

108TH CONGRESS
1ST SESSION

H. R. 2351

To amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings accounts and to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2003

Mr. THOMAS (for himself, Mr. LIPINSKI, Mrs. JOHNSON of Connecticut, Mr. SAM JOHNSON of Texas, Mr. HAYWORTH, Mr. LEWIS of Kentucky, Mr. BRADY of Texas, Mr. ENGLISH, Mr. SESSIONS, Mr. OSE, Mr. FOSSELLA, Mr. PAUL, Mr. SMITH of New Jersey, Mr. WELDON of Florida, Mr. RYUN of Kansas, Mr. DELAY, Mr. TOOMEY, Mr. BARTON of Texas, Mr. WALSH, Mr. BALLENGER, Mr. CAMP, Mr. COLLINS, Mr. RYAN of Wisconsin, Mr. KELLER, Mr. HERGER, Mr. DOOLITTLE, Mr. DEMINT, and Mr. NORWOOD) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings accounts and to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Health Savings Ac-
3 count Availability Act”.

4 **SEC. 2. HEALTH SAVINGS ACCOUNTS.**

5 (a) IN GENERAL.—Part VII of subchapter B of chap-
6 ter 1 of the Internal Revenue Code of 1986 (relating to
7 additional itemized deductions for individuals) is amended
8 by redesignating section 223 as section 224 and by insert-
9 ing after section 222 the following new section:

10 **“SEC. 223. HEALTH SAVINGS ACCOUNTS.**

11 “(a) DEDUCTION ALLOWED.—In the case of an indi-
12 vidual who is an eligible individual for any month during
13 the taxable year, there shall be allowed as a deduction for
14 the taxable year an amount equal to the aggregate amount
15 paid in cash during such taxable year by such individual
16 to a health savings account of such individual.

17 “(b) LIMITATIONS.—

18 “(1) IN GENERAL.—The amount allowable as a
19 deduction under subsection (a) to an individual for
20 the taxable year shall not exceed the sum of the
21 monthly limitations for months during such taxable
22 year that the individual is an eligible individual.

23 “(2) MONTHLY LIMITATION.—The monthly lim-
24 itation for any month is the amount equal to $\frac{1}{12}$ of
25 the annual deductible (as of the first day of such

1 month) of the individual's coverage under the high
2 deductible health plan.

3 “(3) COORDINATION WITH EMPLOYER AND MSA
4 CONTRIBUTIONS.—The limitation which would (but
5 for this paragraph) apply under this subsection to
6 the taxpayer for any taxable year shall be reduced
7 (but not below zero) by the sum of—

8 “(A) the aggregate amount which would
9 (but for subsections (b) and (d) of section 106)
10 be includible in the taxpayer's gross income for
11 such taxable year, and

12 “(B) the aggregate amount paid during
13 such taxable by such individual to Archer MSAs
14 of such individual.

15 “(4) SPECIAL RULES FOR MARRIED INDIVID-
16 UALS, DEPENDENTS, AND MEDICARE ELIGIBLE INDI-
17 VIDUALS.—Rules similar to the rules of paragraphs
18 (3), (6), and (7) of section 220(b) shall apply for
19 purposes of this section.

20 “(c) DEFINITIONS.—For purposes of this section—

21 “(1) ELIGIBLE INDIVIDUAL.—

22 “(A) IN GENERAL.—The term ‘eligible in-
23 dividual’ means, with respect to any month, any
24 individual if—

1 “(i) such individual is covered under a
2 high deductible health plan as of the 1st
3 day of such month, and

4 “(ii) such individual is not, while cov-
5 ered under a high deductible health plan,
6 covered under any health plan—

7 “(I) which is not a high deduct-
8 ible health plan, and

9 “(II) which provides coverage for
10 any benefit which is covered under the
11 high deductible health plan.

12 “(B) CERTAIN COVERAGE DIS-
13 REGARDED.—Subparagraph (A)(ii) shall be ap-
14 plied without regard to—

15 “(i) coverage for any benefit provided
16 by permitted insurance, and

17 “(ii) coverage (whether through insur-
18 ance or otherwise) for accidents, disability,
19 dental care, vision care, or long-term care.

