

106TH CONGRESS
1ST SESSION

H. R. 352

To amend the Internal Revenue Code of 1986 to provide additional retirement savings opportunities for small employers, including self-employed individuals.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 1999

Mr. BLUNT (for himself, Mr. BENTSEN, Mr. HILL of Montana, Mr. FROST, Mr. MCCOLLUM, Mr. TAYLOR of North Carolina, Mr. SCHAFER, Mr. MORAN of Kansas, Mrs. KELLY, Mrs. MYRICK, Mr. THUNE, Mr. LATOURETTE, Mr. SANDLIN, Mr. DELAHUNT, Mr. PETERSON of Pennsylvania, Mr. PITTS, Mr. HUTCHINSON, Mrs. EMERSON, Mr. COOK, Mr. METCALF, Mr. HINCHEY, Mr. YOUNG of Alaska, Mr. PASCRELL, Mr. SKEEN, Mr. BRADY of Texas, Mrs. CUBIN, Mr. MCCRERY, Mr. RILEY, Mr. KANJORSKI, Mr. MCINTYRE, Mr. TALENT, Mr. PAUL, Mr. LOBIONDO, Mr. HULSHOF, Mr. PICKERING, Mr. MORAN of Virginia, Mr. MANZULLO, Mr. DEAL of Georgia, Mr. ALLEN, Ms. MCCARTHY of Missouri, Mr. BALDACCI, Ms. HOOLEY of Oregon, Mr. NORWOOD, Mr. PEASE, Mr. POMEROY, Ms. KILPATRICK, Mr. SUNUNU, Mr. ENGLISH, Mr. DICKEY, Mr. WATKINS, Mr. COOKSEY, and Mr. WELLER) 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 additional retirement savings opportunities for small employers, including self-employed individuals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. REFERENCE.**

2 Except as otherwise expressly provided, whenever in
 3 this Act an amendment or repeal is expressed in terms
 4 of an amendment to, or repeal of, a section or other provi-
 5 sion, the reference shall be considered to be made to a
 6 section or other provision of the Internal Revenue Code
 7 of 1986.

8 **SEC. 2. QUALIFIED SMALL EMPLOYER PLAN.**

9 (a) IN GENERAL.—Section 401 is amended by redes-
 10 ignating subsection (o) as subsection (p) and by inserting
 11 after subsection (n) the following new subsection:

12 “(o) QUALIFIED SMALL EMPLOYER PLAN.—

13 “(1) IN GENERAL.—A trust created or orga-
 14 nized in the United States and forming part of a
 15 small employer plan of a small employer for the ex-
 16 clusive benefit of its employees or their beneficiaries
 17 constitutes a qualified trust under subsection (a) if
 18 such plan meets the requirements of paragraph (2).

19 “(2) REQUIREMENTS.—A plan meets the re-
 20 quirements of this paragraph if—

21 “(A) such plan is the only qualified retire-
 22 ment plan of a small employer,

23 “(B) the plan year for such plan is the cal-
 24 endar year,

1 “(C) as of the 1st day of the plan year,
2 such plan covers all eligible employees of the
3 employer,

4 “(D) such plan meets the contribution re-
5 quirements of paragraph (4),

6 “(E) such plan meets the vesting require-
7 ments of paragraph (5),

8 “(F) such plan meets the funding require-
9 ments of section 412, if applicable, and

10 “(G) such plan meets the other require-
11 ments specified in paragraph (6).

12 “(3) ELIGIBLE EMPLOYEE.—For purposes of
13 paragraph (2)(C), the term ‘eligible employee’ means
14 an individual who—

15 “(A) has attained age 21, and

16 “(B) has completed not less than 1,000
17 hours of service for the employer during the cal-
18 endar year preceding the plan year.

