

113TH CONGRESS  
2D SESSION

# H. R. 5326

To amend the Internal Revenue Code of 1986 to provide for dependent care savings accounts.

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IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2014

Mr. CASSIDY introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for dependent care savings accounts.

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 “Dependent Care Sav-  
5 ings Account Act of 2014”.

6 **SEC. 2. DEPENDENT CARE SAVINGS ACCOUNTS.**

7 (a) IN GENERAL.—Part VII of subchapter B of chap-  
8 ter 1 of the Internal Revenue Code of 1986 is amended  
9 by redesignating section 224 as section 225 and inserting  
10 after section 223 the following new section:

1 **“SEC. 224. DEPENDENT CARE SAVINGS ACCOUNTS.**

2       “(a) DEDUCTION ALLOWED.—In the case of an indi-  
3 vidual, there shall be allowed as a deduction for the tax-  
4 able year an amount equal to the aggregate amount paid  
5 in cash during such taxable year by or on behalf of the  
6 individual to a dependent care savings account of such in-  
7 dividual.

8       “(b) LIMITATION.—

9               “(1) IN GENERAL.—The amount allowable as a  
10 deduction under subsection (a) to an individual for  
11 the taxable year shall not exceed the lesser of—

12                       “(A) \$5,000, or

13                       “(B) the individual’s earned income (with-  
14 in the meaning of section 21) for such taxable  
15 year.

16               “(2) COORDINATION WITH DEPENDENT CARE  
17 ASSISTANCE BENEFITS.—The limitation which would  
18 (but for this paragraph) apply under paragraph (1)  
19 to an individual for any taxable year shall be re-  
20 duced (but not below zero) by the aggregate amount  
21 excludable from the individual’s gross income for  
22 such taxable year under section 129.

23       “(c) DEPENDENT CARE SAVINGS ACCOUNT.—For  
24 purposes of this section—

25               “(1) IN GENERAL.—The term ‘dependent care  
26 savings account’ means a trust created or organized

1 in the United States as a dependent care savings ac-  
2 count exclusively for the purpose of paying the quali-  
3 fied dependent care expenses of the account bene-  
4 ficiary, but only if the written governing instrument  
5 creating the trust meets the following requirements:

6 “(A) Except in the case of a rollover con-  
7 tribution described in subsection (e)(5), no con-  
8 tribution will be accepted unless it is in cash,  
9 and contributions will not be accepted for the  
10 taxable year on behalf of any account bene-  
11 ficiary in excess of \$10,000.

12 “(B) The trustee is a bank (as defined in  
13 section 408(n)) or such other person who dem-  
14 onstrates to the satisfaction of the Secretary  
15 that the manner in which such other person will  
16 administer the trust will be consistent with the  
17 requirements of this section.

18 “(C) No part of the trust assets will be in-  
19 vested in life insurance contracts.

20 “(D) The assets of the trust will not be  
21 commingled with other property except in a  
22 common trust fund or common investment  
23 fund.

24 “(E) The interest of an individual in the  
25 balance in his account is nonforfeitable.

1           “(2) QUALIFIED DEPENDENT CARE EX-  
2 PENSES.—The term ‘qualified dependent care ex-  
3 penses’ means the employment-related expenses (as  
4 defined in section 21(b)(2)) of the account bene-  
5 ficiary with respect to any qualifying individual (as  
6 defined in section 21(b)(1)) of the account bene-  
7 ficiary. Such term includes qualified long-term care  
8 services (as defined in section 7702B(e)), and  
9 amounts paid for qualified long-term care insurance  
10 contracts (as defined in section 7702B(b)), with re-  
11 spect to such qualifying individuals of the account  
12 beneficiary.

13           “(3) ACCOUNT BENEFICIARY.—The term ‘ac-  
14 count beneficiary’ means the individual on whose be-  
15 half the dependent care savings account was estab-  
16 lished.

17           “(4) CERTAIN RULES TO APPLY.—Rules similar  
18 to the following rules shall apply for purposes of this  
19 section:

20                   “(A) Section 219(d)(2) (relating to no de-  
21 duction for rollovers).

22                   “(B) Except as provided in section 129,  
23 section 219(f)(3) (relating to time when con-  
24 tributions deemed made).

1           “(C) Section 219(f)(5) (relating to em-  
2           ployer payments).

3           “(D) Section 223(b)(6) (relating to denial  
4           of deduction to dependents).

5           “(E) Section 408(g) (relating to commu-  
6           nity property laws).

7           “(F) Section 408(h) (relating to custodial  
8           accounts).

9           “(d) TAX TREATMENT OF ACCOUNTS.—

10           “(1) IN GENERAL.—A dependent care savings  
11           account is exempt from taxation under this subtitle  
12           unless such account has ceased to be a dependent  
13           care savings account. Notwithstanding the preceding  
14           sentence, any such account is subject to the taxes  
15           imposed by section 511 (relating to imposition of tax  
16           on unrelated business income of charitable, etc. or-  
17           ganizations).