20 “(2) HIGH DEDUCTIBLE HEALTH PLAN.—

21 “(A) IN GENERAL.—The term ‘high de-
22 ductible health plan’ means a health plan—

23 “(i) in the case of self-only coverage,
24 which has an annual deductible which is

1 not less than \$1,000 and not more than
2 \$2,250,

3 “(ii) in the case of family coverage,
4 which has an annual deductible which is
5 not less than \$2,000 and not more than
6 \$4,500, and

7 “(iii) the annual out-of-pocket ex-
8 penses required to be paid under the plan
9 (other than for premiums) for covered ben-
10 efits does not exceed—

11 “(I) \$3,000 for self-only cov-
12 erage, and

13 “(II) \$5,500 for family coverage.

14 “(B) SPECIAL RULES.—

15 “(i) EXCLUSION OF CERTAIN
16 PLANS.—Such term does not include a
17 health plan if substantially all of its cov-
18 erage is coverage described in paragraph
19 (1)(B).

20 “(ii) SAFE HARBOR FOR ABSENCE OF
21 PREVENTIVE CARE DEDUCTIBLE.—A plan
22 shall not fail to be treated as a high de-
23 ductible health plan by reason of failing to
24 have a deductible for preventive care.

1 “(C) TREATMENT OF NETWORK SERV-
2 ICES.—

3 “(i) IN GENERAL.—In the case of a
4 health plan which is a preferred provider
5 organization plan and which would (with-
6 out regard to services provided outside
7 such organization’s network of providers
8 described in clause (iii)(I)) be a high de-
9 ductible health plan, such plan shall not
10 fail to be a high deductible health plan be-
11 cause—

12 “(I) the annual deductible for
13 services provided outside such network
14 exceeds the applicable maximum dol-
15 lar amount in clause (i) or (ii) of sub-
16 paragraph (A), or

17 “(II) the annual out-of-pocket ex-
18 penses required to be paid for services
19 provided outside such network exceeds
20 the applicable dollar amount in sub-
21 paragraph (A)(iii).

22 “(ii) ANNUAL DEDUCTIBLE.—The an-
23 nual deductible taken into account under
24 subsection (b)(2) with respect to a plan
25 which is a high deductible health plan by

1 reason of clause (i) shall be the annual de-
2 ductible for services provided within such
3 network.

4 “(iii) PREFERRED PROVIDER ORGANI-
5 ZATION PLAN DEFINED.—In this subpara-
6 graph, the term ‘preferred provider organi-
7 zation plan’ means a health plan that—

8 “(I) has a network of providers
9 that have agreed to a contractually
10 specified reimbursement for covered
11 benefits with the organization offering
12 the plan,

13 “(II) provides for reimbursement
14 for all covered benefits regardless of
15 whether such benefits are provided
16 within such network of providers, and

17 “(III) is offered by an organiza-
18 tion that is not licensed or organized
19 under State law as a health mainte-
20 nance organization.

21 “(3) PERMITTED INSURANCE.—The term ‘per-
22 mitted insurance’ has the meaning given such term
23 in section 220(c)(3).

1 “(4) FAMILY COVERAGE.—The term ‘family
2 coverage’ has the meaning given such term in sec-
3 tion 220(e)(5).

4 “(5) ARCHER MSA.—The term ‘Archer MSA’
5 has the meaning given such term in section 220(d).

6 “(d) HEALTH SAVINGS ACCOUNT.—For purposes of
7 this section—

8 “(1) IN GENERAL.—The term ‘health savings
9 account’ means a trust created or organized in the
10 United States as a health savings account exclusively
11 for the purpose of paying the qualified medical ex-
12 penses of the account holder, but only if the written
13 governing instrument creating the trust meets the
14 requirements described in section 220(d)(1) (applied
15 without regard to ‘75 percent of’ in subparagraph
16 (A)(ii) thereof).

17 “(2) QUALIFIED MEDICAL EXPENSES.—The
18 term ‘qualified medical expenses’ has the meaning
19 given such term in section 220(d)(2).

