

109TH CONGRESS
1ST SESSION

S. 772

To amend the Internal Revenue Code of 1986 to expand workplace health incentives by equalizing the tax consequences of employee athletic facility use.

IN THE SENATE OF THE UNITED STATES

APRIL 13, 2005

Mr. CORNYN (for himself and Mr. HARKIN) 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 expand workplace health incentives by equalizing the tax consequences of employee athletic facility use.

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. SHORT TITLE.**

4 This Act may be cited as the “Workforce Health Im-
5 provement Program Act of 2005”.

6 **SEC. 2. EMPLOYER-PROVIDED OFF-PREMISES HEALTH**
7 **CLUB SERVICES.**

8 (a) TREATMENT AS FRINGE BENEFIT.—Subpara-
9 graph (A) of section 132(j)(4) of the Internal Revenue

1 Code of 1986 (relating to on-premises gyms and other ath-
 2 letic facilities) is amended to read as follows:

3 “(A) IN GENERAL.—Gross income shall
 4 not include—

5 “(i) the value of any on-premises ath-
 6 letic facility provided by an employer to its
 7 employees, and

8 “(ii) so much of the fees, dues, or
 9 membership expenses paid by an employer
 10 to an athletic or fitness facility described
 11 in subparagraph (C) on behalf of its em-
 12 ployees as does not exceed \$900 per em-
 13 ployee per year.”.

14 (b) ATHLETIC FACILITIES DESCRIBED.—Paragraph
 15 (4) of section 132(j) of the Internal Revenue Code of 1986
 16 (relating to special rules) is amended by adding at the end
 17 the following new subparagraph:

18 “(C) CERTAIN ATHLETIC OR FITNESS FA-
 19 CILITIES DESCRIBED.—For purposes of sub-
 20 paragraph (A)(ii), an athletic or fitness facility
 21 described in this subparagraph is a facility—

22 “(i) which provides instruction in a
 23 program of physical exercise, offers facili-
 24 ties for the preservation, maintenance, en-
 25 couragement, or development of physical

1 fitness, or is the site of such a program of
2 a State or local government,

3 “(ii) which is not a private club owned
4 and operated by its members,

5 “(iii) which does not offer golf, hunt-
6 ing, sailing, or riding facilities,

7 “(iv) whose health or fitness facility is
8 not incidental to its overall function and
9 purpose, and

10 “(v) which is fully compliant with the
11 State of jurisdiction and Federal anti-dis-
12 crimination laws.”.

13 (c) EXCLUSION APPLIES TO HIGHLY COMPENSATED
14 EMPLOYEES ONLY IF NO DISCRIMINATION.—Section
15 132(j)(1) of the Internal Revenue Code of 1986 is amend-
16 ed—

17 (1) by striking “Paragraphs (1) and (2) of sub-
18 section (a)” and inserting “Subsections (a)(1),
19 (a)(2), and (j)(4)”, and

20 (2) by striking the heading thereof through “(2)
21 APPLY” and inserting “CERTAIN EXCLUSIONS
22 APPLY”.

23 (d) EMPLOYER DEDUCTION FOR DUES TO CERTAIN
24 ATHLETIC FACILITIES.—

1 (1) IN GENERAL.—Paragraph (3) of section
2 274(a) of the Internal Revenue Code of 1986 (relat-
3 ing to denial of deduction for club dues) is amended
4 by adding at the end the following new sentence:
5 “‘The preceding sentence shall not apply to so much
6 of the fees, dues, or membership expenses paid to
7 athletic or fitness facilities (within the meaning of
8 section 132(j)(4)(C)) as does not exceed \$900 per
9 employee per year.’”.

10 (2) CONFORMING AMENDMENT.—The last sen-
11 tence of section 274(e)(4) of such Code is amended
12 by inserting “‘the first sentence of” before “sub-
13 section (a)(3)’”.

14 (e) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 the date of the enactment of this Act.

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