

114TH CONGRESS
1ST SESSION

S. 74

To amend the Internal Revenue Code of 1986 to provide for dependent care savings accounts.

IN THE SENATE OF THE UNITED STATES

JANUARY 7, 2015

Mr. VITTER 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 for dependent care savings accounts.

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 “Dependent Care Sav-
5 ings Account Act of 2015”.

6 **SEC. 2. DEPENDENT CARE SAVINGS ACCOUNTS.**

7 (a) IN GENERAL.—Part VII of subchapter B of chap-
8 ter 1 of the Internal Revenue Code of 1986 is amended
9 by redesignating section 224 as section 225 and inserting
10 after section 223 the following new section:

1 **“SEC. 224. DEPENDENT CARE SAVINGS ACCOUNTS.**

2 “(a) DEDUCTION ALLOWED.—In the case of an indi-
3 vidual, there shall be allowed as a deduction for the tax-
4 able year an amount equal to the aggregate amount paid
5 in cash during such taxable year by or on behalf of the
6 individual to a dependent care savings account of such in-
7 dividual.

8 “(b) LIMITATION.—

9 “(1) IN GENERAL.—The amount allowable as a
10 deduction under subsection (a) to an individual for
11 the taxable year shall not exceed the lesser of—

12 “(A) \$5,000, or

13 “(B) the individual’s earned income (with-
14 in the meaning of section 21) for such taxable
15 year.

16 “(2) COORDINATION WITH DEPENDENT CARE
17 ASSISTANCE BENEFITS.—The limitation which would
18 (but for this paragraph) apply under paragraph (1)
19 to an individual for any taxable year shall be re-
20 duced (but not below zero) by the aggregate amount
21 excludable from the individual’s gross income for
22 such taxable year under section 129.

23 “(c) DEPENDENT CARE SAVINGS ACCOUNT.—For
24 purposes of this section—

25 “(1) IN GENERAL.—The term ‘dependent care
26 savings account’ means a trust created or organized

1 in the United States as a dependent care savings ac-
2 count exclusively for the purpose of paying the quali-
3 fied dependent care expenses of the account bene-
4 ficiary, but only if the written governing instrument
5 creating the trust meets the following requirements:

6 “(A) Except in the case of a rollover con-
7 tribution described in subsection (e)(5), no con-
8 tribution will be accepted unless it is in cash,
9 and contributions will not be accepted for the
10 taxable year on behalf of any account bene-
11 ficiary in excess of \$10,000.

12 “(B) The trustee is a bank (as defined in
13 section 408(n)) or such other person who dem-
14 onstrates to the satisfaction of the Secretary
15 that the manner in which such other person will
16 administer the trust will be consistent with the
17 requirements of this section.

18 “(C) No part of the trust assets will be in-
19 vested in life insurance contracts.

20 “(D) The assets of the trust will not be
21 commingled with other property except in a
22 common trust fund or common investment
23 fund.

24 “(E) The interest of an individual in the
25 balance in his account is nonforfeitable.

1 “(2) QUALIFIED DEPENDENT CARE EX-
 2 PENSES.—The term ‘qualified dependent care ex-
 3 penses’ means the employment-related expenses (as
 4 defined in section 21(b)(2)) of the account bene-
 5 ficiary with respect to any qualifying individual (as
 6 defined in section 21(b)(1)) of the account bene-
 7 ficiary. Such term includes qualified long-term care
 8 services (as defined in section 7702B(c)), and
 9 amounts paid for qualified long-term care insurance
 10 contracts (as defined in section 7702B(b)), with re-
 11 spect to such qualifying individuals of the account
 12 beneficiary.

13 “(3) ACCOUNT BENEFICIARY.—The term ‘ac-
 14 count beneficiary’ means the individual on whose be-
 15 half the dependent care savings account was estab-
 16 lished.

17 “(4) CERTAIN RULES TO APPLY.—Rules similar
 18 to the following rules shall apply for purposes of this
 19 section:

20 “(A) Section 219(d)(2) (relating to no de-
 21 duction for rollovers).

22 “(B) Except as provided in section 129,
 23 section 219(f)(3) (relating to time when con-
 24 tributions deemed made).

1 “(C) Section 219(f)(5) (relating to em-
2 ployer payments).

3 “(D) Section 223(b)(6) (relating to denial
4 of deduction to dependents).

5 “(E) Section 408(g) (relating to commu-
6 nity property laws).

7 “(F) Section 408(h) (relating to custodial
8 accounts).

9 “(d) TAX TREATMENT OF ACCOUNTS.—

10 “(1) IN GENERAL.—A dependent care savings
11 account is exempt from taxation under this subtitle
12 unless such account has ceased to be a dependent
13 care savings account. Notwithstanding the preceding
14 sentence, any such account is subject to the taxes
15 imposed by section 511.

