

107TH CONGRESS
1ST SESSION

H. R. 2658

To amend the Internal Revenue Code of 1986 to exclude employer contributions to health care expenditure accounts from gross income, and to amend title I of the Employee Retirement Income Security Act of 1974 to clarify the applicability of such title to plans employing such accounts.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2001

Mr. DEMINT (for himself, Mr. ARMEY, Mrs. JOHNSON of Connecticut, Mr. BURR of North Carolina, Mr. COOKSEY, Mr. FLETCHER, Mr. HERGER, Mr. HOEKSTRA, Mr. MCKEON, Mr. SAM JOHNSON of Texas, Mr. SHAD-EGG, Mrs. MYRICK, Mr. SOUDER, Mr. RYAN of Wisconsin, Mr. TOOMEY, Mr. STEARNS, Mr. PITTS, Mr. BARTLETT of Maryland, Mr. PENCE, Mr. TIAHRT, Mr. PAUL, Mr. MANZULLO, and Mr. TIBERI) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to exclude employer contributions to health care expenditure accounts from gross income, and to amend title I of the Employee Retirement Income Security Act of 1974 to clarify the applicability of such title to plans employing such accounts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Health Care Account
3 Act of 2001”.

4 **SEC. 2. HEALTH CARE EXPENDITURE ACCOUNTS.**

5 (a) **EXCLUSION FOR EMPLOYER CONTRIBUTIONS TO
6 HEALTH CARE EXPENDITURE ACCOUNTS.—**

7 (1) **EXCLUSION FROM INCOME TAX.—**Section
8 106 of the Internal Revenue Code of 1986 (relating
9 to contributions by employer to accident and health
10 plans) is amended by adding at the end the following
11 new subsection:

12 “(d) **CONTRIBUTIONS TO HEALTH CARE EXPENDI-
13 TURE ACCOUNTS.—**

14 “(1) **IN GENERAL.—**Amounts contributed by
15 the employee’s employer to any health care expendi-
16 ture account of such employee shall be treated as
17 employer-provided coverage for medical expenses
18 under an accident or health plan.

19 “(2) **LIMITATIONS.—**

20 “(A) **EMPLOYEE MUST BE COVERED BY
21 HEALTH INSURANCE.—**Paragraph (1) shall not
22 apply with respect to a contribution unless, at
23 the time of such contribution, the employee was
24 covered by insurance which constitutes medical
25 care for the employee and which is qualified as
26 a health plan by the State in which such plan

1 is offered. For purposes of the preceding sen-
2 tence, the term ‘medical care’ shall have the
3 meaning given to such term by section 213(d)
4 (without regard to paragraph (1)(C) and so
5 much of paragraph (1)(D) as relates to quali-
6 fied long-term care insurance contracts).

7 “(B) EMPLOYEE MAY NOT CONTRIBUTE TO
8 BOTH HEALTH CARE EXPENDITURE ACCOUNT
9 AND ARCHER MSA IN THE SAME YEAR.—Para-
10 graph (1) shall not apply with respect to any
11 contribution in a taxable year if a deduction
12 under section 220 is allowed to the employee
13 for the taxable year.

14 “(C) EMPLOYER MAY NOT CONTRIBUTE TO
15 BOTH HEALTH CARE EXPENDITURE ACCOUNT
16 AND GROUP HEALTH PLAN.—Paragraph (1)
17 shall not apply with respect to any contribution
18 to an employee of an employer in a taxable year
19 if an exclusion is allowed under subsection (a)
20 for such taxable year to any employee of the
21 employer for employer-provided coverage for
22 medical expenses under an accident or health
23 plan (determined without regard to this sub-
24 section).

1 “(D) NO CONSTRUCTIVE RECEIPT.—No
2 amount shall be included in the gross income of
3 any employee solely because the employee may
4 choose between the contributions referred to in
5 paragraph (1) and employer contributions to
6 another health plan of the employer.

7 “(E) HIGHLY COMPENSATED PARTICI-
8 PANTS AND KEY EMPLOYEES.—For purposes of
9 this subsection, rules similar to the rules of sec-
10 tion 125(b) shall apply.

