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H. R. 2351

To amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings accounts and to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements.

IN THE HOUSE OF REPRESENTATIVES

June 5, 2003

Mr. THOMAS (for himself, Mr. LIPINSKI, Mrs. JOHNSON of Connecticut, Mr. SAM JOHNSON of Texas, Mr. HAYWORTH, Mr. LEWIS of Kentucky, Mr. BRADY of Texas, Mr. ENGLISH, Mr. SESSIONS, Mr. OSE, Mr. FOSSELLA, Mr. PAUL, Mr. SMITH of New Jersey, Mr. WELDON of Florida, Mr. RYUN of Kansas, Mr. DELAY, Mr. TOOMEY, Mr. BARTON of Texas, Mr. WALSH, Mr. BALLENGER, Mr. CAMP, Mr. COLLINS, Mr. RYAN of Wisconsin, Mr. KELLER, Mr. HERGER, Mr. DOOLITTLE, Mr. DEMINT, and Mr. NORWOOD) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings accounts and to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Health Savings Account Availability Act'.

**SEC. 2. HEALTH SAVINGS ACCOUNTS.**

(a) IN GENERAL- Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 223 as section 224 and by inserting after section 222 the following new section:

**`SEC. 223. HEALTH SAVINGS ACCOUNTS.**

`(a) DEDUCTION ALLOWED- In the case of an individual who is an eligible individual for any month during the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid in cash during such taxable year by such individual to a health savings account of such individual.

`(b) LIMITATIONS-

`(1) IN GENERAL- The amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the sum of the monthly limitations for months during such taxable year that the individual is an eligible individual.

`(2) MONTHLY LIMITATION- The monthly limitation for any month is the amount equal to 1/12 of the annual deductible (as of the first day of such month) of the individual's coverage under the high deductible health plan.

`(3) COORDINATION WITH EMPLOYER AND MSA CONTRIBUTIONS- The limitation which would (but for this paragraph) apply under this subsection to the taxpayer for any taxable year shall be reduced (but not below zero) by the sum of--

`(A) the aggregate amount which would (but for subsections (b) and (d) of section 106) be includible in the taxpayer's gross income for such taxable year, and

`(B) the aggregate amount paid during such taxable by such individual to Archer MSAs of such individual.

`(4) SPECIAL RULES FOR MARRIED INDIVIDUALS, DEPENDENTS, AND MEDICARE ELIGIBLE INDIVIDUALS- Rules similar to the rules of paragraphs (3), (6), and (7) of section 220(b) shall apply for purposes of this section.

`(c) DEFINITIONS- For purposes of this section--

`(1) ELIGIBLE INDIVIDUAL-

`(A) IN GENERAL- The term 'eligible individual' means, with respect to any month, any individual if--

`(i) such individual is covered under a high deductible health plan as of the 1st day of such month, and

`(ii) such individual is not, while covered under a high deductible health plan, covered under any health plan--

`(I) which is not a high deductible health plan, and

`(II) which provides coverage for any benefit which is covered under the high deductible health plan.

`(B) CERTAIN COVERAGE DISREGARDED- Subparagraph (A)(ii) shall be applied without regard to--

`(i) coverage for any benefit provided by permitted insurance, and

`(ii) coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

`(2) HIGH DEDUCTIBLE HEALTH PLAN-

**`(A) IN GENERAL-** The term 'high deductible health plan' means a health plan--

**`(i)** in the case of self-only coverage, which has an annual deductible which is not less than \$1,000 and not more than \$2,250,

**`(ii)** in the case of family coverage, which has an annual deductible which is

not less than \$2,000 and not more than \$4,500, and

**`(iii)** the annual out-of-pocket expenses required to be paid under the plan (other than for premiums) for covered benefits does not exceed--

**`(I)** \$3,000 for self-only coverage, and

**`(II)** \$5,500 for family coverage.

**`(B) SPECIAL RULES-**

**`(i) EXCLUSION OF CERTAIN PLANS-** Such term does not include a health plan if substantially all of its coverage is coverage described in paragraph (1)(B).

