

111TH CONGRESS
1ST SESSION

H. R. 2526

To amend the Internal Revenue Code of 1986 to increase participation in medical flexible spending arrangements.

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 2009

Mr. LARSON of Connecticut (for himself, Mr. CAMP, Mr. KIND, and Mr. BOUSTANY) 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 increase participation in medical 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. SHORT TITLE.**

4 This Act may be cited as the “Medical FSA Improve-
5 ment Act of 2009”.

6 **SEC. 2. ADDITION OF TAXABLE DISTRIBUTIONS.**

7 (a) TREATMENT OF AMOUNTS EXPENDED FOR MED-
8 ICAL CARE.—Section 105 of the Internal Revenue Code
9 of 1986 (relating to amounts received under accident and

1 health plans) is amended by inserting at the end the fol-
2 lowing new subsection:

3 “(k) AMOUNTS PAID UNDER MEDICAL FLEXIBLE
4 SPENDING ARRANGEMENTS.—

5 “(1) APPLICATION OF SUBSECTION (b).—For
6 purposes of subsection (b) and section 106, a plan
7 shall not fail to be treated as flexible spending ar-
8 rangement solely because such plan, in addition to
9 reimbursing expenses incurred for medical care (as
10 defined in subsection (b)) during the plan year, dis-
11 tributes for the plan year the lesser of—

12 “(A) all or a portion of the employee’s bal-
13 ance, or

14 “(B) \$1,500.

15 “(2) LIMITATION.—Paragraph (1) shall apply
16 only in the case that the balance under such ar-
17 rangement for a plan year is distributed after the
18 close of the plan year to which the balance relates
19 and not later than the end of the 7th month fol-
20 lowing the close of such plan year.

21 “(3) TAX TREATMENT OF DISTRIBUTION.—Any
22 distribution to which paragraph (1) applies shall be
23 treated as remuneration of the employee for
24 employment for the taxable year in which it is distrib-
25 uted.

1 “(4) FLEXIBLE SPENDING ARRANGEMENT.—
2 The term ‘flexible spending arrangement’ means a
3 benefit program within the meaning of section
4 106(c)(2) (relating to long-term care benefits).

5 “(5) TERMINATION.—Paragraph (1) shall not
6 apply to any distribution for a plan year beginning
7 after December 31, 2011.”.

8 (b) ADDITIONAL DEFERRED COMPENSATION EXCEP-
9 TION.—Paragraph (2) of section 125(d) of such Code (re-
10 lating to deferred compensation under a cafeteria plan)
11 is amended by inserting at the end the following new sub-
12 paragraph:

13 “(E) EXCEPTION FOR CERTAIN FLEXIBLE
14 SPENDING ARRANGEMENTS.—Subparagraph (A)
15 shall not apply to a flexible spending arrange-
16 ment (within the meaning of section 106(c)(2))
17 as a result of amounts being distributed to the
18 covered employee in accordance with section
19 105(k).”.

20 (c) CONFORMING AMENDMENT.—Section 409A(d)(1)
21 of such Code is amended by striking “and” at the end
22 of subparagraph (A), by striking the period at the end
23 of subparagraph (B) and inserting “, and”, and by adding
24 at the end the following:

1 “(C) a flexible spending arrangement
2 which is subject to section 105(k).”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to plan years beginning after De-
5 cember 31, 2008.

6 (e) **TRANSITION RULES.**—In the case of plan years
7 that begin before the date of the enactment of this Act,
8 in implementing the amendments made by this section a
9 flexible spending arrangement may allow an individual to
10 make a new election or to revise an existing election under
11 such arrangement so long as such new or revised election
12 is made within 90 days after the date of the enactment
13 of this Act.

14 **SEC. 3. SELF-EMPLOYED INDIVIDUALS.**

15 (a) **IN GENERAL.**—Subsection (d) of section 125 of
16 the Internal Revenue Code of 1986 (defining cafeteria
17 plan) is amended by adding at the end the following new
18 paragraph:

19 “(3) **EMPLOYEE TO INCLUDE SELF-EM-**
20 **PLOYED.**—In the case of a medical flexible spending
21 arrangement—

22 “(A) **IN GENERAL.**—The term ‘employee’
23 includes an individual who is an employee with-
24 in the meaning of section 401(c)(1) (relating to
25 self-employed individuals).

1 “(B) LIMITATION.—The amount which
2 may be excluded under subsection (a) with re-
3 spect to a participant in a cafeteria plan by rea-
4 son of being an employee under subparagraph
5 (A) shall not exceed the lesser of—

6 “(i) the employee’s earned income
7 (within the meaning of section 401(c)) de-
8 rived from the trade or business with re-
9 spect to which the cafeteria plan is estab-
10 lished, or

11 “(ii) \$5,000.”.

12 (b) APPLICATION TO BENEFITS WHICH MAY BE
13 PROVIDED UNDER CAFETERIA PLAN.—

14 (1) ACCIDENT AND HEALTH PLANS.—Sub-
15 section (g) of section 105 of such Code is amended
16 to read as follows:

17 “(g) EMPLOYEE INCLUDES SELF-EMPLOYED.—For
18 purposes of this section, the term ‘employee’ includes an
19 individual who is an employee within the meaning of sec-
20 tion 401(c)(1) (relating to self-employed individuals).”.

21 (2) CONTRIBUTIONS BY EMPLOYERS TO ACCI-
22 DENT AND HEALTH PLANS.—

23 (A) IN GENERAL.—Section 106 of such
24 Code is amended by adding after subsection (e)
25 the following new subsection:

1 “(f) EMPLOYER TO INCLUDE SELF-EMPLOYED.—

2 “(1) IN GENERAL.—For purposes of this sec-
3 tion, in the case of a medical flexible spending ac-
4 count the term ‘employee’ includes an individual who
5 is an employee within the meaning of section
6 401(c)(1) (relating to self-employed individuals).

7 “(2) LIMITATION.—The amount which may be
8 excluded under subsection (a) with respect to an in-
9 dividual treated as an employee by reason of para-
10 graph (1) shall not exceed the lesser of—

11 “(A) the employee’s earned income (within
12 the meaning of section 401(c)) derived from the
13 trade or business with respect to which the acci-
14 dent or health insurance was established, or

15 “(B) \$5,000.

16 “(3) TAX TREATMENT OF DISTRIBUTION.—Any
17 distribution to which 105(k) applies shall be treated
18 as self-employment income (as defined in section
19 1402(b)) of the employee for the taxable year in
20 which it is distributed.

21 “(4) ELECTION.—Paragraph (1) shall not apply
22 for any taxable year if the employee elects to have
23 paragraph (1) not apply for such taxable year.”.

24 (B) COORDINATION WITH SECTION
25 106(f).—Paragraph (2) of section 162(l) of

1 such Code is amended by adding at the end the
2 following new subparagraph:

3 “(D) COORDINATION WITH SECTION
4 106(f).—No deduction shall be allowed under
5 paragraph (1) for any amount with respect to
6 which an election is in effect under section
7 106(f)(4).”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to plan years beginning after De-
10 cember 31, 2008.

11 (d) TRANSITION RULES.—In the case of plan years
12 that begin before the date of the enactment of this Act,
13 in implementing the amendments made by this section a
14 flexible spending arrangement may allow an individual to
15 make an election under such arrangement so long as such
16 election is made within 90 days after the date of the enact-
17 ment of this Act.

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