

108TH CONGRESS  
1ST SESSION

# H. R. 1177

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 HOUSE OF REPRESENTATIVES

MARCH 11, 2003

Mr. DEMINT (for himself, Mr. AKIN, Mr. BALLENGER, Mr. BEAUPREZ, Mr. BURR, Mr. CANNON, Mrs. CHRISTENSEN, Mr. COBLE, Mr. COLE, Mr. COX, Mr. CRANE, Mr. DREIER, Mr. ENGLISH, Mr. FLETCHER, Mr. FRANKS of Arizona, Mr. GRAVES, Mr. HASTINGS of Washington, Mr. HAYES, Mr. HAYWORTH, Mr. HOEKSTRA, Mr. HOSTETTLER, Mr. ISAKSON, Mr. ISTOOK, Mr. JANKLOW, Mr. JONES of North Carolina, Mr. KOLBE, Mr. LAHOOD, Mr. GARY G. MILLER of California, Mrs. MUSGRAVE, Ms. NORTON, Mr. NORWOOD, Mr. OTTER, Mr. PAUL, Mr. PITTS, Mr. ROGERS of Michigan, Mr. RYUN of Kansas, Mr. SMITH of New Jersey, Mr. TERRY, Mr. TIAHRT, Mr. TOOMEY, Mr. UPTON, Mr. WELDON of Florida, Mr. WYNN, and Mr. TANCREDO) 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 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,*

1 **SECTION 1. DISPOSITION OF UNUSED HEALTH BENEFITS**  
2 **IN CAFETERIA PLANS AND FLEXIBLE SPEND-**  
3 **ING ARRANGEMENTS.**

4 (a) IN GENERAL.—Section 125 of the Internal Rev-  
5 enue Code of 1986 (relating to cafeteria plans) is amended  
6 by redesignating subsections (h) and (i) as subsections (i)  
7 and (j), respectively, and by inserting after subsection (g)  
8 the following:

9 “(h) CARRYFORWARDS OR PAYMENTS OF CERTAIN  
10 UNUSED HEALTH BENEFITS.—

11 “(1) IN GENERAL.—For purposes of this title,  
12 a plan or other arrangement shall not fail to be  
13 treated as a cafeteria plan solely because qualified  
14 benefits under such plan include a health flexible  
15 spending arrangement under which, with respect to  
16 any plan year, not more than \$500 of health benefits  
17 which are unused at the end of such year may be—

18 “(A) carried forward to the succeeding  
19 plan year of such health flexible spending ar-  
20 rangement, or

21 “(B) paid to or on behalf of an employee  
22 as remuneration from employment.

23 “(2) TAX TREATMENT OF UNUSED HEALTH  
24 BENEFITS.—

25 “(A) CARRYFORWARDS.—Amounts carried  
26 forward under paragraph (1)(A) from a taxable

1 year shall not be includible in gross income for  
2 such taxable year.

3 “(B) REMUNERATION.—Amounts paid as  
4 remuneration from employment under para-  
5 graph (1)(B) shall be includible in gross in-  
6 come.

7 “(3) DISTRIBUTION OF UNUSED HEALTH BENE-  
8 FITS ON BEHALF OF EMPLOYEE.—Paragraph (2)(B)  
9 shall not be construed to prevent—

10 “(A) an exclusion from gross income to the  
11 extent provided under this title with respect to  
12 any portion of such remuneration that is con-  
13 tributed to a plan or arrangement which is sub-  
14 ject to section 402(g) or to an eligible deferred  
15 compensation plan (as defined in section  
16 457(b)) of an eligible employer described in sec-  
17 tion 457(e)(1)(A),

18 “(B) a deduction (to the extent provided in  
19 section 220) with respect to any portion of such  
20 remuneration contributed to an Archer MSA, or

21 “(C) any other deduction or exclusion al-  
22 lowable under this title with respect to any por-  
23 tion of such remuneration.

24 “(4) HEALTH FLEXIBLE SPENDING ARRANGE-  
25 MENT.—For purposes of this subsection, the term

1       ‘health flexible spending arrangement’ means a flexi-  
2       ble spending arrangement (as defined in section  
3       106(c)) that is a qualified benefit and only permits  
4       reimbursement for expenses for medical care (as de-  
5       fined in section 213(d)(1) (without regard to sub-  
6       paragraphs (C) and (D) thereof).

7               “(5) UNUSED HEALTH BENEFITS.—For pur-  
8       poses of this subsection, the term ‘unused health  
9       benefits’ means the excess of—

10               “(A) the maximum amount of reimburse-  
11               ment allowable for a plan year under a health  
12               flexible spending arrangement, over

13               “(B) the actual amount of reimbursement  
14               for such year under such arrangement.”.

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

○