109TH CONGRESS
2D SESSION

S. 2397

To amend the Internal Revenue Code of 1986 to establish long-term care trust accounts and allow a refundable tax credit for contributions to such accounts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2006

Mr. SMITH (for himself and Mrs. LINCOLN) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Internal Revenue Code of 1986 to establish long-term care trust accounts and allow a refundable tax credit for contributions to such accounts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Long-Term Care Trust Account Act of 2006".

SEC. 2. LONG-TERM CARE TRUST ACCOUNTS.

(a) IN GENERAL.—Subchapter F of chapter 1 of the Internal Revenue Code of 1986 (relating to exempt organizations) is amended by adding at the end the following new part:

"PART IX—LONG-TERM CARE TRUST ACCOUNTS

"SEC. 530A. LONG-TERM CARE TRUST ACCOUNTS.

"(a) GENERAL RULE.—A Long-Term Care Trust Account shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such account shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

"(b) LONG-TERM CARE TRUST ACCOUNT.—For purposes of this section, the term 'Long-Term Care Trust Account' means a trust created or organized in the United States for the exclusive benefit of an individual who is the designated beneficiary of the trust and which is designated (in such manner as the Secretary shall prescribe) at the time of the establishment of the trust as a Long-Term Care Trust Account, but only if the written governing instrument creating the trust meets the following requirements:

"(1) Except in the case of a qualified rollover contribution described in subsection (d)—

"(A) no contribution will be accepted unless it is in cash, and

"(B) contributions will not be accepted for the calendar year in excess of the contribution limit specified in subsection (c)(1).

"(2) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which that person will administer the trust will be consistent with the requirements of this section or who has so demonstrated with respect to any individual retirement plan.

"(3) No part of the trust assets will be invested in life insurance contracts.

"(4) The interest of an individual in the balance of his account is nonforfeitable.

"(5) The assets of the trust shall not be commingled with other property except in a common trust fund or common investment fund.

"(6) Except as provided in subsection (e)(2), no distribution will be allowed if at the time of such distribution the designated beneficiary is not a chronically ill individual (as defined in section 7702B(c)(2)).

"(c) TAX TREATMENT OF CONTRIBUTIONS.—

"(1) CONTRIBUTION LIMIT.—

"(A) IN GENERAL.—The aggregate amount of contributions (other than qualified rollover contributions described in subsection (d)) for any taxable year to all Long-Term Care Trust Accounts maintained for the benefit of the designated beneficiary shall not exceed $5,000.

"(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2006, the dollar amount under subparagraph (A) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the medical care cost adjustment determined under section 213(d)(10)(B)(ii) for the calendar year in which the taxable year begins, determined by substituting '2005' for '1996' in subclause (II) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10, such amount shall be rounded to the next lowest multiple of $10.

"(2) GIFT TAX TREATMENT OF CONTRIBUTIONS.—For purposes of chapters 12 and 13—

"(A) IN GENERAL.—Any contribution to a Long-Term Care Trust Account on behalf of any designated beneficiary—

"(i) shall be treated as a completed gift to such beneficiary which is not a future interest in property, and

"(ii) shall not be treated as a qualified transfer under section 2503(e).

"(B) TREATMENT OF EXCESS CONTRIBUTIONS.—If the aggregate amount of contributions described in subparagraph (A) during the calendar year by a donor exceeds the limitation for such year under section 2503(b), such aggregate amount shall, at the election of the donor, be taken into account for purposes of such section ratably over the 5-year period beginning with such calendar year.

"(d) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section, the term 'qualified rollover contribution' means a contribution to a Long-Term Care Trust Account—

"(1) from another such account of the same beneficiary, but only if such amount is contributed not later than the 60th day after the distribution from such other account, and

"(2) from a Long-Term Care Trust Account of a spouse of the beneficiary of the account to which the contribution is made, but only if such amount is contributed not later than the 60th day after the distribution from such other account.

