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REPORT
112–517

HEALTH SAVINGS ACCOUNTS IMPROVEMENTS ACT OF 2012

JUNE 5, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CAMP, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5858]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5858) to amend the Internal Revenue Code of 1986 to improve health savings accounts, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Health Savings Accounts Improvements Act of 2012".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title, etc.
Sec. 2. Saver's credit for contributions to health savings accounts.
Sec. 3. Special rule for certain medical expenses incurred before establishment of account.
Sec. 4. Allow both spouses to make catch-up contributions to the same health savings account.
Sec. 5. Individuals eligible for veterans benefits for a service-connected disability.
Sec. 6. Distributions by certain early retirees for health coverage treated as qualified medical expense.

SEC. 2. SAVER'S CREDIT FOR CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS.

(a) ALLOWANCE OF CREDIT.—Subsection (a) of section 25B of the Internal Revenue Code of 1986 is amended by inserting "aggregate qualified HSA contributions and" after "so much of the".

(b) QUALIFIED HSA CONTRIBUTIONS.—Subsection (d) of section 25B of such Code is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) QUALIFIED HSA CONTRIBUTIONS.—The term 'qualified HSA contribution' means, with respect to any taxable year, any contribution to a health savings account (as defined in section 223(d)(1)) if—

"(A) such contribution is allowable as a deduction to the taxpayer under section 223(a) for such taxable year, or

"(B) such contribution is made by an employer of the taxpayer at the election of the taxpayer under a cafeteria plan (as defined in section 125(d)) and is not includible in the gross income of the taxpayer by reason of section 125.".

(c) REPORTING OF HSA ELECTIVE CONTRIBUTIONS.—Paragraph (12) of section 6051(a) of such Code is amended to read as follows:

"(12) the total amount contributed to health savings accounts (as defined in section 223(d)) of the employee or the employee's spouse and the portion of such total amount contributed at the election of the employee under any cafeteria plan (as defined in section 125(d)),".

(d) CONFORMING AMENDMENTS.—Section 25B(d)(3) of such Code, as redesignated by subsection (b), is amended—

(1) by striking the first sentence of subparagraph (A) and inserting the following: "The aggregate qualified retirement savings contributions determined under paragraph (1) and qualified HSA contributions determined under paragraph (2) shall be reduced (but not below zero) by the aggregate distributions received by the individual during the testing period from any entity of a type to which contributions under paragraph (1) or paragraph (2) (as the case may be) may be made.", and

(2) by inserting "223(f)(1) or (3)," after "section 72(p)," in subparagraph (C)(i).

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2012.

SEC. 3. SPECIAL RULE FOR CERTAIN MEDICAL EXPENSES INCURRED BEFORE ESTABLISHMENT OF ACCOUNT.

(a) IN GENERAL.—Paragraph (2) of section 223(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(D) TREATMENT OF CERTAIN MEDICAL EXPENSES INCURRED BEFORE ESTABLISHMENT OF ACCOUNT.—If a health savings account is established during the 60-day period beginning on the date that coverage of the account beneficiary under a high deductible health plan begins, then, solely for purposes of determining whether an amount paid is used for a qualified medical expense, such account shall be treated as having been established on the date that such coverage begins.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to coverage beginning after the date of the enactment of this Act.

SEC. 4. ALLOW BOTH SPOUSES TO MAKE CATCH-UP CONTRIBUTIONS TO THE SAME HEALTH SAVINGS ACCOUNT.

(a) IN GENERAL.—Paragraph (5) of section 223(b) of the Internal Revenue Code of 1986 is amended to read as follows:

"(5) SPECIAL RULE FOR MARRIED INDIVIDUALS WITH FAMILY COVERAGE.—

"(A) IN GENERAL.—In the case of individuals who are married to each other, if both spouses are eligible individuals and either spouse has family coverage under a high deductible health plan as of the first day of any month—

"(i) the limitation under paragraph (1) shall be applied by not taking into account any other high deductible health plan coverage of either spouse (and if such spouses both have family coverage under separate high deductible health plans, only one such coverage shall be taken into account),

"(ii) such limitation (after application of clause (i)) shall be reduced by the aggregate amount paid to Archer MSAs of such spouses for the taxable year, and

"(iii) such limitation (after application of clauses (i) and (ii)) shall be divided equally between such spouses unless they agree on a different division.

"(B) TREATMENT OF ADDITIONAL CONTRIBUTION AMOUNTS.—If both spouses referred to in subparagraph (A) have attained age 55 before the close of the taxable year, the limitation referred to in subparagraph (A)(iii) which is subject to division between the spouses shall include the additional contribution amounts determined under paragraph (3) for both spouses. In any other case, any additional contribution amount determined under paragraph (3) shall not be taken into account under subparagraph (A)(iii) and shall not be subject to division between the spouses.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2012.

SEC. 5. INDIVIDUALS ELIGIBLE FOR VETERANS BENEFITS FOR A SERVICE-CONNECTED DISABILITY.

(a) IN GENERAL.—Paragraph (1) of section 223(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(C) SPECIAL RULE FOR INDIVIDUALS ELIGIBLE FOR CERTAIN VETERANS BENEFITS.—An individual shall not fail to be treated as an eligible individual for any period merely because the individual receives hospital care or medical services under any law administered by the Secretary of Veterans Affairs for a service-connected disability (within the meaning of section 101(16) of title 38, United States Code).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to months beginning after December 31, 2012.

SEC. 6. DISTRIBUTIONS BY CERTAIN EARLY RETIREES FOR HEALTH COVERAGE TREATED AS QUALIFIED MEDICAL EXPENSE.