**`(ii) SAFE HARBOR FOR ABSENCE OF PREVENTIVE CARE DEDUCTIBLE-** A plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care.

**`(C) TREATMENT OF NETWORK SERVICES-**

**`(i) IN GENERAL-** In the case of a health plan which is a preferred provider organization plan and which would (without regard to services provided outside such organization's network of providers described in clause (iii)(I)) be a high deductible health plan, such plan shall not fail to be a high deductible health plan because--

**`(I)** the annual deductible for services provided outside such network exceeds the applicable maximum dollar amount in clause (i) or (ii) of subparagraph (A), or

**`(II)** the annual out-of-pocket expenses required to be paid for services provided outside such network exceeds the applicable dollar amount in subparagraph (A)(iii).

**`(ii) ANNUAL DEDUCTIBLE-** The annual deductible taken into account under subsection (b)(2) with respect to a plan which is a high deductible health plan by reason of clause (i) shall be the annual deductible for services provided within such network.

**`(iii) PREFERRED PROVIDER ORGANIZATION PLAN DEFINED-** In this subparagraph, the term 'preferred provider organization plan' means a health plan that--

`(I) has a network of providers that have agreed to a contractually specified reimbursement for covered benefits with the organization offering the plan,  
`(II) provides for reimbursement for all covered benefits regardless of whether such benefits are provided within such network of providers, and  
` (III) is offered by an organization that is not licensed or organized under State law as a health maintenance organization.

`(3) PERMITTED INSURANCE- The term `permitted insurance' has the meaning given such term in section 220(c)(3).

`(4) FAMILY COVERAGE- The term `family coverage' has the meaning given such term in section 220(c)(5).

`(5) ARCHER MSA- The term `Archer MSA' has the meaning given such term in section 220(d).

`(d) HEALTH SAVINGS ACCOUNT- For purposes of this section--

`(1) IN GENERAL- The term `health savings account' means a trust created or organized in the United States as a health savings account exclusively for the purpose of paying the qualified medical expenses of the account holder, but only if the written governing instrument creating the trust meets the requirements described in section 220(d)(1) (applied without regard to `75 percent of' in subparagraph (A)(ii) thereof).

`(2) QUALIFIED MEDICAL EXPENSES- The term `qualified medical expenses' has the meaning given such term in section 220(d)(2).

`(3) ACCOUNT HOLDER- The term `account holder' means the individual on whose behalf the health savings account was established.

`(4) CERTAIN RULES TO APPLY- Rules similar to the following rules shall apply for purposes of this section:

`(A) Section 219(d)(2) (relating to no deduction for rollovers).

`(B) Section 219(f)(3) (relating to time when contributions deemed made).

`(C) Except as provided in section 106(b), section 219(f)(5) (relating to employer payments).

`(D) Section 408(g) (relating to community property laws).

`(E) Section 408(h) (relating to custodial accounts).

`(e) TAX TREATMENT OF ACCOUNTS-

`(1) IN GENERAL- A health savings account is exempt from taxation under this subtitle unless such account has ceased to be a health savings account. Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

`(2) ACCOUNT TERMINATIONS- Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to health savings

accounts, and any amount treated as distributed under such rules shall be treated as not used to pay qualified medical expenses.

**`(f) TAX TREATMENT OF DISTRIBUTIONS-**

**`(1) AMOUNTS USED FOR QUALIFIED MEDICAL EXPENSES-**

Any amount paid or distributed out of a health savings account which is used exclusively to pay qualified medical expenses of any account holder shall not be includible in gross income.

**`(2) INCLUSION OF AMOUNTS NOT USED FOR QUALIFIED MEDICAL EXPENSES-** Any amount paid or distributed out of a health savings account which is not used exclusively to pay the qualified medical expenses of the account holder shall be included in the gross income of such holder.

