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ASSEMBLY SUBSTITUTE AMENDMENT 2, TO 2005 ASSEMBLY BILL 4

January 27, 2005 – Offered by Representatives Moulton, LeMahieu, Ainsworth, Nerison, Ott, Suder, Jeskewitz, Gunderson, Krawczyk, McCormick, Van Roy, Meyer, M. Williams, Jensen, Ballweg, Strachota, Pridemore, Vos, Lamb, Davis, Mursau, Hundertmark, Nischke, Townsend, Wieckert, Stone, Hahn, Loeffelholz, Underheim, Lothian, Kerkman and Albers.

AN ACT to amend 71.83 (1) (c); and to create 71.83 (1) (ce) and subchapter XVI
of chapter 71 [precedes 71.98] of the statutes; relating to: adopting federal law
as it relates to health savings accounts for state income and franchise tax
purposes, modifying a penalty, and providing a penalty.

Analysis by the Legislative Reference Bureau

This substitute amendment adopts, retroactively to January 1, 2004, for state income and franchise tax purposes, section 1201 of Public Law 108–173 as it relates to claiming a deduction for an amount that a person pays into a health savings account (HSA). The substitute amendment also prohibits the imposition of a penalty on an individual who withdraws funds from his or her medical savings account and deposits those funds into his or her HSA.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. 71.83 (1) (c) of the statutes is amended to read:

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savings accounts.

SECTION 4. Initial applicability.

71.83 (1) (c) Medical savings account withdrawals. Any person who is liable for a penalty for federal income tax purposes under section 220 (f) (4) of the Internal Revenue Code is liable for a penalty equal to 33% of that penalty, except that no penalty may be imposed under this paragraph with regard to any amount that is withdrawn from an individual's medical savings account and rolled over or deposited into the same individual's health savings account. The department of revenue shall assess, levy and collect the penalty under this paragraph as it assesses, levies and collects taxes under this chapter. **Section 2.** 71.83 (1) (ce) of the statutes is created to read: 71.83 (1) (ce) *Health savings accounts*. Any person who is liable for a penalty for federal income tax purposes under section 223 (f) (4) of the Internal Revenue Code is liable for a penalty equal to 33 percent of that penalty. The department of revenue shall assess, levy, and collect the penalty under this paragraph as it assesses, levies, and collects taxes under this chapter. **Section 3.** Subchapter XVI of chapter 71 [precedes 71.98] of the statutes is created to read: CHAPTER 71 SUBCHAPTER XVI INTERNAL REVENUE CODE UPDATE **71.98 Internal Revenue Code update.** The following federal laws, to the extent that they apply to the Internal Revenue Code, apply to this chapter:

(1) HEALTH SAVINGS ACCOUNTS. Section 1201 of P.L. 108–173, relating to health

- 1 (1) This act first applies retroactively to taxable years beginning on January
- 2 1, 2004.
- 3 (END)