

107TH CONGRESS
1ST SESSION

H. R. 167

To amend the Internal Revenue Code of 1986 to allow unused benefits from cafeteria plans to be carried over into later years and used for health care reimbursement rollover accounts and certain other plans, arrangements, or accounts.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2001

Mr. ROYCE (for himself and Mr. DREIER) 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 unused benefits from cafeteria plans to be carried over into later years and used for health care reimbursement rollover accounts and certain other plans, arrangements, or 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. CARRYOVER OF UNUSED BENEFITS FROM**
4 **CAFETERIA PLANS AND FLEXIBLE SPENDING**
5 **ARRANGEMENTS.**

6 (a) IN GENERAL.—Section 125 of the Internal Rev-
7 enue Code of 1986 (relating to cafeteria plans) is amended

1 by redesignating subsections (h) and (i) as subsections (i)
2 and (j), respectively, and by inserting after subsection (g)
3 the following new subsection:

4 “(h) ALLOWANCE OF CARRYOVERS OF UNUSED BEN-
5 EFITS TO LATER TAXABLE YEARS.—

6 “(1) IN GENERAL.—For purposes of this title—

7 “(A) a plan or other arrangement shall not
8 fail to be treated as a cafeteria plan or flexible
9 spending or similar arrangement, and

10 “(B) no amount shall be required to be in-
11 cluded in gross income by reason of this section
12 or any other provision of this chapter,

13 solely because under such plan or other arrangement
14 any nontaxable benefit which is unused as of the
15 close of a taxable year may be carried forward to 1
16 or more succeeding taxable years.

17 “(2) LIMITATION.—Paragraph (1) shall not
18 apply to amounts carried from a plan to the extent
19 such amounts exceed \$3,000 (applied on an annual
20 basis). For purposes of this paragraph, all plans and
21 arrangements maintained by an employer or any re-
22 lated person shall be treated as 1 plan.

23 “(3) ALLOWANCE OF ROLLOVER.—

24 “(A) IN GENERAL.—Each flexible spending
25 or similar arrangement which permits a carry-

1 over under paragraph (1) of an amount of un-
2 used benefit shall provide that each participant
3 may elect, in lieu of a carryover of such
4 amount, to have such amount distributed to the
5 participant.

6 “(B) AMOUNTS NOT INCLUDED IN IN-
7 COME.—Any distribution under subparagraph
8 (A) shall not be included in gross income to the
9 extent that such amount is transferred in a
10 trustee-to-trustee transfer, or is contributed
11 within 60 days of the date of the distribution,
12 to—

13 “(i) an individual retirement plan,

14 “(ii) a qualified cash or deferred ar-
15 rangement described in section 401(k),

16 “(iii) a plan under which amounts are
17 contributed by an individual’s employer for
18 an annuity contract described in section
19 403(b),

20 “(iv) an eligible deferred compensa-
21 tion plan described in section 457,

22 “(v) an Archer MSA (within the
23 meaning of section 220),

1 “(vi) an education individual retire-
2 ment account (within the meaning of sec-
3 tion 530(b)), or

4 “(vii) a health care reimbursement
5 rollover account described in section 530A.

6 Any amount rolled over under this subpara-
7 graph shall be treated as a rollover contribution
8 for the taxable year from which the unused
9 amount would otherwise be carried.

10 “(C) TREATMENT OF ROLLOVER.—Any
11 amount rolled over under subparagraph (B)
12 shall be treated as an eligible rollover under
13 section 219, 220, 401(k), 403(b), 457, 530, or
14 530A, whichever is applicable, and shall not be
15 taken into account in applying any limitation
16 (or participation requirement) on contributions
17 under such section or any other provision of
18 this chapter for the taxable year of the rollover.

19 “(4) COST-OF-LIVING ADJUSTMENT.—In the
20 case of any taxable year beginning in a calendar
21 year after 2001, the \$3,000 amount under para-
22 graph (2) shall be adjusted at the same time and in
23 the same manner as under section 415(d)(2), except
24 that the base period taken into account shall be the
25 calendar quarter beginning October 1, 2001, and

1 any increase which is not a multiple of \$50 shall be
 2 rounded to the next lowest multiple of \$50.”

3 (b) HEALTH CARE REIMBURSEMENT ROLLOVER AC-
 4 COUNT.—Subchapter F of chapter 1 of subtitle A of the
 5 Internal Revenue Code of 1986 is amended by adding at
 6 the end the following:

7 **“PART IX—HEALTH CARE REIMBURSEMENT**
 8 **ROLLOVER ACCOUNTS**

“Sec. 530A. Health care reimbursement rollover accounts.

9 **“SEC. 530A. HEALTH CARE REIMBURSEMENT ROLLOVER**
 10 **ACCOUNTS.**

11 “(a) GENERAL RULE.—A health care reimbursement
 12 rollover account shall be exempt from taxation under this
 13 subtitle unless such account has ceased to be a health care
 14 reimbursement rollover account. Notwithstanding the pre-
 15 ceding sentence, any such account is subject to the taxes
 16 imposed by section 511 (relating to imposition of tax on
 17 unrelated business income of charitable, etc. organiza-
 18 tions).

19 “(b) DEFINITIONS AND SPECIAL RULES.—For pur-
 20 poses of this section—

21 “(1) HEALTH CARE REIMBURSEMENT ROLL-
 22 OVER ACCOUNT.—The term ‘health care reimburse-
 23 ment rollover account’ means a trust created or or-
 24 ganized in the United States exclusively for the pur-

1 pose of paying the qualified medical expenses of the
2 account holder, but only if the written governing in-
3 strument creating the trust meets the following re-
4 quirements:

5 “(A) No contribution will be accepted un-
6 less it is a rollover contribution allowed under
7 section 125(h)(3).