11 “(3) SPECIAL RULE FOR DEDUCTION OF EM-
12 PLOYER CONTRIBUTIONS.—Any employer contribu-
13 tion to a health care expenditure account, if other-
14 wise allowable as a deduction under this chapter,
15 shall be allowed only for the taxable year in which
16 paid.

17 “(4) EMPLOYER CONTRIBUTIONS REQUIRED TO
18 BE SHOWN ON RETURN.—Every individual required
19 to file a return under section 6012 for the taxable
20 year shall include on such return the aggregate
21 amount contributed by employers to the health care
22 expenditure account of such individual or such indi-
23 vidual’s spouse for such taxable year.

24 “(5) HEALTH CARE EXPENDITURE ACCOUNT
25 CONTRIBUTIONS NOT PART OF COBRA COVERAGE.—

1 Paragraph (1) shall not apply for purposes of sec-
2 tion 4980B.

3 “(6) DEFINITIONS.—For purposes of this sub-
4 section, the terms ‘eligible individual’ and ‘health
5 care expenditure account’ have the respective mean-
6 ings given to such terms by section 531.

7 “(7) CROSS REFERENCE.—

“**For penalty on failure by employer to make com-
parable contributions to the health care expendi-
ture accounts of comparable employees, see section
4980F.**”

8 (b) EXCLUSION FOR EMPLOYEE CONTRIBUTIONS TO
9 HEALTH CARE EXPENDITURE ACCOUNTS.—

10 (1) IN GENERAL.—Part III of subchapter B of
11 chapter 1 of such Code (relating to items specifically
12 excluded from gross income) is amended by redesignig-
13 nating section 139 as section 139A and by inserting
14 after section 138 the following new section:

15 **“SEC. 139. EMPLOYEE CONTRIBUTIONS TO HEALTH CARE**
16 **EXPENDITURE ACCOUNTS.**

17 “(a) IN GENERAL.—Gross income shall not include
18 any contribution by an employee to a health care expendi-
19 ture account (as defined in section 531).

20 “(b) LIMITATION.—The amount excluded by sub-
21 section (a) shall not exceed the lesser of—

22 “(1) the limitation for the taxable year with re-
23 spect to the employee under section 531(c)(1)(B), or

1 “(b) QUALIFIED MEDICAL EXPENSES.—

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

10 “(2) ACCOUNT HOLDER.—The term ‘account
11 holder’ means the individual on whose behalf the
12 health care expenditure account was established.

13 “(3) CERTAIN RULES TO APPLY.—Rules similar
14 to the following rules shall apply for purposes of this
15 section:

16 “(A) Section 408(g) (relating to commu-
17 nity property laws).

18 “(B) Section 408(h) (relating to custodial
19 accounts).

20 “(C) Section 408(m) (relating to invest-
21 ment in collectibles treated as distributions).

22 “(D) Section 220(f)(7) (relating to trans-
23 fer of account incident to divorce).

24 “(E) Section 220(f)(8) (relating to treat-
25 ment after death of account holder).

1 “(c) CONTRIBUTIONS.—

2 “(1) IN GENERAL.—Except in the case of a
3 rollover contribution described in subsection (e)(5),
4 the requirement of this paragraph is that no con-
5 tribution will be accepted—

6 “(A) unless it is in cash, and

7 “(B) if such contribution would result in
8 aggregate contributions for the taxable year ex-
9 ceeding \$5,000.

10 “(2) COORDINATION WITH EXCLUSION FOR EM-
11 PLOYER CONTRIBUTIONS.—The limitation which
12 would (but for this paragraph) apply under para-
13 graph (1)(B) to the taxpayer for any taxable year
14 shall be reduced (but not below zero) by the amount
15 which would (but for section 106(d)) be includible in
16 the taxpayer’s gross income for such taxable year.