(a) IN GENERAL.—Subparagraph (C) of section 223(d)(2) of the Internal Revenue Code of 1986 is amended by striking "or" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", or", and by adding at the end the following new clause:

"(v) in the case of an account beneficiary who has attained age 55 but not the age specified in section 1811 of the Social Security Act, any group health plan (as defined in section 5000(b)(1)) in which such account beneficiary is enrolled by reason of being a former employee or a surviving spouse of a former employee.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid for coverage for periods after December 31, 2012.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 5858, as reported by the Committee on Ways and Means, provides for various improvements to Health Savings Accounts ("HSAs") in order to make them more attractive to various populations of consumers.

B. BACKGROUND AND NEED FOR LEGISLATION

In 2011, 13.5 million Americans maintained a Health Savings Account ("HSA"), and the number of such accounts has been growing by over 10 percent annually for several years. According to The Mercer National Survey of Employer Sponsored Plans 2011 report:

"This was the biggest one-year increase for CDHPs [Consumer Directed Health Plans] since 2007. . . . With a 40 percent increase in the number of large employers offering CDHPs in 2012, it seems safe to say that the future of CDHPs has arrived." The strong, steady growth of HSAs indicates that consumers value these accounts and CDHPs.

HSAs and CDHPs encourage good health and health care policy. By encouraging individuals to plan, shop, and save for their own health care needs, patients have more control over their own health care. According to the Employee Benefits Research Institute, individuals utilizing CDHPs are more likely to use wellness programs. A recent study published in the May 2012 edition of Health Affairs estimated that CDHPs and HSAs have the potential to save $57 billion in annual health care costs. The authors of the Health Affairs article, "Growth of Consumer-Directed Health Plans to One-Half of All Employer-Sponsored Insurance Could Save $57 Billion Annually," concluded that "[o]ur findings that reductions in spending occur through lower spending per episode, more use of generic versus brand-name drugs, less use of specialists, and lower inpatient hospitalization suggest that these plans do induce changes in treatment choices and not just access."

To support continued HSA growth, legislation is needed to make these accounts more attractive to populations that, for various reasons, receive limited benefits from existing incentives.

C. Legislative History

Background

H.R. 5858 was introduced on May 29, 2012, and was referred to the Committee on Ways and Means.

Committee action

The Committee on Ways and Means marked up H.R. 5858 on May 31, 2012, and ordered the bill, as amended, favorably reported (with a quorum being present).

Committee hearings

The impact of HSAs on health care and policy issues surrounding health savings accounts have been discussed at six committee hearings during the 112th Congress.

- Full Committee Hearing on the Health Care Law's Impact on Jobs, Employers, and the Economy (January 26, 2011)
- Full Committee Hearing on the President's Fiscal Year 2012 Budget Proposal with U.S. Department of Health and Human Services Secretary Kathleen Sebelius (February 16, 2011)
- Subcommittee on Select Revenue Measures Hearing on the Tax-Related Provision of H.R. 3 (March 16, 2011)
- Subcommittee on Oversight Hearing on Internal Revenue Service Operations and the 2011 Tax Return Filing Season (March 31, 2011)
- Full Committee Hearing on How the Tax Code's Burdens on Individuals and Families Demonstrate the Need for Comprehensive Tax Reform (April 13, 2011)

• Subcommittee on Health Hearing on The Individual and Employer Mandates in the Democrats' Health Care Law (March 29, 2012)

II. EXPLANATION OF PROVISION

A. SAVER'S CREDIT FOR CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS (sec. 2 of the bill and sec. 25B of the Code)

PRESENT LAW

Health savings accounts

General rules

An individual with a high deductible health plan (and no other health plan other than a plan that provides certain permitted insurance or permitted coverage) may establish a health savings account ("HSA"). In general, HSAs provide tax-favored treatment for current medical expenses as well as the ability to save on a tax-favored basis for future medical expenses. In general, HSAs are tax-exempt trusts or custodial accounts created exclusively to pay for the qualified medical expenses of the account holder and his or her spouse and dependents. Thus, earnings on amounts in HSAs are not taxable.

Subject to limits, contributions to an HSA made by or on behalf of an eligible individual are deductible by the individual.[1] Contributions made by an employer to an HSA are excludible from income and wages for employment tax purposes. For 2012, the maximum aggregate annual contribution that can be made to an HSA is $3,100 in the case of self-only coverage and $6,250 in the case of family coverage. The annual contribution limits are increased by $1,000 for individuals who have attained age 55 by the end of the taxable year (referred to as "catch-up contributions"). An excise tax applies to contributions in excess of the maximum contribution amount for the HSA unless the excess contributions (and earnings allocable thereto) are distributed no later than the due date for the individual's Federal income tax return for the year.

Distributions from an HSA for qualified medical expenses are not includible in gross income. Distributions from an HSA that are not used for qualified medical expenses are includible in gross income and are subject to an additional tax of 20 percent. The 20 percent additional tax does not apply if the distribution is made after death, disability, or the individual attains the age of Medicare eligibility (i.e., age 65).

Cafeteria plan

A cafeteria plan is a separate written plan of an employer under which all participants are employees, and participants are permitted to choose among at least one permitted taxable benefit (for example, current cash compensation) and at least one qualified benefit (generally an employer-provided benefit excludible from gross income, such as employer-provided health coverage). If an employee receives a qualified benefit based on his or her election between the qualified benefit and a taxable benefit under a cafe-

[1] Sec. 223(a).

teria plan, the qualified benefit generally is not includible in gross income.[2] The amount of the cash compensation forgone pursuant to an election under a cafeteria plan is generally referred to as a salary reduction contribution. One of the choices that may be offered under a cafeteria plan is the choice between cash compensation and the employer making salary reduction contributions to an HSA.

W–2 reporting requirements

An employer must include the amount of any contributions made to an employee's HSA on the employee's Form W–2.[3] There is no requirement to separate on the Form W–2 the amount of any salary reduction contribution to an HSA under a cafeteria plan from any other contribution made by an employer to an HSA.

