

**2011 Jr1 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB2)**

Received: **01/13/2011**

Received By: **mshovers**

Wanted: **As time permits**

Companion to LRB:

For: **Alberta Darling (608) 266-5830**

By/Representing: **Rick Olin**

May Contact:

Drafter: **mshovers**

Subject: **Tax, Individual - dedct/sbtrct**

Addl. Drafters:

Extra Copies: **Send the bill to Rick Olin @  
LFB, not Heather in Sen.  
Darling's office**

Submit via email: **YES**

Requester's email: **Sen.Darling@legis.wisconsin.gov**

Carbon copy (CC:) to: **rick.olin@legis.wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Adopt federal law as it relates to health savings accounts

---

**Instructions:**

See attached. Draft LRB -0357/3 as a sub. to Spec. Session SB 2 (LRB -0357/5)

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 01/13/2011	wjackson 01/13/2011		_____			
/1			mduchek 01/13/2011	_____	sbasford 01/13/2011	sbasford 01/13/2011	
/2	mshovers 01/14/2011	jdyer 01/14/2011	phenry 01/14/2011	_____	lparisi 01/14/2011	lparisi 01/14/2011	

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/3	mshovers 01/14/2011	jdyer 01/14/2011	phenry 01/14/2011	_____	sbasford 01/14/2011	sbasford 01/14/2011	
/4	jkreye 01/14/2011	wjackson 01/14/2011	rschluet 01/14/2011	_____	lparisi 01/14/2011	lparisi 01/14/2011	

FE Sent For:

<END>

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Extra Copies: Send the bill to Rick Olin @ LFB, not Heather in Sen. Darling's office

Submit via email: YES

Requester's email: Sen.Darling@legis.wisconsin.gov

Carbon copy (CC:) to: rick.olin@legis.wisconsin.gov

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No specific pre topic given

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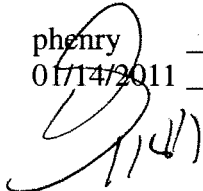
Adopt federal law as it relates to health savings accounts

**Instructions:**

See attached. Draft LRB -0357/3 as a sub. to Spec. Session SB 2 (LRB -0357/5)

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FE Sent For:

1/4 WJ 1/14

<END>

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12 MES 1/14/11

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/?	mshovers	1 wj 1/13	<i>[Handwritten signature]</i>	3			
1/1 MES	1/13/11						

FE Sent For:

<END>



**Shovers, Marc**

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**From:** Olin, Rick  
**Sent:** Wednesday, January 12, 2011 11:53 AM  
**To:** Shovers, Marc  
**Subject:** RE: HSA Drafting Request

Yes, I have a copy. Still waiting to hear from DOR if we need something more than the blanket reference to IRC sec 223.

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**From:** Shovers, Marc  
**Sent:** Wednesday, January 12, 2011 11:18 AM  
**To:** Olin, Rick  
**Subject:** RE: HSA Drafting Request

Hi Rick:

Have you heard anything from DOR? Should I just go ahead and produce a sub for you so you can start reviewing it? I gave you a copy of what it will look like, didn't I?  
Thanks.

Marc

-----Original Message-----

**From:** Olin, Rick  
**Sent:** Monday, January 10, 2011 8:51 AM  
**To:** Shovers, Marc  
**Subject:** HSA Drafting Request

Hi Marc:

Please prepare a substitute amendment for Senator Darling. Please send the draft to me, rather than Heather. We won't need it until the 18th, so you can wait until I hear from DOR on the technical issues we discussed last week.  
Thanks for your help.

Rick Olin, Fiscal Analyst  
Wisconsin Legislative Fiscal Bureau  
(608) 266-3847 (general)  
(608) 267-7597 (direct)

-----Original Message-----

**From:** Reinhardt, Rob  
**Sent:** Monday, January 10, 2011 8:11 AM  
**To:** Smith, Heather  
**Cc:** Olin, Rick  
**Subject:** RE: Motion for HSA SS bill

Heather,

For separate bills, JFC usually works from LRB-drafted amendments, rather than motions. Rick Olin will work with the LRB to get this drafted for you.

