

ASSEMBLY BILL

No. 326

Introduced by Assembly Member Garrick

February 18, 2009

An act to amend Sections 17072 and 19184 of, to amend and repeal Sections 17131.4, 17131.5, 17215.1, and 17215.4 of, and to add Sections 17138.5 and 17216 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 326, as introduced, Garrick. 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, for taxable years beginning on and after January 1, 2010, 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, for taxable years beginning on and after January 1, 2010, 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, health flexible spending arrangements, or health reimbursement 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 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 taxable years beginning on or after January 1, 2010.*

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, relating to contributions to health savings accounts, shall not apply.

(b) *This section shall apply to taxable years beginning on or after January 1, 2005, and before January 1, 2010.*

(c) *This section shall remain in effect only until January 1, 2015, and as of that date is repealed.*

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, relating to the exception for health savings accounts, shall not apply.

(b) *This section shall apply to taxable years beginning on or after January 1, 2005, and before January 1, 2010.*

(c) *This section shall remain in effect only until January 1, 2015, and as of that date is repealed.*

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

17138.5. For taxable years beginning on or after January 1, 2010, Section 106 of the Internal Revenue Code, as amended by Section 302 of the Tax Relief and Health Care Act of 2006 (Public Law 109-432), relating to health savings accounts, shall apply, except as otherwise provided.

1 SEC. 5. Section 17215.1 of the Revenue and Taxation Code
2 is amended to read:

3 17215.1. (a) Section 220(f)(5) of the Internal Revenue Code,
4 relating to rollover contributions, shall not apply.

5 (b) *This section shall apply to taxable years beginning on or*
6 *after January 1, 2005, and before January 1, 2010.*

7 (c) *This section shall remain in effect only until January 1, 2015,*
8 *and as of that date is repealed.*

9 SEC. 6. Section 17215.4 of the Revenue and Taxation Code
10 is amended to read:

11 17215.4. (a) Section 223 of the Internal Revenue Code, relating
12 to health savings accounts, shall not apply.

13 (b) *This section shall apply to taxable years beginning on or*
14 *after January 1, 2005, and before January 1, 2010.*

15 (c) *This section shall remain in effect only until January 1, 2015,*
16 *and as of that date is repealed.*

17 SEC. 7. Section 17216 is added to the Revenue and Taxation
18 Code, to read:

19 17216. For taxable years beginning on or after January 1, 2010,
20 all of the following apply:

21 (a) Section 223 of the Internal Revenue Code, as added by
22 Section 1201 of the Medicare Prescription Drug, Improvement,
23 and Modernization Act of 2003 (Public Law 108-173), and as
24 amended by Title III of the Tax Relief and Health Care Act of
25 2006 (Public Law 109-432), relating to health savings accounts,
26 shall apply, except as otherwise provided.

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

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

38 SEC. 8. Section 19184 of the Revenue and Taxation Code is
39 amended to read:

1 19184. (a) A penalty of fifty dollars (\$50) shall be imposed
2 for each failure, unless it is shown that the failure is due to
3 reasonable cause, by any person required to file who fails to file
4 a report at the time and in the manner required by any of the
5 following provisions:

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

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

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

15 ~~(3)~~

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

18 ~~(4)~~

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

21 (b) (1) Any individual who:

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

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

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

33 (c) Article 3 (commencing with Section 19031) of this chapter
34 (relating to deficiency assessments) shall not apply in respect of
35 the assessment or collection of any penalty imposed under this
36 section.

37 (d) *The amendments made to this section by the act adding this*
38 *subdivision shall apply to taxable years beginning on or after*
39 *January 1, 2010.*

1 SEC. 9. This act provides for a tax levy within the meaning of
2 Article IV of the Constitution and shall go into immediate effect.

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