



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 4

**Assembly Substitute
Amendment 2**

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Under *current federal law*, eligible individuals covered by a high deductible health plan that meets certain requirements may make contributions to a health savings account (HSA) from which distributions may be made to pay for qualified medical expenses of the HSA beneficiary. The contributions to (up to certain limits) and the earnings on an HSA may be deducted in determining adjusted gross income for purposes of federal income tax. An eligible individual's employer also may make tax-free contributions to an HSA on behalf of an eligible employee under certain circumstances. Distributions from an HSA are not subject to federal income tax if they are used to pay for qualified medical expenses of the HSA beneficiary. If a distribution is not used to pay for qualified medical expenses, a federal penalty of 10% applies to the distribution, unless the distribution is made after the account beneficiary becomes disabled or dies.

Under *current state law*, income from which contributions are made to an HSA and earnings on an HSA are included in an individual's income for purposes of state income tax, that is, the contributions and earnings are not tax free.

2005 Assembly Bill 4 would provide a nonrefundable credit against the individual's state income tax for 6.5% of the allowable federal deduction for contributions made by an eligible individual to and earnings on an HSA. (The bill does not apply the credit to contributions to an HSA made by an employer on behalf of an eligible individual.) As under federal law, distributions for qualified medical expenses would not be included in taxable income.

The bill provides that the act would first apply to taxable years beginning on January 1 of the year in which the act takes effect, except that if the act takes effect after July 31, the act first applies to taxable years beginning on the following January 1.

Assembly Substitute Amendment 2 to the bill would adopt federal law as it relates to HSAs, that is, if the conditions specified in federal law are met, contributions (up to certain limits) by an eligible individual and his or her employer to and earnings on an HSA are deducted from income in determining

state income tax. Also, distributions from an HSA for qualified medical expenses would not be included in taxable income. If the federal penalty of 10% applies to a distribution from an HSA for other than qualified medical expenses, the substitute amendment provides a state penalty of 33% of the 10% federal penalty, that is 3.33% of the distribution. The substitute amendment also specifies that no penalty may be imposed under state law for withdrawal from an Archer Medical Savings Account if the amount is rolled over or deposited in the individual's HSA.

The substitute amendment provides that the act applies retroactively to tax years beginning on January 1, 2004.

Legislative History

Assembly Substitute Amendment 2 to the bill was offered by Representative Moulton and others. The Assembly adopted the substitute amendment on a vote of Ayes, 62; Noes, 34; Not Voting, 3.

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