8 “(B) The trustee is a bank (as defined in
9 section 408(n)), an insurance company (as de-
10 fined in section 816), or another person (includ-
11 ing the employer of the account holder) who
12 demonstrates to the satisfaction of the Sec-
13 retary that the manner in which such person
14 will administer the trust will be consistent with
15 the requirements of this section.

16 “(C) The assets of the trust will be in-
17 vested only in appropriate guaranteed principle
18 and interest investments which provide 100 per-
19 cent liquidity.

20 “(D) Contributions to the trust will not be
21 invested until the second year after the year the
22 contributions are made.

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

25 “(2) QUALIFIED MEDICAL EXPENSES.—

1 “(A) IN GENERAL.—The term ‘qualified
2 medical expenses’ means, with respect to an ac-
3 count holder, amounts paid by such holder for
4 medical care (as defined in section 213(d)) for
5 such individual, the spouse of such individual,
6 and any dependent (as defined in section 152)
7 of such individual, but only to the extent such
8 amounts are not compensated for by insurance
9 or otherwise.

10 “(B) HEALTH INSURANCE MAY NOT BE
11 PURCHASED FROM ACCOUNT.—

12 “(i) IN GENERAL.—Subparagraph (A)
13 shall not apply to any payment for cov-
14 erage under a group health plan of an em-
15 ployer of the account holder or the spouse
16 of the account holder.

17 “(ii) EXCEPTIONS.—Clause (i) shall
18 not apply to any expense for coverage
19 under—

20 “(I) a health plan during any pe-
21 riod of continuation coverage required
22 under any Federal law,

23 “(II) a qualified long-term care
24 insurance contract (as defined in sec-
25 tion 7702B(b)), or

1 “(III) a medicare supplemental
2 policy under section 1882 of the So-
3 cial Security Act.

4 “(3) ACCOUNT HOLDER.—The term ‘account
5 holder’ means the individual on whose behalf the
6 health care reimbursement rollover account was es-
7 tablished.

8 “(4) CERTAIN RULES TO APPLY.—Rules similar
9 to rules under section 408(h) (relating to custodial
10 accounts) shall apply for purposes of this section.

11 “(c) TAX TREATMENT OF ACCOUNT TERMI-
12 NATIONS.—Rules similar to the rules of paragraphs (2)
13 and (4) of section 408(e) shall apply to health care reim-
14 bursement rollover accounts and any amount treated as
15 distributed under such rules shall be treated as not used
16 to pay qualified medical expenses.

17 “(d) TAX TREATMENT OF DISTRIBUTIONS.—

18 “(1) AMOUNTS USED FOR QUALIFIED MEDICAL
19 EXPENSES.—Any amount paid or distributed out of
20 a health care reimbursement rollover account which
21 is used exclusively to pay qualified medical expenses
22 of any account holder shall not be includible in gross
23 income.

24 “(2) INCLUSION OF AMOUNTS NOT USED FOR
25 QUALIFIED MEDICAL EXPENSES.—Any amount paid

1 or distributed out of a health care reimbursement
2 rollover account which is not used exclusively to pay
3 the qualified medical expenses of the account holder
4 shall be included in the gross income of such holder.

5 “(3) COORDINATION WITH MEDICAL EXPENSE
6 DEDUCTION.—For purposes of determining the
7 amount of the deduction under section 213 or
8 162(l), any payment or distribution out of a health
9 care reimbursement rollover account for qualified
10 medical expenses shall not be treated as an expense
11 paid for medical care.

12 “(4) TRANSFER OF ACCOUNT INCIDENT TO DI-
13 VORCE.—The transfer of an individual’s interest in
14 a health care reimbursement rollover account to an
15 individual’s spouse or former spouse under a divorce
16 or separation instrument described in subparagraph
17 (A) of section 71(b)(2) shall not be considered a tax-
18 able transfer made by such individual notwith-
19 standing any other provision of this subtitle, and
20 such interest shall, after such transfer, be treated as
21 a health care reimbursement rollover account with
22 respect to which such spouse is the account holder.

23 “(5) TREATMENT AFTER DEATH OF ACCOUNT
24 HOLDER.—

1 “(A) EXCLUSION FROM ESTATE TAX.—The
2 value of the gross estate under chapter 11 shall
3 be determined without regard to the value of
4 health care reimbursement rollover account.

5 “(B) TRANSFER OF ACCOUNT TO DES-
6 IGNATED BENEFICIARY.—If any individual ac-
7 quires the account holder’s interest in a health
8 care reimbursement rollover account by reason
9 of being the designated beneficiary of such ac-
10 count at the death of such account holder, such
11 account shall be treated as if the beneficiary
12 were the account holder.

13 “(C) SPECIAL RULE.—If any person other
14 than an individual acquires the account holder’s
15 interest in a health care reimbursement rollover
16 account by reason of being the designated bene-
17 ficiary of such account at the death of such ac-
18 count holder, such account shall cease to be a
19 health care reimbursement rollover account as
20 of the date of death.

21 “(e) REPORTS.—The Secretary may require the
22 trustee of a health care reimbursement rollover account
23 to make such reports regarding such account to the Sec-
24 retary and to the account holder with respect to contribu-
25 tions, distributions, and such other matters as the Sec-

1 retary determines appropriate. The reports required by
2 this subsection shall be filed at such time and in such
3 manner and furnished to such individuals at such time and
4 in such manner as may be required by the Secretary.”.

5 (c) CLERICAL AMENDMENT.—The table of parts for
6 subchapter F of chapter 1 of such Code is amended by
7 adding at the end the following new item:

“Part IX. Health care reimbursement rollover accounts.”

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 2001.

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