

105TH CONGRESS
2D SESSION

H. R. 3870

To amend the Internal Revenue Code of 1986 to provide additional retirement savings opportunities for small employers, including self-employed individuals.

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 1998

Mr. BLUNT (for himself, Mr. BENTSEN, Mr. HULSHOF, Mr. MORAN of Virginia, Mr. MCCREERY, Mr. YOUNG of Alaska, Mr. BRADY, Mr. CRAPO, Mr. DEAL of Georgia, Mrs. EMERSON, Mr. HILL, Mr. HUTCHINSON, Mr. LATOURETTE, Mr. LOBIONDO, Ms. MCCARTHY of Missouri, Mr. MALONEY of Connecticut, Mr. MORAN of Kansas, Mrs. MYRICK, Mr. TALENT, Mr. PASCRELL, Mr. PICKERING, Mr. SCHUMER, and Mr. TAYLOR of North Carolina) 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 provide additional retirement savings opportunities for small employers, including self-employed individuals.

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. REFERENCE.**

4 Except as otherwise expressly provided, whenever in
5 this Act an amendment or repeal is expressed in terms
6 of an amendment to, or repeal of, a section or other provi-
7 sion, the reference shall be considered to be made to a

1 section or other provision of the Internal Revenue Code
2 of 1986.

3 **SEC. 2. QUALIFIED SMALL EMPLOYER PLAN.**

4 (a) IN GENERAL.—Section 401 is amended by redese-
5 ignating subsection (o) as subsection (p) and by inserting
6 after subsection (n) the following new subsection:

7 “(o) QUALIFIED SMALL EMPLOYER PLAN.—

8 “(1) IN GENERAL.—A trust created or orga-
9 nized in the United States and forming part of a
10 small employer plan of a small employer for the ex-
11 clusive benefit of its employees or their beneficiaries
12 constitutes a qualified trust under subsection (a) if
13 such plan meets the requirements of paragraph (2).

14 “(2) REQUIREMENTS.—A plan meets the re-
15 quirements of this paragraph if—

16 “(A) such plan is the only qualified retire-
17 ment plan of a small employer,

18 “(B) the plan year for such plan is the cal-
19 endar year,

20 “(C) as of the 1st day of the plan year,
21 such plan covers all eligible employees of the
22 employer,

23 “(D) such plan meets the contribution re-
24 quirements of paragraph (4),

1 “(E) such plan meets the vesting require-
2 ments of paragraph (5),

3 “(F) such plan meets the funding require-
4 ments of section 412, if applicable, and

5 “(G) such plan meets the other require-
6 ments specified in paragraph (6).

7 “(3) ELIGIBLE EMPLOYEE.—For purposes of
8 paragraph (2)(C), the term ‘eligible employee’ means
9 an individual who—

10 “(A) has attained age 21, and

11 “(B) has completed not less than 1,000
12 hours of service for the employer during the cal-
13 endar year preceding the plan year.

14 “(4) CONTRIBUTIONS.—A plan meets the re-
15 quirements of this paragraph if—

16 “(A) employer contributions to the plan—

17 “(i) are not less than 3 percent, and
18 do not exceed 10 percent, of compensation
19 of all participants in the plan, and

20 “(ii) are allocated to all participants
21 in the plan on a uniform basis without re-
22 gard to subsection (l), and

23 “(B) in the case of discretionary employer
24 contributions—

1 “(i) such contributions made to the
2 plan do not exceed 15 percent of com-
3 pensation and are allocated to all partici-
4 pants—

5 “(I) as a level percentage of com-
6 pensation, or

7 “(II) under a formula that meets
8 the requirements of subsection (l)(2)
9 (relating to permitted disparity), or

10 “(ii) are made to the same plan under
11 an arrangement that meets the require-
12 ments of subsection (k), in which case the
13 minimum 3 percent contribution referred
14 to in subparagraph (A)(i) shall be applied
15 against the nonelective contributions of
16 subsection (k)(12)(C).

17 Nothing in subparagraph (B)(ii) shall be construed
18 to exempt such plan from any other requirement of
19 subsection (k)(12).

20 “(5) VESTING.—

21 “(A) IN GENERAL.—A plan satisfies the
22 requirements of this paragraph if it satisfies the
23 requirements of either of the following clauses:

24 “(i) 3-YEAR VESTING.—A plan satis-
25 fies the requirements of this clause if an

1 employee who has completed at least 3
 2 years of service with the employer or em-
 3 ployers maintaining the plan has a non-
 4 forfeitable right to 100 percent of his ac-
 5 crued benefit derived from employer con-
 6 tributions.

