To amend the Internal Revenue Code of 1986 to provide additional choice regarding unused health benefits in cafeteria plans and flexible spending arrangements.

IN THE HOUSE OF REPRESENTATIVES

March 11, 2003

Mr. DeMint (for himself, Mr. Akin, Mr. Ballenger, Mr. Beauprez, Mr. Burr, Mr. Cannon, Mrs. Christensen, Mr. Coble, Mr. Cole, Mr. Cox, Mr. Crane, Mr. Drier, Mr. English, Mr. Fletcher, Mr. Franks of Arizona, Mr. Graves, Mr. Hastings of Washington, Mr. Hayes, Mr. Hayworth, Mr. Hoekstra, Mr. Hostettler, Mr. Isakson, Mr. Istook, Mr. Janklow, Mr. Jones of North Carolina, Mr. Kolbe, Mr. LaHood, Mr. Gary G. Miller of California, Mrs. Musgrave, Ms. Norton, Mr. Norwood, Mr. Otter, Mr. Paul, Mr. Pitts, Mr. Rogers of Michigan, Mr. Ryun of Kansas, Mr. Smith of New Jersey, Mr. Terry, Mr. Tiahrt, Mr. Toomey, Mr. Upton, Mr. Weldon of Florida, Mr. Wynn, and Mr. Tancredo) 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 choice regarding unused health benefits in cafeteria plans and flexible spending arrangements.

Be it enacted by the Senate and House of Representa-
SECTION 1. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.

(a) In General.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

“(h) Carryforwards or Payments of Certain Unused Health Benefits.—

“(1) In general.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which, with respect to any plan year, not more than $500 of health benefits which are unused at the end of such year may be—

“(A) carried forward to the succeeding plan year of such health flexible spending arrangement, or

“(B) paid to or on behalf of an employee as remuneration from employment.

“(2) Tax treatment of unused health benefits.—

“(A) Carryforwards.—Amounts carried forward under paragraph (1)(A) from a taxable
year shall not be includible in gross income for such taxable year.

“(B) Remuneration.—Amounts paid as remuneration from employment under paragraph (1)(B) shall be includible in gross income.

“(3) Distribution of Unused Health Benefits on Behalf of Employee.—Paragraph (2)(B) shall not be construed to prevent—

“(A) an exclusion from gross income to the extent provided under this title with respect to any portion of such remuneration that is contributed to a plan or arrangement which is subject to section 402(g) or to an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A),

“(B) a deduction (to the extent provided in section 220) with respect to any portion of such remuneration contributed to an Archer MSA, or

“(C) any other deduction or exclusion allowable under this title with respect to any portion of such remuneration.

“(4) Health Flexible Spending Arrangement.—For purposes of this subsection, the term
‘health flexible spending arrangement’ means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1) (without regard to subparagraphs (C) and (D) thereof).

“(5) UNUSED HEALTH BENEFITS.—For purposes of this subsection, the term ‘unused health benefits’ means the excess of—

“(A) the maximum amount of reimbursement allowable for a plan year under a health flexible spending arrangement, over

“(B) the actual amount of reimbursement for such year under such arrangement.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.