17 “(d) TAX TREATMENT OF ACCOUNTS.—

18 “(1) IN GENERAL.—A health care expenditure
19 account is exempt from taxation under this subtitle
20 unless such account has ceased to be a health care
21 expenditure account. Notwithstanding the preceding
22 sentence, any such account is subject to the taxes
23 imposed by section 511 (relating to imposition of tax
24 on unrelated business income of charitable, etc. or-
25 ganizations).

1 “(2) ACCOUNT TERMINATIONS.—Rules similar
2 to the rules of paragraphs (2) and (4) of section
3 408(e) shall apply to health care expenditure ac-
4 counts, and any amount treated as distributed under
5 such rules shall be treated as not used to pay quali-
6 fied medical expenses.

7 “(e) TAX TREATMENT OF DISTRIBUTIONS.—

8 “(1) AMOUNTS USED FOR QUALIFIED MEDICAL
9 EXPENSES.—Any amount paid or distributed out of
10 a health care expenditure account which is used ex-
11 clusively to pay qualified medical expenses of any ac-
12 count holder shall not be includible in gross income.

13 “(2) INCLUSION OF AMOUNTS NOT USED FOR
14 QUALIFIED MEDICAL EXPENSES.—Any amount paid
15 or distributed out of a health care expenditure ac-
16 count which is not used exclusively to pay the quali-
17 fied medical expenses of the account holder shall be
18 included in the gross income of such holder.

19 “(3) CONTRIBUTIONS RETURNED BEFORE DUE
20 DATE OF RETURN.—Paragraph (2) shall not apply
21 to distributions of any contribution made during the
22 taxable year on behalf of the account holder if—

23 “(A) such distribution is made on or before
24 the last day prescribed by law (including exten-

1 sions of time) for filing such holder’s return for
2 such taxable year, and

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

6 Any net income described in subparagraph (B) shall
7 be included in the gross income of the individual for
8 the taxable year in which such contribution is made.

9 “(4) ADDITIONAL TAX ON DISTRIBUTIONS NOT
10 USED FOR QUALIFIED MEDICAL EXPENSES.—

11 “(A) IN GENERAL.—The tax imposed by
12 this chapter on the account holder for any tax-
13 able year in which there is a payment or dis-
14 tribution from a health care expenditure ac-
15 count of such holder which is includible in gross
16 income under paragraph (2) shall be increased
17 by 15 percent of the amount which is so includ-
18 ible.

19 “(B) EXCEPTION FOR DEATH.—Subpara-
20 graph (A) shall not apply if the payment or dis-
21 tribution is made after the account holder dies.

22 “(5) ROLLOVER CONTRIBUTION.—An amount is
23 described in this paragraph as a rollover contribu-
24 tion if it meets the requirements of subparagraphs
25 (A) and (B).

1 “(A) IN GENERAL.—Paragraph (2) shall
2 not apply to any amount paid or distributed
3 from a health care expenditure account to the
4 account holder to the extent the amount re-
5 ceived is paid into a health care expenditure ac-
6 count or an Archer MSA for the benefit of such
7 holder not later than the 60th day after the day
8 on which the holder receives the payment or
9 distribution.

10 “(B) LIMITATION.—This paragraph shall
11 not apply to any amount described in subpara-
12 graph (A) received by an individual from a
13 health care expenditure account if, at any time
14 during the 1-year period ending on the day of
15 such receipt, such individual received any other
16 amount described in subparagraph (A) from a
17 health care expenditure account which was not
18 includible in the individual’s gross income be-
19 cause of the application of this paragraph or
20 section 220(f)(5) (relating to rollover contribu-
21 tion with respect to Archer MSAs).

22 “(6) COORDINATION WITH OTHER MEDICAL EX-
23 PENSE PROVISIONS.—

24 “(A) MEDICAL EXPENSE DEDUCTION.—

25 For purposes of determining the amount of the

1 deduction under section 213, any payment or
2 distribution out of a health care expenditure ac-
3 count for qualified medical expenses shall not
4 be treated as an expense paid for medical care.

5 “(B) ARCHER MSAS.—For purposes of sec-
6 tion 220, the amount of qualified medical ex-
7 penses otherwise taken into account under
8 paragraph (1) for a taxable year shall be re-
9 duced (before the application of paragraphs (2)
10 and (4)) by the sum of the amounts distributed
11 from an Archer MSA for the taxable year.