7 “(ii) 6-YEAR GRADED VESTING.—A
 8 plan satisfies the requirements of this
 9 clause if an employee has a nonforfeitable
 10 right to a percentage of his accrued benefit
 11 derived from employer contributions deter-
 12 mined under the following table:

Years of service	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.

13 “(B) CERTAIN RULES MADE APPLICA-
 14 BLE.—Except to the extent inconsistent with
 15 the provisions of this paragraph, the rules of
 16 section 411 shall apply for purposes of this sub-
 17 section.

18 “(C) YEAR OF SERVICE.—For purposes of
 19 subparagraph (A), years of service shall be de-
 20 termined under the last sentence of section
 21 410(a)(3)(A).

22 “(6) OTHER REQUIREMENTS.—

1 “(A) ARRANGEMENT MAY BE ONLY PLAN
2 OF EMPLOYER.—

3 “(i) IN GENERAL.—An arrangement
4 shall not be treated as a qualified small
5 employer plan for any year if the employer
6 (or any predecessor employer) maintained
7 a qualified plan with respect to which con-
8 tributions were made, or benefits were ac-
9 crued, for service in any year in the period
10 beginning with the year such arrangement
11 became effective and ending with the year
12 for which the determination is being made.
13 If only individuals other than employees
14 described in subparagraph (A) or (B) of
15 section 410(b)(3) are eligible to participate
16 in such arrangement, then the preceding
17 sentence shall be applied without regard to
18 any qualified plan in which only employees
19 so described are eligible to participate.

20 “(ii) QUALIFIED PLAN.—For purposes
21 of this subparagraph, the term ‘qualified
22 plan’ means a plan, contract, pension, or
23 trust described in subparagraph (A) or (B)
24 of section 219(g)(5).

1 “(iii) GRACE PERIOD.—In the case of
2 an employer who establishes and maintains
3 a plan under this subsection for 1 or more
4 years and who fails to meet any require-
5 ment of this subsection for any subsequent
6 year due to any acquisition, disposition, or
7 similar transaction involving another such
8 employer, rules similar to the rules of sec-
9 tion 410(b)(6)(C) shall apply for purposes
10 of this subsection.

11 “(iv) RULE OF CONSTRUCTION.—
12 Clauses (i), (ii), and (iii) shall not be con-
13 strued to prevent a rollover contribution
14 that meets the requirements of section
15 402(e) or to prevent the adoption of the
16 qualified small employer plan as a succes-
17 sor plan.

18 “(B) PLAN MAY NOT BE ESOP.—A small
19 employer plan does not meet the requirements
20 of paragraph (1) if such plan is—

21 “(i) a tax credit employee stock own-
22 ership plan (as defined in section 409(a)),
23 or

24 “(ii) an employee stock ownership
25 plan (as defined in section 4975(e)(7)).

1 “(C) OTHER APPLICABLE PROVISIONS.—A
2 plan shall not be treated as a qualified small
3 employer plan unless the plan meets the re-
4 quirements of—

5 “(i) paragraphs (1), (2), (9), (11),
6 (12), (13), (14), (15), (16), (17), (19),
7 (20), (22), (23), (27), (30), and (31) of
8 subsection (a), and

9 “(ii) subsections (b), (c), and (d).

10 “(7) TOP-HEAVY RULES INAPPLICABLE.—Sec-
11 tion 416 shall not apply to a trust that meets the
12 requirements of this subsection.

13 “(8) COMPENSATION DEFINED.—For purposes
14 of this subsection, the term ‘compensation’ has the
15 meaning given such term by section
16 404(a)(3)(A)(v).”.

17 (b) DEFINITION OF SMALL EMPLOYER.—

18 (1) IN GENERAL.—Section 414 (relating to
19 definitions and special rules) is amended by adding
20 at the end the following new subsection:

21 “(v) SMALL EMPLOYER.—For purposes of this part,
22 the term ‘small employer’ means an employer (including
23 a professional service organization) that, on the 1st day
24 of the plan year, has 100 or fewer employees.”.

25 (2) CONFORMING AMENDMENTS.—

1 (A) Subsections (b) and (c) of section 414
2 are each amended by inserting “subsection (v)
3 and” after “For purposes of”.

4 (B) Paragraph (3) of section 414(n) is
5 amended by striking “and” at the end of sub-
6 paragraph (B), by striking the period at the
7 end of subparagraph (C) and inserting “, and”,
8 and by adding at the end the following new sub-
9 paragraph:

10 “(D) subsection (v).”.

11 (c) DEDUCTION FOR CONTRIBUTIONS OF EM-
12 PLOYER.—Clause (i) of section 404(a)(3)(A) is amended
13 by striking “or” at the end of subclause (I), by striking
14 the period at the end of subclause (II) and inserting “,
15 or”, and by adding at the end the following new subclause:

16 “(III) the amount such employer is al-
17 lowed to contribute to such trust under
18 section 401(o) for such year, but not more
19 than 25 percent of aggregate compensa-
20 tion.”.

