

108TH CONGRESS
1ST SESSION

S. 1450

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 SENATE OF THE UNITED STATES

JULY 24 (legislative day, JULY 21), 2003

Mr. ENSIGN 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 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,*

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

6 (a) IN GENERAL.—Section 125 of the Internal Rev-
7 enue Code of 1986 (relating to cafeteria plans) is amended
8 by redesignating subsections (h) and (i) as subsections (i)

1 and (j), respectively, and by inserting after subsection (g)
 2 the following:

3 “(h) CARRYFORWARDS OR PAYMENTS OF CERTAIN
 4 UNUSED HEALTH BENEFITS.—

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

12 “(A) carried forward to the succeeding
 13 plan year of such health flexible spending ar-
 14 rangement, or

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

17 “(2) TAX TREATMENT OF UNUSED HEALTH
 18 BENEFITS.—

19 “(A) CARRYFORWARDS.—Amounts carried
 20 forward under paragraph (1)(A) from a taxable
 21 year shall not be includible in gross income for
 22 such taxable year.

23 “(B) REMUNERATION.—Amounts paid as
 24 remuneration from employment under para-

1 graph (1)(B) shall be includible in gross in-
 2 come.

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

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

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

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

20 “(4) HEALTH FLEXIBLE SPENDING ARRANGE-
 21 MENT.—For purposes of this subsection, the term
 22 ‘health flexible spending arrangement’ means a flexi-
 23 ble spending arrangement (as defined in section
 24 106(c)) that is a qualified benefit and only permits
 25 reimbursement for expenses for medical care (as de-

1 fined in section 213(d)(1) (without regard to sub-
2 paragraphs (C) and (D) thereof).

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

6 “(A) the maximum amount of reimburse-
7 ment allowable for a plan year under a health
8 flexible spending arrangement, over

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

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

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