19 “(4) CONTRIBUTIONS.—A plan meets the re-
20 quirements of this paragraph if—

21 “(A) employer contributions to the plan—

22 “(i) are not less than 3 percent, and
23 do not exceed 10 percent, of compensation
24 of all participants in the plan, and

1 “(ii) are allocated to all participants
2 in the plan on a uniform basis without re-
3 gard to subsection (l), and

4 “(B) in the case of discretionary employer
5 contributions—

6 “(i) such contributions made to the
7 plan do not exceed 15 percent of com-
8 pensation and are allocated to all
9 participants—

10 “(I) as a level percentage of com-
11 pensation, or

12 “(II) under a formula that meets
13 the requirements of subsection (l)(2)
14 (relating to permitted disparity), or

15 “(ii) are made to the same plan under
16 an arrangement that meets the require-
17 ments of subsection (k), in which case the
18 minimum 3 percent contribution referred
19 to in subparagraph (A)(i) shall be applied
20 against the nonelective contributions of
21 subsection (k)(12)(C).

22 Nothing in subparagraph (B)(ii) shall be construed
23 to exempt such plan from any other requirement of
24 subsection (k)(12).

25 “(5) VESTING.—

1 “(A) IN GENERAL.—A plan satisfies the
2 requirements of this paragraph if it satisfies the
3 requirements of either of the following clauses:

4 “(i) 3-YEAR VESTING.—A plan satis-
5 fies the requirements of this clause if an
6 employee who has completed at least 3
7 years of service with the employer or em-
8 ployers maintaining the plan has a non-
9 forfeitable right to 100 percent of his ac-
10 crued benefit derived from employer con-
11 tributions.

12 “(ii) 6-YEAR GRADED VESTING.—A
13 plan satisfies the requirements of this
14 clause if an employee has a nonforfeitable
15 right to a percentage of his accrued benefit
16 derived from employer contributions deter-
17 mined under the following table:

“Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.

18 “(B) CERTAIN RULES MADE APPLICA-
19 BLE.—Except to the extent inconsistent with
20 the provisions of this paragraph, the rules of
21 section 411 shall apply for purposes of this sub-
22 section.

1 “(C) YEAR OF SERVICE.—For purposes of
2 subparagraph (A), years of service shall be de-
3 termined under the last sentence of section
4 410(a)(3)(A).

5 “(6) OTHER REQUIREMENTS.—

6 “(A) ARRANGEMENT MAY BE ONLY PLAN
7 OF EMPLOYER.—

8 “(i) IN GENERAL.—An arrangement
9 shall not be treated as a qualified small
10 employer plan for any year if the employer
11 (or any predecessor employer) maintained
12 a qualified plan with respect to which con-
13 tributions were made, or benefits were ac-
14 crued, for service in any year in the period
15 beginning with the year such arrangement
16 became effective and ending with the year
17 for which the determination is being made.
18 If only individuals other than employees
19 described in subparagraph (A) or (B) of
20 section 410(b)(3) are eligible to participate
21 in such arrangement, then the preceding
22 sentence shall be applied without regard to
23 any qualified plan in which only employees
24 so described are eligible to participate.

1 “(ii) QUALIFIED PLAN.—For purposes
2 of this subparagraph, the term ‘qualified
3 plan’ means a plan, contract, pension, or
4 trust described in subparagraph (A) or (B)
5 of section 219(g)(5).

6 “(iii) GRACE PERIOD.—In the case of
7 an employer who establishes and maintains
8 a plan under this subsection for 1 or more
9 years and who fails to meet any require-
10 ment of this subsection for any subsequent
11 year due to any acquisition, disposition, or
12 similar transaction involving another such
13 employer, rules similar to the rules of sec-
14 tion 410(b)(6)(C) shall apply for purposes
15 of this subsection.

16 “(iv) RULE OF CONSTRUCTION.—
17 Clauses (i), (ii), and (iii) shall not be con-
18 strued to prevent a rollover contribution
19 that meets the requirements of section
20 402(c) or to prevent the adoption of the
21 qualified small employer plan as a succes-
22 sor plan.