**`(3) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN-**

**`(A) IN GENERAL-** If any excess contribution is contributed for a taxable year to any health savings account of an individual, paragraph (2) shall not apply to distributions from the health savings accounts of such individual (to the extent such distributions do not exceed the aggregate excess contributions to all such accounts of such individual for such year) if--

**`(i)** such distribution is received by the individual on or before the last day prescribed by law (including extensions of time) for filing such individual's return for such taxable year, and

**`(ii)** such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in the gross income of the individual for the taxable year in which it is received.

**`(B) EXCESS CONTRIBUTION-** For purposes of subparagraph (A), the term 'excess contribution' means any contribution (other than a rollover contribution) which is neither excludable from gross income under section 106(d) nor deductible under this section.

**`(4) ADDITIONAL TAX ON DISTRIBUTIONS NOT USED FOR QUALIFIED MEDICAL EXPENSES-**

**`(A) IN GENERAL-** The tax imposed by this chapter on the account holder for any taxable year in which there is a payment or distribution from a health savings account of such holder which is includible in gross income under paragraph (2) shall be increased by 15 percent of the amount which is so includible.

**`(B) EXCEPTION FOR DISABILITY OR DEATH-**

Subparagraph (A) shall not apply if the payment or distribution is made after the account holder becomes disabled within the meaning of section 72(m)(7) or dies.

**`(C) EXCEPTION FOR DISTRIBUTIONS AFTER**

**MEDICARE ELIGIBILITY-** Subparagraph (A) shall not apply

to any payment or distribution after the date on which the account holder attains the age specified in section 1811 of the Social Security Act.

**`(5) ROLLOVER CONTRIBUTION-** An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

**`(A) IN GENERAL-** Paragraph (2) shall not apply to any amount paid or distributed from an Archer MSA or a health savings account to the account holder to the extent the amount received is paid into a health savings account for the benefit of such holder not later than the 60th day after the day on which the holder receives the payment or distribution.

**`(B) LIMITATION-** This paragraph shall not apply to any amount described in subparagraph (A) received by an individual from an Archer MSA or a health savings account if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in subparagraph (A) from an Archer MSA or a health savings account which was not includible in the individual's gross income because of the application of this paragraph.

**`(6) ADDITIONAL TAX; SPECIAL RULES-** Rules similar to the rules of paragraphs (6), (7), and (8) of section 220(f) shall apply for purposes of this section.

**`(g) COST-OF-LIVING ADJUSTMENT-**

**`(1) IN GENERAL-** In the case of any taxable year beginning in a calendar year after 1998, each dollar amount in subsection (c)(2) shall be increased by an amount equal to--

**`(A)** such dollar amount, multiplied by

**`(B)** the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof.

**`(2) SPECIAL RULES-** In the case of the \$1,000 amount in subsection (c)(2)(A)(i) and the \$2,000 amount in subsection (c)(2)(A)(ii), paragraph (1)(B) shall be applied by substituting 'calendar year 2002' for 'calendar year 1997'.

**`(3) ROUNDING-** If any increase under paragraph (1) or (2) is not a multiple of \$50, such increase shall be rounded to the nearest multiple of \$50.

**`(h) REPORTS-** The Secretary may require the trustee of a health savings account to make such reports regarding such account to the Secretary and to the account holder with respect to contributions, distributions, and such other matters as the Secretary determines appropriate. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.'.

**(b) DEDUCTION ALLOWED WHETHER OR NOT INDIVIDUAL ITEMIZES OTHER DEDUCTIONS-** Subsection (a) of section 62 of such

Code is amended by inserting after paragraph (18) the following new paragraph:

`(19) **HEALTH SAVINGS ACCOUNTS-** The deduction allowed by section 223.'

(c) **ROLLOVERS FROM ARCHER MSAS PERMITTED-** Subparagraph (A) of section 220(f)(5) of such Code (relating to rollover contribution) is amended by inserting `or a health savings account (as defined in section 223(d))' after `paid into an Archer MSA'.