16 “(2) ACCOUNT TERMINATIONS.—Rules similar
17 to the rules of paragraphs (2) and (4) of section
18 408(e) shall apply to dependent care savings ac-
19 counts, and any amount treated as distributed under
20 such rules shall be treated as not used to pay quali-
21 fied dependent care expenses.

22 “(e) TAX TREATMENT OF DISTRIBUTIONS.—

23 “(1) AMOUNTS USED FOR QUALIFIED DEPEND-
24 ENT CARE EXPENSES.—Any amount paid or distrib-
25 uted out of a dependent care savings account which

1 is used exclusively to pay qualified dependent care
 2 expenses of any account beneficiary shall not be in-
 3 cludible in gross income.

4 “(2) INCLUSION OF AMOUNTS NOT USED FOR
 5 QUALIFIED DEPENDENT CARE EXPENSES.—Any
 6 amount paid or distributed out of a dependent care
 7 savings account which is not used exclusively to pay
 8 the qualified dependent care expenses of the account
 9 beneficiary shall be included in the gross income of
 10 such beneficiary.

11 “(3) EXCESS CONTRIBUTIONS RETURNED BE-
 12 FORE DUE DATE OF RETURN.—

13 “(A) IN GENERAL.—If any excess con-
 14 tribution is contributed for a taxable year to
 15 any dependent care savings account of an indi-
 16 vidual, paragraph (2) shall not apply to dis-
 17 tributions from the dependent care savings ac-
 18 counts of such individual (to the extent such
 19 distributions do not exceed the aggregate excess
 20 contributions to all such accounts of such indi-
 21 vidual for such year) if—

22 “(i) such distribution is received by
 23 the individual on or before the last day
 24 prescribed by law (including extensions of

1 time) for filing such individual's return for
2 such taxable year, and

3 “(ii) such distribution is accompanied
4 by the amount of net income attributable
5 to such excess contribution.

6 Any net income described in clause (ii) shall be
7 included in the gross income of the individual
8 for the taxable year in which it is received.

9 “(B) EXCESS CONTRIBUTION.—For pur-
10 poses of subparagraph (A), the term ‘excess
11 contribution’ means any contribution (other
12 than a rollover contribution described in para-
13 graph (5)) which is neither excludable from
14 gross income under section 129 nor deductible
15 under this section.

16 “(4) ADDITIONAL TAX ON DISTRIBUTIONS NOT
17 USED FOR QUALIFIED DEPENDENT CARE EX-
18 PENSES.—

19 “(A) IN GENERAL.—The tax imposed by
20 this chapter on the account beneficiary for any
21 taxable year in which there is a payment or dis-
22 tribution from a dependent care savings ac-
23 count of such beneficiary which is includible in
24 gross income under paragraph (2) shall be in-

1 creased by 20 percent of the amount which is
2 so includible.

3 “(B) EXCEPTION FOR DISABILITY OR
4 DEATH.—Subparagraph (A) shall not apply if
5 the payment or distribution is made after the
6 account beneficiary becomes disabled within the
7 meaning of section 72(m)(7) or dies.

8 “(5) ROLLOVER CONTRIBUTION.—An amount is
9 described in this paragraph as a rollover contribu-
10 tion if it meets the requirements of subparagraphs
11 (A) and (B).

12 “(A) IN GENERAL.—Paragraph (2) shall
13 not apply to any amount paid or distributed
14 from a dependent care savings account to the
15 account beneficiary to the extent the amount
16 received is paid into a dependent care savings
17 account for the benefit of such beneficiary not
18 later than the 60th day after the day on which
19 the beneficiary receives the payment or distribu-
20 tion.

21 “(B) LIMITATION.—This paragraph shall
22 not apply to any amount described in subpara-
23 graph (A) received by an individual from a de-
24 pendent care savings account if, at any time
25 during the 1-year period ending on the day of

1 such receipt, such individual received any other
2 amount described in subparagraph (A) from a
3 dependent care savings account which was not
4 includible in the individual's gross income be-
5 cause of the application of this paragraph.

6 “(6) COORDINATION WITH DEPENDENT CARE
7 CREDIT.—For purposes of determining the amount
8 of the credit under section 21, any payment or dis-
9 tribution out of a dependent care savings account
10 for qualified dependent care expenses shall not be
11 treated as employment-related expenses.

12 “(7) TRANSFER OF ACCOUNT INCIDENT TO DI-
13 VORCE; TREATMENT AFTER DEATH.—Rules similar
14 to the rules of paragraphs (7) and (8) of section 223
15 shall apply with respect to dependent care savings
16 accounts.