Saver's credit

Present law provides a nonrefundable tax credit for eligible taxpayers who make qualified retirement savings contributions.[4] Subject to AGI limits, the credit is available to individuals who are 18 or older, other than individuals who are full-time students or claimed as a dependent on another taxpayer's return. The AGI limits for 2012 (as indexed for inflation) are $57,500 for married taxpayers filing joint returns, $43,125 for head of household taxpayers, and $28,750 for single taxpayers and married taxpayers filing separate returns.

For purposes of the credit, qualified retirement savings contributions include (1) elective deferrals to a section 401(k) plan, a section 403(b) plan, a governmental section 457 plan, a SIMPLE IRA, or a SEP; (2) contributions to a traditional or Roth IRA; and (3) voluntary after-tax employee contributions to a qualified retirement plan or annuity or a section 403(b) plan. The maximum amount of qualified retirement savings contributions taken into account for purposes of the credit is $2,000. The amount of any contribution eligible for the credit is reduced by distributions received by the taxpayer (or by the taxpayer's spouse if the taxpayer files a joint return) from any plan or IRA to which eligible contributions can be made during the taxable year for which the credit is claimed, the two taxable years prior to the year the credit is claimed, and during the period after the end of the taxable year for which the credit is claimed and prior to the due date for filing the taxpayer's return for the year. Certain distributions are disregarded for purposes of this rule, such as corrective distributions of qualified retirement savings contributions. Distributions that are rolled over to another retirement plan do not affect the credit.

The credit is a percentage of the taxpayer's qualified retirement savings contributions up to $2,000. The credit percentage depends on the AGI of the taxpayer, varying from 10 percent to 50 percent, as shown in the table below. The credit is in addition to any deduction or exclusion that would otherwise apply with respect to the contribution. The credit offsets minimum tax liability as well as regular tax liability.

[2] Sec. 125(a).
[3] Sec. 6051(a)(12).
[4] Sec. 25B.

TABLE 1.—CREDIT RATES FOR SAVER'S CREDIT (FOR 2012)

Joint filers	Heads of households	All other filers	Credit rate
$0–$34,500	$0–$25,875	$0–$17,250	50 percent.
$34,501–$37,500	$25,876–$28,125	$17,251–$18,750	20 percent.
$37,501–$57,500	$28,126–$43,125	$18,751–$28,750	10 percent.

REASONS FOR CHANGE

The Committee believes that more should be done to encourage low-income taxpayers to take advantage of HSAs. To provide an additional tax benefit for contributions to HSAs for low-income taxpayers, the bill makes contributions to HSAs eligible contributions for the saver's credit.

EXPLANATION OF PROVISION

Under the provision, deductible contributions to an HSA made by a taxpayer and salary reduction contributions under a cafeteria plan made by an employer to an HSA for the taxpayer qualify for the saver's credit. These HSA contributions are aggregated with qualified retirement savings contributions to determine the amount of credit to which a taxpayer is entitled. Thus, the present law limit of $2,000 applies to aggregate contributions (both HSA contributions and qualified retirement savings contributions) taken into account in determining the amount of the credit.

HSA contributions are generally subject to the same rules as apply to qualified retirement savings contributions including the reduction in the amount of qualified contributions due to distributions received by the taxpayer (or by the taxpayer's spouse if the taxpayer files a joint return with the spouse) during certain periods. However, distributions from an HSA used for qualified medical expenses are disregarded in determining the amount by which qualified contributions are reduced for distributions. Further, as in the case of corrective distributions of qualified retirement savings contributions, distributions of excess HSA contributions plus allocable earnings (made before the due date of the taxpayer's Federal income tax return) are also disregarded in determining the amount by which qualified contributions are reduced for distributions.

In order to identify salary reduction contributions to an HSA under a cafeteria plan for purposes of the saver's credit, the provision also includes a requirement that the employer separately state on an employee's Form W–2 the amount of salary reduction contributions made to an HSA under a cafeteria plan.

EFFECTIVE DATE

The provision applies for taxable years beginning after December 31, 2012.

B. Special Rule for Certain Medical Expenses Incurred Before Establishment of Health Savings Account (sec. 3 of the bill and sec. 223 of the Code)

PRESENT LAW

Health savings accounts

An individual with a high deductible health plan (and no other health plan other than a plan that provides certain permitted insurance or permitted coverage) may establish a health savings account ("HSA").[5] In general, HSAs provide tax-favored treatment for current medical expenses as well as the ability to save on a tax-favored basis for future medical expenses. In general, HSAs are tax-exempt trusts or custodial accounts created exclusively to pay for the qualified medical expenses of the account holder and his or her spouse and dependents. Thus, earnings on amounts in HSAs are not taxable.

Subject to limits, contributions to an HSA made by or on behalf of an eligible individual are deductible by the individual. Contributions to an HSA are excludible from income and wages for employment tax purposes if made by the employer. For 2012, the maximum aggregate annual contribution that can be made to an HSA is $3,100 in the case of self-only coverage and $6,250 in the case of family coverage. The annual contribution limits are increased by $1,000 for individuals who have attained age 55 by the end of the taxable year (referred to as "catch-up contributions"). Contributions, including catch-up contributions, cannot be made once an individual is enrolled in Medicare.

Distributions from an HSA for qualified medical expenses are not includible in gross income. Distributions from an HSA that are not used for qualified medical expenses are includible in gross income and are subject to an additional tax of 20 percent. The 20 percent additional tax does not apply if the distribution is made after death, disability, or the individual attains the age of Medicare eligibility (i.e., age 65).

In order for a distribution from as an HSA to be excludible as a payment for a qualified medical expense, the medical expense must be incurred on or after the date that the HSA is established.[6] Thus, a distribution from an HSA is not excludible as payment used for a qualified medical expense if the medical expense is incurred after a taxpayer enrolls in a high deductible health plan but before the taxpayer establishes an HSA.