20 “(3) ACCOUNT HOLDER.—The term ‘account
21 holder’ means the individual on whose behalf the
22 health savings account was established.

23 “(4) CERTAIN RULES TO APPLY.—Rules similar
24 to the following rules shall apply for purposes of this
25 section:

1 “(A) Section 219(d)(2) (relating to no de-
2 duction for rollovers).

3 “(B) Section 219(f)(3) (relating to time
4 when contributions deemed made).

5 “(C) Except as provided in section 106(b),
6 section 219(f)(5) (relating to employer pay-
7 ments).

8 “(D) Section 408(g) (relating to commu-
9 nity property laws).

10 “(E) Section 408(h) (relating to custodial
11 accounts).

12 “(e) TAX TREATMENT OF ACCOUNTS.—

13 “(1) IN GENERAL.—A health savings account is
14 exempt from taxation under this subtitle unless such
15 account has ceased to be a health savings account.
16 Notwithstanding the preceding sentence, any such
17 account is subject to the taxes imposed by section
18 511 (relating to imposition of tax on unrelated busi-
19 ness income of charitable, etc. organizations).

20 “(2) ACCOUNT TERMINATIONS.—Rules similar
21 to the rules of paragraphs (2) and (4) of section
22 408(e) shall apply to health savings accounts, and
23 any amount treated as distributed under such rules
24 shall be treated as not used to pay qualified medical
25 expenses.

1 “(f) TAX TREATMENT OF DISTRIBUTIONS.—

2 “(1) AMOUNTS USED FOR QUALIFIED MEDICAL
3 EXPENSES.—Any amount paid or distributed out of
4 a health savings account which is used exclusively to
5 pay qualified medical expenses of any account holder
6 shall not be includible in gross income.

7 “(2) INCLUSION OF AMOUNTS NOT USED FOR
8 QUALIFIED MEDICAL EXPENSES.—Any amount paid
9 or distributed out of a health savings account which
10 is not used exclusively to pay the qualified medical
11 expenses of the account holder shall be included in
12 the gross income of such holder.

13 “(3) EXCESS CONTRIBUTIONS RETURNED BE-
14 FORE DUE DATE OF RETURN.—

15 “(A) IN GENERAL.—If any excess con-
16 tribution is contributed for a taxable year to
17 any health savings account of an individual,
18 paragraph (2) shall not apply to distributions
19 from the health savings accounts of such indi-
20 vidual (to the extent such distributions do not
21 exceed the aggregate excess contributions to all
22 such accounts of such individual for such year)
23 if—

24 “(i) such distribution is received by
25 the individual on or before the last day

1 prescribed by law (including extensions of
2 time) for filing such individual's return for
3 such taxable year, and

4 “(ii) such distribution is accompanied
5 by the amount of net income attributable
6 to such excess contribution.

7 Any net income described in clause (ii) shall be
8 included in the gross income of the individual
9 for the taxable year in which it is received.

10 “(B) EXCESS CONTRIBUTION.—For pur-
11 poses of subparagraph (A), the term ‘excess
12 contribution’ means any contribution (other
13 than a rollover contribution) which is neither
14 excludable from gross income under section
15 106(d) nor deductible under this section.

16 “(4) ADDITIONAL TAX ON DISTRIBUTIONS NOT
17 USED FOR QUALIFIED MEDICAL EXPENSES.—

18 “(A) IN GENERAL.—The tax imposed by
19 this chapter on the account holder for any tax-
20 able year in which there is a payment or dis-
21 tribution from a health savings account of such
22 holder which is includible in gross income under
23 paragraph (2) shall be increased by 15 percent
24 of the amount which is so includible.

1 “(B) EXCEPTION FOR DISABILITY OR
2 DEATH.—Subparagraph (A) shall not apply if
3 the payment or distribution is made after the
4 account holder becomes disabled within the
5 meaning of section 72(m)(7) or dies.

6 “(C) EXCEPTION FOR DISTRIBUTIONS
7 AFTER MEDICARE ELIGIBILITY.—Subparagraph
8 (A) shall not apply to any payment or distribu-
9 tion after the date on which the account holder
10 attains the age specified in section 1811 of the
11 Social Security Act.