23 “(B) PLAN MAY NOT BE ESOP.—A small
24 employer plan does not meet the requirements
25 of paragraph (1) if such plan is—

1 “(i) a tax credit employee stock own-
 2 ership plan (as defined in section 409(a)),
 3 or

4 “(ii) an employee stock ownership
 5 plan (as defined in section 4975(e)(7)).

6 “(C) OTHER APPLICABLE PROVISIONS.—A
 7 plan shall not be treated as a qualified small
 8 employer plan unless the plan meets the re-
 9 quirements of—

10 “(i) paragraphs (1), (2), (9), (11),
 11 (12), (13), (14), (15), (16), (17), (19),
 12 (20), (22), (23), (27), (30), and (31) of
 13 subsection (a), and

14 “(ii) subsections (b), (c), and (d).

15 “(7) TOP-HEAVY RULES INAPPLICABLE.—
 16 Section 416 shall not apply to a trust that
 17 meets the requirements of this subsection.

18 “(8) COMPENSATION DEFINED.—For pur-
 19 poses of this subsection, the term ‘compensa-
 20 tion’ has the meaning given such term by sec-
 21 tion 404(a)(3)(A)(v).”.

22 (b) DEFINITION OF SMALL EMPLOYER.—

23 (1) IN GENERAL.—Section 414 (relating to
 24 definitions and special rules) is amended by adding
 25 at the end the following new subsection:

1 “(v) SMALL EMPLOYER.—For purposes of this part,
 2 the term ‘small employer’ means an employer (including
 3 a professional service organization) that, on the 1st day
 4 of the plan year, has 100 or fewer employees.”.

5 (2) CONFORMING AMENDMENTS.—

6 (A) Subsections (b) and (c) of section 414
 7 are each amended by inserting “subsection (v)
 8 and” after “For purposes of”.

9 (B) Paragraph (3) of section 414(n) is
 10 amended by striking “and” at the end of sub-
 11 paragraph (B), by striking the period at the
 12 end of subparagraph (C) and inserting “, and”,
 13 and by adding at the end the following new sub-
 14 paragraph:

15 “(D) subsection (v).”.

16 (c) DEDUCTION FOR CONTRIBUTIONS OF EM-
 17 PLOYER.—Clause (i) of section 404(a)(3)(A) is amended
 18 by striking “or” at the end of subclause (I), by striking
 19 the period at the end of subclause (II) and inserting “,
 20 or”, and by adding at the end the following new subclause:

21 “(III) the amount such employer is al-
 22 lowed to contribute to such trust under
 23 section 401(o) for such year, but not more
 24 than 25 percent of aggregate compensa-
 25 tion.”.

1 (d) SINGLE ANNUAL ENTRY DATE.—

2 (1) DEFINITION OF YEAR OF SERVICE.—Sub-
3 paragraph (A) of section 410(a)(3) of such Code (re-
4 lating to general rule for definition of year of serv-
5 ice) is amended by adding at the end the following:
6 “In the case of service for an employer who has in
7 effect a qualified small employer plan under section
8 401(o), computation of any 12-month period shall be
9 made with reference to the first day of the calendar
10 year in which employment of the employee com-
11 menced.”.

12 (2) TIME OF PARTICIPATION.—Paragraph (4)
13 of section 410(a) (relating to time of participation)
14 is amended by adding at the end the following: “In
15 the case of a qualified small employer plan under
16 section 401(o), the preceding sentence shall be ap-
17 plied without regard to subparagraph (B).”.

18 (e) COMPENSATION.—Subparagraph (A) of section
19 404(a)(3) (relating to stock bonus and profit-sharing
20 trusts) is amended by redesignating clause (v) as clause
21 (vi) and by inserting after clause (iv) the following new
22 clause:

23 “(v) COMPENSATION DEFINED.—For
24 purposes of this paragraph, the term ‘com-
25 pensation’ means a participant’s com-

1 pensation (as defined by section
2 415(c)(3))”.

3 (f) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to years beginning after December
5 31, 1998.