REASONS FOR CHANGE

The Committee continues to believe that high deductible health plans and the related HSAs will help reduce health care costs. The Committee has identified certain cases where it believes that the operation of HSAs can be improved. One such case involves the

[5] Sec. 223. Generally, a high deductible health plan is a health plan that, for 2012, has an annual deductible that is at least $1,200 for self-only coverage or $2,400 for family coverage and that has an out-of-pocket expense limit that is no more than $6,050 in the case of self-only coverage and $12,100 in the case of family coverage. Out-of-pocket expenses include deductibles, co-payments, and other amounts (other than premiums) that the individual must pay for covered benefits under the plan. A plan does not fail to be a high deductible health plan by reason of failing to have a deductible for preventive care.

[6] Q&A–26 of Notice 2004–2, 2004–1 C.B. 269.

typical lag between obtaining coverage under a high deductible health plan and the establishment of an HSA.

Recognizing this lag, the Committee believes it is appropriate to allow medical expenses incurred after coverage is obtained under a HDHP but prior to the establishment of the HSA to be paid for from the HSA and to be excludible from income, provided the HSA is established within 60 days of obtaining coverage under a HDHP.

EXPLANATION OF PROVISION

Under the provision, if an HSA is established during the 60-day period beginning on the date that an individual's coverage under a high deductible health plan begins, then the HSA is treated as having been established on the date that such coverage begins for purposes of determining if an expense incurred is a qualified medical expense. Thus, if a taxpayer establishes an HSA within 60 days of the date that the taxpayer's coverage under a high deductible health plan begins, any distribution from an HSA used as a payment for a medical expense incurred during that 60–day period after the high deductible health plan coverage began is excludible from gross income as a payment used for a qualified medical expense even though the expense was incurred before the date that the HSA was established.

EFFECTIVE DATE

The provision applies with respect to high deductible health plan coverage commencing after the date of enactment.

C. Allow Both Spouses To Make Catch-Up Contributions to the Same HSA (sec. 4 of the bill and sec. 223 of the Code)

PRESENT LAW

An individual with a high deductible health plan and no other health plan (other than a plan that provides certain permitted insurance or permitted coverage) may establish a health savings account ("HSA"). In general, HSAs provide tax-favored treatment for current medical expenses as well as the ability to save on a tax-favored basis for future medical expenses. In general, HSAs are tax-exempt trusts or custodial accounts created exclusively to pay for the qualified medical expenses of the account holder and his or her spouse and dependents. Thus, earnings on amounts in HSAs are not taxable.

Subject to limits, contributions to an HSA made by or on behalf of an eligible individual are deductible in determining adjusted gross income of the individual (that is, an "above-the-line" deduction). Contributions to an HSA by an employer for an employee (including salary reduction contributions made through a cafeteria plan) are excludible from income and from wages for employment tax purposes. Distributions from an HSA for qualified medical expenses are not includible in gross income. Distributions from an HSA that are not used for qualified medical expenses are includible in gross income and are subject to an additional tax of 20 percent. The 20 percent additional tax does not apply if the distribution is made after death, disability, or the individual attains the age of Medicare eligibility (i.e., age 65).

For 2012, the maximum aggregate annual contribution that can be made to an HSA is $3,100 in the case of self-only coverage and $6,250 in the case of family coverage.[7] The annual contribution limits are increased by $1,000 for an eligible individual who has attained age 55 by the end of the taxable year (referred to as "catch-up contributions").[8] All HSA contributions are aggregated for purposes of the maximum annual contribution limit, and contributions to Archer MSAs reduce the annual HSA contribution limit. The annual HSA contribution limit for an individual is generally the sum of the limits determined separately for each month (1/12 of the maximum aggregate annual contribution amount), based on the individual's status and health plan coverage as of the first day of the month.[9]

If eligible individuals are married to each other and either spouse has family coverage, both spouses are treated as having only family coverage, so that the annual contribution limit for family coverage applies. This annual contribution limit (without regard to any catch-up contribution amounts) is reduced by any Archer MSA contributions and then divided equally between the spouses unless they agree on a different division.

If both spouses of a married couple are eligible individuals, each may contribute to an HSA, but they cannot have a joint HSA.[10] Under the rule described above, however, the spouses may divide their annual contribution limit by allocating the entire amount to one spouse to be contributed to that spouse's HSA.[11] This rule does not apply to catch-up contribution amounts, though. Thus, if both spouses are at least age 55 and eligible to make catch-up contributions, each must make the catch-up contribution to his or her own HSA.[12]

REASONS FOR CHANGE

The Committee has identified certain cases where it believes that the operation of HSAs can be improved. One such case involves the present-law obstacle that prevents both otherwise eligible spouses from making catch-up contributions if they have only one HSA account. The Committee believes the efficiency of HSAs could be improved by allowing both eligible spouses to make catch up contributions to a single HSA, rather than the present law requirement that they each must have their own HSA in order to make catch up contributions.

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[7] Under section 4973, an excise tax applies to contributions in excess of the maximum contribution amount for the HSA. The excise tax generally is equal to six percent of the cumulative amount of excess contributions that are not distributed from the HSA.

[8] Contributions, including catch-up contributions, cannot be made once an individual is enrolled in Medicare.

[9] Under a special rule, an individual who is an eligible individual during the last month of a taxable year is treated as having been an eligible individual for every month in the taxable year for purposes of computing the amount that may be contributed to the HSA for the year. Thus, the individual may contribute the maximum aggregate annual contribution amount. However, if the individual ceases to be an eligible individual within a certain period, contributions that could not otherwise have been made are generally includible in income and are subject to a 10-percent additional tax.

[10] Notice 2004–50, 2004–2 C.B. 196, Q&A–63.

[11] Notice 2004–50, Q&A–32. Funds from that HSA can be used to pay qualified medical expenses for either spouse on a tax-free basis. Notice 2004–50, Q&A–36.

[12] Notice 2008–59, 2008–2 C.B. 123, Q&A–22.

