



State of Wisconsin

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STEPHEN R. MILLER
CHIEF

January 11, 2011

MEMORANDUM

To: Representative Fitzgerald

From: Marc E. Shovers, Managing Attorney, (608) 266-0129

Subject: Technical Memorandum to **2011 AB 2 (Jr1)** (LRB-0832/2) **by DOR**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

January 11, 2011

TO: Marc Shovers
Legislative Reference Bureau

FROM: Rebecca Boldt
Department of Revenue

SUBJECT: Technical Memorandum on Special Session Assembly Bill 2 – Health Savings Accounts

Allowing a credit for a HSA instead of following federal law and allowing a deduction for such accounts adds a great deal of complexity for the taxpayer. Following federal law would mean that the taxpayer would need no further adjustment for Wisconsin. Allowing the credit instead of a deduction means the taxpayer will have to add back the amount of the federal deduction, contact the financial institution to determine the earnings on the account and add the earnings to Wisconsin income, and then compute the credit. Distributions from the account are not allowed as a medical deduction for federal purposes but would be allowed for Wisconsin. Not following federal law is also a problem for taxpayers who want to rollover an amount from a medical savings account (MSA) to a HSA. The rollover amount becomes taxable for Wisconsin.

There is a question about the meaning of “federal tax-exempt earnings” in sec. 71.07(6f)(a)1 and 2. For federal purposes, an employer may contribute to a HSA for an employee. The amount contributed is not included in the employee’s wages for federal tax purposes, but would be included for Wisconsin. In addition, the earnings on a HSA are exempt from federal tax, but taxable for Wisconsin. Does “federal tax-exempt earnings” mean the amount not included as wages for federal tax purposes as provided in sec. 106(d) of the IRC or the amount of tax-exempt earnings from the investment of the account? This should be clarified.

Because Wisconsin does not recognize an HSA, amounts withdrawn from the HSA for payment of medical expenses are not allowed as an itemized deduction for federal purposes but are allowed as an itemized deduction for Wisconsin when computing the itemized deduction credit. Thus a person could receive a double benefit, first when the credit is allowed and again when the amounts are withdrawn to pay medical expenses.

For federal purposes, if amounts withdrawn from the HSA are used for nonmedical purposes, the amount must be included in income. There is no provision in this bill for those circumstances

where the amount withdrawn is not used for medical expenses. A person receives the credit but there are no consequences if the amount is not used for medical purposes.

If you have any questions regarding this technical memorandum, please contact Brad Caruth at 608-261-8984 or Bradley.Caruth@revenue.wi.gov.

cc: Representative Kaufert