of having the security of personal information breached is not any different than it would be without this credit.	N/A
<i>Simplicity</i> - Can taxpayers understand the rule and comply	Much of the additional law that is built in with this proposal is fairly confusing, adding complexity to the current tax law. This proposal also has a lot of caveats as to how much the taxpayer	-

<p>with it correctly and in a cost-efficient manner?</p>	<p>can claim. The legislative language makes it difficult to understand who is qualified to take the credit initially. A typical taxpayer without expert tax knowledge would not understand what this law means to them.</p> <p>Simplicity closely ties to the certainty principle, which is not met by this bill. If there is no certainty in how the tax policy affects taxpayers and how the credit is calculated and used, then simplicity is not achieved. The complex definitions in the bill already violate the simplicity rule. In addition, an employer must also register with the national apprenticeship program and make sure that the entity is subject to the correct agreements. Furthermore, employees will also need to follow a different set of rules to meet the qualifications, which can be complicated on its own. Finally, when it comes to claiming the credit, the employer must go through the steps necessary to calculate and appropriately categorize the credit on the tax return.</p> <p>Referencing the steps laid out in the evaluation of the certainty principle earlier, this proposal does not simplify the current code nor does it effectively follow the simplicity principle in making sure that taxpayers understand the code and are able to apply it correctly and effectively.</p>	
<p><i>Neutrality</i> – Is the rule unlikely to change taxpayer behavior?</p>	<p>Professor Jason Furman of Harvard University once explained that “generally, the tax system should strive to be neutral so that decisions are made on their economic merits and not for tax reasons.”⁵ However, policymakers often depart from neutrality to achieve specific goals. This bill seeks to establish a tax credit for on-site apprenticeship programs in what</p>	<p>-</p>

⁵ Furman, Jason. April 15, 2008. Testimony Before the U.S. Senate Committee on Finance Hearing on “Tax: Fundamentals in Advance of Reform.” *The Concept of Neutrality in Tax Policy*. Retrieved from: https://www.brookings.edu/wp-content/uploads/2016/06/0415_tax-neutrality_furman-1.pdf

	<p>appears to be an effort to favor and stimulate jobs in the skilled trades and similar sectors of the economy. Inherently, it is not tax-neutral. It is purposefully trying to incentivize a change in behavior to invest more in certain types of workers and industries.</p>	
<p><i>Economic growth and efficiency</i> – Will the rule not unduly impede or reduce the productive capacity of the economy?</p>	<p>The tax would not likely impede or reduce the productive capacity of the economy since the maximum credit available per qualified individual is only \$5,000 in a limited sector of the economy. In fact, the author of the legislation introduced it to stimulate employment in the skilled trades and apprenticeship programs, which are under-represented in the building and other service-provider sectors of the economy.</p> <p>The legislation also provides a veteran’s preference to help provide job opportunities for returning veterans. The recordkeeping requirements include: the amount of wages paid to the individual, the total number of hours of work performed by the individual, the average of the total number of qualified individuals for the prior 3 years, potential overlap of the wages of this program with other Section 38 credits, whether or not the program is “qualified”, whether or not the worker is seasonal, or whether or not the training is for a “qualified occupation”, etc.</p> <p>Given the complexity, it seems unlikely that many taxpayers would want to take advantage of the credit for an annual benefit of \$5,000 per worker for a maximum of 3 years. It might cost them that much to comply.</p>	<p>+/-</p>
<p><i>Transparency and Visibility</i> – Will taxpayers know that</p>	<p>Without a publicity campaign, it is unlikely that taxpayers will know of the credit and how to participate in the program. The taxpayer(s) subject to the proposed Section 45S credit would</p>	<p>-</p>

<p>the tax exists and how and when it is imposed upon them and others?</p>	<p>be employers who participate in qualified apprenticeship programs. Most of these programs provide education to those interested in skilled trades such as carpentry, electrical, HVAC, machinist, painting, plumbing, and tile laying (for example per the State of California Department of Industrial Relations). According to the U.S. Department of Labor website, most of these taxpayers are small businesses in the building and improvement sector, or trade schools, training centers, or unions. These taxpayers are likely not sophisticated enough to maintain their own tax departments that would keep abreast of changes in tax law. More likely, a small to mid-size taxpayer like this would have their taxes prepared by their local CPA firm who may or may not be aware of this opportunity to inform the taxpayer of the tax benefit.</p> <p>Most importantly, the recordkeeping requirements to take the credit are substantial and must be communicated to the taxpayer well in advance of preparing their current year return, to educate them about the information needed. Furthermore, if the public wanted to gain an understanding of how the credit is calculated or carried out, it would be difficult to obtain this information.</p>	
<p><i>Minimum tax gap</i> – Is the likelihood of intentional and unintentional non-compliance likely to be low?</p>	<p>The likelihood of intentional and unintentional non-compliance is likely to be low. First, the qualified credit is essentially capped at \$15,000 maximum for each qualified individual claimable by the employer, and the credit is not allowed to be claimed for more than three taxable years with respect to any qualified individual. Second, the individual must (a) satisfy the rules laid out by the National Apprenticeship Act, (b) must have a qualified apprenticeship agreement with the qualified employer, and (c) the agreement must also be subject to the rules governed by the National Apprenticeship</p>	<p>+</p>

