DESCRIPTION OF H.R. 6312, THE "PERSONAL HEALTH INVESTMENT TODAY ACT" or THE "PHIT ACT"

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on July 11, 2018

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 6312, the "Personal Health Investment Today Act," or the "PHIT Act," on July 11, 2018. The bill provides that qualified sports and fitness expenses will be treated as amounts paid for medical care. 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. 6312, the "Personal Health Investment Today Act"* or the "*PHIT Act*," (JCX-47-18), July 10, 2018. 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. Certain Amounts Paid for Physical Activity, Fitness and Exercise Treated as Amounts Paid for Medical Care

Present Law

Health savings accounts

An individual may establish a health savings account ("HSA") only if the individual is covered under a plan that meets the requirements for a high deductible health plan, as described below. 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, an HSA is a tax-exempt trust or custodial account created exclusively to pay for the qualified medical expenses of the account holder and his or her spouse and dependents.

Within limits,[2] 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 employment taxes if made by the employer. Earnings in HSAs are not taxable. 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 or disability, or after the individual attains the age of Medicare eligibility (age 65). Unlike reimbursements from a flexible spending arrangement or health reimbursement arrangement, distributions from an HSA are not required to be substantiated by the employer or a third party for the distributions to be excludible from income.

High deductible health plans

A high deductible health plan is a health plan that has a minimum annual deductible of $1,350 (for 2018) for self-only coverage and twice this amount for family coverage, and for which the sum of the annual deductible and other annual out-of-pocket expenses (other than premiums) for covered benefits does not exceed $6,650 (for 2018) for self-only coverage and twice this amount for family coverage.[3] These dollar thresholds are subject to inflation adjustment, based on chained CPI.[4]

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[2] For 2018, the basic limit on annual contributions that can be made to an HSA is $3,450 in the case of self-only coverage and $6,900 in the case of family coverage. (The 2018 limitation for family coverage was revised by the IRS to permit taxpayers to disregard the $6,850 limitation under the modified inflation adjustment of Pub. L. No. 115-97. Rev. Rul. 2018-27, 2018-20 I.R.B. 591, May 14, 2018.) The basic annual contributions 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).

[3] Sec. 223(c)(2).

[4] Sec. 223(g).

An individual who is covered under a high deductible health plan is eligible to establish an HSA, provided that while such individual is covered under the high deductible health plan, the individual is not covered under any health plan that (1) is not a high deductible health plan and (2) provides coverage for any benefit (subject to certain exceptions) covered under the high deductible health plan.[5]

Various types of coverage are disregarded for this purpose, including coverage of any benefit provided by permitted insurance, coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care, as well as certain limited coverage through health flexible savings accounts.[6] Permitted insurance means insurance under which substantially all of the coverage provided relates to liabilities incurred under workers' compensation laws, tort liabilities, liabilities relating to ownership or use of property, or such other similar liabilities as specified by the Secretary under regulations. Permitted insurance also means insurance for a specified disease or illness, and insurance paying a fixed amount per day (or other period) of hospitalization.[7]

Archer medical savings accounts (MSAs)

Like an HSA, an Archer MSA is a tax-exempt trust or custodial account to which tax-deductible contributions may be made by individuals with a high deductible health plan.[8] Only self-employed individuals and employees of small employers are eligible to have an Archer MSA. Archer MSAs provide tax benefits similar to those provided by HSAs for individuals covered by high deductible health plans. Distributions from an Archer MSA for qualified medical expenses are excludible from gross income. Distributions from an Archer MSA 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 or disability, or after the individual attains the age of Medicare eligibility (i.e., age 65).

Qualified medical expenses

Qualified medical expenses generally are defined under Code section 213(d) and include expenses for diagnosis, cure, mitigation, treatment, or prevention of disease, including prescription drugs, transportation primarily for and essential to such care, and qualified long-term care expenses. Qualified medical expenses do not include expenses for insurance other than for (1) certain premiums paid for long-term care insurance, (2) premiums for health coverage during any period of continuation coverage required by Federal law, (3) premiums for health care coverage while an individual is receiving unemployment compensation under Federal or

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[5] Sec. 223(c)(1).

[6] Sec. 223(c)(1)(B).

[7] Sec. 223(c)(3).

[8] Sec. 220.

State law, and (4) premiums for individuals who have attained the age of Medicare eligibility, other than premiums for Medigap policies.

Qualified medical expenses may be incurred by the account owner, the spouse of such individual and any dependent[9] including qualifying children, or a qualifying relative including (1) a child or descendant of a child, (2) a brother, sister, stepbrother or stepsister, (3) the father or mother, or an ancestor of either, (4) a stepfather or stepmother, (5) a son or daughter of a brother or sister of the taxpayer, (6) a brother or sister of the father or mother of the taxpayer, (7) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law, or, (8) an individual who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.

