

105TH CONGRESS
2D SESSION

S. 2304

To amend the Internal Revenue Code of 1986 to allow the carryover of unused nontaxable benefits under cafeteria plans, flexible spending arrangements, and health flexible spending accounts.

IN THE SENATE OF THE UNITED STATES

JULY 14, 1998

Mr. BENNETT introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow the carryover of unused nontaxable benefits under cafeteria plans, flexible spending arrangements, and health flexible spending accounts.

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. CARRYOVER OF UNUSED BENEFITS FROM CAF-**
4 **ETERIA PLANS, FLEXIBLE SPENDING AR-**
5 **RANGEMENTS, AND HEALTH FLEXIBLE**
6 **SPENDING ACCOUNTS.**

7 (a) IN GENERAL.—Section 125 of the Internal Reve-
8 nue Code of 1986 (relating to cafeteria plans) is amended

1 by redesignating subsections (h) and (i) as subsections (i)
 2 and (j) and by inserting after subsection (g) the following
 3 new subsection:

4 “(h) ALLOWANCE OF CARRYOVERS OF UNUSED BEN-
 5 EFITS TO LATER TAXABLE YEARS.—

6 “(1) IN GENERAL.—For purposes of this title—

7 “(A) a plan or other arrangement shall not
 8 fail to be treated as a cafeteria plan or flexible
 9 spending or similar arrangement, and

10 “(B) no amount shall be required to be in-
 11 cluded in gross income by reason of this section
 12 or any other provision of this chapter,

13 solely because under such plan or other arrangement
 14 any nontaxable benefit which is unused as of the
 15 close of a taxable year may be carried forward to 1
 16 or more succeeding taxable years.

17 “(2) LIMITATION.—Paragraph (1) shall not
 18 apply to amounts carried from a plan to the extent
 19 such amounts exceed \$500 (applied on an annual
 20 basis). For purposes of this paragraph, all plans and
 21 arrangements maintained by an employer or any re-
 22 lated person shall be treated as 1 plan.

23 “(3) ALLOWANCE OF ROLLOVER.—

24 “(A) IN GENERAL.—In the case of any un-
 25 used benefit described in paragraph (1) which

1 consists of amounts in a health flexible spend-
2 ing account or dependent care flexible spending
3 account, the plan or arrangement shall provide
4 that a participant may elect, in lieu of such car-
5 ryover, to have such amounts distributed to the
6 participant.

7 “(B) AMOUNTS NOT INCLUDED IN IN-
8 COME.—Any distribution under subparagraph
9 (A) shall not be included in gross income to the
10 extent that such amount is transferred in a
11 trustee-to-trustee transfer, or is contributed
12 within 60 days of the date of the distribution,
13 to—

14 “(i) an individual retirement plan,

15 “(ii) a qualified cash or deferred ar-
16 rangement described in section 401(k),

17 “(iii) a plan under which amounts are
18 contributed by an individual’s employer for
19 an annuity contract described in section
20 403(b),

21 “(iv) an eligible deferred compensa-
22 tion plan described in section 457, or

23 “(v) a medical savings account (within
24 the meaning of section 220).

1 Any amount rolled over under this subpara-
2 graph shall be treated as a rollover contribution
3 for the taxable year from which the unused
4 amount would otherwise be carried.

5 “(C) TREATMENT OF ROLLOVER.—Any
6 amount rolled over under subparagraph (B)
7 shall be treated as an eligible rollover under
8 section 219, 220, 401(k), 403(b), or 457,
9 whichever is applicable, and shall not be taken
10 into account in applying any limitation (or par-
11 ticipation requirement) on employer or em-
12 ployee contributions under such section or any
13 other provision of this chapter for the taxable
14 year of the rollover.

15 “(4) COST-OF-LIVING ADJUSTMENT.—In the
16 case of any taxable year beginning in a calendar
17 year after 1998, the \$500 amount under paragraph
18 (2) shall be adjusted at the same time and in the
19 same manner as under section 415(d)(2), except
20 that the base period taken into account shall be the
21 calendar quarter beginning October 1, 1997, and
22 any increase which is not a multiple of \$50 shall be
23 rounded to the next lowest multiple of \$50.”

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 1997.

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