

ASSEMBLY BILL

No. 245

Introduced by Assembly Member DeVore
(Coauthors: Assembly Members Adams, Aghazarian, Benoit,
Gaines, La Malfa, Silva, Spitzer, Strickland, Tran, and Walters)

February 1, 2007

An act to amend Sections 17072, 17131.4, 17131.5, 17215, 17215.1, 17215.4, 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 245, as introduced, DeVore. Income tax: health savings account.

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

This bill would, for taxable years beginning on or after January 1, 2007, 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 federal law with respect to treatment of the account as a tax-exempt trust, the allowance of rollovers from the Archer Medical Savings Accounts to a health savings account, and penalties in connection therewith.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

SECTION 1. Section 17072 of the Revenue and Taxation Code, as amended by Section 4 of Chapter 691 of the Statutes of 2005, is amended to read:

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

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

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

(d) *The amendments made to this section by the act adding this subdivision shall apply only to each taxable year beginning on or after January 1, 2007.*

SEC. 2. Section 17131.4 of the Revenue and Taxation Code is amended to read:

17131.4. (a) Section 106(d) of the Internal Revenue Code, as added by Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173), relating to contributions to health savings accounts, shall not apply.

(b) *This section shall apply only to taxable years beginning on or after January 1, 2005, and before January 1, 2007.*

SEC. 3. Section 17131.5 of the Revenue and Taxation Code is amended to read:

17131.5. (a) Section 125(d)(2)(D) of the Internal Revenue Code, as added by Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173), relating to the exception for health savings accounts, shall not apply.

(b) *This section shall apply only to taxable years beginning on or after January 1, 2005, and before January 1, 2007.*

SEC. 4. Section 17138.5 is added to the Revenue and Taxation Code, to read:

17138.5. For each taxable year beginning on or after January 1, 2007, Section 106 of the Internal Revenue Code, as amended by Section 1201 of the Medicare Prescription Drug, Improvement,

1 and Modernization Act of 2003 (Public Law 108-173), relating to
2 health savings accounts, shall apply, except as otherwise provided.

3 SEC. 5. Section 17138.6 is added to the Revenue and Taxation
4 Code, to read:

5 17138.6. For each taxable year beginning on or after January
6 1, 2007, Section 125 of the Internal Revenue Code, as amended
7 by Section 1201 of the Medicare Prescription Drug, Improvement,
8 and Modernization Act of 2003 (Public Law 108-173), relating to
9 health savings accounts, shall apply, except as otherwise provided.

10 SEC. 6. Section 17215 of the Revenue and Taxation Code is
11 amended to read:

12 17215. (a) Section 220(a) of the Internal Revenue Code,
13 relating to deduction allowed, is modified to provide that the
14 amount allowed as a deduction shall be an amount equal to the
15 amount allowed to that individual as a deduction under Section
16 220 of the Internal Revenue Code, relating to medical savings
17 accounts, on the federal income tax return filed for the same taxable
18 year by that individual.

19 (b) Section 220(f)(4) of the Internal Revenue Code, relating to
20 additional tax on distributions not used for qualified medical
21 expenses, is modified by substituting “10 percent” in lieu of “15
22 percent.”

23 (c) *Section 220(f)(5) of the Internal Revenue Code, as amended*
24 *by Section 1201(c) of the Medicare Prescription Drug,*
25 *Improvement, and Modernization Act of 2003 (Public Law*
26 *108-173), relating to permitted rollovers from the Archer Medical*
27 *Savings Accounts, shall apply, except as otherwise provided.*

28 (d) *The amendments made to this section by the act adding this*
29 *subdivision shall apply only to each taxable year beginning on or*
30 *after January 1, 2007.*

31 SEC. 7. Section 17215.1 of the Revenue and Taxation Code
32 is amended to read:

33 17215.1. (a) Section 220(f)(5) of the Internal Revenue Code,
34 *as added by Section 1201 of the Medicare Prescription Drug,*
35 *Improvement, and Modernization Act of 2003 (Public Law*
36 *108-173), relating to rollover contributions, shall not apply.*

37 (b) *This section shall apply only to taxable years beginning on*
38 *or after January 1, 2005, and before January 1, 2007.*

39 SEC. 8. Section 17215.4 of the Revenue and Taxation Code
40 is amended to read:

17215.4. (a) Section 223 of the Internal Revenue Code, as added by Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173), relating to health savings accounts, shall not apply.

(b) This section shall apply only to taxable years beginning on or after January 1, 2005, and before January 1, 2007.

SEC. 9. Section 17216 is added to the Revenue and Taxation Code, to read:

17216. For each taxable year beginning on or after January 1, 2007, all of the following apply:

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

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

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

SEC. 10. Section 19184 of the Revenue and Taxation Code is amended to read:

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

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

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

(3) Section 223(h) of the Internal Revenue Code, as added by Section 1201 of the Medicare Prescription Drug, Improvement,

1 *and Modernization Act of 2003 (Public Law 108-173), relating to*
2 *health savings accounts.*

3 ~~(3)~~

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

6 ~~(4)~~

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

9 (b) (1) Any individual who:

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

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

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

21 (c) Article 3 (commencing with Section 19031) of this chapter
22 (relating to deficiency assessments) shall not apply in respect of
23 the assessment or collection of any penalty imposed under this
24 section.

25 (d) *The amendments made to this section by the act adding this*
26 *subdivision shall apply only to each taxable year beginning or*
27 *after January 1, 2007.*

28 SEC. 11. This act provides for a tax levy within the meaning
29 of Article IV of the Constitution and shall go into immediate effect.