1/12/2011



State of Wisconsin  
2011 - 2012 LEGISLATURE

January 2011 Special Session

S 0008/1



LRB-0357/3

MES:jld&wlj:md

SSA  
to 2011 Jt S.S. BILL 2  
A Senate

stays  
RMNR

WANTED  
Fri. morning

Regen

1 AN ACT to create 71.05 (6) (b) 47., 71.83 (1) (ce) and subchapter XVI of chapter  
2 71 [precedes 71.98] of the statutes; relating to: adopting federal law as it  
3 relates to health savings accounts for state income and franchise tax purposes  
4 and providing a penalty.

substitute amendment

**Analysis by the Legislative Reference Bureau**

This ~~bill~~ adopts, 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. The ~~bill~~ also specifies that any gain generated by a health savings account is exempt from taxation.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

5 SECTION 1. 71.05 (6) (b) 47. of the statutes is created to read:



## Shovers, Marc

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**From:** Olin, Rick  
**Sent:** Friday, January 14, 2011 7:39 AM  
**To:** Shovers, Marc  
**Cc:** Reinhardt, Rob; Koskinen, John B - DOR  
**Subject:** FW: Follow-up on HSA Substitute

Marc:  
Here are the comments from DOR. It seems we need three additional cross-references to the IRC. Also, I think we should incorporate the Dec. 31, 2010 reference to the IRC, since that is the procedure we use on other IRC updates. If you want to talk, I'll be in all day. If I'm not at my desk, ask Liz or Sandy (6-3847) to find me. Thanks,  
Rick

---

**From:** Stock, Marcella L - DOR [<mailto:Marcella.Stock@revenue.wi.gov>]  
**Sent:** Friday, January 14, 2011 7:08 AM  
**To:** Olin, Rick  
**Cc:** Boldt, Rebecca A - DOR; Hanson, Jeffrey W - DOR  
**Subject:** FW: Follow-up on HSA Substitute

Even though there is a cross reference to sec. 220(f)(5) in sec. 223(d)(1), we still would need to adopt sec. 220(f)(5). The reference in sec. 223(d)(1) only accepts rollover contributions for HSAs. It would not exempt the distribution from tax. For that, you need the provision in sec. 220(f)(5).

I suggest that this bill adopt secs. 106(d), 220(f)(5)(A), and 408(d)(9).

I have an additional question. The draft I am looking at (LRB-0357/3) creates sec. 71.98. My concern is that this draft adopts sec. 223 of the IRC without any date limitations (such as the IRC as amended to December 31, 2010). Because there is no date limitation, any changes that may be made in the future to sec. 223 of the IRC would automatically apply for Wisconsin without having to be adopted by the Legislature. Is this the intent?

---

**From:** Boldt, Rebecca A - DOR  
**Sent:** Thursday, January 13, 2011 2:34 PM  
**To:** Olin, Rick - LEGIS  
**Cc:** Stock, Marcella L - DOR  
**Subject:** FW: Follow-up on HSA Substitute

Rick:

I ALWAYS defer to Marcy on these types of questions so it's best to wait for her, but I did find a cross reference to section 220(f)(5).

In a quick discussion with Marcy days ago she implied that in answer to your other questions she thought that yes a reference to section 106 would be required, but I could have misunderstood and that was before she had a chance to really look at the issue.

Rebecca

---

**From:** Boldt, Rebecca A - DOR  
**Sent:** Thursday, January 13, 2011 2:27 PM  
**To:** Stock, Marcella L - DOR  
**Subject:** FW: Follow-up on HSA Substitute

I found this in section 223(d)(1) - would this suffice to allow the archer rollovers?

(A) Except in the case of a rollover contribution described

in subsection (f)(5) or section 220(f)(5), no contribution will be accepted -

- (i) unless it is in cash, or
- (ii) to the extent such contribution, when added to previous contributions to the trust for the calendar year, exceeds the sum of -

---

**From:** Olin, Rick [mailto:Rick.Olin@legis.wisconsin.gov]  
**Sent:** Thursday, January 13, 2011 1:38 PM  
**To:** Boldt, Rebecca A - DOR; Stock, Marcella L - DOR  
**Cc:** Reinhardt, Rob - LEGIS  
**Subject:** Follow-up on HSA Substitute

I know you guys are very busy, but can we get a response by tomorrow noon? In addition to the email below, I sent another email:

*Regarding the substitute amendment:*

*Federal law permits the rollover of Archer MSAs to HSAs. I think this occurs in IRC 220(f)(5)(A), as opposed to somewhere in IRC Sec. 223. Since Wisconsin allows contributions to MSAs, provided the MSA was created before 2007, should the substitute amendment include a cross-reference to Section 220? Or did I miss the rollover language in Section 223?*

Thanks for your help.

---

**From:** Olin, Rick  
**Sent:** Friday, January 07, 2011 8:29 AM  
**To:** Boldt, Rebecca A - DOR; Stock, Marcella L - DOR; Caruth, Bradley R - DOR  
**Subject:** HSA Substitute

Hi Folks:

The following material is a question I asked Marc Shovers about the HSA substitute amendment. I assume you have a copy; if not, let me know. The question I would like you to consider is -- Is the cross-reference to Section 223 of the IRC sufficient or should the sub also include a cross-reference to Section 106(d) of the IRC? I have pasted Marc's response below my question. He thinks we don't need the additional cross-reference. Nonetheless, we would like to make sure that you think the sub includes contributions by employers. A response sometime next week should suffice. The two health committees will probably take up the HSA bills in the latter part of the week. Thanks for your thoughts.