12 “(5) ROLLOVER CONTRIBUTION.—An amount is
13 described in this paragraph as a rollover contribu-
14 tion if it meets the requirements of subparagraphs
15 (A) and (B).

16 “(A) IN GENERAL.—Paragraph (2) shall
17 not apply to any amount paid or distributed
18 from an Archer MSA or a health savings ac-
19 count to the account holder to the extent the
20 amount received is paid into a health savings
21 account for the benefit of such holder not later
22 than the 60th day after the day on which the
23 holder receives the payment or distribution.

24 “(B) LIMITATION.—This paragraph shall
25 not apply to any amount described in subpara-

1 graph (A) received by an individual from an Archer MSA or a health savings account if, at any
2 time during the 1-year period ending on the day
3 of such receipt, such individual received any
4 other amount described in subparagraph (A)
5 from an Archer MSA or a health savings account which was not includible in the individual's gross income because of the application of
6 this paragraph.
7
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9

10 “(6) ADDITIONAL TAX; SPECIAL RULES.—Rules
11 similar to the rules of paragraphs (6), (7), and (8)
12 of section 220(f) shall apply for purposes of this section.
13

14 “(g) COST-OF-LIVING ADJUSTMENT.—

15 “(1) IN GENERAL.—In the case of any taxable
16 year beginning in a calendar year after 1998, each
17 dollar amount in subsection (c)(2) shall be increased
18 by an amount equal to—

19 “(A) such dollar amount, multiplied by

20 “(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar
21 year in which such taxable year begins by substituting ‘calendar year 1997’ for ‘calendar year
22 1992’ in subparagraph (B) thereof.
23
24

1 “(2) SPECIAL RULES.—In the case of the
2 \$1,000 amount in subsection (c)(2)(A)(i) and the
3 \$2,000 amount in subsection (c)(2)(A)(ii), para-
4 graph (1)(B) shall be applied by substituting ‘cal-
5 endar year 2002’ for ‘calendar year 1997’.

6 “(3) ROUNDING.—If any increase under para-
7 graph (1) or (2) is not a multiple of \$50, such in-
8 crease shall be rounded to the nearest multiple of
9 \$50.

10 “(h) REPORTS.—The Secretary may require the
11 trustee of a health savings account to make such reports
12 regarding such account to the Secretary and to the ac-
13 count holder with respect to contributions, distributions,
14 and such other matters as the Secretary determines appro-
15 priate. The reports required by this subsection shall be
16 filed at such time and in such manner and furnished to
17 such individuals at such time and in such manner as may
18 be required by the Secretary.”.

19 (b) DEDUCTION ALLOWED WHETHER OR NOT INDI-
20 VIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a)
21 of section 62 of such Code is amended by inserting after
22 paragraph (18) the following new paragraph:

23 “(19) HEALTH SAVINGS ACCOUNTS.—The de-
24 duction allowed by section 223.”.

1 (c) ROLLOVERS FROM ARCHER MSAs PER-
2 MITTED.—Subparagraph (A) of section 220(f)(5) of such
3 Code (relating to rollover contribution) is amended by in-
4 serting “or a health savings account (as defined in section
5 223(d))” after “paid into an Archer MSA”.

6 (d) EXCLUSIONS FOR EMPLOYER CONTRIBUTIONS TO
7 MEDICAL SAVINGS ACCOUNTS.—

8 (1) EXCLUSION FROM INCOME TAX.—Section
9 106 of such Code (relating to contributions by em-
10 ployer to accident and health plans) is amended by
11 adding at the end the following new subsection:

12 “(d) CONTRIBUTIONS TO HEALTH SAVINGS AC-
13 COUNTS.—

14 “(1) IN GENERAL.—In the case of an employee
15 who is an eligible individual, amounts contributed by
16 such employee’s employer to any health savings ac-
17 count of such employee shall be treated as employer-
18 provided coverage for medical expenses under an ac-
19 cident or health plan to the extent such amounts do
20 not exceed the excess of—

21 “(A) the limitation under section 223(b)(1)
22 (determined without regard to this subsection)
23 which is applicable to such employee for such
24 taxable year, over

1 “(B) the aggregate amount treated as em-
2 ployer-provided coverage for medical expenses
3 under an accident or health plan under sub-
4 section (b).