(d) **EXCLUSIONS FOR EMPLOYER CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS-**

(1) **EXCLUSION FROM INCOME TAX-** Section 106 of such Code (relating to contributions by employer to accident and health plans) is amended by adding at the end the following new subsection:

`(d) **CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS-**

`(1) **IN GENERAL-** In the case of an employee who is an eligible individual, amounts contributed by such employee's employer to any health savings account of such employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the excess of--

`(A) the limitation under section 223(b)(1) (determined without regard to this subsection) which is applicable to such employee for such taxable year, over

`(B) the aggregate amount treated as employer-provided coverage for medical expenses under an accident or health plan under subsection (b).

`(2) **SPECIAL RULES-** Rules similar to the rules of paragraphs (2), (3), (4), and (5) of subsection (b) shall apply for purposes of this subsection.

`(3) **DEFINITIONS-** For purposes of this subsection, the terms `eligible individual' and `health savings account' have the respective meanings given to such terms by section 223.

`(4) **CROSS REFERENCE-**

`For penalty on failure by employer to make comparable contributions to the health savings accounts of comparable employees, see section 4980G.'

(2) **EXCLUSION FROM EMPLOYMENT TAXES-**

(A) **RAILROAD RETIREMENT TAX-** Subsection (e) of section 3231 of such Code is amended by adding at the end the following new paragraph:

`(11) **HEALTH SAVINGS ACCOUNT CONTRIBUTIONS-** The term `compensation' shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).'

(B) **UNEMPLOYMENT TAX-** Subsection (b) of section 3306 of such Code is amended by striking `or' at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting `; or', and by inserting after paragraph (17) the following new paragraph:

`(18) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).'

(C) **WITHHOLDING TAX-** Subsection (a) of section 3401 of such Code is amended by striking `or' at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting `; or', and by inserting after paragraph (21) the following new paragraph:

`(22) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).'

(3) **EMPLOYER CONTRIBUTIONS REQUIRED TO BE SHOWN ON W-2-** Subsection (a) of section 6051 of such Code is amended by striking `and' at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting `, and', and by inserting after paragraph (11) the following new paragraph:

`(12) the amount contributed to any health savings account (as defined in section 223(d)) of such employee or such employee's spouse.'

(4) **PENALTY FOR FAILURE OF EMPLOYER TO MAKE COMPARABLE HEALTH SAVINGS ACCOUNT CONTRIBUTIONS-**

(A) **IN GENERAL-** Chapter 43 of such Code is amended by adding after section 4980F the following new section:

## **`SEC. 4980G. FAILURE OF EMPLOYER TO MAKE COMPARABLE HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.**

`(a) **GENERAL RULE-** In the case of an employer who makes a contribution to the health savings account of any employee with respect to coverage under a high deductible health plan of the employer during a calendar year, there is hereby imposed a tax on the failure of such employer to meet the requirements of subsection (d) for such calendar year.

`(b) **AMOUNT OF TAX-** The amount of the tax imposed by subsection (a) on any failure for any calendar year is the amount equal to 35 percent of the aggregate amount contributed by the employer to health savings accounts of employees for taxable years of such employees ending with or within such calendar year.

`(c) **WAIVER BY SECRETARY-** In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

`(d) **EMPLOYER REQUIRED TO MAKE COMPARABLE HEALTH SAVINGS ACCOUNT CONTRIBUTIONS FOR ALL PARTICIPATING EMPLOYEES-** An employer meets the requirements of this subsection for any calendar year if the employer meets the requirements of section 4980E(d) applied by substituting `health savings account' for `Archer MSA' each place it appears.



`(e) **CONTROLLED GROUPS**- For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 employer.

`(f) **DEFINITIONS**- Terms used in this section which are also used in section 223 have the respective meanings given such terms in section 223.'.

(B) **CLERICAL AMENDMENT**- The table of sections for chapter 43 of such Code is amended by adding after the item relating to section 4980F the following new item:

`Sec. 4980G. Failure of employer to make comparable health savings account contributions.'.