12 “(f) REPORTS.—The Secretary may require the
13 trustee of a health care expenditure account to make such
14 reports regarding such account to the Secretary and to
15 the account holder with respect to contributions, distribu-
16 tions, and such other matters as the Secretary determines
17 appropriate. The reports required by this subsection shall
18 be filed at such time and in such manner and furnished
19 to such individuals at such time and in such manner as
20 may be required by the Secretary.”.

21 (d) TAX ON EXCESS CONTRIBUTIONS.—Section 4973
22 of such Code (relating to tax on excess contributions to
23 certain tax-favored accounts and annuities) is amended—

24 (1)(A) by striking “or” at the end of paragraph
25 (3) of subsection (a),

1 (B) by inserting “or” after the comma at the
2 end of paragraph (4), and

3 (C) by inserting after paragraph (4) the fol-
4 lowing:

5 “(2) a health care expenditure account (within
6 the meaning of section 531(d)),”, and

7 (2) by adding at the end the following new sub-
8 section:

9 “(d) EXCESS CONTRIBUTIONS TO HEALTH CARE EX-
10 PENDITURE ACCOUNTS.—For purposes of this section, in
11 the case of health care expenditure accounts (within the
12 meaning of section 531(d)), the term ‘excess contribu-
13 tions’ means the sum of—

14 “(1) the aggregate amount contributed for the
15 taxable year to the accounts (other than rollover
16 contributions described in section 531(e)(5)) which
17 is neither excludable from gross income under sec-
18 tion 106(d) nor allowable as a contribution under
19 section 531 for such year, and

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

23 “(A) the distributions out of the accounts
24 which were included in gross income under sec-
25 tion 531(e)(2), and

1 “(B) the excess (if any) of—

2 “(i) the maximum amount allowable
3 as a contribution under section 531(b)(1)
4 (determined without regard to section
5 106(d)) for the taxable year, over

6 “(ii) the amount contributed to the
7 accounts for the taxable year.

8 For purposes of this subsection, any contribution which
9 is distributed out of the health care expenditure account
10 in a distribution to which section 531(e)(3) applies shall
11 be treated as an amount not contributed.”.

12 (e) TAX ON PROHIBITED TRANSACTIONS.—

13 (1) Section 4975 of such Code (relating to tax
14 on prohibited transactions) is amended by adding at
15 the end of subsection (c) the following new para-
16 graph:

17 “(6) SPECIAL RULE FOR HEALTH CARE EX-
18 PENDITURE ACCOUNTS.—An individual for whose
19 benefit a health care expenditure account (within the
20 meaning of section 531) is established shall be ex-
21 empt from the tax imposed by this section with re-
22 spect to any transaction concerning such account
23 (which would otherwise be taxable under this sec-
24 tion) if, with respect to such transaction, the ac-
25 count ceases to be a health care expenditure account

1 by reason of the application of section 531(d)(2) to
2 such account.”.

3 (2) Paragraph (1) of section 4975(e) of such
4 Code is amended by striking “or” at the end of sub-
5 paragraph (E), by redesignating subparagraph (F)
6 as subparagraph (G), and by inserting after sub-
7 paragraph (E) the following new subparagraph:

8 “(F) a health care expenditure account de-
9 scribed in section 531(d), or”.

10 (f) FAILURE TO PROVIDE REPORTS ON HEALTH
11 CARE EXPENDITURE ACCOUNTS.—Paragraph (2) of sec-
12 tion 6693(a) of such Code is amended by striking “and”
13 at the end of subparagraph (C), by striking the period at
14 the end of subparagraph (D) and inserting “, and”, and
15 by adding at the end the following new subparagraph:

16 “(E) section 531(f) (relating to health care
17 expenditure accounts).”.

