

**ASSEMBLY BILL**

**No. 84**

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**Introduced by Assembly Member Nakanishi**

December 13, 2006

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An act to amend Sections 17072, 17215, and 19184 of, and to add Sections 17138.5, 17138.6, and 17216 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 84, as introduced, Nakanishi. Income tax: health savings accounts.

The Personal Income Tax Law authorizes various deductions in computing income that is subject to tax under that law.

This bill would allow a deduction in connection with health savings accounts in conformity with federal law. In general, the deduction would be an amount equal to the aggregate amount paid in cash during the taxable year by or on behalf of an eligible individual, as defined, to a health savings account of that individual, as provided. This bill would also provide related conformity to that federal law with respect to treatment of the account as a tax-exempt trust, the allowance of rollovers from Archer Medical Savings Accounts to a health savings account, and penalties in connection therewith.

This bill would take effect immediately as a tax levy. However, the provisions of this bill would not become operative until January 1, 2008.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 17072 of the Revenue and Taxation Code  
2 is amended to read:

3 17072. (a) Section 62 of the Internal Revenue Code, relating  
4 to adjusted gross income defined, shall apply, except as otherwise  
5 provided.

6 (b) Section 62(a)(2)(D) of the Internal Revenue Code, relating  
7 to certain expenses of elementary and secondary school teachers,  
8 shall not apply.

9 (c) *The deduction allowed by Section 17216, relating to health*  
10 *savings accounts, is allowed in computing adjusted gross income.*

11 (d) *The amendments made to this section by the act adding this*  
12 *subdivision shall apply only to each taxable year beginning on or*  
13 *after January 1, 2008.*

14 SEC. 2. Section 17138.5 is added to the Revenue and Taxation  
15 Code, to read:

16 17138.5. For each taxable year beginning on or after January  
17 1, 2008, Section 106 of the Internal Revenue Code, as amended  
18 by Section 1201 of the Medicare Prescription Drug, Improvement,  
19 and Modernization Act of 2003 (Public Law 108-173), relating to  
20 health savings accounts, shall apply, except as otherwise provided.

21 SEC. 3. Section 17138.6 is added to the Revenue and Taxation  
22 Code, to read:

23 17138.6. For each taxable year beginning on or after January  
24 1, 2008, Section 125 of the Internal Revenue Code, as amended  
25 by Section 1201 of the Medicare Prescription Drug, Improvement,  
26 and Modernization Act of 2003 (Public Law 108-173), relating to  
27 health savings accounts, shall apply, except as otherwise provided.

28 SEC. 4. Section 17215 of the Revenue and Taxation Code is  
29 amended to read:

30 17215. (a) Section 220(a) of the Internal Revenue Code,  
31 relating to deduction allowed, is modified to provide that the  
32 amount allowed as a deduction shall be an amount equal to the  
33 amount allowed to that individual as a deduction under Section  
34 220 of the Internal Revenue Code, relating to medical savings  
35 accounts, on the federal income tax return filed for the same taxable  
36 year by that individual.

37 (b) Section 220(f)(4) of the Internal Revenue Code, relating to  
38 additional tax on distributions not used for qualified medical

1 expenses, is modified by substituting “10 percent” in lieu of “15  
2 percent.”

3 (c) *Section 220(f)(5) of the Internal Revenue Code, as amended*  
4 *by Section 1201(c) of the Medicare Prescription Drug,*  
5 *Improvement, and Modernization Act of 2003 (Public Law*  
6 *108-173), relating to permitted rollovers from Archer Medical*  
7 *Savings Accounts, shall apply, except as otherwise provided.*

8 (d) *The amendments made to this section by the act adding this*  
9 *subdivision shall apply only to each taxable year beginning on or*  
10 *after January 1, 2008.*

11 SEC. 5. Section 17216 is added to the Revenue and Taxation  
12 Code, to read:

13 17216. For each taxable year beginning on or after January 1,  
14 2008, all of the following apply:

15 (a) Section 223 of the Internal Revenue Code, as added by  
16 Section 1201 of the Medicare Prescription Drug, Improvement,  
17 and Modernization Act of 2003 (Public Law 108-173), relating to  
18 health savings accounts, shall apply, except as otherwise provided.

19 (b) Section 223(e)(1) of the Internal Revenue Code, as added  
20 by Section 1201 of the Medicare Prescription Drug, Improvement,  
21 and Modernization Act of 2003 (Public Law 108-173), shall be  
22 modified by substituting the phrase “Section 17651” for the phrase  
23 “Section 511 (relating to imposition of tax of unrelated business  
24 income of charitable, etc., organizations),” contained therein.

25 (c) Section 223(f)(4)(A) of the Internal Revenue Code, as added  
26 by Section 1201 of the Medicare Prescription Drug, Improvement,  
27 and Modernization Act of 2003 (Public Law 108-173), shall be  
28 modified by substituting “2 ½ percent” for “10 percent,” contained  
29 therein.

30 SEC. 6. Section 19184 of the Revenue and Taxation Code is  
31 amended to read:

32 19184. (a) A penalty of fifty dollars (\$50) shall be imposed  
33 for each failure, unless it is shown that the failure is due to  
34 reasonable cause, by any person required to file who fails to file  
35 a report at the time and in the manner required by any of the  
36 following provisions:

37 (1) Subdivision (c) of Section 17507, relating to individual  
38 retirement accounts.

1 (2) Section 220(h) of the Internal Revenue Code, relating to  
2 medical savings accounts for taxable years beginning on or after  
3 January 1, 1997.

4 (3) *Section 223(h) of the Internal Revenue Code, as added by*  
5 *Section 1201 of the Medicare Prescription Drug, Improvement,*  
6 *and Modernization Act of 2003 (Public Law 108-173), relating to*  
7 *health savings accounts.*

8 **Subdivision**

9 (4) Subdivision (b) of Section 17140.3 or subdivision (b) of  
10 Section 23711 relating to qualified tuition programs.

11 ~~(4)~~

12 (5) Subdivision (e) of Section 23712, relating to Coverdell  
13 education savings accounts.

14 (b) (1) Any individual who:

15 (A) Is required to furnish information under Section 17508 as  
16 to the amount designated nondeductible contributions made for  
17 any taxable year, and

18 (B) Overstates the amount of those contributions made for that  
19 taxable year, shall pay a penalty of one hundred dollars (\$100) for  
20 each overstatement unless it is shown that the overstatement is due  
21 to reasonable cause.

22 (2) Any individual who fails to file a form required to be filed  
23 by the Franchise Tax Board under Section 17508 shall pay a  
24 penalty of fifty dollars (\$50) for each failure unless it is shown  
25 that the failure is due to reasonable cause.

26 (c) Article 3 (commencing with Section 19031) of this chapter  
27 (relating to deficiency assessments) shall not apply in respect of  
28 the assessment or collection of any penalty imposed under this  
29 section.

30 (d) *The amendments made to this section by the act adding this*  
31 *subdivision shall apply only to each taxable year beginning on or*  
32 *after January 1, 2008.*

33 SEC. 7. This act provides for a tax levy within the meaning of  
34 Article IV of the Constitution and shall go into immediate effect.