"(e) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) IN GENERAL.—Any distribution from a Long-Term Care Trust Account shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this subsection.

"(2) LONG-TERM CARE INSURANCE PREMIUMS.—If at the time of any distribution, the designated beneficiary is not a chronically ill individual (as defined in section 7702B(c)(2)), no amount shall be includible in gross income under paragraph (1) if the aggregate premiums for any qualified long-term care insurance contract for such beneficiary during the taxable year are not less than the aggregate distributions during the taxable year.

"(3) DISTRIBUTIONS FOR QUALIFIED LONG-TERM CARE SERVICES.—For purposes of this subsection, if at the time of any distribution, the designated beneficiary is a chronically ill individual (as so defined)—

"(A) IN-KIND DISTRIBUTIONS.—No amount shall be includible in gross income under paragraph (1) by reason of a distribution which consists of providing a benefit to the distributee which, if paid for by the distributee, would constitute expenses for any qualified long-term care services (as defined in section 7702B(c)).

"(B) CASH DISTRIBUTIONS.—In the case of distributions not described in subparagraph (A), if—

"(i) such distributions do not exceed the expenses for qualified long-term care services (as so defined), reduced by expenses described in subparagraph (A), no amount shall be includible in gross income, and

"(ii) in any other case, the amount otherwise includible in gross income shall be reduced by an amount which bears the same ratio to such amount as such expenses bear to such distributions.

"(4) CHANGE IN BENEFICIARIES OR ACCOUNTS.—Paragraph (1) shall not apply to that portion of any distribution which, within 60 days of such distribution, is transferred—

"(A) to another Long-Term Care Trust Account for the benefit of the designated beneficiary, or

"(B) to the credit of another designated beneficiary under a Long-Term Care Trust Account who is a spouse of the designated beneficiary with respect to which the distribution was made.

"(5) OPERATING RULES.—For purposes of applying section 72—

"(A) to the extent provided by the Secretary, all Long-Term Care Trust Accounts of which an individual is a designated beneficiary shall be treated as one account,

"(B) except to the extent provided by the Secretary, all distributions during a taxable year shall be treated as one distribution, and

"(C) except to the extent provided by the Secretary, the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

"(6) SPECIAL RULES FOR DEATH AND DIVORCE.—

"(A) IN GENERAL.—Rules similar to the rules of paragraphs (7) and (8) of section 220(f) shall apply.

"(B) AMOUNTS INCLUDIBLE IN ESTATE OF DONOR MAKING EXCESS CONTRIBUTIONS.—In the case of a donor who makes the election described in subsection (c)(2)(B) and who dies before the close of the 5-year period referred to in such subsection, the gross estate of the donor shall include the portion of such contributions properly allocable to periods after the date of death of the donor.

"(7) ADDITIONAL TAX.—The tax imposed by this chapter for any taxable year on any taxpayer who receives a payment or distribution from a Long-Term Care Trust Account which is includible in gross income shall be increased by 25 percent of the amount which is so includible under rules similar to the rules of section 530(d)(4).

"(8) DENIAL OF DOUBLE BENEFIT.—For purposes of determining the amount of any deduction under this chapter, any payment or distribution out of a Long-Term Care Trust Account shall not be treated as an expense paid for medical care.

"(f) DESIGNATED BENEFICIARY.—For purposes of this section, the term 'designated beneficiary' means the individual designated at the commencement of participation in the Long-Term Care Trust Account as the beneficiary of amounts paid (or to be paid) to the account.

"(g) LOSS OF TAXATION EXEMPTION OF ACCOUNT WHERE BENEFICIARY ENGAGES IN PROHIBITED TRANSACTION.—Rules similar to the rules of paragraph (2) of section 408(e) shall apply to any Long-Term Care Trust Account.

"(h) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account or an annuity contract issued by an insurance company qualified to do business in a State shall be treated as a trust under this section if—

"(1) the custodial account or annuity contract would, except for the fact that it is not a trust, constitute a trust which meets the requirements of subsection (b), and

"(2) in the case of a custodial account, the assets of such account are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or annuity contract treated as a trust by reason of the preceding sentence, the person holding the assets of such account or holding such annuity contract shall be treated as the trustee thereof.