18 (g) WITHHOLDING TAX.—Subsection (a) of section
19 3401 of such Code is amended by striking “or” at the
20 end of paragraph (20), by striking the period at the end
21 of paragraph (21) and inserting “; or”, and by inserting
22 after paragraph (21) the following new paragraph:

23 “(22) any payment made to or for the benefit
24 of an employee if at the time of such payment it is
25 reasonable to believe that the employee will be able

1 to exclude such payment from income under section
2 106(d).”.

3 (h) EMPLOYER CONTRIBUTIONS REQUIRED TO BE
4 SHOWN ON W-2.—Subsection (a) of section 6051 of such
5 Code is amended by striking “and” at the end of para-
6 graph (10), by striking the period at the end of paragraph
7 (11) and inserting “, and”, and by inserting after para-
8 graph (11) the following new paragraph:

9 “(12) the amount contributed to any health
10 care expenditure account (as defined in section 531)
11 of such employee or such employee’s spouse.”.

12 (i) PENALTY FOR FAILURE OF EMPLOYER TO MAKE
13 COMPARABLE HEALTH CARE EXPENDITURE ACCOUNT
14 CONTRIBUTIONS.—

15 (1) IN GENERAL.—Chapter 43 of such Code is
16 amended by adding after section 4980E the fol-
17 lowing new section:

18 **“SEC. 4980F. FAILURE OF EMPLOYER TO MAKE COM-**
19 **PARABLE HEALTH CARE EXPENDITURE AC-**
20 **COUNT CONTRIBUTIONS.**

21 “(a) GENERAL RULE.—In the case of an employer
22 who makes a contribution to the health care expenditure
23 account of any employee during a calendar year, there is
24 hereby imposed a tax on the failure of such employer to

1 meet the requirements of subsection (d) for such calendar
2 year.

3 “(b) AMOUNT OF TAX.—The amount of the tax im-
4 posed by subsection (a) on any failure for any calendar
5 year is the amount equal to 35 percent of the aggregate
6 amount contributed by the employer to health care ex-
7 penditure accounts of employees for taxable years of such
8 employees ending with or within such calendar year.

9 “(c) WAIVER BY SECRETARY.—In the case of a fail-
10 ure which is due to reasonable cause and not to willful
11 neglect, the Secretary may waive part or all of the tax
12 imposed by subsection (a) to the extent that the payment
13 of such tax would be excessive relative to the failure in-
14 volved.

15 “(d) EMPLOYER REQUIRED TO MAKE COMPARABLE
16 HEALTH CARE EXPENDITURE ACCOUNT CONTRIBUTIONS
17 FOR ALL PARTICIPATING EMPLOYEES.—

18 “(1) IN GENERAL.—An employer meets the re-
19 quirements of this subsection for any calendar year
20 if the employer makes available comparable con-
21 tributions to the health care expenditure accounts of
22 all comparable participating employees during such
23 calendar year.

24 “(2) COMPARABLE CONTRIBUTIONS.—

1 “(A) IN GENERAL.—For purposes of para-
2 graph (1), the term ‘comparable contributions’
3 means contributions which meet the require-
4 ments of section 125.

5 “(B) PART-YEAR EMPLOYEES.—In the
6 case of an employee who is employed by the em-
7 ployer for only a portion of the calendar year,
8 a contribution to the health care expenditure
9 account of such employee shall be treated as
10 comparable if it is an amount which bears the
11 same ratio to the comparable amount (deter-
12 mined without regard to this subparagraph) as
13 such portion bears to the entire calendar year.

14 “(3) COMPARABLE PARTICIPATING EMPLOY-
15 EES.—For purposes of paragraph (1), the term
16 ‘comparable participating employees’ means all em-
17 ployees who are eligible individuals who have a
18 health care expenditure account.

19 “(4) PART-TIME EMPLOYEES.—

20 “(A) IN GENERAL.—Paragraph (3) shall
21 be applied separately with respect to part-time
22 employees and other employees.

23 “(B) PART-TIME EMPLOYEE.—For pur-
24 poses of subparagraph (A), the term ‘part-time
25 employee’ means any employee who is custom-

1 arily employed for fewer than 30 hours per
2 week.