EXPLANATION OF PROVISION

Under the provision, if both spouses of a married couple are eligible for catch-up contributions and either has family coverage, the annual contribution limit that can be divided between them includes both catch-up contribution amounts. Thus, for example, they can agree that their combined catch-up contribution amount is allocated to one spouse to be contributed to that spouse's HSA. In other cases, as under present law, a spouse's catch-up contribution amount is not eligible for division between the spouses; the catch-up contribution must be made to the HSA of that spouse.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2012.

D. Individuals Eligible for Veterans Benefits for a Service-Connected Disability (sec. 5 of the bill and sec. 223 of the Code)

PRESENT LAW

An individual with a high deductible health plan and no other health plan (other than a plan that provides certain permitted insurance or permitted coverage) is generally eligible to make deductible contributions to a health savings account ("HSA"), subject to certain limits (an "eligible individual"). HSA contributions made on behalf of an eligible individual by an employer are excludible from income and wages for employment tax purposes. Eligibility for HSA contributions is generally determined monthly, based on the individual's status and health plan coverage as of the first day of the month. Contributions to an HSA cannot be made once an individual is enrolled in Medicare.

An individual with other coverage in addition to a high deductible health plan is still eligible to make HSA contributions if such other coverage is permitted insurance or permitted coverage. Permitted insurance is: (1) insurance if substantially all of the coverage provided under such insurance relates to (a) liabilities incurred under worker's compensation law, (b) tort liabilities, (c) liabilities relating to ownership or use of property (e.g., auto insurance), or (d) such other similar liabilities as the Secretary of Treasury may prescribe by regulations; (2) insurance for a specified disease or illness; and (3) insurance that provides a fixed payment per day (or other period) for hospitalization. Permitted coverage is coverage (whether provided through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care. Coverage under certain health flexible spending arrangements or health reimbursement arrangements is also permitted.

Under IRS guidance, an otherwise eligible individual who is eligible for medical benefits under a program of the Department of Veterans Affairs ("VA"), but who has not actually received such benefits during the preceding three months, continues to be an eligible individual.[13] However, an individual is not eligible to make HSA contributions for any month if the individual has received VA

[13] Notice 2004–50, 2004–2 C.B. 196, Q&A–5.

medical benefits at any time during the previous three months unless the benefits are for permissible coverage or preventive care.[14]

REASONS FOR CHANGE

The Committee believes the present-law HSA eligibility rules inappropriately discriminate against those who avail themselves of VA medical benefits for a service-connected disability. The Committee therefore believes it is appropriate to allow otherwise eligible individuals to contribute to an HSA regardless of whether they receive VA medical benefits for a service-connected disability.

EXPLANATION OF PROVISION

Under the provision, an individual does not fail to be treated as an eligible individual for any period merely because the individual receives VA medical benefits for a service-connected disability.

The provision does not otherwise change the application of the present-law rule for individuals eligible for VA medical benefits. Thus, an otherwise eligible individual who is eligible for VA medical benefits, but who has not actually received such benefits during the preceding three months, continues to be an eligible individual. However, an individual is not eligible to make HSA contributions for any month if the individual has received VA medical benefits at any time during the previous three months unless the benefits are for permissible coverage or preventive care (or for a service-connected disability).

EFFECTIVE DATE

The provision applies to months beginning after December 31, 2012.

E. DISTRIBUTIONS BY CERTAIN EARLY RETIREES FOR HEALTH COVERAGE TREATED AS QUALIFIED MEDICAL EXPENSE (sec. 6 of the bill and sec. 223 of the Code)

PRESENT LAW

An individual with a high deductible health plan and no other health plan (other than a plan that provides certain permitted insurance or permitted coverage) may establish a health savings account ("HSA"). In general, HSAs are tax-exempt trusts or custodial accounts created exclusively to pay for the qualified medical expenses of the account holder and his or her spouse and dependents.

Distributions from an HSA for qualified medical expenses are not includible in gross income.[15] Distributions from an HSA that are not used for qualified medical expenses are includible in gross income and are subject to an additional tax of 20 percent. The 20–percent additional tax does not apply if the distribution is made after death, disability, or the individual attains the age of Medicare eligibility (i.e., age 65).

Payments for insurance are generally not qualified medical expenses that can be paid from an HSA on a tax-free basis, subject to certain exceptions. For example, an exception applies for health

[14] Notice 2004–50, Q&A–5; Notice 2008–59, 2008–2 C.B. 123, Q&A–9.

[15] Amounts in an HSA can be used for qualified medical expenses even if the individual is not currently eligible to make HSA contributions.

insurance expenses, other than for a Medicare supplemental policy, of an HSA holder who is at least age 65.

REASONS FOR CHANGE

The Committee is concerned about the growing medical care costs of a growing population of early retirees, some of whom may have involuntarily retired early and are unable to find new employment in the current jobs environment. In order to help defray the medical insurance costs of these taxpayers, the Committee believes that it is appropriate to expand the definition of HSA eligible medical expenses to include expenses for coverage under a group health plan in which the HSA holder is enrolled by reason of being a former employee or a surviving spouse of a former employee.

EXPLANATION OF PROVISION

Under the provision, in the case of an HSA holder who is at least age 55 but not age 65, qualified medical expenses include expenses for coverage under a group health plan (that is, an employer-sponsored health plan) in which the HSA holder is enrolled by reason of being a former employee or a surviving spouse of a former employee. Thus, in that case, expenses for such coverage can be paid from an HSA on a tax-free basis.

EFFECTIVE DATE

The provision is effective for amounts paid for coverage for periods after December 31, 2012.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the votes of the Committee on Ways and Means in its consideration of H.R. 5858.