(e) **TAX ON EXCESS CONTRIBUTIONS**- Section 4973 of such Code (relating to tax on excess contributions to certain tax-favored accounts and annuities) is amended--

(1) by striking `or' at the end of paragraph (3) of subsection (a),  
(2) by inserting `or' at the end of paragraph (4) of subsection (a),  
(3) by inserting after paragraph (4) of subsection (a) the following new paragraph:

`(5) a health savings account (within the meaning of section 223(d)),',  
and

(4) by adding at the end the following new subsection:

`(g) **EXCESS CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS**- For purposes of this section, in the case of health savings accounts (within the meaning of section 223(d)), the term `excess contributions' means the sum of-

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`(1) the aggregate amount contributed for the taxable year to the accounts (other than rollover contributions referred to in section 223(f)(3)) which is neither excludable from gross income under section 106(d) nor allowable as a deduction under section 223 for such year,  
and

`(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of--

`(A) the distributions out of the accounts which were included in gross income under section 223(f)(2), and

`(B) the excess (if any) of--

`(i) the maximum amount allowable as a deduction under section 223(b)(1) (determined without regard to section 106(d)) for the taxable year, over

`(ii) the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed out of the health savings account in a distribution to which section 223(f)(3) applies shall be treated as an amount not contributed.'.

(f) **TAX ON PROHIBITED TRANSACTIONS**-

(1) Section 4975 of such Code (relating to tax on prohibited transactions) is amended by adding at the end of subsection (c) the following new paragraph:

`(6) **SPECIAL RULE FOR HEALTH SAVINGS ACCOUNTS**- An individual for whose benefit a health savings account (within the

meaning of section 223(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a health savings account by reason of the application of section 223(e)(2) to such account.'

(2) Paragraph (1) of section 4975(e) of such Code is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and by inserting after subparagraph (D) the following new subparagraph:

'(E) a health savings account described in section 223(d),'.

(g) **FAILURE TO PROVIDE REPORTS ON HEALTH SAVINGS ACCOUNTS-** Paragraph (2) of section 6693(a) of such Code (relating to reports) is amended by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (B) the following new subparagraph:

'(C) section 223(h) (relating to health savings accounts),'.

(h) **EXCEPTION FROM CAPITALIZATION OF POLICY ACQUISITION EXPENSES-** Subparagraph (B) of section 848(e)(1) of such Code (defining specified insurance contract) is amended by striking 'and' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ', and', and by adding at the end the following new clause:

'(v) any contract which is a health savings account (as defined in section 223(d)).'.

(i) **CLERICAL AMENDMENT-** The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following:

'Sec. 223. Medical savings accounts.

'Sec. 224. Cross reference.'

(j) **EFFECTIVE DATE-** The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

### **SEC. 3. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.**

(a) **IN GENERAL-** Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

'(h) **CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS-**

'(1) **IN GENERAL-** For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than \$500 of unused health benefits may be--

`(A) carried forward to the succeeding plan year of such health flexible spending arrangement, or

`(B) contributed on behalf of an employee to a qualified retirement plan (as defined in section 4974(c)), an eligible deferred compensation plan (as defined in section 457(b)), or a health savings account (as defined in section 223(d)).

**`(2) CONTRIBUTION OF UNUSED HEALTH BENEFITS ON BEHALF OF EMPLOYEE-** For purposes of this title, contributions on behalf of an employee described in paragraph (1) shall be treated as elective contributions made pursuant to a choice by the employee between such contributions and compensation which would otherwise be includible in the gross income of the employee. Contributions described in paragraph (1) shall be excluded from the gross income of the employee, or included in the gross income of the employee and allowed as a deduction by the employee, to the extent that elective contributions would be treated in that manner under this title.

**`(3) HEALTH FLEXIBLE SPENDING ARRANGEMENT-** For purposes of this subsection, the term 'health flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1) (without regard to subparagraphs (C) and (D) thereof)).

**`(4) UNUSED HEALTH BENEFITS-** For purposes of this subsection, with respect to an employee, the term 'unused health benefits' means the excess of--

`(A) the maximum amount of reimbursement allowable to the employee during a plan year under a health flexible spending arrangement, taking into account any election by the employee, over

`(B) the actual amount of reimbursement during such year under such arrangement.'.

**(b) EFFECTIVE DATE-** The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

**END**