Rick Olin, Fiscal Analyst  
Wisconsin Legislative Fiscal Bureau  
(608) 266-3847 (general)  
(608) 267-7597 (direct)

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**From:** Olin, Rick  
**Sent:** Thursday, January 06, 2011 3:38 PM  
**To:** Shovers, Marc  
**Cc:** Kreye, Joseph  
**Subject:** HSA Substitute

Hi Marc:

I have a question about the HSA substitute (replaces credit with deduction). DOR's Schedule i lists 3 add-backs to agi under current state law:

- employee contributions;
- employer contributions; and
- interest earnings on accounts.

I tried to find all three references in the IRC. Your cross-reference to section 223 covers the employee contribution, and your creation of s. 71.05(6)(b)47. covers the interest earnings. This treatment made me wonder why we couldn't use an IRC cross-reference, but I could not find one related to HSA interest earnings. However, in looking for it, I found Section 106 relating to an exclusion from gross income for employer contributions to accident and health plans. Sub (d) pertains specifically to HSAs. **Do you think s. 71.98(1) should refer both to Section 223 and to Section 106 or 106(d)?** I have not discussed this with DOR, but could do so if you are unsure of the answer to my question. Also, did your discussions with DOR uncover where the exclusion for interest earnings on HSAs is included in the IRC? I thought it might be under sec. 223(e) but was unsure. Thanks for your help.

Rick Olin, Fiscal Analyst  
Wisconsin Legislative Fiscal Bureau  
(608) 266-3847 (general)  
(608) 267-7597 (direct)

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**From:** Shovers, Marc  
**Sent:** Thursday, January 06, 2011 5:33 PM  
**To:** Olin, Rick  
**Subject:** RE: HSA Substitute

Hi Rick:

I'm not sure that there needs to be x-refs to anything regarding the add-backs. And I can't really find them on the form, which seems to be too basic, and the instructions for the form don't seem to offer enough guidance. DOR's brief explanation in the instructions for Schedule I identifies the following differences between state and federal law:

### 3. Health Savings Accounts

(a) Federal – Certain individuals may establish health savings accounts. A deduction is allowed for contributions to the account. Amounts contributed by an employer to an employee's account are excluded from the employee's gross income. (Public Laws 108-173 and 109-432)

(b) Wisconsin – The federal provisions relating to health savings accounts do not apply. For example:

- 1) a deduction is not allowed for the amount paid to a health savings account,
- 2) earnings on the health savings account are subject to Wisconsin income tax,
- 3) amounts distributed from the account are not subject to Wisconsin income tax,
- 4) rollovers from an Archer Medical Savings Account, health flexible spending arrangement (FSA), or a health reimbursement arrangement (HRA) result in a taxable transaction, and
- 5) the amounts contributed by an employer (or contributed pre-tax for federal purposes by an employee) are taxable wages to the employee.

The substitute amendment is not a deduction; it simply adopts federal law with regard to HSAs. If it becomes law, it will just mean that Wisconsin residents will not have to add anything back to AGI that they deducted from AGI under federal law. Created s. 71.05 (6) (b) 47. was requested by DOR because they thought there might be some confusion as to whether gains generated from

contributions made before the bill takes effect would be covered by the mini-IRC update. To make sure that nobody will have to add back any gain, regardless of when the relevant contributions to an HSA were made, DOR suggested the addition of s. 71.05 (6) (b) 47.

I really don't think any reference has to be made to any other IRC section. My understanding is that adopting Section 223 of the IRC will accomplish the requester's goal; the subtraction in s. 71.05 (6) (b) 47. is just an effort to be extra-careful. Please feel free to check with DOR, but I believe that over the last few years DOR has seen various iterations of the draft I gave you and nobody has ever raised this issue.

Marc

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State of Wisconsin  
2011 - 2012 LEGISLATURE  
January 2011 Special Session



LRBs0008/1  
MES:jld&wlj:md

fmr

SENATE SUBSTITUTE AMENDMENT,  
TO SENATE BILL 2

WANTED:  
NOON

reglu

4

1 AN ACT to create 71.05 (6) (b) 47., 71.83 (1) (ce) and subchapter XVI of chapter  
2 71 [precedes 71.98] of the statutes; relating to: adopting federal law as it  
3 relates to health savings accounts for state income and franchise tax purposes  
4 and providing a penalty.

*Analysis by the Legislative Reference Bureau*

This substitute amendment adopts, 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. The substitute amendment also specifies that any gain generated by a health savings account is exempt from taxation.

