

118TH CONGRESS
2D SESSION

H. R. 7407

To amend the Internal Revenue Code of 1986 to provide a credit to certain small employers for the startup costs of dependent care flexible spending plans.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2024

Mr. SMITH of Nebraska (for himself, Mr. DAVIS of Illinois, and Mr. FEENSTRA) 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 provide a credit to certain small employers for the startup costs of dependent care flexible spending plans.

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 “Small Business De-
5 pendent Care FSA Opportunity Act”.

6 **SEC. 2. SMALL EMPLOYER DEPENDENT CARE FLEXIBLE**
7 **SPENDING PLAN STARTUP COSTS.**

8 (a) IN GENERAL.—Subpart D of part IV of sub-
9 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 is amended by adding at the end the following new
2 section:

3 **“SEC. 45BB. SMALL EMPLOYER DEPENDENT CARE FLEXI-**
4 **BLE SPENDING PLAN STARTUP COSTS.**

5 “(a) IN GENERAL.—For purposes of section 38, in
6 the case of an eligible employer, the small employer de-
7 pendent care flexible spending plan startup cost credit de-
8 termined under this section for any taxable year is an
9 amount equal to the qualified startup costs paid or in-
10 curred by the taxpayer during the taxable year.

11 “(b) DOLLAR LIMITATION.—The amount of the cred-
12 it determined under this section for any taxable year shall
13 not exceed—

14 “(1) for the first credit year and each of the 2
15 taxable years immediately following the first credit
16 year, the greater of—

17 “(A) \$500, or

18 “(B) the lesser of—

19 “(i) \$250 for each employee of the eli-
20 gible employer who is not a highly com-
21 pensated employee (as defined in section
22 414(q)) and who is eligible to participate
23 in the dependent care flexible spending
24 plan maintained by the eligible employer,
25 or

1 “(ii) \$5,000, and

2 “(2) zero for any other taxable year.

3 “(c) ELIGIBLE EMPLOYER.—For purposes of this
4 section—

5 “(1) IN GENERAL.—The term ‘eligible em-
6 ployer’ has the meaning given such term by section
7 408(p)(2)(C)(i).

8 “(2) REQUIREMENT FOR NEW DEPENDENT
9 CARE FLEXIBLE SPENDING PLANS.—Such term shall
10 not include an employer if, during the 3-taxable year
11 period immediately preceding the 1st taxable year
12 for which the credit under this section is otherwise
13 allowable for a dependent care flexible spending plan
14 of the employer, the employer or any member of any
15 controlled group including the employer (or any
16 predecessor of either) established or maintained a
17 dependent care flexible spending plan for substan-
18 tially the same employees as the employees for whom
19 the dependent care flexible spending plan with re-
20 spect to which such credit is otherwise allowable is
21 established or maintained.

22 “(d) OTHER DEFINITIONS.—For purposes of this
23 section—

24 “(1) IN GENERAL.—The term ‘qualified startup
25 costs’ means any ordinary and necessary expenses of

1 an eligible employer which are paid or incurred in
2 connection with—

3 “(A) the establishment or administration
4 of a dependent care flexible spending plan, or

5 “(B) education of employees with respect
6 to such plan.

7 “(2) PLAN MUST HAVE AT LEAST 1 PARTICI-
8 PANT.—Such term shall not include any expense in
9 connection with a plan that does not have at least
10 1 employee eligible to participate who is not a highly
11 compensated employee (as defined in section
12 414(q)).

13 “(3) DEPENDENT CARE FLEXIBLE SPENDING
14 PLAN.—The term “dependent care flexible spending
15 plan” means so much of any plan of an employer as
16 consists of dependent care flexible spending arrange-
17 ments. For purposes of the preceding sentence, an
18 arrangement shall be treated as a dependent care
19 flexible spending arrangement only if employer con-
20 tributions to such arrangement are excludible from
21 the gross income of an employee under section 129.

22 “(4) FIRST CREDIT YEAR.—The term “first
23 credit year” means, with respect to any qualified
24 startup costs—

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- 1 the date of the enactment of this Act, in taxable years
- 2 ending after such date.

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