

1 *which a deduction is allowed to such beneficiary under any*  
2 *other provision of this chapter.”.*

3 (b) *CLERICAL AMENDMENT.—The table of sections for*  
4 *part III of subchapter B of chapter 1 of the Internal Rev-*  
5 *enue Code of 1986 is amended by inserting after the item*  
6 *relating to section 139C the following new item:*

*“Sec. 139D. Indian health care benefits.”.*

7 (c) *EFFECTIVE DATE.—The amendments made by this*  
8 *section shall apply to benefits and coverage provided after*  
9 *the date of the enactment of this Act.*

10 (d) *NO INFERENCE.—Nothing in the amendments*  
11 *made by this section shall be construed to create an infer-*  
12 *ence with respect to the exclusion from gross income of—*

13 (1) *benefits provided by an Indian tribe or tribal*  
14 *organization that are not within the scope of this sec-*  
15 *tion, and*

16 (2) *benefits provided prior to the date of the en-*  
17 *actment of this Act.*

18 **SEC. 9022. ESTABLISHMENT OF SIMPLE CAFETERIA PLANS**

19 **FOR SMALL BUSINESSES.**

20 (a) *IN GENERAL.—Section 125 of the Internal Revenue*  
21 *Code of 1986 (relating to cafeteria plans), as amended by*  
22 *this Act, is amended by redesignating subsections (j) and*  
23 *(k) as subsections (k) and (l), respectively, and by inserting*  
24 *after subsection (i) the following new subsection:*

1       “(j) *SIMPLE CAFETERIA PLANS FOR SMALL BUSI-*  
2 *NESSES.*—

3               “(1) *IN GENERAL.*—*An eligible employer main-*  
4 *taining a simple cafeteria plan with respect to which*  
5 *the requirements of this subsection are met for any*  
6 *year shall be treated as meeting any applicable non-*  
7 *discrimination requirement during such year.*

8               “(2) *SIMPLE CAFETERIA PLAN.*—*For purposes of*  
9 *this subsection, the term ‘simple cafeteria plan’ means*  
10 *a cafeteria plan—*

11               “(A) *which is established and maintained*  
12 *by an eligible employer, and*

13               “(B) *with respect to which the contribution*  
14 *requirements of paragraph (3), and the eligi-*  
15 *bility and participation requirements of para-*  
16 *graph (4), are met.*

17               “(3) *CONTRIBUTION REQUIREMENTS.*—

18               “(A) *IN GENERAL.*—*The requirements of*  
19 *this paragraph are met if, under the plan the*  
20 *employer is required, without regard to whether*  
21 *a qualified employee makes any salary reduction*  
22 *contribution, to make a contribution to provide*  
23 *qualified benefits under the plan on behalf of*  
24 *each qualified employee in an amount equal to—*

1           “(i) a uniform percentage (not less  
2           than 2 percent) of the employee’s compensa-  
3           tion for the plan year, or

4           “(ii) an amount which is not less than  
5           the lesser of—

6                   “(I) 6 percent of the employee’s  
7                   compensation for the plan year, or

8                   “(II) twice the amount of the sal-  
9                   ary reduction contributions of each  
10                  qualified employee.

11           “(B) MATCHING CONTRIBUTIONS ON BE-  
12           HALF OF HIGHLY COMPENSATED AND KEY EM-  
13           PLOYEES.—The requirements of subparagraph  
14           (A)(ii) shall not be treated as met if, under the  
15           plan, the rate of contributions with respect to  
16           any salary reduction contribution of a highly  
17           compensated or key employee at any rate of con-  
18           tribution is greater than that with respect to an  
19           employee who is not a highly compensated or key  
20           employee.

21           “(C) ADDITIONAL CONTRIBUTIONS.—Subject  
22           to subparagraph (B), nothing in this paragraph  
23           shall be treated as prohibiting an employer from  
24           making contributions to provide qualified bene-

1 *fits under the plan in addition to contributions*  
2 *required under subparagraph (A).*

3 *“(D) DEFINITIONS.—For purposes of this*  
4 *paragraph—*

5 *“(i) SALARY REDUCTION CONTRIBU-*  
6 *TION.—The term ‘salary reduction contribu-*  
7 *tion’ means, with respect to a cafeteria*  
8 *plan, any amount which is contributed to*  
9 *the plan at the election of the employee and*  
10 *which is not includible in gross income by*  
11 *reason of this section.*

