

110TH CONGRESS  
1ST SESSION

# S. 99

To amend the Internal Revenue Code of 1986 to provide a refundable credit for small business employee health insurance expenses.

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IN THE SENATE OF THE UNITED STATES

JANUARY 4, 2007

Mr. KERRY 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 a refundable credit for small business employee health insurance expenses.

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 Health  
5 Care Tax Credit Act”.

6 **SEC. 2. CREDIT FOR EMPLOYEE HEALTH INSURANCE EX-**  
7 **PENSES.**

8 (a) IN GENERAL.—Subpart D of part IV of sub-  
9 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to business-related credits) is amended by  
2 adding at the end the following:

3 **“SEC. 450. EMPLOYEE HEALTH INSURANCE EXPENSES.**

4 “(a) GENERAL RULE.—For purposes of section 38,  
5 in the case of a qualified small employer, the employee  
6 health insurance expenses credit determined under this  
7 section is an amount equal to the applicable percentage  
8 of the amount paid by the taxpayer during the taxable  
9 year for qualified employee health insurance expenses.

10 “(b) APPLICABLE PERCENTAGE.—For purposes of  
11 subsection (a), the applicable percentage is—

12 “(1) 50 percent in the case of an employer with  
13 less than 10 qualified employees,

14 “(2) 25 percent in the case of an employer with  
15 more than 9 but less than 25 qualified employees,  
16 and

17 “(3) 20 percent in the case of an employer with  
18 more than 24 but less than 50 qualified employees.

19 “(c) PER EMPLOYEE DOLLAR LIMITATION.—The  
20 amount of qualified employee health insurance expenses  
21 taken into account under subsection (a) with respect to  
22 any qualified employee for any taxable year shall not ex-  
23 ceed—

24 “(1) \$4,000 for self-only coverage, and

25 “(2) \$10,000 for family coverage.

1       “(d) DEFINITIONS AND SPECIAL RULES.—For pur-  
2 poses of this section—

3           “(1) QUALIFIED SMALL EMPLOYER.—

4               “(A) IN GENERAL.—The term ‘qualified  
5 small employer’ means any small employer  
6 which—

7                   “(i) provides eligibility for health in-  
8 surance coverage (after any waiting period  
9 (as defined in section 9801(b)(4))) to all  
10 qualified employees of the employer, and

11                   “(ii) pays at least 50 percent of the  
12 cost of such coverage for each qualified  
13 employee.

14           “(B) SMALL EMPLOYER.—

15               “(i) IN GENERAL.—For purposes of  
16 this paragraph, the term ‘small employer’  
17 means, with respect to any taxable year,  
18 any employer if—

19                   “(I) the average gross receipts of  
20 such employer for the preceding 3 tax-  
21 able years does not exceed  
22 \$5,000,000, and

23                   “(II) such employer employed an  
24 average of more than 1 but less than  
25 50 qualified employees on business

1 days during the preceding taxable  
2 year.

3 “(ii) AGGREGATE GROSS ASSETS.—  
4 For purposes of clause (i)(I), the term ‘ag-  
5 gregate gross assets’ shall have meaning  
6 given such term by section 1202(d)(2).

7 “(iii) EMPLOYERS NOT IN EXISTENCE  
8 IN PRECEDING YEAR.—For purposes of  
9 clause (i)(II)—

10 “(I) a preceding taxable year  
11 may be taken into account only if the  
12 employer was in existence throughout  
13 such year, and

14 “(II) in the case of an employer  
15 which was not in existence throughout  
16 the preceding taxable year, the deter-  
17 mination of whether such employer is  
18 a qualified small employer shall be  
19 based on the average number of em-  
20 ployees that it is reasonably expected  
21 such employer will employ on business  
22 days in the current taxable year.

23 “(iv) AGGREGATION RULES.—All per-  
24 sons treated as a single employer under  
25 subsection (a) or (b) of section 52 or sub-

1 section (m) or (o) of section 414 shall be  
2 treated as one person for purposes of this  
3 subparagraph.

4 “(v) PREDECESSORS.—The Secretary  
5 may prescribe regulations which provide  
6 for references in this subparagraph to an  
7 employer to be treated as including ref-  
8 erences to predecessors of such employer.

9 “(2) QUALIFIED EMPLOYEE HEALTH INSUR-  
10 ANCE EXPENSES.—

11 “(A) IN GENERAL.—The term ‘qualified  
12 employee health insurance expenses’ means any  
13 amount paid by an employer for health insur-  
14 ance coverage to the extent such amount is at-  
15 tributable to coverage provided to any employee  
16 while such employee is a qualified employee.

17 “(B) EXCEPTION FOR AMOUNTS PAID  
18 UNDER SALARY REDUCTION ARRANGEMENTS.—  
19 No amount paid or incurred for health insur-  
20 ance coverage pursuant to a salary reduction  
21 arrangement shall be taken into account under  
22 subparagraph (A).