Health Flexible Spending Accounts (FSAs) and Health reimbursement arrangements

In addition to offering health insurance, employers often agree to reimburse medical expenses of their employees (and their spouses and dependents). These arrangements are commonly used by employers to pay or reimburse employees for medical expenses that are not covered by health insurance. These arrangements include health flexible spending arrangements ("health FSAs") and health reimbursement arrangements ("HRAs").

Health FSAs

Health FSAs typically are funded on a salary reduction basis under a cafeteria plan, meaning that employees are given the option to reduce their current cash compensation and instead have the amount made available for use in reimbursing the employee for his or her medical expenses. If the health FSA meets certain requirements, the compensation that is foregone is not includible in gross income or wages for payroll tax purposes.

Health FSAs that are funded on a salary reduction basis are subject to the requirements for cafeteria plans, including a requirement that amounts remaining in a health FSA at the end of a plan year must be forfeited by the employee (referred to as the "use-it-or-lose-it rule").[10]

HRAs

HRAs operate in a manner similar to health FSAs, in that they are employer-maintained arrangements that reimburse employees and their dependents[11] for medical expenses. Some of

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[9] Generally as defined in sec. 152.

[10] See sec. 125(d)(2). Subsequent IRS guidance has provided a grace period for the carryover of excess benefits or contributions in a health FSA, see, e.g. Notice 2005-42, 2005-23 I.R.B. 1204 (June 6, 2005). As an alternative to a grace period, Notice 2013-71, 2013-47 I.R.B. 532 (November 18, 2013) permits employers to amend the cafeteria plan document to provide for up to $500 of any unused amount as of the end of the plan year in a health FSA to be carried over to the following year).

[11] As defined in sec. 152.

the rules applicable to HRAs and health FSAs are similar (*e.g.*, the amounts in the arrangements can only be used to reimburse medical expenses and not for other purposes), but the rules are not identical. In particular, HRAs cannot be funded on a salary reduction basis and the use-it-or-lose-it rule does not apply. Thus, amounts remaining at the end of the year may be carried forward to be used to reimburse medical expenses in following years.[12] Unlike a health FSA, an HRA is permitted to reimburse an employee for health insurance premiums.

Physical activity, fitness and exercise

Under present law, sports and fitness expenses such as memberships at a fitness facility, participation or instruction in a program of physical exercise or physical activity are generally not treated as medical care under the provisions of the Internal Revenue Code.[13]

Description of Proposal

Under the proposal, qualified sports and fitness expenses would be treated as medical care. The term qualified sports and fitness expenses (other than videos, books, or similar materials) means amounts paid for membership at a fitness facility, participation or instruction in a program of physical exercise or physical activity, or safety equipment for use in a program (including a self-directed program) of physical exercise or physical activity. The aggregate amount treated as qualified sports and fitness expenses with respect to any taxpayer for any taxable year is limited to $500 (twice that amount in the case of a joint return or a head of household), and the amount treated as qualified sports and fitness expenses with respect to any single item of safety equipment is limited to $250 with respect to any taxpayer for any taxable year. These amounts are adjusted for inflation. Golf, hunting, sailing and riding are not treated as a physical exercise or physical activity for purposes of determining qualified sports and fitness expenses.

A fitness facility means a facility providing instruction in a program of physical exercise or physical activity, offering facilities for the preservation, maintenance, encouragement, or development of physical fitness, or serving as the site of such a program of a State or local government, (1) which is not a private club owned and operated by its members, (2) which does not offer facilities for golf, hunting, sailing or horseback riding, (3) whose health or fitness facility is not incidental to its overall function and purpose, and (4) which is fully compliant with applicable State and Federal anti-discrimination laws. In the case of any program that includes physical exercise or physical activity and also other components (such as travel and accommodations), special rules apply.

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[12] Guidance with respect to HRAs, including the interaction of FSAs and HRAs in the case of an individual covered under both, is provided in Notice 2002-45, 2002-2 C.B. 93 (July 15, 2002).

[13] See, *e.g.*, Chief Counsel Advice Memorandum 201622031, May 27, 2016. Under guidance, certain expenses may be treated as medical care (for example, taxpayers may deduct the cost of a weight loss program if the individual is diagnosed as obese or is directed by a doctor to lose weight as treatment for a specific disease, see Rev. Rul. 2002-19, 2002-16 I.R.B. 778 (April 22, 2002).

Effective Date

The provision is effective for taxable years beginning after December 31, 2018.