MOTION TO REPORT RECOMMENDATION

The bill H.R. 5858, as amended, was ordered favorably reported by a roll call vote of 21 yeas to 7 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Camp	X			Mr. Levin			
Mr. Herger	X			Mr. Rangel			
Mr. Johnson				Mr. Stark		X	
Mr. Brady	X			Mr. McDermott		X	
Mr. Ryan	X			Mr. Lewis		X	
Mr. Nunes	X			Mr. Neal			
Mr. Tiberi	X			Mr. Becerra			
Mr. Davis	X			Mr. Doggett		X	
Mr. Reichert	X			Mr. Thompson		X	
Mr. Boustany	X			Mr. Larson		X	
Mr. Roskam	X			Mr. Blumenauer		X	
Mr. Gerlach	X			Mr. Kind	X		
Mr. Price	X			Mr. Pascrell			
Mr. Buchanan	X			Ms. Berkley	X		
Mr. Smith	X			Mr. Crowley			
Mr. Schock	X						
Ms. Jenkins	X						
Mr. Paulsen	X						
Mr. Marchant							

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Berg	X						
Ms. Black							
Mr. Reed	X						

IV. BUDGET EFFECTS OF THE PROVISION

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 5858, as reported.

The bill is estimated to have the following effects on Federal budget receipts for fiscal years 2013–2022:

ESTIMATED BUDGET EFFECTS OF H.R. 5858,
THE "HEALTH SAVINGS ACCOUNTS IMPROVEMENTS ACT OF 2012,"
AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

Fiscal Years 2013 - 2022

[Millions of Dollars]

Provision	Effective	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2013-17	2013-22
1. Saver's credit for contributions to health savings accounts	tyba 12/31/12	-3	-29	-39	-44	-54	-56	-64	-70	-73	-75	-169	-507
2. Special rule for certain medical expenses incurred before establishment of account [1]	cba DOE	-4	-9	-10	-11	-12	-13	-14	-15	-15	-16	-47	-120
3. Allow both spouses to make catch-up contributions to the same HSA account	tyba 12/31/12	-59	-127	-144	-160	-175	-190	-204	-217	-229	-239	-665	-1,745
4. Individuals eligible for veterans benefits for a service-connected disability [1]	mba 12/31/12	-11	-18	-21	-25	-30	-35	-41	-47	-54	-61	-105	-343
5. Distributions by certain early retirees for health coverage treated as qualified medical expenses [1]	apfcpa 12/31/12	-96	-144	-162	-179	-196	-212	-228	-243	-255	-266	-776	-1,981
NET TOTAL		**-173**	**-327**	**-376**	**-419**	**-467**	**-506**	**-551**	**-592**	**-626**	**-657**	**-1,762**	**-4,696**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. The date of enactment is assumed to be October 1, 2012.

Legend for "Effective" column:

apfcpa = amounts paid for coverage periods after
cba = coverage beginning after
DOE = date of enactment
mba = months beginning after
tyba = taxable years beginning after

[1] Estimate includes the following off-budget effects:	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2013-17	2013-22
Special rule for certain medical expenses incurred before establishment of account	-1	-1	-1	-2	-2	-2	-2	-2	-2	-2	-7	-17
Individuals eligible for veterans benefits for a service-connected disability	-3	-5	-6	-7	-9	-10	-12	-14	-15	-18	-30	-99
Distributions by certain early retirees for health coverage treated as qualified medical expenses	-3	-4	-4	-5	-5	-6	-6	-6	-7	-7	-21	-53

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing tax provisions involve increased tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by the CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 4, 2012.

Hon. Dave Camp,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5858, the Health Savings Accounts Improvements Act of 2012.

If you wish further details on this estimate, we will be pleased to provide them. The CB0 staff contact is Kalyani Parthasarathy.

Sincerely,

Douglas W. Elmendorf.

Enclosure.

H.R. 5858—Health Savings Accounts Improvements Act of 2012

Summary: H.R. 5858 would make several changes to the tax treatment of health savings accounts (HSAs). The staff of the Joint Committee on Taxation (JCT) estimates that these changes together would decrease revenues by $173 million in 2013, about $1.8 billion over the 2013–2017 period, and $4.7 billion over the 2013–2022 period. Pay-as-you-go procedures apply because enacting the legislation would affect revenues.

The bill would allow certain former employees to use HSA contributions for their health insurance expenses, allow spouses to allocate their catch-up contributions between their HSAs, permit certain deductible HSA contributions to be eligible for a saver's tax credit, allow individuals recently receiving veterans benefits for a service-connected disability to make HSA contributions, and allow HSA contributions to pay for certain expenses incurred before the establishment of the account.

JCT has determined that the provisions of H.R. 5858 contain no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of the Health Savings Accounts Improvements Act of 2012 is shown in the following table.

	By fiscal year, in millions of dollars—												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012–2017	2012–2022
CHANGES IN REVENUES													
Distributions by Former Employees	0	−96	−144	−162	−179	−196	−212	−228	−243	−255	−266	−776	−1,981
Spousal Catch-up Contributions	0	−59	−127	−144	−160	−175	−190	−204	−217	−229	−239	−665	−1,745
Saver's Credit Eligibility	0	−3	−29	−39	−44	−54	−56	−64	−70	−73	−75	−169	−507
Veterans' Eligibility	0	−11	−18	−21	−25	−30	−35	−41	−47	−54	−61	−105	−343
Previous Medical Expenses	0	−4	−9	−10	−11	−12	−13	−14	−15	−15	−16	−47	−120
Total Changes	0	−173	−327	−376	−419	−467	−506	−551	−592	−626	−657	−1,762	−4,696
On-budget	0	−166	−317	−365	−405	−451	−488	−531	−570	−602	−630	−1,704	−4,527
Off-budget [a]	0	−7	−10	−11	−14	−16	−18	−20	−22	−24	−27	−58	−169

Note: Components may not sum to totals because of rounding.
[a] Off-budget revenues result from changes in Social Security payroll tax receipts, which are categorized as off-budget.
Source: Staff of the Joint Committee on Taxation.