17 “(f) REPORTS.—The Secretary may require the
18 trustee of a dependent care savings account to make such
19 reports regarding such account to the Secretary and to
20 the account beneficiary with respect to contributions, dis-
21 tributions, the return of excess contributions, and such
22 other matters as the Secretary determines appropriate.
23 The reports required by this subsection shall be filed at
24 such time and in such manner and furnished to such indi-

viduals at such time and in such manner as may be required by the Secretary.”.

(b) DEDUCTION ALLOWED IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62 of the Internal Revenue Code of 1986 is amended by inserting before the last sentence the following new paragraph:

“(22) DEPENDENT CARE SAVINGS ACCOUNTS.—
The deduction allowed by section 224(a).”.

(c) EXCLUSION OF EMPLOYER CONTRIBUTIONS.—Section 129 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(f) CONTRIBUTIONS TO DEPENDENT CARE SAVINGS ACCOUNTS.—

“(1) IN GENERAL.—Gross income of an employee does not include amounts contributed by an employee’s employer to any dependent care savings account (as defined in section 224) of such employee to the extent such amounts do not exceed the limitation under section 224(b)(1) which is applicable to such employee for such taxable year.

“(2) CROSS REFERENCE.—For penalty on failure by employer to make comparable contributions to the dependent care savings accounts of comparable employees, see section 4980H.”.

1 (d) TAX ON EXCESS CONTRIBUTIONS.—Section 4973
 2 of the Internal Revenue Code of 1986 is amended—

3 (1) in subsection (a), by striking “or” at the
 4 end of paragraph (4), by adding “or” at the end of
 5 paragraph (5), and by inserting after paragraph (5)
 6 the following new paragraph:

7 “(6) a dependent care savings account (as de-
 8 fined in section 224),”, and

9 (2) by adding at the end the following new sub-
 10 section:

11 “(h) EXCESS CONTRIBUTIONS TO DEPENDENT CARE
 12 SAVINGS ACCOUNTS.—For purposes of this section, in the
 13 case of a dependent care savings account (as defined in
 14 section 224), the term ‘excess contributions’ means the
 15 sum of—

16 “(1) the aggregate amount contributed for the
 17 taxable year to the account (other than a rollover
 18 contribution described in section 224(e)(5)) which is
 19 neither excludable from gross income under section
 20 129 nor allowable as a deduction under section 224
 21 for such year, and

22 “(2) the amount determined under this sub-
 23 section for the preceding taxable year, reduced by
 24 the sum of—

1 “(A) the distributions out of the account
2 which were included in gross income under sec-
3 tion 224(e)(2), and

4 “(B) the excess (if any) of—

5 “(i) the maximum amount allowable
6 as a deduction under section 224(b)(1) for
7 the taxable year, over

8 “(ii) the amount contributed to the
9 account for the taxable year.”.

10 (e) FAILURE OF EMPLOYER TO MAKE COMPARABLE
11 DEPENDENT CARE SAVINGS ACCOUNT CONTRIBU-
12 TIONS.—Chapter 43 of the Internal Revenue Code of
13 1986, as amended by the Patient Protection and Afford-
14 able Care Act, is amended by adding at the end the fol-
15 lowing new section:

16 **“SEC. 4980J. FAILURE OF EMPLOYER TO MAKE COM-**
17 **PARABLE DEPENDENT CARE SAVINGS AC-**
18 **COUNT CONTRIBUTIONS.**

19 “(a) GENERAL RULE.—In the case of an employer
20 who makes a contribution to the dependent care savings
21 account of any employee during a calendar year, there is
22 hereby imposed a tax on the failure of such employer to
23 meet the requirements of subsection (b) for such calendar
24 year.

1 “(b) RULES AND REQUIREMENTS.—Rules and re-
2 quirements similar to the rules and requirements of sec-
3 tion 4980E shall apply for purposes of this section.

4 “(c) REGULATIONS.—The Secretary shall issue regu-
5 lations to carry out the purposes of this section.

6 “(d) EXCEPTION.—For purposes of applying section
7 4980E to a contribution to a dependent care savings ac-
8 count of an employee who is not a highly compensated
9 employee (as defined in section 414(q)), highly com-
10 pensated employees shall not be treated as comparable
11 participating employees.”.

12 (f) CLERICAL AMENDMENTS.—

13 (1) The table of sections for part VII of sub-
14 chapter B of chapter 1 of the Internal Revenue Code
15 of 1986 is amended by redesignating the item relat-
16 ing to section 224 as an item relating to section
17 225, and by inserting before such item the following
18 new item:

“Sec. 224. Dependent care savings accounts.”.

19 (2) The table of sections for chapter 43 of such
20 Code, as amended by the Patient Protection and Af-
21 fordable Care Act, is amended by adding at the end
22 the following new item:

“Sec. 4980J. Failure of employer to make comparable dependent care savings
 account contributions.”.

1 (g) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 the date of the enactment of this Act.

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