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(Original Signature of Member)

119TH CONGRESS
2D 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.

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.