

SENATE BILL

No. 10

**Introduced by Senator Maldonado
(Coauthor: Senator Harman)**

October 11, 2007

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

SB 10, as introduced, Maldonado. 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 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.

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, 2006.*

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, 2006, 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, 2006, 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 rollovers from Archer MSAs permitted, shall*
7 *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, 2006.*

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 2006, 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 “2½ 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 ~~(3)~~

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, 2006.*

33 SEC. 7. (a) The amendments made by this act to Sections
34 17072, 17215, and 19184 of the Revenue and Taxation Code
35 incorporate, by reference, the provisions of Section 1201 of the
36 Medicare Prescription Drug, Improvement, and Modernization
37 Act of 2003 (Public Law 108-173), which added Section 223 of
38 the Internal Revenue Code to Part VII of Subchapter B of Chapter
39 1 of Subtitle A of the Internal Revenue Code and amended Sections
40 62, 106, 125, and 220 of the Internal Revenue Code, and shall

1 apply retroactively to taxable years beginning on or after January
2 1, 2006.

3 (b) The Legislature finds and declares that this act fulfills a
4 statewide public purpose because of the following:

5 The State of California has not yet conformed its state income
6 tax law to the provisions of Section 1201 of the Medicare
7 Prescription Drug, Improvement, and Modernization Act of 2003
8 (Public Law 108-173). As the result, the taxpayers who have
9 converted their Archer Medical Savings Accounts into health
10 savings accounts pursuant to Sections 220 and 223 of the Internal
11 Revenue Code may be subject to tax and penalties under state, but
12 not federal, income tax laws. This act provides necessary relief
13 from the tax and penalties to the taxpayers who have converted
14 their Archer Medical Savings Accounts into health savings
15 accounts in taxable years beginning on or after January 1, 2006.

16 (c) If, by the operation of any law or rule of law, including res
17 judicata, a refund or credit of any overpayment of tax resulting
18 from the retroactive application of the amendments made to
19 Sections 17072, 17215, and 19184 of the Revenue and Taxation
20 Code by this act is prevented at any time before the close of the
21 two-year period beginning on the effective date of this act, that
22 refund or credit may nonetheless be made or allowed, provided
23 that the claim for refund or credit is filed before the close of that
24 period.

25 SEC. 8. This act provides for a tax levy within the meaning of
26 Article IV of the Constitution and shall go into immediate effect.

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