

107TH CONGRESS
2D SESSION

S. 3113

To amend the Internal Revenue Code of 1986 to provide additional choice regarding unused health benefits in cafeteria plans and flexible spending arrangements.

IN THE SENATE OF THE UNITED STATES

OCTOBER 15, 2002

Mr. ENSIGN 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 provide additional choice regarding unused health benefits in cafeteria plans and flexible spending arrangements.

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. DISPOSITION OF UNUSED HEALTH BENEFITS**
4 **IN CAFETERIA PLANS AND FLEXIBLE SPEND-**
5 **ING ARRANGEMENTS.**

6 (a) IN GENERAL.—Section 125 of the Internal Rev-
7 enue Code of 1986 (relating to cafeteria plans) is amended
8 by redesignating subsections (h) and (i) as subsections (i)

1 and (j), respectively, and by inserting after subsection (g)
 2 the following:

3 “(h) CARRYFORWARDS OR PAYMENTS OF CERTAIN
 4 UNUSED HEALTH BENEFITS.—

5 “(1) IN GENERAL.—For purposes of this title,
 6 a plan or other arrangement shall not fail to be
 7 treated as a cafeteria plan solely because qualified
 8 benefits under such plan include a health flexible
 9 spending arrangement under which not more than
 10 \$500 of unused health benefits may be—

11 “(A) carried forward to the succeeding
 12 plan year of such health flexible spending ar-
 13 rangement, or

14 “(B) paid to or on behalf of an employee
 15 as compensation as of the end of such plan year
 16 or upon the termination of, or failure to re-en-
 17 roll in, such plan or arrangement.

18 “(2) DISTRIBUTION OF UNUSED HEALTH BENE-
 19 FITS ON BEHALF OF EMPLOYEE.—For purposes of
 20 paragraph (1)(B), unused health benefits paid as
 21 compensation on behalf of an employee by the em-
 22 ployer shall be—

23 “(A) includible in gross income and wages
 24 of the employee, whether or not a deduction for

1 such payment is allowable under this title to the
2 employee, and

3 “(B) excludable from—

4 “(i) gross income to the extent pro-
5 vided under section 402(e), 457(a) (with
6 respect to contributions to an eligible de-
7 ferred compensation plan (as defined in
8 section 457(b)) of an eligible employer de-
9 scribed in section 457(e)(1)(A)), or 220,
10 and

11 “(ii) wages to the extent otherwise
12 provided for amounts so excludable.

13 “(3) HEALTH FLEXIBLE SPENDING ARRANGE-
14 MENT.—For purposes of this subsection, the term
15 ‘health flexible spending arrangement’ means a flexi-
16 ble spending arrangement (as defined in section
17 106(c)) that is a qualified benefit and only permits
18 reimbursement for expenses for medical care (as de-
19 fined in section 213(d)(1) (without regard to sub-
20 paragraphs (C) and (D) thereof)).

21 “(4) UNUSED HEALTH BENEFITS.—For pur-
22 poses of this subsection, the term ‘unused health
23 benefits’ means the excess of—

1 “(A) the maximum amount of reimburse-
2 ment allowable during a plan year under a
3 health flexible spending arrangement, over

4 “(B) the actual amount of reimbursement
5 during such year under such arrangement.”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 subsection (a) shall apply to taxable years beginning after
8 December 31, 2003.

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