

109TH CONGRESS
2D SESSION

S. 2397

To amend the Internal Revenue Code of 1986 to establish long-term care trust accounts and allow a refundable tax credit for contributions to such accounts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2006

Mr. SMITH (for himself and Mrs. LINCOLN) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to establish long-term care trust accounts and allow a refundable tax credit for contributions to such accounts, and for other purposes.

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 “Long-Term Care Trust
5 Account Act of 2006”.

6 **SEC. 2. LONG-TERM CARE TRUST ACCOUNTS.**

7 (a) IN GENERAL.—Subchapter F of chapter 1 of the
8 Internal Revenue Code of 1986 (relating to exempt organi-

1 zations) is amended by adding at the end the following
 2 new part:

3 **“PART IX—LONG-TERM CARE TRUST ACCOUNTS**

4 **“SEC. 530A. LONG-TERM CARE TRUST ACCOUNTS.**

5 “(a) GENERAL RULE.—A Long-Term Care Trust Ac-
 6 count shall be exempt from taxation under this subtitle.
 7 Notwithstanding the preceding sentence, such account
 8 shall be subject to the taxes imposed by section 511 (relat-
 9 ing to imposition of tax on unrelated business income of
 10 charitable organizations).

11 “(b) LONG-TERM CARE TRUST ACCOUNT.—For pur-
 12 poses of this section, the term ‘Long-Term Care Trust Ac-
 13 count’ means a trust created or organized in the United
 14 States for the exclusive benefit of an individual who is the
 15 designated beneficiary of the trust and which is designated
 16 (in such manner as the Secretary shall prescribe) at the
 17 time of the establishment of the trust as a Long-Term
 18 Care Trust Account, but only if the written governing in-
 19 strument creating the trust meets the following require-
 20 ments:

21 “(1) Except in the case of a qualified rollover
 22 contribution described in subsection (d)—

23 “(A) no contribution will be accepted un-
 24 less it is in cash, and

1 “(B) contributions will not be accepted for
2 the calendar year in excess of the contribution
3 limit specified in subsection (c)(1).

4 “(2) The trustee is a bank (as defined in sec-
5 tion 408(n)), an insurance company (as defined in
6 section 816), or another person who demonstrates to
7 the satisfaction of the Secretary that the manner in
8 which that person will administer the trust will be
9 consistent with the requirements of this section or
10 who has so demonstrated with respect to any indi-
11 vidual retirement plan.

12 “(3) No part of the trust assets will be invested
13 in life insurance contracts.

14 “(4) The interest of an individual in the bal-
15 ance of his account is nonforfeitable.

16 “(5) The assets of the trust shall not be com-
17 mingled with other property except in a common
18 trust fund or common investment fund.

19 “(6) Except as provided in subsection (e)(2), no
20 distribution will be allowed if at the time of such dis-
21 tribution the designated beneficiary is not a chron-
22 ically ill individual (as defined in section
23 7702B(c)(2)).

24 “(c) TAX TREATMENT OF CONTRIBUTIONS.—

25 “(1) CONTRIBUTION LIMIT.—

1 “(A) IN GENERAL.—The aggregate
2 amount of contributions (other than qualified
3 rollover contributions described in subsection
4 (d)) for any taxable year to all Long-Term Care
5 Trust Accounts maintained for the benefit of
6 the designated beneficiary shall not exceed
7 \$5,000.

8 “(B) INFLATION ADJUSTMENT.—In the
9 case of any taxable year beginning in a calendar
10 year after 2006, the dollar amount under sub-
11 paragraph (A) shall be increased by an amount
12 equal to—

13 “(i) such dollar amount, multiplied by

14 “(ii) the medical care cost adjustment
15 determined under section 213(d)(10)(B)(ii)
16 for the calendar year in which the taxable
17 year begins, determined by substituting
18 ‘2005’ for ‘1996’ in subclause (II) thereof.

19 If any amount as adjusted under the preceding
20 sentence is not a multiple of \$10, such amount
21 shall be rounded to the next lowest multiple of
22 \$10.

