

AMENDED IN ASSEMBLY MARCH 10, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2041**

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**Introduced by Assembly ~~Member~~ Members Villines and Smyth**

February 17, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2041, as amended, Villines. 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; *and* 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 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 (~~TRHCA~~) of 2006 (Public Law 109-432), relating to health savings accounts, shall apply, except as otherwise provided.

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

17138.6. For taxable years beginning on or after January 1, 2010, Section 125 of the Internal Revenue Code, as amended 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.

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

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

(b) Section 220(f)(4) of the Internal Revenue Code, relating to 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 to taxable years beginning on or after  
10 January 1, 2010.

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

13 17216. For taxable years beginning on or after January 1, 2010,  
14 both 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), and as  
18 amended by Title III of the Tax Relief and Health Care Act  
19 (~~TRHCA~~) of 2006 (Public Law 109-432), relating to health savings  
20 accounts, shall apply, except as otherwise provided.

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

27 SEC. 6. This act provides for a tax levy within the meaning of  
28 Article IV of the Constitution and shall go into immediate effect.