6 **SEC. 3. CREDIT FOR EMPLOYER EXPENSES IN ESTABLISH-**
7 **ING QUALIFIED SMALL EMPLOYER RETIRE-**
8 **MENT PLANS.**

9 (a) GENERAL RULE.—Subpart D of part IV of sub-
10 chapter A of chapter 1 is amended by adding at the end
11 the following new section:

12 **“SEC. 45D. EXPENSES IN ESTABLISHING QUALIFIED SMALL**
13 **EMPLOYER RETIREMENT PLANS.**

14 “(a) GENERAL RULE.—For purposes of section 38,
15 the qualified small employer retirement plan credit deter-
16 mined under this section for the taxable year is an amount
17 equal to 50 percent of the qualified retirement plan ex-
18 penses paid or incurred in the taxable year by an eligible
19 small employer.

20 “(b) LIMITATION.—The credit allowed under sub-
21 section (a) shall not exceed—

22 “(1) \$2,000 for the taxable year in which the
23 qualified small employer retirement plan is adopted,
24 and

1 “(2) \$1,000 for each of the 4 years following
2 the year in which such plan was adopted and zero
3 thereafter.

4 “(c) DEFINITIONS.—For purposes of subsection
5 (a)—

6 “(1) QUALIFIED RETIREMENT PLAN EX-
7 PENSE.—The term ‘qualified retirement plan ex-
8 pense’ means an expense—

9 “(A) for establishing, maintaining, and ad-
10 ministering a qualified small employer retire-
11 ment plan, and

12 “(B) for educating employees with respect
13 to such plan.

14 “(2) ELIGIBLE SMALL EMPLOYER.—The term
15 ‘eligible small employer’ means a small employer (as
16 defined in section 414(v)) who establishes a qualified
17 plan on or after January 1, 1998, and on or before
18 December 31, 2000.”.

19 (b) CREDIT MADE PART OF GENERAL BUSINESS
20 CREDIT.—Subsection (b) of section 38 is amended by
21 striking “plus” at the end of paragraph (11), by striking
22 the period at the end of paragraph (12) and inserting “,
23 plus”, and by adding at the end thereof the following new
24 paragraph:

1 “(13) the qualified small employer retirement
2 plan credit determined under section 45D(a).”.

3 (c) CREDIT ALLOWED AGAINST REGULAR AND MINI-
4 MUM TAX.—

5 (1) IN GENERAL.—Subsection (c) of section 38
6 (relating to limitation based on amount of tax) is
7 amended by redesignating paragraph (3) as para-
8 graph (4) and by inserting after paragraph (2) the
9 following new paragraph:

10 “(3) SPECIAL RULES FOR QUALIFIED SMALL
11 EMPLOYER RETIREMENT PLAN CREDIT.—

12 “(A) IN GENERAL.—In the case of the
13 qualified small employer retirement plan
14 credit—

15 “(i) this section and section 39 shall
16 be applied separately with respect to the
17 credit, and

18 “(ii) in applying paragraph (1) to the
19 credit—

20 “(I) subparagraph (A) thereof
21 shall not apply, and

22 “(II) the limitation under para-
23 graph (1) (as modified by subclause
24 (I)) shall be reduced by the credit al-
25 lowed under subsection (a) for the

1 taxable year (other than the qualified
2 small employer retirement plan cred-
3 it).

4 “(B) QUALIFIED SMALL EMPLOYER RE-
5 TIREMENT PLAN CREDIT.—For purposes of this
6 subsection, the term ‘qualified small employer
7 retirement plan credit’ means the credit allow-
8 able under subsection (a) by reason of section
9 45D(a).”.

10 (2) CONFORMING AMENDMENT.—Subclause (II)
11 of section 38(c)(2)(A)(ii) is amended by inserting
12 “or the qualified small employer retirement plan
13 credit” after “employment credit”.