23 “(2) GIFT TAX TREATMENT OF CONTRIBU-
24 TIONS.—For purposes of chapters 12 and 13—

1 “(A) IN GENERAL.—Any contribution to a
2 Long-Term Care Trust Account on behalf of
3 any designated beneficiary—

4 “(i) shall be treated as a completed
5 gift to such beneficiary which is not a fu-
6 ture interest in property, and

7 “(ii) shall not be treated as a qualified
8 transfer under section 2503(e).

9 “(B) TREATMENT OF EXCESS CONTRIBU-
10 TIONS.—If the aggregate amount of contribu-
11 tions described in subparagraph (A) during the
12 calendar year by a donor exceeds the limitation
13 for such year under section 2503(b), such ag-
14 gregate amount shall, at the election of the
15 donor, be taken into account for purposes of
16 such section ratably over the 5-year period be-
17 ginning with such calendar year.

18 “(d) QUALIFIED ROLLOVER CONTRIBUTION.—For
19 purposes of this section, the term ‘qualified rollover con-
20 tribution’ means a contribution to a Long-Term Care
21 Trust Account—

22 “(1) from another such account of the same
23 beneficiary, but only if such amount is contributed
24 not later than the 60th day after the distribution
25 from such other account, and

1 “(2) from a Long-Term Care Trust Account of
2 a spouse of the beneficiary of the account to which
3 the contribution is made, but only if such amount is
4 contributed not later than the 60th day after the
5 distribution from such other account.

6 “(e) TAX TREATMENT OF DISTRIBUTIONS.—

7 “(1) IN GENERAL.—Any distribution from a
8 Long-Term Care Trust Account shall be includible
9 in the gross income of the distributee in the manner
10 as provided under section 72 to the extent not ex-
11 cluded from gross income under any other provision
12 of this subsection.

13 “(2) LONG-TERM CARE INSURANCE PRE-
14 MIUMS.—If at the time of any distribution, the des-
15 ignated beneficiary is not a chronically ill individual
16 (as defined in section 7702B(e)(2)), no amount shall
17 be includible in gross income under paragraph (1) if
18 the aggregate premiums for any qualified long-term
19 care insurance contract for such beneficiary during
20 the taxable year are not less than the aggregate dis-
21 tributions during the taxable year.

22 “(3) DISTRIBUTIONS FOR QUALIFIED LONG-
23 TERM CARE SERVICES.—For purposes of this sub-
24 section, if at the time of any distribution, the des-

1 ignated beneficiary is a chronically ill individual (as
2 so defined)—

3 “(A) IN-KIND DISTRIBUTIONS.—No
4 amount shall be includible in gross income
5 under paragraph (1) by reason of a distribution
6 which consists of providing a benefit to the dis-
7 tributee which, if paid for by the distributee,
8 would constitute expenses for any qualified
9 long-term care services (as defined in section
10 7702B(c)).

11 “(B) CASH DISTRIBUTIONS.—In the case
12 of distributions not described in subparagraph
13 (A), if—

14 “(i) such distributions do not exceed
15 the expenses for qualified long-term care
16 services (as so defined), reduced by ex-
17 penses described in subparagraph (A), no
18 amount shall be includible in gross income,
19 and

20 “(ii) in any other case, the amount
21 otherwise includible in gross income shall
22 be reduced by an amount which bears the
23 same ratio to such amount as such ex-
24 penses bear to such distributions.

1 “(4) CHANGE IN BENEFICIARIES OR AC-
2 COUNTS.—Paragraph (1) shall not apply to that
3 portion of any distribution which, within 60 days of
4 such distribution, is transferred—

5 “(A) to another Long-Term Care Trust
6 Account for the benefit of the designated bene-
7 ficiary, or

8 “(B) to the credit of another designated
9 beneficiary under a Long-Term Care Trust Ac-
10 count who is a spouse of the designated bene-
11 ficiary with respect to which the distribution
12 was made.

13 “(5) OPERATING RULES.—For purposes of ap-
14 plying section 72—

15 “(A) to the extent provided by the Sec-
16 retary, all Long-Term Care Trust Accounts of
17 which an individual is a designated beneficiary
18 shall be treated as one account,

19 “(B) except to the extent provided by the
20 Secretary, all distributions during a taxable
21 year shall be treated as one distribution, and

22 “(C) except to the extent provided by the
23 Secretary, the value of the contract, income on
24 the contract, and investment in the contract

1 shall be computed as of the close of the cal-
2 endar year in which the taxable year begins.