5 “(2) SPECIAL RULES.—Rules similar to the
6 rules of paragraphs (2), (3), (4), and (5) of sub-
7 section (b) shall apply for purposes of this sub-
8 section.

9 “(3) DEFINITIONS.—For purposes of this sub-
10 section, the terms ‘eligible individual’ and ‘health
11 savings account’ have the respective meanings given
12 to such terms by section 223.

13 “(4) CROSS REFERENCE.—

**“For penalty on failure by employer to make com-
 parable contributions to the health savings ac-
 counts of comparable employees, see section
 4980G.”.**

14 (2) EXCLUSION FROM EMPLOYMENT TAXES.—

15 (A) RAILROAD RETIREMENT TAX.—Sub-
16 section (e) of section 3231 of such Code is
17 amended by adding at the end the following
18 new paragraph:

19 “(11) HEALTH SAVINGS ACCOUNT CONTRIBU-
20 TIONS.—The term ‘compensation’ shall not include
21 any payment made to or for the benefit of an em-
22 ployee if at the time of such payment it is reason-
23 able to believe that the employee will be able to ex-

1 clude such payment from income under section
2 106(d).”.

3 (B) UNEMPLOYMENT TAX.—Subsection (b)
4 of section 3306 of such Code is amended by
5 striking “or” at the end of paragraph (16), by
6 striking the period at the end of paragraph (17)
7 and inserting “; or”, and by inserting after
8 paragraph (17) the following new paragraph:

9 “(18) any payment made to or for the benefit
10 of an employee if at the time of such payment it is
11 reasonable to believe that the employee will be able
12 to exclude such payment from income under section
13 106(d).”.

14 (C) WITHHOLDING TAX.—Subsection (a)
15 of section 3401 of such Code is amended by
16 striking “or” at the end of paragraph (20), by
17 striking the period at the end of paragraph (21)
18 and inserting “; or”, and by inserting after
19 paragraph (21) the following new paragraph:

20 “(22) any payment made to or for the benefit
21 of an employee if at the time of such payment it is
22 reasonable to believe that the employee will be able
23 to exclude such payment from income under section
24 106(d).”

1 (3) EMPLOYER CONTRIBUTIONS REQUIRED TO
2 BE SHOWN ON W-2.—Subsection (a) of section 6051
3 of such Code is amended by striking “and” at the
4 end of paragraph (10), by striking the period at the
5 end of paragraph (11) and inserting “, and”, and by
6 inserting after paragraph (11) the following new
7 paragraph:

8 “(12) the amount contributed to any health
9 savings account (as defined in section 223(d)) of
10 such employee or such employee’s spouse.”.

11 (4) PENALTY FOR FAILURE OF EMPLOYER TO
12 MAKE COMPARABLE HEALTH SAVINGS ACCOUNT
13 CONTRIBUTIONS.—

14 (A) IN GENERAL.—Chapter 43 of such
15 Code is amended by adding after section 4980F
16 the following new section:

17 **“SEC. 4980G. FAILURE OF EMPLOYER TO MAKE COM-**
18 **PARABLE HEALTH SAVINGS ACCOUNT CON-**
19 **TRIBUTIONS.**

20 “(a) GENERAL RULE.—In the case of an employer
21 who makes a contribution to the health savings account
22 of any employee with respect to coverage under a high de-
23 ductible health plan of the employer during a calendar
24 year, there is hereby imposed a tax on the failure of such

1 employer to meet the requirements of subsection (d) for
2 such calendar year.

3 “(b) AMOUNT OF TAX.—The amount of the tax im-
4 posed by subsection (a) on any failure for any calendar
5 year is the amount equal to 35 percent of the aggregate
6 amount contributed by the employer to health savings ac-
7 counts of employees for taxable years of such employees
8 ending with or within such calendar year.

9 “(c) WAIVER BY SECRETARY.—In the case of a fail-
10 ure which is due to reasonable cause and not to willful
11 neglect, the Secretary may waive part or all of the tax
12 imposed by subsection (a) to the extent that the payment
13 of such tax would be excessive relative to the failure in-
14 volved.

