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(Original Signature of Member)

118TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To amend the Internal Revenue Code of 1986 to provide a credit to certain small employers for the startup costs of dependent care flexible spending plans.

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. SMITH of Nebraska introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend the Internal Revenue Code of 1986 to provide a credit to certain small employers for the startup costs of dependent care flexible spending plans.

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 Business De-  
5       pendent Care FSA Opportunity Act”.

1 **SEC. 2. SMALL EMPLOYER DEPENDENT CARE FLEXIBLE**  
2 **SPENDING PLAN STARTUP COSTS.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-  
4 chapter A of chapter 1 of the Internal Revenue Code of  
5 1986 is amended by adding at the end the following new  
6 section:

7 **“SEC. 45BB. SMALL EMPLOYER DEPENDENT CARE FLEXI-**  
8 **BLE SPENDING PLAN STARTUP COSTS.**

9 “(a) IN GENERAL.—For purposes of section 38, in  
10 the case of an eligible employer, the small employer de-  
11 pendent care flexible spending plan startup cost credit de-  
12 termined under this section for any taxable year is an  
13 amount equal to the qualified startup costs paid or in-  
14 curred by the taxpayer during the taxable year.

15 “(b) DOLLAR LIMITATION.—The amount of the cred-  
16 it determined under this section for any taxable year shall  
17 not exceed—

18 “(1) for the first credit year and each of the 2  
19 taxable years immediately following the first credit  
20 year, the greater of—

21 “(A) \$500, or

22 “(B) the lesser of—

23 “(i) \$250 for each employee of the eli-  
24 gible employer who is not a highly com-  
25 pensated employee (as defined in section  
26 414(q)) and who is eligible to participate

1                   in the dependent care flexible spending  
2                   plan maintained by the eligible employer,  
3                   or

4                   “(ii) \$5,000, and  
5                   “(2) zero for any other taxable year.

6           “(c) ELIGIBLE EMPLOYER.—For purposes of this  
7 section—

8                   “(1) IN GENERAL.—The term ‘eligible em-  
9           ployer’ has the meaning given such term by section  
10           408(p)(2)(C)(i).

11                   “(2) REQUIREMENT FOR NEW DEPENDENT  
12           CARE FLEXIBLE SPENDING PLANS.—Such term shall  
13           not include an employer if, during the 3-taxable year  
14           period immediately preceding the 1st taxable year  
15           for which the credit under this section is otherwise  
16           allowable for a dependent care flexible spending plan  
17           of the employer, the employer or any member of any  
18           controlled group including the employer (or any  
19           predecessor of either) established or maintained a  
20           dependent care flexible spending plan for substan-  
21           tially the same employees as the employees for whom  
22           the dependent care flexible spending plan with re-  
23           spect to which such credit is otherwise allowable is  
24           established or maintained.

1       “(d) OTHER DEFINITIONS.—For purposes of this  
2 section—

3               “(1) IN GENERAL.—The term ‘qualified startup  
4 costs’ means any ordinary and necessary expenses of  
5 an eligible employer which are paid or incurred in  
6 connection with—

7                       “(A) the establishment or administration  
8 of a dependent care flexible spending plan, or

9                       “(B) education of employees with respect  
10 to such plan.

11               “(2) PLAN MUST HAVE AT LEAST 1 PARTICI-  
12 PANT.—Such term shall not include any expense in  
13 connection with a plan that does not have at least  
14 1 employee eligible to participate who is not a highly  
15 compensated employee (as defined in section  
16 414(q)).

17               “(3) DEPENDENT CARE FLEXIBLE SPENDING  
18 PLAN.—The term “dependent care flexible spending  
19 plan” means so much of any plan of an employer as  
20 consists of dependent care flexible spending arrange-  
21 ments. For purposes of the preceding sentence, an  
22 arrangement shall be treated as a dependent care  
23 flexible spending arrangement only if employer con-  
24 tributions to such arrangement are excludible from  
25 the gross income of an employee under section 129.

1           “(4) FIRST CREDIT YEAR.—The term “first  
2           credit year” means, with respect to any qualified  
3           startup costs—

4                   “(A) the taxable year which includes the  
5                   date that the dependent care flexible spending  
6                   plan to which such costs relate becomes effec-  
7                   tive, or

8                   “(B) at the election of the eligible em-  
9                   ployer, the taxable year preceding the taxable  
10                  year referred to in subparagraph (A).

11          “(e) SPECIAL RULES.—Rules similar to the rules of  
12          section 45E(e) shall apply for purposes of this section.”.

13          (b) CREDIT TO BE PART OF GENERAL BUSINESS  
14          CREDIT.—Section 38(b) of such Code is amended by strik-  
15          ing “plus” at the end of paragraph (40), by striking the  
16          period at the end of paragraph (41) and inserting “, plus”,  
17          and by adding at the end the following new paragraph:

18                   “(42) in the case of an eligible employer (as de-  
19                   fined in section 45BB(c), the small employer de-  
20                   pendent care flexible spending plan startup cost  
21                   credit determined under section 45BB.”.

22          (c) CLERICAL AMENDMENT.—The table of sections  
23          for subpart D of part IV of subchapter A of chapter 1  
24          of such Code is amended by adding at the end the fol-  
25          lowing new item:

“Sec. 45BB. Small employer dependent care flexible spending plan startup costs.”.

1       (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to amounts paid or incurred after  
3 the date of the enactment of this Act, in taxable years  
4 ending after such date.