

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2563:

Greenwood

AS INTRODUCED

An Act relating to revenue and taxation; creating the Health Savings Account Act; defining terms; determining applicability of act; allowing for contributions into account; limiting amount of contributions; exempting contributions and interest from taxation; providing for distribution of funds; limiting use of funds in account; allowing for withdrawals from account under certain conditions; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2358.10 of Title 68, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 5 of this act shall be known and may be cited as the "Health Savings Account Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2358.11 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in the Health Savings Account Act:

1. "Deductible" means the total deductible for an eligible individual and all the dependents of that eligible individual for a calendar year;

2. "Dependent" means the spouse or child of the eligible individual as defined in Section 152 of the Internal Revenue Code;

3. "Eligible individual" means the individual taxpayer, including employees of an employer who contributes to health savings accounts on behalf of the employee who:

- a. must be covered by a "High Deductible Health Plan" individually or with a dependent,

- b. may not be covered under any health plan that is not a high deductible health plan, except for:
 - (1) coverage for accidents,
 - (2) workers compensation insurance,
 - (3) insurance for a specified disease or illness,
 - (4) insurance paying a fixed amount per day per hospitalization, or
 - (5) tort liabilities, and
- c. establishes or on whose behalf the health savings account is established;

4. "Health savings account" means a trust or custodian established in this state pursuant to a health savings account program exclusively to pay the qualified medical expenses of an eligible individual or dependents of the eligible individual, but only if the written governing instrument creating the account meets the following requirements:

- a. except in the case of a rollover contribution, no contribution will be accepted:
 - (1) unless it is in cash, or
 - (2) to the extent such contribution, when added to the previous contributions to the account for the calendar year, exceeds one hundred percent (100%) of the deductible of the eligible individual or Two Thousand Six Hundred Dollars (\$2,600.00) for an individual or Five Thousand One Hundred Fifty Dollars (\$5,150.00) per family, whichever is lower,
- b. the trustee or custodian is a bank, an insurance company, or another person approved by the Oklahoma Tax Commission,
- c. no part of the trust assets will be invested in life insurance contracts,

- d. the assets of the account will not be commingled with other property except as allowed for under Individual Retirement Accounts, and
- e. interest of the eligible individual in the account is nonforfeitable;

5. "Health savings account program" means a program that includes all of the following:

- a. the purchase by an eligible individual or by an employer of a high deductible health plan, and
- b. the contribution into a health savings account by an eligible individual or on behalf of an employee or by the employer of the employee. The total annual contribution may not exceed the amount of the higher deductible of the plan or the amounts listed in division (2) of subparagraph a of paragraph 4 of this section;

6. "High deductible" means:

- a. in the case of self-only coverage, an annual deductible which is not less than One Thousand Dollars (\$1,000.00) and the sum of the annual deductible and other annual out-of-pocket expenses required to be paid under the plan for covered benefits does not exceed Five Thousand Dollars (\$5,000.00),
- b. in the case of family coverage, an annual deductible of not less than Two Thousand Dollars (\$2,000.00) and the sum of the annual deductible and other annual out-of-pocket expenses required to be paid under the plan for covered benefits does not exceed Ten Thousand Dollars (\$10,000.00), and
- c. a plan shall not fail to be treated as a high deductible plan by reason of failing to have a deductible for preventative care or, in the case of

network plans, for having out-of-pocket expenses which exceed these limits on an annual deductible for services provided outside the network;

7. "High deductible health plan" means a health coverage policy, certificate, or contract that provides for payments for covered benefits that exceed the higher deductible; and

8. "Qualified medical expense" means an expense paid by the taxpayer for medical care described in Section 213(d) of the Internal Revenue Code.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2358.12 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The provisions of this Health Savings Account Act shall apply also to taxpayers who are not receiving preferred federal tax treatment for a health savings account under Section 223 of the Internal Revenue Code.

B. For taxable years beginning after January 1, 2005, a resident of Oklahoma or an employer shall be allowed to deposit contributions to a health savings account. The amount of deposit for a calendar year shall not exceed the amount of the high deductible of the plan which shall not exceed Two Thousand Six Hundred Dollars (\$2,600.00) for an individual policy, and Five Thousand One Hundred Fifty Dollars (\$5,150.00) for a family policy.

C. Except as provided in Section 5 of this act, principal contributed to and interest earned on a health savings account and money reimbursed to an eligible individual or an employee for qualified medical expenses are exempt from taxation under Section 2355 of Title 68 of the Oklahoma Statutes.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2358.13 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The trustee or custodian shall utilize funds held in a health savings account solely for the purpose of paying the qualified medical expenses of the eligible individual or the dependents of the eligible individual, or to purchase a health coverage policy certificate, or contract, if the eligible individual is receiving unemployment compensation, is exercising continuation privileges under federal law, is purchasing a long-term care insurance contract, or to pay for health insurance other than a Medicare supplemental policy for those who are Medicare eligible.

B. Funds held in a health savings account shall not be used to cover expenses of the eligible individual or dependents of the eligible individual that are otherwise covered, including but not limited to medical expense covered pursuant to an automobile insurance policy, worker's compensation insurance policy or self-insured plan, or another employer-funded health coverage policy, certificate, or contract.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2358.14 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding subsection C, D, E, or F of this section, an eligible individual may withdraw money from the health savings account of the individual for any purpose other than a purpose described in subsection B of Section 4 of this act.

B. Subject to subsection C of this section, if the eligible individual withdraws money for any purpose other than a purpose described in subsection A of Section 4 of this act at any other time, all of the following apply:

1. The amount of the withdrawal is income for the purposes of Section 2355 of Title 68 of the Oklahoma Statutes in the tax year of the withdrawal; and

2. Interest earned on the account during the tax year in which a withdrawal under this subsection is made is income for the purposes of Section 2355 of Title 68 of the Oklahoma Statutes.

C. The amount of disbursement of any assets of a health savings account pursuant to a filing for protection under Title 11 of the United States Code, 11 U.S.C., Section 101 et seq. by an eligible individual or person for whose benefit the account was established is not considered a withdrawal for purposes of this section. The amount of a disbursement is not subject to taxation under Section 2355 of Title 68 of the Oklahoma Statutes and subsection B of this section does not apply.

D. The transfer of interest of an eligible individual in a health savings account to the spouse of an eligible individual or former spouse under a divorce or separation instrument shall not be considered a taxable transfer made by such eligible individual, notwithstanding any other provision of this section, and such interest shall, after such transfer, be treated as a health savings account with respect to which such spouse is the eligible individual.

E. Upon the death of the eligible individual, the trustee or custodian shall distribute the principal and accumulated interest of the health savings account to the estate of the deceased.

F. If an employee becomes employed with a different employer that participates in a health savings account program, the employee may transfer the health savings account of the employee to the trustee or custodian of the employer, or to an individually purchased account program.

SECTION 6. This act shall become effective January 1, 2005.

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