

AMENDED IN ASSEMBLY MAY 2, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 726

Introduced by Assembly Member Morrell
(Coauthor: Senator Gaines)

February 17, 2011

An act to amend Section 17085 of, and to add Section 17131.7 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 726, as amended, Morrell. Personal income taxes: exclusions: rollovers.

The Personal Income Tax Law provides various exclusions from gross income in computing tax liability and, in modified conformity to federal law, imposes a penalty tax upon early distributions from tax-deferred retirement accounts, as provided.

This bill would provide an exclusion from gross income for moneys removed from a specified savings plan and deposited directly into a health savings account, as provided, and would waive that penalty tax for early distribution.

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 17085 of the Revenue and Taxation Code
- 2 is amended to read:

17085. Section 72 of the Internal Revenue Code, relating to annuities; certain proceeds of endowment and life insurance contracts, is modified as follows:

(a) The amendments and transitional rules made by Public Law 99-514 shall be applicable to this part for the same transactions and the same years as they are applicable for federal purposes, except that the repeal of Section 72(d) of the Internal Revenue Code, relating to repeal of special rule for employees' annuities, shall apply only to the following:

(1) Any individual whose annuity starting date is after December 31, 1986.

(2) At the election of the taxpayer, any individual whose annuity starting date is after July 1, 1986, and before January 1, 1987.

(b) The amount of a distribution from an individual retirement account or annuity or employee trust or employee annuity that is includable in gross income for federal purposes shall be reduced for purposes of this part by the lesser of either of the following:

(1) An amount equal to the amount includable in federal gross income for the taxable year.

(2) An amount equal to the basis in the account or annuity allowed by Section 17507 (relating to individual retirement accounts and simplified employee pensions), the increased basis allowed by Sections 17504 and 17506 (relating to plans of self-employed individuals), the increased basis allowed by Section 17501, or the increased basis allowed by Section 17551 that is remaining after adjustment for reductions in gross income under this provision in prior taxable years.

(c) (1) Except as provided in paragraphs (2) and (3), the amount of the penalty imposed under this part shall be computed in accordance with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code, as applicable for federal income tax purposes for the same taxable year, using a rate of 2½ percent, in lieu of the rate provided in those sections.

(2) In the case where Section 72(t)(6) of the Internal Revenue Code, relating to special rules for simple retirement accounts, as applicable for federal income tax purposes for the same taxable year, applies, the rate in paragraph (1) shall be 6 percent in lieu of the 2½ percent rate specified therein.

1 (3) In the case of payments or ~~distribution~~ *distributions* that are
2 excluded from gross income pursuant to Section 17131.7, the
3 penalty imposed by this subdivision shall not apply.

4 (d) Section 72(f)(2) of the Internal Revenue Code shall be
5 applicable without applying the exceptions which immediately
6 follow that paragraph.

7 (e) The amendments made by Section 844 of the Pension
8 Protection Act of 2006 (Public Law 109-280) to Section 72(e) of
9 the Internal Revenue Code, shall not apply.

10 SEC. 2. Section 17131.7 is added to the Revenue and Taxation
11 Code, to read:

12 17131.7. Gross income shall not include moneys paid or
13 distributed out of a 401(k) plan to an individual if the entire amount
14 received *does not exceed one hundred thousand dollars (\$100,000)*
15 *and* is paid into a health savings account not later than the 60th
16 day after the day on which he or she receives the payment or
17 distribution.

18 SEC. 3. This act provides for a tax levy within the meaning of
19 Article IV of the Constitution and shall go into immediate effect.