18           “(2) ACCOUNT TERMINATIONS.—Rules similar  
19           to the rules of paragraphs (2) and (4) of section  
20           408(e) shall apply to dependent care savings ac-  
21           counts, and any amount treated as distributed under  
22           such rules shall be treated as not used to pay quali-  
23           fied dependent care expenses.

24           “(e) TAX TREATMENT OF DISTRIBUTIONS.—

1           “(1) AMOUNTS USED FOR QUALIFIED DEPEND-  
2           ENT CARE EXPENSES.—Any amount paid or distrib-  
3           uted out of a dependent care savings account which  
4           is used exclusively to pay qualified dependent care  
5           expenses of any account beneficiary shall not be in-  
6           cludible in gross income.

7           “(2) INCLUSION OF AMOUNTS NOT USED FOR  
8           QUALIFIED DEPENDENT CARE EXPENSES.—Any  
9           amount paid or distributed out of a dependent care  
10          savings account which is not used exclusively to pay  
11          the qualified dependent care expenses of the account  
12          beneficiary shall be included in the gross income of  
13          such beneficiary.

14          “(3) EXCESS CONTRIBUTIONS RETURNED BE-  
15          FORE DUE DATE OF RETURN.—

16                 “(A) IN GENERAL.—If any excess con-  
17                 tribution is contributed for a taxable year to  
18                 any dependent care savings account of an indi-  
19                 vidual, paragraph (2) shall not apply to dis-  
20                 tributions from the dependent care savings ac-  
21                 counts of such individual (to the extent such  
22                 distributions do not exceed the aggregate excess  
23                 contributions to all such accounts of such indi-  
24                 vidual for such year) if—

1           “(i) such distribution is received by  
2           the individual on or before the last day  
3           prescribed by law (including extensions of  
4           time) for filing such individual’s return for  
5           such taxable year, and

6           “(ii) such distribution is accompanied  
7           by the amount of net income attributable  
8           to such excess contribution.

9           Any net income described in clause (ii) shall be  
10          included in the gross income of the individual  
11          for the taxable year in which it is received.

12          “(B) EXCESS CONTRIBUTION.—For pur-  
13          poses of subparagraph (A), the term ‘excess  
14          contribution’ means any contribution (other  
15          than a rollover contribution described in para-  
16          graph (5)) which is neither excludable from  
17          gross income under section 129 nor deductible  
18          under this section.

19          “(4) ADDITIONAL TAX ON DISTRIBUTIONS NOT  
20          USED FOR QUALIFIED DEPENDENT CARE EX-  
21          PENSES.—

22          “(A) IN GENERAL.—The tax imposed by  
23          this chapter on the account beneficiary for any  
24          taxable year in which there is a payment or dis-  
25          tribution from a dependent care savings ac-

1 count of such beneficiary which is includible in  
2 gross income under paragraph (2) shall be in-  
3 creased by 20 percent of the amount which is  
4 so includible.

5 “(B) EXCEPTION FOR DISABILITY OR  
6 DEATH.—Subparagraph (A) shall not apply if  
7 the payment or distribution is made after the  
8 account beneficiary becomes disabled within the  
9 meaning of section 72(m)(7) or dies.

10 “(5) ROLLOVER CONTRIBUTION.—An amount is  
11 described in this paragraph as a rollover contribu-  
12 tion if it meets the requirements of subparagraphs  
13 (A) and (B).

14 “(A) IN GENERAL.—Paragraph (2) shall  
15 not apply to any amount paid or distributed  
16 from a dependent care savings account to the  
17 account beneficiary to the extent the amount  
18 received is paid into a dependent care savings  
19 account for the benefit of such beneficiary not  
20 later than the 60th day after the day on which  
21 the beneficiary receives the payment or distribu-  
22 tion.

23 “(B) LIMITATION.—This paragraph shall  
24 not apply to any amount described in subpara-  
25 graph (A) received by an individual from a de-



1           pendent care savings account if, at any time  
2           during the 1-year period ending on the day of  
3           such receipt, such individual received any other  
4           amount described in subparagraph (A) from a  
5           dependent care savings account which was not  
6           includible in the individual's gross income be-  
7           cause of the application of this paragraph.

8           “(6) COORDINATION WITH DEPENDENT CARE  
9           CREDIT.—For purposes of determining the amount  
10          of the credit under section 21, any payment or dis-  
11          tribution out of a dependent care savings account  
12          for qualified dependent care expenses shall not be  
13          treated as employment-related expenses.

14          “(7) TRANSFER OF ACCOUNT INCIDENT TO DI-  
15          VORCE; TREATMENT AFTER DEATH.—Rules similar  
16          to the rules of paragraphs (7) and (8) of section 223  
17          shall apply with respect to dependent care savings  
18          accounts.

