

110TH CONGRESS
2D SESSION

H. R. 5160

To amend the Internal Revenue Code of 1986 to encourage retirement savings by modifying requirements with respect to employer-established IRAs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2008

Mr. KIND (for himself and Mr. HULSHOF) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and Labor, 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 encourage retirement savings by modifying requirements with respect to employer-established IRAs, and for other purposes.

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 “Small Businesses Add
5 Value for Employees Act of 2008” or the “SAVE Act of
6 2008”.

1 **SEC. 2. ELIMINATION OF RESTRICTION ON SIMPLE IRA**
2 **ROLLOVERS.**

3 (a) IN GENERAL.—Paragraph (3) of section 408(d)
4 of the Internal Revenue Code of 1986 (relating to rollover
5 contribution) is amended by striking subparagraph (G).

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to distributions in taxable years
8 beginning after the date of the enactment of this Act.

9 **SEC. 3. ALLOWING MID-YEAR SIMPLE IRA PLAN TERMI-**
10 **NATION.**

11 (a) IN GENERAL.—Subsection (p) of section 408 of
12 the Internal Revenue Code of 1986 is amended by adding
13 at the end the following new paragraph:

14 “(11) SPECIAL RULES RELATING TO MID-YEAR
15 TERMINATION.—

16 “(A) IN GENERAL.—An employer may
17 elect to terminate (in such form and manner as
18 the Secretary may provide) the qualified salary
19 reduction arrangement of the employer at any
20 time during the year.

21 “(B) PRORATION AND APPLICATION OF
22 QUALIFIED PLAN LIMITATION.—In the case of a
23 year during which an employer terminates a
24 qualified salary reduction arrangement before
25 the end of such year—

1 “(i) the applicable dollar amount in
2 effect for such year shall be prorated to
3 the date of such termination,

4 “(ii) for purposes of determining the
5 compensation of an employee for such ar-
6 rangement for such year, the year of such
7 termination shall be treated as ending on
8 the date of such termination, and

9 “(iii) subparagraph (D) of paragraph
10 (2) shall not apply with respect to a quali-
11 fied plan maintained in such year only
12 after the date of such termination.”.

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

16 **SEC. 4. ELIMINATION OF HIGHER PENALTY ON EARLY SIM-**
17 **PLE IRA DISTRIBUTIONS.**

18 (a) **IN GENERAL.**—Subsection (t) of section 72 of the
19 Internal Revenue Code of 1986 (relating to 10 percent ad-
20 ditional tax on early distributions from qualified retire-
21 ment plans) is amended by striking paragraph (6).

22 (b) **EFFECTIVE DATE.**—The amendment made by
23 this section shall apply to distributions in taxable years
24 beginning after the date of the enactment of this Act.

1 **SEC. 5. INCREASE IN CONTRIBUTIONS ALLOWED FOR SIM-**
2 **PLE IRA.**

3 (a) **ADDITIONAL NONELECTIVE EMPLOYER CON-**
4 **TRIBUTIONS ALLOWED.—**

5 (1) **IN GENERAL.—**Subparagraph (A) of section
6 408(p)(2) of the Internal Revenue Code of 1986 (re-
7 lating to qualified salary reduction arrangement) is
8 amended by striking “and” at the end of clause (iii),
9 by redesignating clause (iv) as clause (v), and by in-
10 sserting after clause (iii) the following new clause:

11 “(iv) the employer may make, in addi-
12 tion to any other contribution under this
13 paragraph, nonelective contributions of not
14 more than 10 percent of compensation
15 (subject to the limitation described in sub-
16 paragraph (B)(ii)) for each employee who
17 is eligible to participate in the arrangement
18 and who has at least \$5,000 of compensa-
19 tion from the employer for the year, and”.

20 (2) **CONFORMING AMENDMENT.—**Clause (v) of
21 section 408(p)(2)(A) of such Code, as redesignated
22 by this section, is amended by striking “clause (i) or
23 (iii)” and inserting “clause (i), (iii), or (iv)”.

24 (b) **INCREASE IN ELECTIVE CONTRIBUTION LIMITA-**
25 **TION.—**Subparagraph (E) of section 408(p)(2) is amend-
26 ed to read as follows:

1 “(E) APPLICABLE DOLLAR AMOUNT.—For
2 purposes of subparagraph (A)(ii), the applicable
3 dollar amount shall be the applicable dollar
4 amount in effect under subparagraph (B) of
5 section 402(g)(1).”.