Basis of estimate: Under current law, tax-deductible contributions to HSAs generally cannot be used to pay health insurance expenses. H.R. 5858 would allow such use for an HSA account holder between the ages of 55 and 64 who is enrolled in an employer-sponsored health plan as a former employee or a surviving spouse of a former employee. JCT estimates that this proposal would decrease revenues by $96 million in 2013, $776 million over the 2013–2017 period, and about $2.0 billion over the 2013–2022 period. Some of those revenue losses—$53 million over the 2013–2022 period—would be off-budget.

Eligible individuals who are at least age 55 at the end of the taxable year may make catch-up contributions to their HSAs, which are amounts above the normal contribution limits, under current law. H.R. 5858 would permit catch-up contributions from either spouse to be allocable to the HSA of one spouse in the same manner as is allowed for other annual contributions. JCT estimates that this change would decrease revenues by $59 million in 2013, $665 million over the 2013–2017 period, and about $1.7 billion over the 2013–2022 period.

Current law provides a saver's tax credit to individuals who make qualified retirement savings contributions, and whose annual gross income is under certain thresholds. H.R. 5858 would permit tax-deductible contributions to an HSA by such individuals to also be eligible for this saver's credit. The sum of such HSA contributions and qualified retirement savings contributions would still be subject to the current law limit of $2,000. JCT estimates that the provision would result in a revenue loss of $3 million in 2013, $169 million over the 2013–2017 period, and $507 million over the 2013–2022 period.

H.R. 5858 also would allow individuals to remain eligible to make deductible HSA contributions despite recently receiving medical benefits from the Department of Veterans Affairs for a service-connected disability. Under current law, such individuals would not be eligible to make contributions to an HSA if they had received such benefits in the previous three months. JCT estimates that this change would decrease revenues by $11 million in 2013, $105 million over the 2013–2017 period, and $343 million over the 2013–2022 period. Some of those revenue losses—$99 million over the 2013–2022 period—would be off-budget.

H.R. 5858 would allow certain contributions to an HSA to pay for expenses incurred after the taxpayer entered into a high deductible health plan but before the establishment of the account. Under current law, the medical expense must be incurred on or after the date the HSA is established in order to remain eligible for reimbursement. H.R. 5858 would remove this requirement so long as the expense was incurred within 60 days of the date the taxpayer established the HSA. JCT estimates that this provision would decrease revenues by $4 million in 2013, $47 million over the 2013–2017 period, and $120 million over the 2013–2022 period. Some of those revenue losses—$17 million over the 2013–2022 period—would be off-budget.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-

you-go procedures are shown in the following table. Only on-budget changes to outlays or revenues are subject to pay-as-you-go procedures.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 5858, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON MAY 31, 2012

	By fiscal year, in millions of dollars—												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012–2017	2012–2022
NET INCREASE OR DECREASE (—) IN THE ON-BUDGET DEFICIT													
Statutory Pay-As-You-Go Impact	0	166	317	365	405	451	488	531	570	602	630	1,704	4,527

Intergovernmental and private-sector impact: JCT has determined that the provisions of H.R. 5858 contain no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Kalyani Parthasarathy.

Estimate approved by: Frank Sammartino, Assistant Director for Tax Analysis.

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of H.R. 5858 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for any measure that authorizes funding is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

This Committee has determined that the reported bill does not contain any Federal private sector mandates within the meaning of Public Law No. 104–4, the Unfunded Mandates Reform Act of 1995. The costs required to comply with each Federal private sector mandate generally are no greater than the aggregate estimated budget effects of the provision.

The Committee has determined that the bill does not impose a private sector mandate, and has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Applicability of House Rule XXI 5(b)

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined

by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

E. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have "widespread applicability" to individuals or small businesses within the meaning of the rule.

F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter A—Determination of Tax Liability

* * * * * * *

PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart A—Nonrefundable Personal Credits

* * * * * * *

SEC. 25B. ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS BY CERTAIN INDIVIDUALS.

(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the applicable percentage of so much of the *aggregate qualified HSA contributions and* qualified retirement savings contributions of the eligible individual for the taxable year as do not exceed $2,000.

* * * * * * *

(d) QUALIFIED RETIREMENT SAVINGS CONTRIBUTIONS.—For purposes of this section—

(1) * * *

(2) QUALIFIED HSA CONTRIBUTIONS.—The term "qualified HSA contribution" means, with respect to any taxable year, any contribution to a health savings account (as defined in section 223(d)(1)) if—

(A) such contribution is allowable as a deduction to the taxpayer under section 223(a) for such taxable year, or

(B) such contribution is made by an employer of the taxpayer at the election of the taxpayer under a cafeteria plan (as defined in section 125(d)) and is not includible in the gross income of the taxpayer by reason of section 125.

[(2)**]** *(3)* REDUCTION FOR CERTAIN DISTRIBUTIONS.—

(A) IN GENERAL.—**[**The qualified retirement savings contributions determined under paragraph (1) shall be reduced (but not below zero) by the aggregate distributions received by the individual during the testing period from any entity of a type to which contributions under paragraph (1) may be made.**]** *The aggregate qualified retirement savings contributions determined under paragraph (1) and qualified HSA contributions determined under paragraph (2) shall be reduced (but not below zero) by the aggregate distributions received by the individual during the testing period from any entity of a type to which contributions under paragraph (1) or paragraph (2) (as the case may be) may be made.* The preceding sentence shall not apply to the portion of any distribution which is not includible in gross income by reason of a trustee-to-trustee transfer or a rollover distribution.

* * * * * * *

(C) EXCEPTED DISTRIBUTIONS.—There shall not be taken into account under subparagraph (A)—

(i) any distribution referred to in section 72(p), *223(f)(1) or (3),* 401(k)(8), 401(m)(6), 402(g)(2), 404(k), or 408(d)(4), and

* * * * * * *

Subchapter B—Computation of Taxable Income

* * * * * * *

PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

* * * * * * *

SEC. 223. HEALTH SAVINGS ACCOUNTS.