3 “(e) CONTROLLED GROUPS.—For purposes of this
4 section, all persons treated as a single employer under sub-
5 section (b), (c), (m), or (o) of section 414 shall be treated
6 as 1 employer.

7 “(f) DEFINITIONS.—Terms used in this section which
8 are also used in section 531 have the respective meanings
9 given such terms in section 531.”.

10 (2) CLERICAL AMENDMENT.—The table of sec-
11 tions for chapter 43 of such Code is amended by
12 adding after the item relating to section 4980E the
13 following new item:

 “Sec. 4980F. Failure of employer to make comparable medical
 savings account contributions.”.

14 (j) CONFORMING AND CLERICAL AMENDMENTS.—

15 (1) Section 220(d)(1)(A) of such Code is
16 amended by inserting “or section 531(e)(5)” after
17 “subsection (f)(5)”.

18 (2) The table of parts for subchapter F of
19 chapter 1 of such Code is amended by adding after
20 the item relating to part VIII the following new
21 item:

 “PART IX—HEALTH CARE EXPENDITURE ACCOUNTS.”.

1 (k) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2001.

4 **SEC. 3. APPLICABILITY OF ERISA TO HEALTH CARE EX-**
5 **PENDITURE ACCOUNTS.**

6 (a) ERISA COVERAGE OF HEALTH CARE EXPENDI-
7 TURE ACCOUNTS.—Section 4 of the Employee Retirement
8 Income Security Act of 1974 (29 U.S.C. 1003) is
9 amended—

10 (1) by striking “The provisions of part 7” in
11 subsection (b) and inserting the following:

12 “(c) The provisions of part 7”; and

13 (2) by adding at the end the following new sub-
14 section:

15 “(d) In the case of any employee welfare benefit plan
16 of which a health care expenditure account (within the
17 meaning of section 531(a) of the Internal Revenue Code
18 of 1986) forms a part—

19 “(1) for purposes of applying this title to such
20 plan in connection with such account, the benefits
21 provided under such plan shall be deemed to consist
22 solely of any employer contributions to the account
23 provided for in the terms of the plan, and

24 “(2) this title shall not apply with respect to
25 any health insurance coverage (within the meaning

1 of section 733(b)) acquired with funds held in such
2 account.”.

3 (b) EXCLUSION FROM DEFINITIONS OF GROUP
4 HEALTH PLAN.—

5 (1) CONTINUATION COVERAGE REQUIRE-
6 MENTS.—Section 607(1) of such Act (29 U.S.C.
7 1167(1)) is amended, in the second sentence, by in-
8 serting before the period the following: “or the provi-
9 sions of any employee welfare benefit plan described
10 in section 4(d) relating to a health care expenditure
11 account (within the meaning of section 531(a) of the
12 Internal Revenue Code of 1986).”.

13 (2) HIPAA GROUP HEALTH PLAN REQUIRE-
14 MENTS.—Section 733(a) of such Act (29 U.S.C.
15 1191b(a)) is amended by adding at the end the fol-
16 lowing new paragraph:

17 “(3) EXCLUSION OF HEALTH CARE EXPENDITURE
18 ACCOUNT PLANS.—The term ‘group health plan’ excludes
19 the provisions of any employee welfare benefit plan de-
20 scribed in section 4(d) relating to a health care expendi-
21 ture account (within the meaning of section 531(a) of the
22 Internal Revenue Code of 1986).”.

23 (c) LIMITATION ON ERISA PREEMPTION.—Section
24 514(b) of such Act (29 U.S.C. 1144(b)) is amended—

1 (1) by redesignating paragraph (9) as para-
2 graph (10); and

3 (2) by inserting after paragraph (8) the fol-
4 lowing new paragraph:

5 “(9) Nothing in this section shall be construed to
6 alter, amend, modify, invalidate, impair, or supersede any
7 provision of State law relating to health insurance cov-
8 erage (within the meaning of section 733(b)) solely be-
9 cause such coverage is acquired with funds held in a health
10 care expenditure account (within the meaning of section
11 531(a) of the Internal Revenue Code of 1986) forming a
12 part of an employee welfare benefit plan.”.

○