119TH CONGRESS
2D SESSION

S. _____

To amend the Internal Revenue Code of 1986 to establish that employers may offer employees a choice among tax-favored employer contributions.

IN THE SENATE OF THE UNITED STATES

_____

_____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to establish that employers may offer employees a choice among tax-favored employer contributions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXCLUSION OF CERTAIN EMPLOYER-PROVIDED BENEFITS UNDER A QUALIFIED BENEFIT OPTIONS PLAN.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 125 the following new section:

"SEC. 125A. QUALIFIED BENEFIT OPTIONS PLANS.

"(a) IN GENERAL.—Except as provided in subsection (c), no amount shall be included in the gross income of a participant in a qualified benefit options plan solely because, under the plan, the participant may choose among the benefits of the plan.

"(b) QUALIFIED BENEFIT OPTIONS PLAN.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified benefit options plan' means a written plan or arrangement offered by an employer to employees and former employees (including retired employees) of the employer, under which participants—

"(A) may elect to allocate employer contributions among qualified benefits, and

"(B) may not elect to receive cash or any other taxable benefit instead of qualified benefits.

"(2) QUALIFIED BENEFITS.—The term 'qualified benefits' includes—

"(A) non-elective employer contributions which are excluded from gross income under section 402 or 403,

"(B) contributions to a health reimbursement arrangement or health savings account

which are excluded from gross income under section 105 or 106,

''(C) amounts paid by an employer pursuant to a qualified educational assistance program which are excluded from gross income under section 127, and

''(D) other benefits for which amounts contributed or paid by an employer are excluded from gross income under any other provision of this chapter.

''(c) NONDISCRIMINATION RULES.—

''(1) EXCEPTION FOR HIGHLY COMPENSATED PARTICIPANTS AND KEY EMPLOYEES, ETC.—Rules similar to the rules of subsections (b), (c), (e), and (g) of section 125 shall apply for purposes of this section with respect to eligibility for participation in and contributions or benefits under a qualified benefit options plan. Such rules shall be applied to all qualified benefits offered under the plan in the aggregate.

''(2) COORDINATION WITH BENEFIT OR PROGRAM RULES.—If a qualified benefit options plan meets the requirements described in paragraph (1)—

"(A) for purposes of applying the requirements of sections 401(a)(4) and 416 to a qualified benefit included in such plan, the amount of any employer contribution made available to a participant for allocation to a qualified benefit to which section 401(a)(4) or 416 applies shall be treated as an employer contribution made to such plan, without regard to whether the participant elects to have any portion of such amount contributed to such plan, and

"(B) a qualified benefit included in such plan shall be deemed to have met the requirements of section 105(h), 127(b)(2), 4980G, or any other applicable nondiscrimination requirement (other than the requirements of sections 401(a)(4) and 416)) which would otherwise apply with respect to the employer contribution made available to a participant for allocation to such qualified benefit.

The Secretary shall prescribe regulations addressing the interaction of qualified benefits made available through a qualified benefit options plan and qualified benefits which are not provided through such a plan to ensure that a qualified benefit does not fail to meet the requirements of section 105(h),

127(b)(2), 4980G, or any other applicable non-discrimination requirement solely due to the rate at which employees and former employees elect to allocate employer contributions to such qualified benefit.

''(d) CROSS-REFERENCE.—For reporting and record-keeping requirements, see section 6039D.''.

(b) REPORTING AND RECORDKEEPING.—Subsection (d) of section 6039D of the Internal Revenue Code of 1986 is amended—

(1) by inserting '', 125A'' after ''125'' in paragraph (1), and

(2) by adding at the end of paragraph (2) the following: ''In the case of a qualified benefit options plan under section 125A, such term means, with respect to such plan, the section under which each qualified benefit (as defined in section 125A(b)(2)) included in the plan is excludable from gross income.''.

(c) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 125 the following new item:

''Sec. 125A. Qualified benefit options plans.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2026.