	<p>Act. For an employer to have a qualified apprenticeship program, it must be registered with the office of apprenticeship and training administration of labor or a state apprenticeship agency recognized by such office of apprenticeship. All of the programs must be registered, filed and maintained with proper authorities. These action items create extra layers of protection preventing intentional and unintentional non-compliances.</p> <p>Even though the rule allows an employee to transfer the completed training or educational credits to a separate apprenticeship agreement with a different employer, all the qualifications pertain to the individual; the separate apprenticeship program and the agreement must still be qualified under the rules of National Apprenticeship Act.</p> <p>The complexity of the rules is more likely to deter employers from claiming such credit than causing the likelihood of intentional or unintentional non-compliance in claiming such business tax credit.</p>	
<p><i>Accountability to taxpayers – Will taxpayers know the purpose of the rule, why needed and whether alternatives were considered? Can lawmakers support a rationale for the rule?</i></p>	<p>According to Section (e) of this proposed bill, the Controller General of the United States will need to conduct and submit evaluations to the Committees of Finance and Health, Education, Labor, and Pensions as well as to the Committees on Ways and Means. Although the bill did not specify in detail regarding the accountability of taxpayers, the responsibility of providing public awareness for this credit will be assumed by the agencies who are also collecting data for compliance purposes. Section (e) of this bill explains what needs to be included in the evaluation report. Some examples include: (1) whether qualified individuals or programs received credits, (2) whether qualified individuals who completed the</p>	<p>+/-</p>

	<p>apprenticeship program stayed in the same occupation, and (3) recommendation for improvement on legislative administrations all suggest that the burden of compliance and measurement for effectiveness falls on the government agencies rather than the taxpayers.</p> <p>On June 15, 2017, President Trump signed an executive order to create a task force to recommend ways to promote the apprenticeship programs and require all federal agencies to put in more efforts in evaluating and consolidating training programs.⁶ Furthermore, President Trump wants the Department of Labor to allow companies to develop their own industry apprenticeship guidelines that are reviewed on a consistent basis.⁷</p> <p>This proposal happens to be one of the few that gained bipartisan support. The bill does not state in detail how taxpayers will be held accountable in complying with the requirements other than filing the required information for claiming the credit. The efficiency and effectiveness of the program will rely heavily upon the efforts of the government agencies for public awareness, reporting relevant data, and implementing and updating provisions on a yearly basis.</p>	
<p><i>Appropriate government revenues – Will the government be able to determine how much tax revenue will likely be collected and when?</i></p>	<p>The purpose of this bill is to induce economic growth by extending business credits to professional training programs. It will be hard to measure the indirect revenue that the government is hoping to collect by using this credit to induce business success because results might be due to factors other than the credit. However, it is easy to measure the tax expenditure the government will incur to sponsor this credit.</p>	<p>+/-</p>

⁶ Executive Order No. 13801 (June 15, 2017). 82 FR 28229, 2017-13012.

⁷ Office of the Press Secretary (June 15, 2017). *Presidential Executive Order on Expanding Apprenticeships in America*. whitehouse.gov. Washington, D.C.: White House. Retrieved from: <https://www.whitehouse.gov/pre-sidential-actions/3245/>

	Given the fact that both employers and sponsoring programs must comply with the specific rules laid out by the Apprenticeship Act and required proper filings, it is easy for the Department of Labor and IRS to compile data based on the number of taxpayers and employer programs registered with the authorities.	
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Conclusion

Although the idea behind the proposal is positive with an attempt to stimulate economic and job growth, our evaluation shows that achieving these objectives through the tax code is unlikely to be successful. Results are mixed for principles such as economic growth, efficiency, equity, and fairness. Other principles such as certainty, transparency, visibility, and simplicity are violated. The only positive result is the minimum tax gap. The added complexities introduced into the tax code bring about more costs than incentives for businesses to hire and train their employees. Taxpayers and government agencies are burdened by additional recordkeeping requirements and potential penalties if the credit is not claimed correctly. This could lead to the credit being ignored or misused, thus failing to meet the stated objectives of the bill. Therefore, enacting this bill is not recommended.

Possible Improvements

The main problems identified relate to the violation of the simplicity, certainty, and transparency and visibility principles. A viable alternative would be to fund a grant through the Department of Labor that is similar to Pell Grants run through the Department of Education. The grants could be given to employees directly, allowing workers to apply for the grant on an individual basis. This not only bypasses the tax code but empowers the workers by incentivizing them to better their skills. The funds would operate on a first-come-first-serve basis, creating competition for workers. This would solve many of the issues identified, including simplicity and certainty. Another approach would be to encourage states to run trade schools or community colleges by offering grants and subsidies to students seeking certain high-level job training and education.