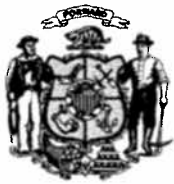
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LPS-  
OVER  
↓







State of Wisconsin  
2011 - 2012 LEGISLATURE

January 2011 Special Session



LRBs0008/2  
MES:ald&wlj:ph

RMR

SENATE SUBSTITUTE AMENDMENT,  
TO SENATE BILL 2

Wanted  
2 PM

Regen ✓

4

1 AN ACT *to create* 71.05 (6) (b) 47., 71.83 (1) (ce) and subchapter XVI of chapter  
2 71 [precedes 71.98] of the statutes; **relating to:** adopting federal law as it  
3 relates to health savings accounts for state income and franchise tax purposes  
4 and providing a penalty. ✓

***Analysis by the Legislative Reference Bureau***

This substitute amendment adopts, for state income and franchise tax purposes, ~~Section 1201 of Public Law 108-178 as amended~~ relating to claiming a deduction\* for an amount that a person pays into a health savings account. ✓ The substitute amendment also specifies that any gain generated by a health savings account is exempt from taxation.

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

5 SECTION 1. 71.05 (6) (b) 47. of the statutes is created to read:

a number of provisions in the Internal Revue Code  
that



1 (d) *Administration*. Subsection ~~(9e)~~ (d), to the extent that it applies to the credit  
2 under that subsection, applies to the credit under this subsection.

3 **SECTION 2.** ~~71.10~~ (4) (cf) of the statutes is created to read:

4 71.10 ~~(4)~~ (cf) The health savings account tax credit under s. 71.07 (6f).

5 **SECTION 3. Nonstatutory provisions.**

6 (1) REQUIRED GENERAL FUND BALANCE. Section 20.003 (4) of the statutes does not  
7 apply to the action of the legislature in enacting this act. ✓

8 **SECTION 4. Initial applicability.**

9 (1) This act first applies to taxable years beginning on January 1 of the year  
10 in which this subsection takes effect, except that if this subsection takes effect after  
11 July 31 this act first applies to taxable years beginning on January 1 of the year  
12 following the year in which this subsection takes effect.

13 ~~END~~

ms  
2-19



State of Wisconsin  
2011 - 2012 LEGISLATURE  
January 2011 Special Session



LRBs0008/3  
MES:jld&wlj:ph

4  
stops  
RMR

SENATE SUBSTITUTE AMENDMENT ,  
TO SENATE BILL 2

in 1-14-11

NOW

re jmr

1 AN ACT to create 71.05 (6) (b) 47., 71.83 (1) (ce) and subchapter XVI of chapter  
2 71 [precedes 71.98] of the statutes; relating to: adopting federal law as it  
3 relates to health savings accounts for state income and franchise tax purposes  
4 and providing a penalty.

*Analysis by the Legislative Reference Bureau*

This substitute amendment adopts, for state income and franchise tax purposes, a number of provisions in the Internal Revenue Code that relate to claiming a deduction for an amount that a person pays into a health savings account. The substitute amendment also specifies that any gain generated by a health savings account is exempt from taxation.

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

5 SECTION 1. 71.05 (6) (b) 47. of the statutes is created to read:

1 71.05 (6) (b) 47. For taxable years beginning after December 31, 2010, any  
2 amount of gain generated on a health savings account created under section 223 of  
3 the Internal Revenue Code.

4 **SECTION 2.** 71.83 (1) (ce) of the statutes is created to read:

5 71.83 (1) (ce) *Health savings accounts.* Any person who is liable for a penalty  
6 for federal income tax purposes under section 223 (f) (4) of the Internal Revenue Code  
7 is liable for a penalty equal to 33 percent of that penalty. The department of revenue  
8 shall assess, levy, and collect the penalty under this paragraph as it assesses, levies,  
9 and collects taxes under this chapter.

10 **SECTION 3.** Subchapter XVI of chapter 71 [precedes 71.98] of the statutes is  
11 created to read:

12 **CHAPTER 71**

13 **SUBCHAPTER XVI**

14 **INTERNAL REVENUE CODE UPDATE**

15 **71.98 Internal Revenue Code update.** The following federal laws, to the  
16 extent that they apply to the Internal Revenue Code, apply to this chapter:

17 (1) **HEALTH SAVINGS ACCOUNTS.** Sections 106 (d), 220 (f) (5) (A), 223, and 408 (d)  
18 (9) of the Internal Revenue Code, all as amended to December 31, 2010, and relating  
19 to health savings accounts.

20 **SECTION 4. Nonstatutory provisions.**

21 (1) **REQUIRED GENERAL FUND BALANCE.** Section 20.003 (4) of the statutes does not  
22 apply to the action of the legislature in enacting this act.

23 **SECTION 5. Initial applicability.**

24 (1) This act first applies to taxable years beginning on January 1, 2011.

25 **(END)**