3 “(6) SPECIAL RULES FOR DEATH AND DI-
4 VORCE.—

5 “(A) IN GENERAL.—Rules similar to the
6 rules of paragraphs (7) and (8) of section
7 220(f) shall apply.

8 “(B) AMOUNTS INCLUDIBLE IN ESTATE OF
9 DONOR MAKING EXCESS CONTRIBUTIONS.—In
10 the case of a donor who makes the election de-
11 scribed in subsection (c)(2)(B) and who dies be-
12 fore the close of the 5-year period referred to
13 in such subsection, the gross estate of the donor
14 shall include the portion of such contributions
15 properly allocable to periods after the date of
16 death of the donor.

17 “(7) ADDITIONAL TAX.—The tax imposed by
18 this chapter for any taxable year on any taxpayer
19 who receives a payment or distribution from a Long-
20 Term Care Trust Account which is includible in
21 gross income shall be increased by 25 percent of the
22 amount which is so includible under rules similar to
23 the rules of section 530(d)(4).

24 “(8) DENIAL OF DOUBLE BENEFIT.—For pur-
25 poses of determining the amount of any deduction

1 under this chapter, any payment or distribution out
2 of a Long-Term Care Trust Account shall not be
3 treated as an expense paid for medical care.

4 “(f) DESIGNATED BENEFICIARY.—For purposes of
5 this section, the term ‘designated beneficiary’ means the
6 individual designated at the commencement of participa-
7 tion in the Long-Term Care Trust Account as the bene-
8 ficiary of amounts paid (or to be paid) to the account.

9 “(g) LOSS OF TAXATION EXEMPTION OF ACCOUNT
10 WHERE BENEFICIARY ENGAGES IN PROHIBITED TRANS-
11 ACTION.—Rules similar to the rules of paragraph (2) of
12 section 408(e) shall apply to any Long-Term Care Trust
13 Account.

14 “(h) CUSTODIAL ACCOUNTS.—For purposes of this
15 section, a custodial account or an annuity contract issued
16 by an insurance company qualified to do business in a
17 State shall be treated as a trust under this section if—

18 “(1) the custodial account or annuity contract
19 would, except for the fact that it is not a trust, con-
20 stitute a trust which meets the requirements of sub-
21 section (b), and

22 “(2) in the case of a custodial account, the as-
23 sets of such account are held by a bank (as defined
24 in section 408(n)) or another person who dem-
25 onstrates, to the satisfaction of the Secretary, that

1 the manner in which he will administer the account
2 will be consistent with the requirements of this sec-
3 tion.

4 For purposes of this title, in the case of a custodial ac-
5 count or annuity contract treated as a trust by reason of
6 the preceding sentence, the person holding the assets of
7 such account or holding such annuity contract shall be
8 treated as the trustee thereof.

9 “(i) REPORTS.—The trustee of a Long-Term Care
10 Trust Account shall make such reports regarding such ac-
11 count to the Secretary and to the beneficiary of the ac-
12 count with respect to contributions, distributions, and
13 such other matters as the Secretary may require. The re-
14 ports required by this subsection shall be filed at such time
15 and in such manner and furnished to such individuals at
16 such time and in such manner as may be required.”

17 (b) TAX ON EXCESS CONTRIBUTIONS.—

18 (1) IN GENERAL.—Subsection (a) of section
19 4973 of the Internal Revenue Code of 1986 (relating
20 to tax on excess contributions to certain tax-favored
21 accounts and annuities) is amended by striking “or”
22 at the end of paragraph (4), by inserting “or” at the
23 end of paragraph (5), and by inserting after para-
24 graph (5) the following new paragraph:

1 “(6) a Long-Term Care Trust Account (as de-
2 fined in section 530A),”.