21 (d) SINGLE ANNUAL ENTRY DATE.—

22 (1) DEFINITION OF YEAR OF SERVICE.—Sub-
23 paragraph (A) of section 410(a)(3) of such Code (re-
24 lating to general rule for definition of year of serv-
25 ice) is amended by adding at the end the following:

1 “In the case of service for an employer who has in
2 effect a qualified small employer plan under section
3 401(o), computation of any 12-month period shall be
4 made with reference to the first day of the calendar
5 year in which employment of the employee com-
6 menced.”.

7 (2) TIME OF PARTICIPATION.—Paragraph (4)
8 of section 410(a) (relating to time of participation)
9 is amended by adding at the end the following: “In
10 the case of a qualified small employer plan under
11 section 401(o), the preceding sentence shall be ap-
12 plied without regard to subparagraph (B).”.

13 (e) COMPENSATION.—Subparagraph (A) of section
14 404(a)(3) (relating to stock bonus and profit-sharing
15 trusts) is amended by redesignating clause (v) as clause
16 (vi) and by inserting after clause (iv) the following new
17 clause:

18 “(v) COMPENSATION DEFINED.—For
19 purposes of this paragraph, the term ‘com-
20 pensation’ means a participant’s com-
21 pensation (as defined by section
22 415(c)(3))”.

23 (f) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to years beginning after December
25 31, 1998.

1 **SEC. 3. CREDIT FOR EMPLOYER EXPENSES IN ESTABLISH-**
2 **ING QUALIFIED SMALL EMPLOYER RETIRE-**
3 **MENT PLANS.**

4 (a) GENERAL RULE.—Subpart D of part IV of sub-
5 chapter A of chapter 1 is amended by adding at the end
6 the following new section:

7 **“SEC. 45D. EXPENSES IN ESTABLISHING QUALIFIED SMALL**
8 **EMPLOYER RETIREMENT PLANS.**

9 “(a) GENERAL RULE.—For purposes of section 38,
10 the qualified small employer retirement plan credit deter-
11 mined under this section for the taxable year is an amount
12 equal to 50 percent of the qualified retirement plan ex-
13 penses paid or incurred in the taxable year by an eligible
14 small employer.

15 “(b) LIMITATION.—The credit allowed under sub-
16 section (a) shall not exceed—

17 “(1) \$2,000 for the taxable year in which the
18 qualified small employer retirement plan is adopted,
19 and

20 “(2) \$1,000 for each of the 4 years following
21 the year in which such plan was adopted and zero
22 thereafter.

23 “(c) DEFINITIONS.—For purposes of subsection
24 (a)—

1 “(1) QUALIFIED RETIREMENT PLAN EX-
2 PENSE.—The term ‘qualified retirement plan ex-
3 pense’ means an expense—

4 “(A) for establishing, maintaining, and ad-
5 ministering a qualified small employer retire-
6 ment plan, and

7 “(B) for educating employees with respect
8 to such plan.

9 “(2) ELIGIBLE SMALL EMPLOYER.—The term
10 ‘eligible small employer’ means a small employer (as
11 defined in section 414(v)) who establishes a qualified
12 plan on or after January 1, 1998, and on or before
13 December 31, 2000.”.

14 (b) CREDIT MADE PART OF GENERAL BUSINESS
15 CREDIT.—Subsection (b) of section 38 is amended by
16 striking “plus” at the end of paragraph (11), by striking
17 the period at the end of paragraph (12) and inserting “,
18 plus”, and by adding at the end thereof the following new
19 paragraph:

20 “(13) the qualified small employer retirement
21 plan credit determined under section 45D(a).”.

22 (c) CREDIT ALLOWED AGAINST REGULAR AND MINI-
23 MUM TAX.—

24 (1) IN GENERAL.—Subsection (c) of section 38
25 (relating to limitation based on amount of tax) is

1 amended by redesignating paragraph (3) as para-
2 graph (4) and by inserting after paragraph (2) the
3 following new paragraph:

4 “(3) SPECIAL RULES FOR QUALIFIED SMALL
5 EMPLOYER RETIREMENT PLAN CREDIT.—

6 “(A) IN GENERAL.—In the case of the
7 qualified small employer retirement plan cred-
8 it—

9 “(i) this section and section 39 shall
10 be applied separately with respect to the
11 credit, and

12 “(ii) in applying paragraph (1) to the
13 credit—

14 “(I) subparagraph (A) thereof
15 shall not apply, and

16 “(II) the limitation under para-
17 graph (1) (as modified by subclause
18 (I)) shall be reduced by the credit al-
19 lowed under subsection (a) for the
20 taxable year (other than the qualified
21 small employer retirement plan cred-
22 it).