23 “(C) HEALTH INSURANCE COVERAGE.—  
24 The term ‘health insurance coverage’ has the  
25 meaning given such term by section 9832(b)(1).

1 “(3) QUALIFIED EMPLOYEE.—

2 “(A) IN GENERAL.—The term ‘qualified  
3 employee’ means an employee of an employer  
4 who, with respect to any period, is not provided  
5 health insurance coverage under—

6 “(i) a health plan of the employee’s  
7 spouse,

8 “(ii) title XVIII, XIX, or XXI of the  
9 Social Security Act,

10 “(iii) chapter 17 of title 38, United  
11 States Code,

12 “(iv) chapter 55 of title 10, United  
13 States Code,

14 “(v) chapter 89 of title 5, United  
15 States Code, or

16 “(vi) any other provision of law.

17 “(B) EMPLOYEE.—The term ‘employee’—

18 “(i) means any individual, with re-  
19 spect to any calendar year, who is reason-  
20 ably expected to receive not more than  
21 \$50,000 of compensation from the em-  
22 ployer during such year,

23 “(ii) does not include an employee  
24 within the meaning of section 401(c)(1),  
25 and

1           “(iii) includes a leased employee with-  
2           in the meaning of section 414(n).

3           “(C) COMPENSATION.—The term ‘com-  
4           pensation’ means amounts described in section  
5           6051(a)(3).

6           “(D) INFLATION ADJUSTMENT.—

7           “(i) IN GENERAL.—In the case of a  
8           taxable year beginning after 2007, the  
9           \$50,000 amount in subparagraph (B)(i)  
10          shall be increased by an amount equal to—

11                   “(I) such dollar amount, multi-  
12                   plied by

13                           “(II) the cost-of-living adjust-  
14                           ment determined under section 1(f)(3)  
15                           for the calendar year in which the tax-  
16                           able year begins, determined by sub-  
17                           stituting ‘calendar year 2006’ for ‘cal-  
18                           endar year 1992’ in subparagraph (B)  
19                           thereof.

20           “(ii) ROUNDING.—If any amount as  
21           adjusted under clause (i) is not a multiple  
22           of \$1,000, such amount shall be rounded  
23           to the next lowest multiple of \$1,000.

24           “(4) NO QUALIFIED EMPLOYEES EXCLUDED.—  
25          Subsection (a) shall not apply to an employer for

1 any period unless at all times during such period  
2 health insurance coverage is available to all qualified  
3 employees of such employer under similar terms.

4 “(e) PORTION OF CREDIT MADE REFUNDABLE.—

5 “(1) IN GENERAL.—The aggregate credits al-  
6 lowed to a taxpayer under subpart C shall be in-  
7 creased by the lesser of—

8 “(A) the credit which would be allowed  
9 under subsection (a) without regard to this sub-  
10 section and the limitation under section 38(c),  
11 or

12 “(B) the amount by which the aggregate  
13 amount of credits allowed by this subpart (de-  
14 termined without regard to this subsection)  
15 would increase if the limitation imposed by sec-  
16 tion 38(c) for any taxable year were increased  
17 by the amount of employer payroll taxes im-  
18 posed on the taxpayer during the calendar year  
19 in which the taxable year begins.

20 The amount of the credit allowed under this sub-  
21 section shall not be treated as a credit allowed under  
22 this subpart and shall reduce the amount of the  
23 credit otherwise allowable under subsection (a) with-  
24 out regard to section 38(c).

1           “(2) EMPLOYER PAYROLL TAXES.—For pur-  
2           poses of this subsection—

3                   “(A) IN GENERAL.—The term ‘employer  
4                   payroll taxes’ means the taxes imposed by—

5                           “(i) section 3111(b), and

6                           “(ii) sections 3211(a) and 3221(a)  
7                           (determined at a rate equal to the rate  
8                           under section 3111(b)).

9                   “(B) SPECIAL RULE.—A rule similar to  
10                   the rule of section 24(d)(2)(C) shall apply for  
11                   purposes of subparagraph (A).

12           “(f) DENIAL OF DOUBLE BENEFIT.—No deduction  
13           or credit under any other provision of this chapter shall  
14           be allowed with respect to qualified employee health insur-  
15           ance expenses taken into account under subsection (a).”.

16           (b) CREDIT TO BE PART OF GENERAL BUSINESS  
17           CREDIT.—Section 38(b) of the Internal Revenue Code of  
18           1986 (relating to current year business credit) is amended  
19           by striking “plus” at the end of paragraph (30), by strik-  
20           ing the period at the end of paragraph (31) and inserting  
21           “, plus”, and by adding at the end the following:

22                   “(32) the employee health insurance expenses  
23                   credit determined under section 45O.”.

24           (c) CLERICAL AMENDMENT.—The table of sections  
25           for subpart D of part IV of subchapter A of chapter 1

1 of the Internal Revenue Code of 1986 is amended by add-  
2 ing at the end the following:

“Sec. 450. Employee health insurance expenses.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to amounts paid or incurred in tax-  
5 able years beginning after December 31, 2006.

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