3 (2) EXCESS CONTRIBUTION.—Section 4973 of
4 such Code is amended by adding at the end the fol-
5 lowing new subsection:

6 “(h) EXCESS CONTRIBUTIONS TO LONG-TERM CARE
7 TRUST ACCOUNTS.—For purposes of this section—

8 “(1) IN GENERAL.—In the case of Long-Term
9 Care Trust Accounts (within the meaning of section
10 530A), the term ‘excess contributions’ means the
11 sum of—

12 “(A) the amount by which the amount con-
13 tributed for the calendar year to such accounts
14 (other than qualified rollover contributions (as
15 defined in section 530A(d))) exceeds the con-
16 tribution limit under section 530A(c)(1), and

17 “(B) the amount determined under this
18 subsection for the preceding calendar year, re-
19 duced by the excess (if any) of the maximum
20 amount allowable as a contribution under sec-
21 tion 530A(c)(1) for the calendar year over the
22 amount contributed to the accounts for the cal-
23 endar year.

24 “(2) SPECIAL RULE.—A contribution shall not
25 be taken into account under paragraph (1) if such

1 contribution (together with the amount of net in-
 2 come attributable to such contribution) is returned
 3 to the beneficiary before June 1 of the year fol-
 4 lowing the year in which the contribution is made.”.

5 (c) FAILURE TO PROVIDE REPORTS ON LONG-TERM
 6 CARE TRUST ACCOUNTS.—Paragraph (2) of section
 7 6693(a) of the Internal Revenue Code of 1986 (relating
 8 to failure to provide reports on individual retirement ac-
 9 counts or annuities) is amended by striking “and” at the
 10 end of subparagraph (D), by striking the period at the
 11 end of subparagraph (E) and inserting “, and”, and by
 12 adding at the end the following new subparagraph:

13 “(F) section 530A(i) (relating to Long-
 14 Term Care Trust Accounts).”.

15 (d) CONFORMING AMENDMENT.—The table of parts
 16 for subchapter F of chapter 1 of the Internal Revenue
 17 Code of 1986 is amended by adding at the end the fol-
 18 lowing new item:

“PART IX. LONG-TERM CARE TRUST ACCOUNTS”.

19 (e) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to taxable years beginning after
 21 December 31, 2005.

22 **SEC. 3. REFUNDABLE CREDIT FOR CONTRIBUTIONS TO**
 23 **LONG-TERM CARE TRUST ACCOUNTS.**

24 (a) IN GENERAL.—Subpart C of part IV of sub-
 25 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to refundable credits) is amended by insert-
2 ing after section 35 the following new section:

3 **“SEC. 35A. CONTRIBUTIONS TO LONG-TERM CARE TRUST**
4 **ACCOUNTS.**

5 “(a) GENERAL RULE.—In the case of an individual,
6 there shall be allowed as a credit against the tax imposed
7 by this subtitle for the taxable year an amount equal to
8 10 percent of the contributions to any Long-Term Care
9 Trust Account allowed under section 530A for such tax-
10 able year.

11 “(b) REDUCTION BASED ON ADJUSTED GROSS IN-
12 COME.—

13 “(1) IN GENERAL.—The percentage which
14 would (but for this subsection) be taken into account
15 under subsection (a) for the taxable year shall be re-
16 duced (but not below zero) by the percentage deter-
17 mined under paragraph (2).

18 “(2) AMOUNT OF REDUCTION.—The percentage
19 determined under this paragraph is the percentage
20 which bears the same ratio to the percentage which
21 would be so taken into account as—

22 “(A) the excess of—

23 “(i) the taxpayer’s adjusted gross in-
24 come for such taxable year, over

1 “(ii) \$95,000 (\$190,000 in the case of
2 a joint return), bears to

3 “(B) \$10,000 (\$20,000 in the case of a
4 joint return).

5 “(3) ADJUSTED GROSS INCOME.—For purposes
6 of this subsection, adjusted gross income shall be de-
7 termined without regard to sections 911, 931, and
8 933.

9 “(c) DENIAL OF DOUBLE BENEFIT.—No deduction
10 shall be allowed under this chapter for any amount taken
11 into account in determining the credit under this section.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) Paragraph (2) of section 1324(b) of title
14 31, United States Code, is amended by inserting be-
15 fore the period “, or from section 35A of such
16 Code”.

17 (2) The table of sections of subpart C of part
18 IV of subchapter A of chapter 1 of the Internal Rev-
19 enue Code of 1986 is amended by inserting after the
20 item relating to section 35 the following new item:

 “Sec. 35A. Contributions to Long-Term Care Trust Accounts.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to amounts paid or incurred in tax-
23 able years beginning after December 31, 2005.

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