

109TH CONGRESS  
1ST SESSION

# S. 309

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

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 8, 2005

Mr. DEMINT (for himself, Mr. SALAZAR, and Mr. ENSIGN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

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

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. DISPOSITION OF UNUSED HEALTH BENEFITS**  
4 **IN CAFETERIA PLANS AND FLEXIBLE SPEND-**  
5 **ING ARRANGEMENTS.**

6 (a) IN GENERAL.—Section 125 of the Internal Rev-  
7 enue Code of 1986 (relating to cafeteria plans) is amended  
8 by redesignating subsections (h) and (i) as subsections (i)

1 and (j), respectively, and by inserting after subsection (g)  
2 the following:

3 “(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH  
4 BENEFITS.—

5 “(1) IN GENERAL.—For purposes of this title,  
6 a plan or other arrangement shall not fail to be  
7 treated as a cafeteria plan solely because qualified  
8 benefits under such plan include a health flexible  
9 spending arrangement under which not more than  
10 \$500 of unused health benefits may be—

11 “(A) carried forward to the succeeding  
12 plan year of such health flexible spending ar-  
13 rangement, or

14 “(B) to the extent permitted by section  
15 106(d), contributed by the employer to a health  
16 savings account (as defined in section 223(d))  
17 maintained for the benefit of the employee.

18 “(2) HEALTH FLEXIBLE SPENDING ARRANGE-  
19 MENT.—For purposes of this subsection, the term  
20 ‘health flexible spending arrangement’ means a flexi-  
21 ble spending arrangement (as defined in section  
22 106(c)) that is a qualified benefit and only permits  
23 reimbursement for expenses for medical care (as de-  
24 fined in section 213(d)(1), without regard to sub-  
25 paragraphs (C) and (D) thereof).

1           “(3) UNUSED HEALTH BENEFITS.—For pur-  
2           poses of this subsection, with respect to an em-  
3           ployee, the term ‘unused health benefits’ means the  
4           excess of—

5                   “(A) the maximum amount of reimburse-  
6                   ment allowable to the employee for a plan year  
7                   under a health flexible spending arrangement,  
8                   over

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

11          (b) EFFECTIVE DATE.—The amendments made by  
12          subsection (a) shall apply to taxable years beginning after  
13          December 31, 2004.

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