12 *“(ii) QUALIFIED EMPLOYEE.—The*  
13 *term ‘qualified employee’ means, with re-*  
14 *spect to a cafeteria plan, any employee who*  
15 *is not a highly compensated or key em-*  
16 *ployee and who is eligible to participate in*  
17 *the plan.*

18 *“(iii) HIGHLY COMPENSATED EM-*  
19 *PLOYEE.—The term ‘highly compensated*  
20 *employee’ has the meaning given such term*  
21 *by section 414(q).*

22 *“(iv) KEY EMPLOYEE.—The term ‘key*  
23 *employee’ has the meaning given such term*  
24 *by section 416(i).*

1           “(4) *MINIMUM ELIGIBILITY AND PARTICIPATION*  
2           *REQUIREMENTS.—*

3           “(A) *IN GENERAL.—The requirements of*  
4           *this paragraph shall be treated as met with re-*  
5           *spect to any year if, under the plan—*

6           “(i) *all employees who had at least*  
7           *1,000 hours of service for the preceding plan*  
8           *year are eligible to participate, and*

9           “(ii) *each employee eligible to partici-*  
10          *pate in the plan may, subject to terms and*  
11          *conditions applicable to all participants,*  
12          *elect any benefit available under the plan.*

13          “(B) *CERTAIN EMPLOYEES MAY BE EX-*  
14          *CLUDED.—For purposes of subparagraph (A)(i),*  
15          *an employer may elect to exclude under the plan*  
16          *employees—*

17          “(i) *who have not attained the age of*  
18          *21 before the close of a plan year,*

19          “(ii) *who have less than 1 year of serv-*  
20          *ice with the employer as of any day during*  
21          *the plan year,*

22          “(iii) *who are covered under an agree-*  
23          *ment which the Secretary of Labor finds to*  
24          *be a collective bargaining agreement if there*  
25          *is evidence that the benefits covered under*

1           the cafeteria plan were the subject of good  
2           faith bargaining between employee rep-  
3           resentatives and the employer, or

4           “(iv) who are described in section  
5           410(b)(3)(C) (relating to nonresident aliens  
6           working outside the United States).

7           A plan may provide a shorter period of service  
8           or younger age for purposes of clause (i) or (ii).

9           “(5) *ELIGIBLE EMPLOYER*.—For purposes of this  
10          subsection—

11           “(A) *IN GENERAL*.—The term ‘eligible em-  
12          ployer’ means, with respect to any year, any em-  
13          ployer if such employer employed an average of  
14          100 or fewer employees on business days during  
15          either of the 2 preceding years. For purposes of  
16          this subparagraph, a year may only be taken  
17          into account if the employer was in existence  
18          throughout the year.

19           “(B) *EMPLOYERS NOT IN EXISTENCE DUR-*  
20          *ING PRECEDING YEAR*.—If an employer was not  
21          in existence throughout the preceding year, the  
22          determination under subparagraph (A) shall be  
23          based on the average number of employees that  
24          it is reasonably expected such employer will em-  
25          ploy on business days in the current year.

1                   “(C) *GROWING EMPLOYERS RETAIN TREAT-*  
2                   *MENT AS SMALL EMPLOYER.—*

3                   “(i) *IN GENERAL.—If—*

4                   “(I) *an employer was an eligible*  
5                   *employer for any year (a ‘qualified*  
6                   *year’), and*

7                   “(II) *such employer establishes a*  
8                   *simple cafeteria plan for its employees*  
9                   *for such year;*

10                  *then, notwithstanding the fact the employer*  
11                  *fails to meet the requirements of subpara-*  
12                  *graph (A) for any subsequent year, such*  
13                  *employer shall be treated as an eligible em-*  
14                  *ployer for such subsequent year with respect*  
15                  *to employees (whether or not employees dur-*  
16                  *ing a qualified year) of any trade or busi-*  
17                  *ness which was covered by the plan during*  
18                  *any qualified year.*

19                  “(ii) *EXCEPTION.—This subparagraph*  
20                  *shall cease to apply if the employer employs*  
21                  *an average of 200 or more employees on*  
22                  *business days during any year preceding*  
23                  *any such subsequent year.*

24                  “(D) *SPECIAL RULES.—*