(a) * * *

(b) LIMITATIONS.—

(1) * * *

* * * * * * *

[(5) SPECIAL RULE FOR MARRIED INDIVIDUALS.—In the case of individuals who are married to each other, if either spouse has family coverage—

[(A) both spouses shall be treated as having only such family coverage (and if such spouses each have family coverage under different plans, as having the family coverage with the lowest annual deductible), and

[(B) the limitation under paragraph (1) (after the application of subparagraph (A) and without regard to any additional contribution amount under paragraph (3))—

[(i) shall be reduced by the aggregate amount paid to Archer MSAs of such spouses for the taxable year, and

[(ii) after such reduction, shall be divided equally between them unless they agree on a different division.]

(5) SPECIAL RULE FOR MARRIED INDIVIDUALS WITH FAMILY COVERAGE.—

(A) IN GENERAL.—In the case of individuals who are married to each other, if both spouses are eligible individuals and either spouse has family coverage under a high deductible health plan as of the first day of any month—

(i) the limitation under paragraph (1) shall be applied by not taking into account any other high deductible health plan coverage of either spouse (and if such spouses both have family coverage under separate high deductible health plans, only one such coverage shall be taken into account),

(ii) such limitation (after application of clause (i)) shall be reduced by the aggregate amount paid to Archer MSAs of such spouses for the taxable year, and

(iii) such limitation (after application of clauses (i) and (ii)) shall be divided equally between such spouses unless they agree on a different division.

(B) TREATMENT OF ADDITIONAL CONTRIBUTION AMOUNTS.—If both spouses referred to in subparagraph (A)

have attained age 55 before the close of the taxable year, the limitation referred to in subparagraph (A)(iii) which is subject to division between the spouses shall include the additional contribution amounts determined under paragraph (3) for both spouses. In any other case, any additional contribution amount determined under paragraph (3) shall not be taken into account under subparagraph (A)(iii) and shall not be subject to division between the spouses.

* * * * * * *

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) ELIGIBLE INDIVIDUAL.—

(A) * * *

* * * * * * *

(C) SPECIAL RULE FOR INDIVIDUALS ELIGIBLE FOR CERTAIN VETERANS BENEFITS.—An individual shall not fail to be treated as an eligible individual for any period merely because the individual receives hospital care or medical services under any law administered by the Secretary of Veterans Affairs for a service-connected disability (within the meaning of section 101(16) of title 38, United States Code).

* * * * * * *

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

(1) * * *

(2) QUALIFIED MEDICAL EXPENSES.—

(A) * * *

* * * * * * *

(C) EXCEPTIONS.—Subparagraph (B) shall not apply to any expense for coverage under—

(i) * * *

* * * * * * *

(iii) a health plan during a period in which the individual is receiving unemployment compensation under any Federal or State law, **[**or**]**

(iv) in the case of an account beneficiary who has attained the age specified in section 1811 of the Social Security Act, any health insurance other than a medicare supplemental policy (as defined in section 1882 of the Social Security Act)**[**.**]**, *or*

(v) in the case of an account beneficiary who has attained age 55 but not the age specified in section 1811 of the Social Security Act, any group health plan (as defined in section 5000(b)(1)) in which such account beneficiary is enrolled by reason of being a former employee or a surviving spouse of a former employee.

(D) TREATMENT OF CERTAIN MEDICAL EXPENSES INCURRED BEFORE ESTABLISHMENT OF ACCOUNT.—If a health savings account is established during the 60-day period beginning on the date that coverage of the account beneficiary under a high deductible health plan begins, then, solely for purposes of determining whether an amount paid is used

for a qualified medical expense, such account shall be treated as having been established on the date that such coverage begins.

* * * * * * *

Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART III—INFORMATION RETURNS

* * * * * * *

Subpart C—Information Regarding Wages Paid Employees

SEC. 6051. RECEIPTS FOR EMPLOYEES.

(a) REQUIREMENT.—Every person required to deduct and withhold from an employee a tax under section 3101 or 3402, or who would have been required to deduct and withhold a tax under section 3402 (determined without regard to subsection (n)) if the employee had claimed no more than one withholding exemption, or every employer engaged in a trade or business who pays remuneration for services performed by an employee, including the cash value of such remuneration paid in any medium other than cash, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, within 30 days after the date of receipt of a written request from the employee if such 30-day period ends before January 31, a written statement showing the following:

(1) * * *

* * * * * * *

[(12) the amount contributed to any health savings account (as defined in section 223(d)) of such employee or such employee's spouse,**]**

(12) the total amount contributed to health savings accounts (as defined in section 223(d)) of the employee or the employee's spouse and the portion of such total amount contributed at the election of the employee under any cafeteria plan (as defined in section 125(d)),

* * * * * * *

VII. DISSENTING VIEWS

We voted against this bill because it costs $4.7 billion in lost tax revenues and this revenue loss is not offset. When combined with the three other health care measures under consideration at the Markup, the total cost for all bills is nearly $42 billion and the Majority has not set forth any options to pay for this cost. Not one option was set forth at the Markup. It is simply unacceptable in this time of fiscal austerity to not pay the cost of these bills. It is irresponsible to add nearly $42 billion to the deficit.

This Markup continues the Majority's attempt to repeal the Affordable Care Act (ACA) without offering a replacement. In January of 2009, the Majority voted to repeal and replace the ACA. If their replacement solution is expanded access to Health Flexible Spending Accounts and Health Savings Accounts, then it falls far short of the needs of American families. Neither Health Flexible Spending Accounts nor Health Savings Accounts provide health coverage to participants. They only provide tax breaks for certain health costs. They are not real solutions to the problems facing our nation with respect to health care and insurance coverage.

SANDER M. LEVIN.
FORTNEY PETE STARK.
JIM MCDERMOTT.
JOHN LEWIS.
XAVIER BECERRA.
EARL BLUMENAUER.

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