

**DESCRIPTION OF H.R. 5445, A BILL TO AMEND
THE INTERNAL REVENUE CODE OF 1986
TO IMPROVE THE RULES WITH RESPECT TO
HEALTH SAVINGS ACCOUNTS**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on June 15, 2016

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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CONTENTS

	<u>Page</u>
INTRODUCTION	1
A. Allow Both Spouses to Make Catch-Up Contributions to the Same HSA.....	2
B. Special Rule for Certain Medical Expenses Incurred Before Establishment of Health Savings Account	4
C. Maximum Contribution Limit to HSA Increased to Amount of Deductible and Out-of-Pocket Limitation.....	5

INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 5445, a bill to amend the Internal Revenue Code of 1986 to improve the rules with respect to health savings accounts, on June 15, 2016. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 5445, A Bill to Amend the Internal Revenue Code of 1986 to Improve the Rules with Respect to Health Savings Accounts* (JCX-53-16), June 14, 2016. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended, unless otherwise stated.

A. Allow Both Spouses to Make Catch-Up Contributions to the Same HSA

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”).² 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.

HSA contributions for a year are subject to basic dollar limits that are also adjusted annually as needed to reflect annual cost-of-living increases. For 2016, the basic limit on contributions that can be made to an HSA for a year is \$3,350 in the case of self-only coverage and \$6,750 in the case of family coverage.³ For 2017, the amount is \$3,400 in the case of self-only coverage and \$6,750 (the same as 2016) in the case of family coverage. The basic 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”).⁴ All HSA contributions are aggregated for purposes of the contribution limits.⁵ The annual HSA contribution limit for an individual is generally the sum of the limits determined separately for each month (that is, 1/12 of the limit for the year, including the catch-up limit, if applicable), based on the individual’s status and health plan coverage as of the first day of the month.⁶

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 contribution limit for family coverage applies. The contribution limit (without regard to any catch-up contribution amounts) is divided equally between the spouses unless they agree on a different division.

² Sec. 223.

³ 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.

⁴ Contributions, including catch-up contributions, cannot be made once an individual is enrolled in Medicare.

⁵ In addition, contributions to Archer MSAs under section 220 reduce the annual HSA contribution limit.

⁶ 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 annual limit. Thus, the individual may contribute the maximum annual 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.

If both spouses of a married couple are eligible individuals, each may contribute to an HSA, but they cannot have a joint HSA.⁷ Under the rule described above, however, the spouses may divide their basic contribution limit for the year by allocating the entire amount to one spouse to be contributed to that spouse's HSA.⁸ This rule does not apply to catch-up contribution amounts. 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.⁹

Description of Proposal

Under the proposal, 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 catch-up contribution amounts of both spouses. Thus, for example, the spouses can agree that their combined basic and catch-up contribution amounts are 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 proposal applies for taxable years beginning after December 31, 2016.

⁷ Notice 2004-50, 2004-2 C.B. 196, Q&A-63.

⁸ 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.

⁹ Notice 2008-59, 2008-2 C.B. 123, Q&A-22.

B. Special Rule for Certain Medical Expenses Incurred Before Establishment of Health Savings Account

Present Law

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 (that is, age 65).

In order for a distribution from 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.¹⁰ Thus, a distribution from an HSA is not excludible as a payment 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.

Description of Proposal

Under the proposal, 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 coverage under the high deductible health plan 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 for a qualified medical expense even though the expense was incurred before the date that the HSA was established.

Effective Date

The proposal applies with respect to coverage beginning after December 31, 2016.

¹⁰ Q&A-26 of Notice 2004-2, 2004-1 C.B. 269.

C. Maximum Contribution Limit to HSA Increased to Amount of Deductible and Out-of-Pocket Limitation

Present Law

HSA contributions for a year are subject to basic dollar limits that are adjusted annually as needed to reflect annual cost-of-living increases. For 2016, the basic limit on contributions that can be made to an HSA for a year is \$3,350 in the case of self-only coverage and \$6,750 in the case of family coverage.¹¹ For 2017, the amount is \$3,400 in the case of self-only coverage and \$6,750 (the same as 2016) in the case of family coverage. The basic 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”).¹² All HSA contributions are aggregated for purposes of the contribution limits.¹³ The annual HSA contribution limit for an individual is generally the sum of the limits determined separately for each month (that is, 1/12 of the limit for the year, including the catch-up limit, if applicable), based on the individual’s status and health plan coverage as of the first day of the month.¹⁴

A minimum annual deductible amount and a maximum on the sum of the annual deductible and out-of-pocket expenses (such as co-pays) apply to high deductible health plans, which are adjusted annually as needed to reflect cost-of-living increases. For 2016, the minimum deductible is \$1,300 in the case of self-only coverage and \$2,600 in the case of family coverage. In addition, for 2016, the sum of the deductible and out-of-pocket expenses must be no more than \$6,550 in the case of self-only coverage and no more than \$13,100 in the case of family coverage. The same amounts apply for 2017.

Description of Proposal

The proposal increases the basic limit on aggregate HSA contributions for a year to equal the maximum on the sum of the annual deductible and out-of-pocket expenses permitted under a high deductible health plan. Thus, for 2017, the basic limit is \$6,550 in the case of self-only coverage and \$13,100 in the case of family coverage. As under present law, basic contribution limits are increased by \$1,000 for an eligible individual who has attained age 55 by the end of

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¹⁴ 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 annual limit. Thus, the individual may contribute the maximum annual 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.

the taxable year. In addition, as under present law, the annual HSA contribution limit for an individual is generally the sum of the limits determined separately for each month (that is, 1/12 of the limit for the year, including the catch-up limit, if applicable), based on the individual's status and health plan coverage as of the first day of the month.

Effective Date

The provision applies for taxable years beginning after December 31, 2016.