23 “(B) QUALIFIED SMALL EMPLOYER RE-
24 TIREMENT PLAN CREDIT.—For purposes of this
25 subsection, the term ‘qualified small employer

1 retirement plan credit' means the credit allow-
2 able under subsection (a) by reason of section
3 45D(a).”.

4 (2) CONFORMING AMENDMENT.—Subclause (II)
5 of section 38(c)(2)(A)(ii) is amended by inserting
6 “or the qualified small employer retirement plan
7 credit” after “employment credit”.

8 (d) LIMITATION ON CARRYBACK.—Subsection (d) of
9 section 39 is amended by adding at the end thereof the
10 following new paragraph:

11 “(7) NO CARRYBACK OF QUALIFIED SMALL EM-
12 PLOYER RETIREMENT PLAN CREDIT BEFORE EFFEC-
13 TIVE DATE.—No portion of the unused business
14 credit for any taxable year which is attributable to
15 the credit determined under section 45D may be
16 carried back to any taxable year ending before the
17 date of the enactment of section 45D.”.

18 (e) DEDUCTION FOR CERTAIN UNUSED BUSINESS
19 CREDITS.—Subsection (c) of section 196 is amended by
20 striking “and” at the end of paragraph (6), by striking
21 the period at the end of paragraph (7) and inserting “,
22 and”, and by adding after paragraph (7) the following new
23 paragraph:

24 “(8) the qualified small employer retirement
25 plan credit determined under section 45D.”.

1 (f) DENIAL OF DOUBLE BENEFIT.—Section 280C is
2 amended by adding at the end thereof the following new
3 subsection:

4 “(d) CREDIT FOR QUALIFIED SMALL EMPLOYER RE-
5 TIREMENT PLAN EXPENSES.—No deduction shall be al-
6 lowed for that portion of the expenses referred to in sec-
7 tion 45D(c)(1) otherwise allowable as a deduction for the
8 taxable year which is equal to the amount of the credit
9 determined for such taxable year under section 45D(a).”.

10 (g) CLERICAL AMENDMENT.—The table of sections
11 for subpart D of part IV of subchapter A of chapter 1
12 is amended by adding at the end the following new item:

“Sec. 45D. Expenses in establishing qualified small employer re-
tirement plans.”.

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

16 **SEC. 4. IMPLEMENTATION.**

17 (a) MODEL PLAN.—Not later than 6 months after
18 the date of the enactment of this Act, the Secretary of
19 the Treasury shall issue a model small employer retire-
20 ment plan that meets the requirements of section 401(o)
21 of the Internal Revenue Code of 1986.

22 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
23 OWNERS AND THEIR SPOUSES.—

1 (1) IN GENERAL.—The Secretary of the Treas-
2 ury shall modify the requirements for filing annual
3 returns with respect to one-participant retirement
4 plans to ensure that such plans with assets of
5 \$500,000 or less as of the close of the plan year
6 need not file a return for that year.

7 (2) ONE-PARTICIPANT RETIREMENT PLAN DE-
8 FINED.—For purposes of this subsection, the term
9 “one-participant retirement plan” means a retire-
10 ment plan that—

11 (A) on the first day of the plan year—

12 (i) covered only the employer (and the
13 employer’s spouse) and the employer
14 owned the entire business (whether or not
15 incorporated), or

16 (ii) covered only one or more partners
17 (and their spouses) in a business partner-
18 ship (including partners in an S or C cor-
19 poration),

20 (B) meets the minimum coverage require-
21 ments of section 410(b) of the Internal Revenue
22 Code of 1986 without being combined with any
23 other plan of the business that covers the em-
24 ployees of the business,

1 (C) does not provide benefits to anyone ex-
2 cept the employer (and the employer's spouse)
3 or the partners (and their spouses),

4 (D) does not cover a business that is a
5 member of an affiliated service group, a con-
6 trolled group of corporations, or a group of
7 businesses under common control, and

8 (E) does not cover a business that leases
9 employees.

10 (3) OTHER DEFINITIONS.—Terms used in para-
11 graph (2) which are also used in section 414 of the
12 Internal Revenue Code of 1986 shall have the re-
13 spective meanings given such terms by such section.

14 (c) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
15 PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case
16 of a retirement plan which covers less than 25 employees
17 on the 1st day of the plan year and meets the require-
18 ments described in subparagraphs (B), (D), and (E) of
19 subsection (b)(2), the Secretary of the Treasury shall pro-
20 vide for the filing of a simplified annual return that is
21 substantially similar to the annual return required to be
22 filed by a one-participant retirement plan.

○