6 (c) SIMPLE IRA SUBJECT TO DEFINED CONTRIBU-
7 TION PLAN LIMITATION.—Subsection (p) of section 408
8 of such Code is amended by adding at the end the fol-
9 lowing new paragraph:

10 “(11) SUBJECT TO DEFINED CONTRIBUTION
11 PLAN LIMITATION.—An arrangement shall not be
12 treated as a qualified salary reduction arrangement
13 for any year if contributions with respect to any em-
14 ployee for the year exceed the limitation of para-
15 graph (1) of section 415(c) (relating to limitation for
16 defined contribution plans).”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to contributions for taxable years
19 beginning after December 31, 2007.

20 **SEC. 6. SIMPLE 401(k) PARITY FOR ADDITIONAL NONELEC-**
21 **TIVE EMPLOYER CONTRIBUTIONS.**

22 (a) IN GENERAL.—Subparagraph (B) of section
23 401(k)(11) of such Code (relating to contribution require-
24 ments) is amended by adding at the end the following new
25 clause:

1 “(iv) SPECIAL RULE FOR ADDITIONAL
2 NONELECTIVE EMPLOYER CONTRIBU-
3 TIONS.—An arrangement shall not be
4 treated as failing to meet the requirements
5 of this subparagraph merely because under
6 such arrangement the employer makes, in
7 addition to any other contribution under
8 this subparagraph, nonelective contribu-
9 tions of not more than 10 percent of com-
10 pensation for each employee who is eligible
11 to participate in the arrangement and who
12 has at least \$5,000 of compensation from
13 the employer for the year.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to plan years beginning after De-
16 cember 31, 2007.

17 **SEC. 7. AUTOMATIC DEFERRAL IRAS.**

18 (a) IN GENERAL.—Subpart A of part I of subchapter
19 D of chapter 1 of the Internal Revenue Code of 1986 (re-
20 lating to pension, profit-sharing, stock bonus plans, etc.)
21 is amended by inserting after section 408A the following
22 new section:

23 **“SEC. 408B. AUTOMATIC DEFERRAL IRAS.**

24 “(a) IN GENERAL.—An automatic deferral IRA shall
25 be treated for purposes of this title in the same manner

1 as an individual retirement plan. An automatic IRA may
2 also be treated as a Roth IRA for purposes of this title
3 if it meets the requirements of section 408A.

4 “(b) AUTOMATIC DEFERRAL IRA.—For purposes of
5 this section, the term ‘automatic deferral IRA’ means an
6 individual retirement plan (as defined in section
7 7701(a)(37)) with respect to which contributions are made
8 under an arrangement which satisfies the requirements of
9 paragraphs (1) through (4) of subsection (c).

10 “(c) AUTOMATIC DEFERRAL IRA ARRANGEMENTS.—

11 “(1) ENROLLMENT.—

12 “(A) IN GENERAL.—The requirements of
13 this paragraph are met if each employee eligible
14 to participate in the arrangement is treated as
15 having elected to have the employer make pay-
16 ments as elective contributions to an automatic
17 deferral IRA on behalf of such employee (which
18 would have otherwise been made to the em-
19 ployee directly in cash) in an amount equal to
20 so much of a qualified percentage of compensa-
21 tion of such employee as does not exceed the
22 deductible amount for such year (within the
23 meaning of section 219(b)).

24 “(B) ELIGIBILITY.—An employee is eligi-
25 ble to participate if such employee is described

1 in paragraph (2) of section 408(k), except that
2 for purposes of determining whether an em-
3 ployee is described in such paragraph, subpara-
4 graph (C) thereof shall be applied by sub-
5 stituting ‘\$5,000’ for ‘\$450’.

6 “(C) ELECTION OUT.—The election treat-
7 ed as having been made under subparagraph
8 (A) shall cease to apply with respect to any em-
9 ployee who makes an affirmative election—

10 “(i) to not have such elective contribu-
11 tions made, or

12 “(ii) not later than the close of the
13 30-day period beginning on the date of the
14 first contribution with respect to such em-
15 ployee, to make elective contributions at a
16 level specified in such affirmative election.

17 “(D) QUALIFIED PERCENTAGE.—For pur-
18 poses of this paragraph, the term ‘qualified per-
19 centage’ means, with respect to any employee,
20 any percentage determined under the trust
21 agreement if such percentage is applied uni-
22 formly, is at least 3 percent, and does not ex-
23 ceed 10 percent.

24 “(2) NOTICE.—

1 “(A) IN GENERAL.—The requirements of
2 this paragraph are met if, within a reasonable
3 period before the first day an employee is eligi-
4 ble to participate in the arrangement, the em-
5 ployee receives written notice of the employee’s
6 rights and obligations under the arrangement
7 which—

8 “(i) is sufficiently accurate and com-
9 prehensive to apprise the employee of such
10 rights, and

11 “(ii) is written in a manner calculated
12 to be understood by the average employee
13 to whom the arrangement applies.