15 “(d) EMPLOYER REQUIRED TO MAKE COMPARABLE
16 HEALTH SAVINGS ACCOUNT CONTRIBUTIONS FOR ALL
17 PARTICIPATING EMPLOYEES.—An employer meets the re-
18 quirements of this subsection for any calendar year if the
19 employer meets the requirements of section 4980E(d) ap-
20 plied by substituting ‘health savings account’ for ‘Archer
21 MSA’ each place it appears.

22 “(e) CONTROLLED GROUPS.—For purposes of this
23 section, all persons treated as a single employer under sub-
24 section (b), (c), (m), or (o) of section 414 shall be treated
25 as 1 employer.

1 “(f) DEFINITIONS.—Terms used in this section which
2 are also used in section 223 have the respective meanings
3 given such terms in section 223.”.

4 (B) CLERICAL AMENDMENT.—The table of
5 sections for chapter 43 of such Code is amend-
6 ed by adding after the item relating to section
7 4980F the following new item:

“Sec. 4980G. Failure of employer to make comparable health savings account contributions.”.

8 (e) TAX ON EXCESS CONTRIBUTIONS.—Section 4973
9 of such Code (relating to tax on excess contributions to
10 certain tax-favored accounts and annuities) is amended—

11 (1) by striking “or” at the end of paragraph

12 (3) of subsection (a),

13 (2) by inserting “or” at the end of paragraph

14 (4) of subsection (a),

15 (3) by inserting after paragraph (4) of sub-
16 section (a) the following new paragraph:

17 “(5) a health savings account (within the mean-
18 ing of section 223(d)),”, and

19 (4) by adding at the end the following new sub-
20 section:

21 “(g) EXCESS CONTRIBUTIONS TO HEALTH SAVINGS
22 ACCOUNTS.—For purposes of this section, in the case of
23 health savings accounts (within the meaning of section

1 223(d)), the term ‘excess contributions’ means the sum
2 of—

3 “(1) the aggregate amount contributed for the
4 taxable year to the accounts (other than rollover
5 contributions referred to in section 223(f)(3)) which
6 is neither excludable from gross income under sec-
7 tion 106(d) nor allowable as a deduction under sec-
8 tion 223 for such year, and

9 “(2) the amount determined under this sub-
10 section for the preceding taxable year, reduced by
11 the sum of—

12 “(A) the distributions out of the accounts
13 which were included in gross income under sec-
14 tion 223(f)(2), and

15 “(B) the excess (if any) of—

16 “(i) the maximum amount allowable
17 as a deduction under section 223(b)(1)
18 (determined without regard to section
19 106(d)) for the taxable year, over

20 “(ii) the amount contributed to the
21 accounts for the taxable year.

22 For purposes of this subsection, any contribution which
23 is distributed out of the health savings account in a dis-
24 tribution to which section 223(f)(3) applies shall be treat-
25 ed as an amount not contributed.”.

1 (f) TAX ON PROHIBITED TRANSACTIONS.—

2 (1) Section 4975 of such Code (relating to tax
3 on prohibited transactions) is amended by adding at
4 the end of subsection (c) the following new para-
5 graph:

6 “(6) SPECIAL RULE FOR HEALTH SAVINGS AC-
7 COUNTS.—An individual for whose benefit a health
8 savings account (within the meaning of section
9 223(d)) is established shall be exempt from the tax
10 imposed by this section with respect to any trans-
11 action concerning such account (which would other-
12 wise be taxable under this section) if, with respect
13 to such transaction, the account ceases to be a
14 health savings account by reason of the application
15 of section 223(e)(2) to such account.”.

16 (2) Paragraph (1) of section 4975(e) of such
17 Code is amended by redesignating subparagraphs
18 (E) and (F) as subparagraphs (F) and (G), respec-
19 tively, and by inserting after subparagraph (D) the
20 following new subparagraph:

21 “(E) a health savings account described in
22 section 223(d),”.