19          “(f) REPORTS.—The Secretary may require the  
20          trustee of a dependent care savings account to make such  
21          reports regarding such account to the Secretary and to  
22          the account beneficiary with respect to contributions, dis-  
23          tributions, the return of excess contributions, and such  
24          other matters as the Secretary determines appropriate.  
25          The reports required by this subsection shall be filed at

1 such time and in such manner and furnished to such indi-  
2 viduals at such time and in such manner as may be re-  
3 quired by the Secretary.”.

4 (b) DEDUCTION ALLOWED IN COMPUTING AD-  
5 JUSTED GROSS INCOME.—Subsection (a) of section 62 of  
6 such Code is amended by inserting before the last sentence  
7 the following new paragraph:

8 “(22) DEPENDENT CARE SAVINGS ACCOUNTS.—  
9 The deduction allowed by section 224(a).”.

10 (c) EXCLUSION OF EMPLOYER CONTRIBUTIONS.—  
11 Section 129 of such Code is amended by adding at the  
12 end the following new subsection:

13 “(f) CONTRIBUTIONS TO DEPENDENT CARE SAVINGS  
14 ACCOUNTS.—

15 “(1) IN GENERAL.—Gross income of an em-  
16 ployee does not include amounts contributed by an  
17 employee’s employer to any dependent care savings  
18 account (as defined in section 224) of such employee  
19 to the extent such amounts do not exceed the limita-  
20 tion under section 224(b)(1) which is applicable to  
21 such employee for such taxable year.

22 “(2) CROSS REFERENCE.—For penalty on fail-  
23 ure by employer to make comparable contributions  
24 to the dependent care savings accounts of com-  
25 parable employees, see section 4980H.”.

1           (c) TAX ON EXCESS CONTRIBUTIONS.—Section 4973  
2 of such Code is amended—

3           (1) in subsection (a), by striking “or” at the  
4 end of paragraph (4), by adding “or” at the end of  
5 paragraph (5), and by inserting after paragraph (5)  
6 the following new paragraph:

7           “(6) a dependent care savings account (as de-  
8 fined in section 224),”, and

9           (2) by adding at the end the following new sub-  
10 section:

11           “(h) EXCESS CONTRIBUTIONS TO DEPENDENT CARE  
12 SAVINGS ACCOUNTS.—For purposes of this section, in the  
13 case of dependent care savings accounts (as defined in sec-  
14 tion 224), the term ‘excess contributions’ means the sum  
15 of—

16           “(1) the aggregate amount contributed for the  
17 taxable year to the accounts (other than a rollover  
18 contribution described in section 224(e)(5)) which is  
19 neither excludable from gross income under section  
20 129 nor allowable as a deduction under section 224  
21 for such year, and

22           “(2) the amount determined under this sub-  
23 section for the preceding taxable year, reduced by  
24 the sum of—

1           “(A) the distributions out of the accounts  
2           which were included in gross income under sec-  
3           tion 224(e)(2), and

4           “(B) the excess (if any) of—

5                   “(i) the maximum amount allowable  
6                   as a deduction under section 224(b)(1) for  
7                   the taxable year, over

8                   “(ii) the amount contributed to the  
9                   accounts for the taxable year.”.

10       (d) FAILURE OF EMPLOYER TO MAKE COMPARABLE  
11       DEPENDENT CARE SAVINGS ACCOUNT CONTRIBU-  
12       TIONS.—Chapter 43 of such Code is amended by adding  
13       at the end the following new section:

14       **“SEC. 4980H. FAILURE OF EMPLOYER TO MAKE COM-**  
15                   **PARABLE DEPENDENT CARE SAVINGS AC-**  
16                   **COUNT CONTRIBUTIONS.**

17       “(a) GENERAL RULE.—In the case of an employer  
18       who makes a contribution to the dependent care savings  
19       account of any employee during a calendar year, there is  
20       hereby imposed a tax on the failure of such employer to  
21       meet the requirements of subsection (b) for such calendar  
22       year.

23       “(b) RULES AND REQUIREMENTS.—Rules and re-  
24       quirements similar to the rules and requirements of sec-  
25       tion 4980E shall apply for purposes of this section.

1       “(c) REGULATIONS.—The Secretary shall issue regu-  
2 lations to carry out the purposes of this section.

3       “(d) EXCEPTION.—For purposes of applying section  
4 4980E to a contribution to a dependent care savings ac-  
5 count of an employee who is not a highly compensated  
6 employee (as defined in section 414(q)), highly com-  
7 pensated employees shall not be treated as comparable  
8 participating employees.”.

9       (e) CLERICAL AMENDMENTS.—

10           (1) The table of sections for part VII of sub-  
11 chapter B of chapter 1 of such Code is amended by  
12 redesignating the item relating to section 224 as an  
13 item relating to section 225 and inserting before  
14 such item the following new item:

“Sec. 224. Dependent care savings accounts.”.

15           (2) The table of sections for chapter 43 such  
16 Code is amended by adding at the end the following  
17 new item:

“Sec. 4980H. Failure of employer to make comparable dependent care savings  
account contributions.”.

18       (f) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to taxable years beginning after  
20 the date of the enactment of this Act.

○