

108TH CONGRESS  
1ST SESSION

# H. R. 176

To amend the Internal Revenue Code of 1986 to allow amounts elected for reimbursement of medical care expenses under a health flexible spending arrangement that are unused during a plan year to be carried over for such use for subsequent plan years.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 2003

Mr. ROYCE (for himself and Mr. KENNEDY of Minnesota) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to allow amounts elected for reimbursement of medical care expenses under a health flexible spending arrangement that are unused during a plan year to be carried over for such use for subsequent plan years.

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 **HEALTH FLEXIBLE SPENDING ARRANGE-**  
5 **MENTS.**

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  
 5 FUNDS TO SUBSEQUENT 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 health  
 9 flexible spending 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 amounts elected for reimbursement of eligible  
 15 medical care expenses under a health flexible spend-  
 16 ing arrangement which are unused during a plan  
 17 year may be carried forward to one or more suc-  
 18 ceeding plan years.

19 “(2) AMOUNTS INCLUDED IN GROSS INCOME.—

20 Any carryover amount described in paragraph (1)  
 21 shall be included in gross income for purposes of  
 22 subtitle and subtitle B (relating to withholding and  
 23 employment taxes). Any such carryover shall be  
 24 treated as wages for the taxable year from which the  
 25 amount was carried.

1           “(3) TREATMENT OF AND LIMITATION ON  
2       ROLLOVER AMOUNTS.—Amounts carried over under  
3       paragraph (1) shall be limited as follows:

4           “(A) Amounts carried forward pursuant to  
5       paragraph (1) shall be limited to \$2,000 per  
6       plan year (as indexed for future years by the  
7       cost of living adjustment determined under sec-  
8       tion 1(f)(3)). Any unused amounts during any  
9       plan year in excess of this amount shall be for-  
10      feited and shall be treated in accordance with  
11      the applicable regulations issued under section  
12      125.

13          “(B) Amounts carried forward pursuant to  
14      paragraph (1) shall be used only for reimburse-  
15      ment of qualified medical care expenses (as de-  
16      fined in paragraph (5)).

17          “(C) The employer may invest such carry-  
18      over amounts in guaranteed principal and inter-  
19      est investments which provide 100 percent li-  
20      quidity within the account.

21          “(4) FORFEITURES FOR TERMINATING PARTICI-  
22      PANTS PERMITTED.—Nothing in this subsection  
23      shall preclude the application of the requirement set  
24      forth in the regulations promulgated under section  
25      125 that participants who terminate participation

1 prior to the end of the plan year must forfeit any  
2 health flexible spending arrangement account bal-  
3 ance provided such amounts do not consist of carry  
4 over amounts described in paragraph (1).

5 “(5) QUALIFIED MEDICAL EXPENSES.—

6 “(A) IN GENERAL.—The term ‘qualified  
7 medical expenses’ means amounts paid for med-  
8 ical care (as defined in section 213(d)) for such  
9 individual, the spouse of such individual, and  
10 any dependent (as defined in section 152) of  
11 such individual, but only to the extent such  
12 amounts are not compensated for by insurance  
13 or otherwise.

14 “(B) HEALTH INSURANCE EXPENSES.—

15 “(i) IN GENERAL.—Subparagraph (A)  
16 shall not apply to any payment for cov-  
17 erage under a group health plan of an em-  
18 ployer of the health flexible spending ar-  
19 rangement participant or the spouse of the  
20 participant.

21 “(ii) EXCEPTIONS.—Clause (i) shall  
22 not apply to any expense for coverage  
23 under—

1 “(I) a group health plan during  
2 any period of continuation coverage  
3 required under any Federal law,

4 “(II) a qualified long-term care  
5 insurance contract (as defined in sec-  
6 tion 7702B(b)),

7 “(III) a Medicare supplemental  
8 policy under section 1882 of the So-  
9 cial Security Act, or

10 “(IV) an individual health insur-  
11 ance policy.

12 “(6) CARRYOVER AMOUNTS TO BE EXPENDED  
13 AFTER HEALTH FLEXIBLE SPENDING ARRANGEMENT  
14 CONTRIBUTION.—All qualified medical care expenses  
15 that are submitted for reimbursement must be reim-  
16 bursed first from amounts in the participant’s health  
17 care flexible spending arrangement that do not con-  
18 stitute carryover amounts described in paragraph  
19 (1), to the extent such amounts may be reimbursed  
20 from the portion of the health flexible spending ar-  
21 rangement that does not consist of carryover  
22 amounts pursuant to rules set forth in the regula-  
23 tions promulgated under section 125 relative to  
24 health flexible spending arrangements.

1           “(7) TREATMENT OF CARRYOVER AMOUNTS  
2 FOLLOWING TERMINATION OF EMPLOYMENT OR  
3 OTHER LOSS OF ELIGIBILITY.—Upon a termination  
4 of employment or other loss of eligibility under the  
5 health care flexible spending arrangement, the em-  
6 ployer must provide for one or more of the following  
7 methods of distribution of a participant’s accumu-  
8 lated carryover amount plus interest earned and al-  
9 located to such participant pursuant to paragraph  
10 (3)(C):

11           “(A) The participant’s accumulated carry-  
12 over amount, including any interest earned and  
13 allocated to such health care spending arrange-  
14 ment balance pursuant to paragraph (3)(C),  
15 may be retained by the employer to be used to  
16 reimburse qualifying medical care expenses of  
17 the former participant and the former employ-  
18 ee’s spouse or dependents incurred after the  
19 date of termination;

20           “(B) The carryover amount calculated as  
21 of the day of the termination of employment or  
22 other loss of eligibility may be transferred to  
23 the subsequent employer to be used by the  
24 former participant in a manner consistent with  
25 the rule of this subsection, provided the subse-

1           quent employer provides a similar arrangement  
2           and agrees in writing; or

3                 “(C) The employer may distribute the car-  
4           ryover amount, including any interest earned  
5           and allocated to such account pursuant to para-  
6           graph (3)(C), to any appropriate vehicle as de-  
7           fined by the Department of Treasury in regula-  
8           tions or to the participant in cash. If carryover  
9           amounts are received in cash, the interest  
10          earned and allocated to such participant pursu-  
11          ant to paragraph (3)(C) shall be treated as or-  
12          dinary income for purposes of this subtitle.

13         The employer must offer at least one of the options  
14         set forth above; however, nothing in this subsection  
15         requires the employer to offer more than one option.  
16         If the employer offers more than one of the options  
17         listed above, the employee must choose the applica-  
18         ble option within 60 days of the date of termination  
19         of employment or loss of eligibility. Should no elec-  
20         tion be made, the funds will revert to the employer  
21         consistent with Federal regulations. If the termi-  
22         nation of employment or loss of eligibility is a result  
23         of the participant’s death, the surviving spouse, or  
24         dependents, if no surviving spouse, will receive the

1 participant's carry over funds in a manner con-  
2 sistent with paragraph (7)(C).”.

3 (b) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to taxable years beginning after  
5 December 31, 2003.

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