14 (d) LIMITATION ON CARRYBACK.—Subsection (d) of
15 section 39 is amended by adding at the end thereof the
16 following new paragraph:

17 “(7) NO CARRYBACK OF QUALIFIED SMALL EM-
18 PLOYER RETIREMENT PLAN CREDIT BEFORE EFFEC-
19 TIVE DATE.—No portion of the unused business
20 credit for any taxable year which is attributable to
21 the credit determined under section 45D may be
22 carried back to any taxable year ending before the
23 date of the enactment of section 45D.”.

24 (e) DEDUCTION FOR CERTAIN UNUSED BUSINESS
25 CREDITS.—Subsection (c) of section 196 is amended by

1 striking “and” at the end of paragraph (6), by striking
 2 the period at the end of paragraph (7) and inserting “,
 3 and”, and by adding after paragraph (7) the following new
 4 paragraph:

5 “(8) the qualified small employer retirement
 6 plan credit determined under section 45D.”.

7 (f) DENIAL OF DOUBLE BENEFIT.—Section 280C is
 8 amended by adding at the end thereof the following new
 9 subsection:

10 “(d) CREDIT FOR QUALIFIED SMALL EMPLOYER RE-
 11 TIREMENT PLAN EXPENSES.—No deduction shall be al-
 12 lowed for that portion of the expenses referred to in sec-
 13 tion 45D(c)(1) otherwise allowable as a deduction for the
 14 taxable year which is equal to the amount of the credit
 15 determined for such taxable year under section 45D(a).”.

16 (g) CLERICAL AMENDMENT.—The table of sections
 17 for subpart D of part IV of subchapter (A) of chapter
 18 1 is amended by adding at the end the following new item:

“Sec. 45D. Expenses in establishing qualified small employer retirement plans.”.

19 (h) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to taxable years beginning after
 21 the date of the enactment of this Act.

22 **SEC. 4. IMPLEMENTATION.**

23 (a) MODEL PLAN.—Not later than 6 months after
 24 the date of the enactment of this Act, the Secretary of
 25 the Treasury shall issue a model small employer retire-

1 ment plan that meets the requirements of section 401(o)
2 of the Internal Revenue Code of 1986.

3 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
4 OWNERS AND THEIR SPOUSES.—

5 (1) IN GENERAL.—The Secretary of the Treas-
6 ury shall modify the requirements for filing annual
7 returns with respect to one-participant retirement
8 plans to ensure that such plans with assets of
9 \$500,000 or less as of the close of the plan year
10 need not file a return for that year.

11 ONE-PARTICIPANT RETIREMENT PLAN DE-
12 FINED.—For purposes of this subsection, the term
13 “one-participant retirement plan” means a retire-
14 ment plan that—

15 (A) on the first day of the plan year—

16 (i) covered only the employer (and the
17 employer’s spouse) and the employer
18 owned the entire business (whether or not
19 incorporated), or

20 (ii) covered only one or more partners
21 (and their spouses) in a business partner-
22 ship (including partners in an S or C cor-
23 poration),

24 (B) meets the minimum coverage require-
25 ments of section 410(b) of the Internal Revenue

1 Code of 1986 without being combined with any
2 other plan of the business that covers the em-
3 ployees of the business,

4 (C) does not provide benefits to anyone ex-
5 cept the employer (and the employer's spouse)
6 or the partners (and their spouses),

7 (D) does not cover a business that is a
8 member of an affiliated service group, a con-
9 trolled group of corporations, or a group of
10 businesses under common control, and

11 (E) does not cover a business that leases
12 employees.

13 (3) OTHER DEFINITIONS.—Terms used in para-
14 graph (2) which are also used in section 414 of the
15 Internal Revenue Code of 1986 shall have the re-
16 spective meanings given such terms by such section.

17 (c) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
18 PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case
19 of a retirement plan which covers less than 25 employees
20 on the 1st day of the plan year and meets the require-
21 ments described in subparagraphs (B), (D), and (E) of
22 subsection (b)(2), the Secretary of the Treasury shall pro-
23 vide for the filing of a simplified annual return that is

- 1 substantially similar to the annual return required to be
- 2 filed by a one-participant retirement plan.

○