

111TH CONGRESS
1ST SESSION

H. R. 544

To amend the Internal Revenue Code of 1986 to allow amounts in a health flexible spending arrangement that are unused during a plan year to be carried over to subsequent plan years or deposited into certain health or retirement plans.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 2009

Mr. ROYCE 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 allow amounts in a health flexible spending arrangement that are unused during a plan year to be carried over to subsequent plan years or deposited into certain health or retirement plans.

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 “Flexible Health Sav-
5 ings Act of 2009”.

1 **SEC. 2. DISPOSITION OF UNUSED HEALTH BENEFITS IN**
2 **CAFETERIA PLANS AND FLEXIBLE SPENDING**
3 **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 (i) and (j) as subsections (j)
7 and (k), respectively, and by inserting after subsection (h)
8 the following new subsection:

9 “(i) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH
10 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 or health flexible spend-
14 ing arrangement solely because qualified benefits
15 under such plan include a health flexible spending
16 arrangement under which not more than \$500 of
17 unused health benefits may be—

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

21 “(B) to the extent permitted by sections
22 223, contributed on behalf of the employee to a
23 health savings account (as defined in section
24 223(d)), maintained for the benefit of such em-
25 ployee, or

1 “(C) contributed to a qualified retirement
2 plan (as defined in section 4974(c)), or an eligi-
3 ble deferred compensation plan (as defined in
4 section 457(b)) of an eligible employer de-
5 scribed in section 457(e)(1)(A).

6 “(2) SPECIAL RULES FOR TREATMENT OF CON-
7 TRIBUTIONS TO HEALTH AND RETIREMENT
8 PLANS.—For purposes of this title, contributions
9 under subparagraph (B) or (C) of paragraph (1)—

10 “(A) shall be treated as a contribution
11 made by the employee (and includible in the
12 gross income of such employee) in the case of
13 a contribution to a health savings account,

14 “(B) shall be treated as elective deferrals
15 (as defined in section 402(g)(3)) in the case of
16 contributions to a qualified cash or deferred ar-
17 rangement (as defined in section 401(k)) or to
18 an annuity contract described in section 403(b),

19 “(C) shall be treated as employer contribu-
20 tions to which the employee has a nonforfeitable
21 right in the case of a plan (other than a plan
22 described in subparagraph (A)) which is de-
23 scribed in section 401(a) which includes a trust
24 exempt from tax under section 501(a),

1 “(D) shall be treated as deferred com-
2 pensation in the case of contributions to an eli-
3 gible deferred compensation plan (as defined in
4 section 457(b)), and

5 “(E) shall be treated in the manner des-
6 ignated for purposes of section 408 or 408A in
7 the case of contributions to an individual retire-
8 ment plan.

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

17 “(4) UNUSED HEALTH BENEFITS.—For pur-
18 poses of this subsection, with respect to an em-
19 ployee, the term ‘unused health benefits’ means the
20 excess of—

21 “(A) the maximum amount of reimburse-
22 ment allowable to the employee during a plan
23 year under a health flexible spending arrange-
24 ment, taking into account any election by the
25 employee, over

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

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply to plan years ending after the
5 date of the enactment of this Act.

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