"(i) REPORTS.—The trustee of a Long-Term Care Trust Account shall make such reports regarding such account to the Secretary and to the beneficiary of the account with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required.".

(b) TAX ON EXCESS CONTRIBUTIONS.—

(1) IN GENERAL.—Subsection (a) of section 4973 of the Internal Revenue Code of 1986 (relating to tax on excess contributions to certain tax-favored accounts and annuities) is amended by striking "or" at the end of paragraph (4), by inserting "or" at the end of paragraph (5), and by inserting after paragraph (5) the following new paragraph:

“(6) a Long-Term Care Trust Account (as defined in section 530A),”.

(2) EXCESS CONTRIBUTION.—Section 4973 of such Code is amended by adding at the end the following new subsection:

“(h) EXCESS CONTRIBUTIONS TO LONG-TERM CARE TRUST ACCOUNTS.—For purposes of this section—

“(1) IN GENERAL.—In the case of Long-Term Care Trust Accounts (within the meaning of section 530A), the term ‘excess contributions’ means the sum of—

“(A) the amount by which the amount contributed for the calendar year to such accounts (other than qualified rollover contributions (as defined in section 530A(d))) exceeds the contribution limit under section 530A(c)(1), and

“(B) the amount determined under this subsection for the preceding calendar year, reduced by the excess (if any) of the maximum amount allowable as a contribution under section 530A(c)(1) for the calendar year over the amount contributed to the accounts for the calendar year.

“(2) SPECIAL RULE.—A contribution shall not be taken into account under paragraph (1) if such contribution (together with the amount of net income attributable to such contribution) is returned to the beneficiary before June 1 of the year following the year in which the contribution is made.''.

(c) FAILURE TO PROVIDE REPORTS ON LONG-TERM CARE TRUST ACCOUNTS.—Paragraph (2) of section 6693(a) of the Internal Revenue Code of 1986 (relating to failure to provide reports on individual retirement accounts or annuities) is amended by striking ''and'' at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting '', and'', and by adding at the end the following new subparagraph:

''(F) section 530A(i) (relating to Long-Term Care Trust Accounts).''.

(d) CONFORMING AMENDMENT.—The table of parts for subchapter F of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''PART IX. LONG-TERM CARE TRUST ACCOUNTS''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 3. REFUNDABLE CREDIT FOR CONTRIBUTIONS TO LONG-TERM CARE TRUST ACCOUNTS.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of

1986 (relating to refundable credits) is amended by inserting after section 35 the following new section:

"SEC. 35A. CONTRIBUTIONS TO LONG-TERM CARE TRUST ACCOUNTS.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 10 percent of the contributions to any Long-Term Care Trust Account allowed under section 530A for such taxable year.

"(b) REDUCTION BASED ON ADJUSTED GROSS INCOME.—

"(1) IN GENERAL.—The percentage which would (but for this subsection) be taken into account under subsection (a) for the taxable year shall be reduced (but not below zero) by the percentage determined under paragraph (2).

"(2) AMOUNT OF REDUCTION.—The percentage determined under this paragraph is the percentage which bears the same ratio to the percentage which would be so taken into account as—

"(A) the excess of—

"(i) the taxpayer's adjusted gross income for such taxable year, over "(ii) $95,000 ($190,000 in the case of a joint return), bears to

"(B) $10,000 ($20,000 in the case of a joint return).

"(3) ADJUSTED GROSS INCOME.—For purposes of this subsection, adjusted gross income shall be determined without regard to sections 911, 931, and 933.

"(c) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this chapter for any amount taken into account in determining the credit under this section.".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period ", or from section 35A of such Code".

(2) The table of sections of subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 35 the following new item:

"Sec. 35A. Contributions to Long-Term Care Trust Accounts.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2005.

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