23 (g) FAILURE TO PROVIDE REPORTS ON HEALTH
24 SAVINGS ACCOUNTS.—Paragraph (2) of section 6693(a)
25 of such Code (relating to reports) is amended by redesi-

1 nating subparagraphs (C) and (D) as subparagraphs (D)
 2 and (E), respectively, and by inserting after subparagraph
 3 (B) the following new subparagraph:

4 “(C) section 223(h) (relating to health sav-
 5 ings accounts),”.

6 (h) EXCEPTION FROM CAPITALIZATION OF POLICY
 7 ACQUISITION EXPENSES.—Subparagraph (B) of section
 8 848(e)(1) of such Code (defining specified insurance con-
 9 tract) is amended by striking “and” at the end of clause
 10 (iii), by striking the period at the end of clause (iv) and
 11 inserting “, and”, and by adding at the end the following
 12 new clause:

13 “(v) any contract which is a health
 14 savings account (as defined in section
 15 223(d)).”.

16 (i) CLERICAL AMENDMENT.—The table of sections
 17 for part VII of subchapter B of chapter 1 of such Code
 18 is amended by striking the last item and inserting the fol-
 19 lowing:

“Sec. 223. Medical savings accounts.
 “Sec. 224. Cross reference.”.

20 (j) EFFECTIVE DATE.—The amendments made by
 21 this section shall apply to taxable years beginning after
 22 December 31, 2003.

1 **SEC. 3. DISPOSITION OF UNUSED HEALTH BENEFITS IN**
2 **CAFETERIA PLANS AND FLEXIBLE SPENDING**
3 **ARRANGEMENTS.**

4 (a) IN GENERAL.—Section 125 of the Internal Rev-
5 enue Code of 1986 (relating to cafeteria plans) is amended
6 by redesignating subsections (h) and (i) as subsections (i)
7 and (j), respectively, and by inserting after subsection (g)
8 the following:

9 “(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH
10 BENEFITS.—

11 “(1) IN GENERAL.—For purposes of this title,
12 a plan or other arrangement shall not fail to be
13 treated as a cafeteria plan solely because qualified
14 benefits under such plan include a health flexible
15 spending arrangement under which not more than
16 \$500 of unused health benefits may be—

17 “(A) carried forward to the succeeding
18 plan year of such health flexible spending ar-
19 rangement, or

20 “(B) contributed on behalf of an employee
21 to a qualified retirement plan (as defined in
22 section 4974(c)), an eligible deferred compensa-
23 tion plan (as defined in section 457(b)), or a
24 health savings account (as defined in section
25 223(d)).

1 “(2) CONTRIBUTION OF UNUSED HEALTH BEN-
2 EFITS ON BEHALF OF EMPLOYEE.—For purposes of
3 this title, contributions on behalf of an employee de-
4 scribed in paragraph (1) shall be treated as elective
5 contributions made pursuant to a choice by the em-
6 ployee between such contributions and compensation
7 which would otherwise be includible in the gross in-
8 come of the employee. Contributions described in
9 paragraph (1) shall be excluded from the gross in-
10 come of the employee, or included in the gross in-
11 come of the employee and allowed as a deduction by
12 the employee, to the extent that elective contribu-
13 tions would be treated in that manner under this
14 title.

15 “(3) HEALTH FLEXIBLE SPENDING ARRANGE-
16 MENT.—For purposes of this subsection, the term
17 ‘health flexible spending arrangement’ means a flexi-
18 ble spending arrangement (as defined in section
19 106(c)) that is a qualified benefit and only permits
20 reimbursement for expenses for medical care (as de-
21 fined in section 213(d)(1) (without regard to sub-
22 paragraphs (C) and (D) thereof)).

23 “(4) UNUSED HEALTH BENEFITS.—For pur-
24 poses of this subsection, with respect to an em-

1 ployee, the term ‘unused health benefits’ means the
2 excess of—

3 “(A) the maximum amount of reimburse-
4 ment allowable to the employee during a plan
5 year under a health flexible spending arrange-
6 ment, taking into account any election by the
7 employee, over

8 “(B) the actual amount of reimbursement
9 during such year under such arrangement.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 subsection (a) shall apply to taxable years beginning after
12 December 31, 2003.

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