14 “(B) TIMING AND CONTENT.—A notice
15 shall not be treated as meeting the require-
16 ments of subparagraph (A) with respect to an
17 employee unless—

18 “(i) the notice explains the employee’s
19 right to elect not to have elective contribu-
20 tions made on the employee’s behalf (or to
21 elect to have such contributions made at a
22 different percentage),

23 “(ii) the notice explains how contribu-
24 tions made under the arrangement will be

1 invested in the absence of any investment
2 election by the employee, and

3 “(iii) the employee has a reasonable
4 period of time after receipt of the notice
5 described in clauses (i) and (ii) and before
6 the first elective contribution is made to
7 make either such election.

8 “(3) DEFAULT INVESTMENT ARRANGEMENT.—
9 The requirements of this paragraph are met if—

10 “(A) in the absence of an investment elec-
11 tion by the employee with respect to the em-
12 ployee’s interest in the trust, such interest is in-
13 vested as provided in regulations prescribed
14 pursuant to subparagraph (A) of section
15 404(c)(5) of the Employee Retirement Income
16 Security Act of 1974, and

17 “(B) the employer provides each employee
18 who has an interest in the trust, notice which
19 meets the requirements of subparagraph (B) of
20 such section.

21 “(4) ADMINISTRATIVE REQUIREMENTS.—The
22 requirements of this paragraph are met if—

23 “(A) an employer must make the elective
24 employer contributions under paragraph (1)(A)
25 not later than the close of the 30-day period

1 following the last day of the month with respect
2 to which the contributions are to be made,

3 “(B) an employee may elect to terminate
4 participation in the arrangement at any time
5 during the year, except that if the employee so
6 terminates, the arrangement may provide that
7 the employee may elect to resume participation
8 until the beginning of the next year, and

9 “(C) each employee eligible to participate
10 may elect, during the 30-day period before the
11 beginning of any year, or to modify the amount
12 subject to such arrangement, for such year.”.

13 (b) PREEMPTION OF CONFLICTING STATE LAWS.—
14 Any law of a State shall be superseded if it would directly
15 or indirectly prohibit or restrict an employer from creating
16 or organizing an automatic deferral IRA (as defined in
17 section 408B of the Internal Revenue Service of 1986).

18 (c) CLERICAL AMENDMENT.—The table of sections
19 for subpart A of part I of subchapter D of chapter 1 of
20 the Internal Revenue Code of 1986 is amended by insert-
21 ing after the item relating to 408A the following new item:

“408B. Automatic deferral IRAs.”.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning after
24 December 31, 2007.

1 **SEC. 8. EXPANDING SMALL EMPLOYER PENSION PLAN**
2 **STARTUP COST CREDIT.**

3 (a) IN GENERAL.—

4 (1) INCLUDING STARTUP COSTS FOR EM-
5 PLOYER-ESTABLISHED IRAS.—Paragraph (2) of sec-
6 tion 45E(d) of the Internal Revenue Code of 1986
7 (defining eligible employer plan) is amended by in-
8 serting before the period “and a plan of which a
9 trust described in section 408(c) is a part”.

10 (2) ADDITIONAL CREDIT AMOUNT.—

11 (A) IN GENERAL.—Subsection (a) of sec-
12 tion 45E of such Code is amended by striking
13 “50 percent of” and all that follows and insert-
14 ing “the sum of—

15 “(1) 50 percent of the qualified startup costs
16 paid or incurred by the taxpayer during the taxable
17 year, plus

18 “(2) \$25 multiplied by the number of employees
19 of the employer who participate in any eligible em-
20 ployer plan of the employer for the first time in such
21 taxable year.”.

22 (B) CONFORMING AMENDMENT.—Para-
23 graph (2) of section 45E(c) of such Code (de-
24 fining eligible employer) is amended—

1 (i) by striking “qualified employer
2 plan” in each place it appears and insert-
3 ing “eligible employer plan”, and

4 (ii) by striking “QUALIFIED” in the
5 heading thereof and inserting “ELIGIBLE”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to costs paid or incurred in taxable
8 years beginning after the date of the enactment of this
9 Act.

10 **SEC. 9. AMENDMENT TO EMPLOYEE RETIREMENT INCOME**
11 **SECURITY ACT OF 1974.**

12 (a) IN GENERAL.—Section 3(2) of the Employee Re-
13 tirement Income Security Act of 1974 (29 U.S.C.
14 1002(2)) is amended by adding at the end the following
15 new subparagraph:

16 “(C) An individual retirement plan (as defined in sec-
17 tion 7701(a)(37) of the Internal Revenue Code of 1986)
18 shall not be considered a pension plan merely because an
19 employer establishes a payroll deduction program for the
20 purpose of enabling employees to make voluntary con-
21 tributions to such account or annuity.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall take effect on the date of the enactment
24 of this Act.

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