

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 212 Session of 2011

INTRODUCED BY FOLMER, ALLOWAY, D. WHITE, MENSCH, RAFFERTY,
ERICKSON, ORIE, BROWNE, PIPPY, BRUBAKER, PILEGGI, WAUGH AND
BAKER, JANUARY 21, 2011

REFERRED TO FINANCE, JANUARY 21, 2011

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," providing for a small business health savings
11 account tax credit.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
15 the Tax Reform Code of 1971, is amended by adding an article to
16 read:

17 ARTICLE XVII-G

18 SMALL BUSINESS HEALTH SAVINGS ACCOUNT TAX CREDIT

19 Section 1701-G. Scope.

20 This article relates to small business health savings account
21 tax credit.

22 Section 1702-G. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Department." The Department of Revenue of the Commonwealth.

"Employee" or "employees." An individual or group of individuals employed by a small business. The term shall also include a sole proprietor.

"Health insurance policy." An individual or group health, sickness or accident policy or subscriber contract or certificate issued by an entity subject to any one of the following:

(1) The act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

(2) The act of December 29, 1972 (P.L.1701, No.364), known as the Health Maintenance Organization Act.

(3) The act of May 18, 1976 (P.L.123, No.54), known as the Individual Accident and Sickness Insurance Minimum Standards Act.

(4) 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations) or 63 (relating to professional health services plan corporations).

"Health Savings Account." As defined in section 223(d) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 223(d)).

"Qualified high deductible health plan." A health insurance policy that would qualify as a high deductible health plan under section 223(c)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 223(c)(2)).

"Qualified tax liability." The liability for taxes imposed under Article III, IV or VI. The term shall include the

1 liability for taxes imposed under Article III on an owner of a
2 pass-through entity.

3 "Pass-through entity." Any of the following:

4 (1) A partnership, limited partnership, limited
5 liability company, business trust or other unincorporated
6 entity that for Federal income tax purposes is taxable as a
7 partnership.

8 (2) A Pennsylvania S corporation.

9 "Secretary." The Secretary of Revenue of the Commonwealth.

10 "Small business." An employer who, on at least 50% of its
11 working days during the taxable year, employed fewer than 100
12 employees.

13 "Tax credit." The small business health savings account tax
14 credit authorized under this article.

15 "Taxpayer." A small business subject to tax under Article
16 III, IV or VI. The term includes:

17 (1) the partner, shareholder, owner or member of a pass-
18 through entity; or

19 (2) a sole proprietor.

20 Section 1703-G. Credit for Health Savings Account
21 contributions.

22 (a) Application.--A taxpayer who purchases and provides a
23 qualified high deductible health plan to employees and makes a
24 contribution to a health savings account on behalf of employees
25 in a taxable year may apply for a tax credit as provided in this
26 article. By September 15, a taxpayer must submit an application
27 to the department for the aggregate contribution made by the
28 taxpayer to employee health savings accounts in the taxable year
29 that ended in the prior calendar year.

30 (b) Computation.--A taxpayer who qualifies under subsection

1 (a) shall receive a tax credit for the taxable year in
2 accordance with the following:

3 (1) Fifty percent of the aggregate contribution made by
4 the taxpayer to employee health savings accounts when the
5 contribution is provided for the benefit of employees,
6 spouses and dependents for the taxable year.

7 (2) Twenty-five percent of the aggregate contribution
8 made by the taxpayer to employee health savings accounts when
9 the contribution is provided solely for the benefit of an
10 employee.

11 (c) Notification.--By December 15 of the calendar year
12 following the close of the taxable year during which the
13 contribution to employee health savings accounts was made, the
14 department shall notify the taxpayer of the amount of the
15 taxpayer's tax credit approved by the department.

16 Section 1704-G. Limitation on credits.

17 (a) Limit.--The total amount of credits approved by the
18 department shall not exceed \$30,000,000 in any fiscal year.

19 (b) Calculation.--If the total amount of small business
20 health savings account tax credits applied for by all taxpayers
21 exceeds the amount allocated for those credits, then the small
22 business health savings account tax credit to be received by
23 each applicant shall be the product of the allocated amount
24 multiplied by the quotient of the small business health savings
25 account tax credit applied for by the applicant divided by the
26 total of all small business health savings account credits
27 applied for by all applicants, the algebraic equivalent of which
28 is:

29 taxpayer's small business health savings account tax
30 credit=amount allocated for those credits X (small business

health savings account tax credit applied for by the
applicant/total of all small business health savings account tax
credits applied for by all applicants).

Section 1705-G. Carryover, carryback, refund and assignment of
credit.

(a) Carryover.--If the taxpayer cannot use the entire amount
of the tax credit for the taxable year in which the tax credit
is first approved, then the excess may be carried over to
succeeding taxable years and used as a credit against the
qualified tax liability of the taxpayer for those taxable years.
Each time that the tax credit is carried over to a succeeding
taxable year, it is to be reduced by the amount that was used as
a credit during the immediately preceding taxable year. The tax
credit may be carried over and applied to succeeding taxable
years for no more than 15 taxable years following the first
taxable year for which the taxpayer was entitled to claim the
credit.

(b) Application of credit.--A tax credit approved by the
department for monetary contributions made to employee health
savings accounts in a taxable year first shall be applied
against the taxpayer's qualified tax liability for the current
taxable year as of the date on which the credit was approved
before the tax credit is applied against any tax liability under
subsection (a).

(c) Prohibition.--A taxpayer is not entitled to assign,
carry back or obtain a refund of an unused tax credit.

Section 1706-G. Shareholder, owner or member pass-through.

(a) Shareholder's calculation.--If a Pennsylvania S
corporation does not have an eligible tax liability against
which the tax credit may be applied, a shareholder of the

Pennsylvania S corporation is entitled to a tax credit equal to the tax credit determined for the Pennsylvania S corporation for the taxable year multiplied by the percentage of the Pennsylvania S corporation's distributive income to which the shareholder is entitled.

(b) Owner or member calculation.--If a pass-through entity other than a Pennsylvania S corporation does not have an eligible tax liability against which the tax credit may be applied, an owner or member of the pass-through entity is entitled to a tax credit equal to the tax credit determined for the pass-through entity for the taxable year multiplied by the percentage of the pass-through entity's distributive income to which the owner or member is entitled.

(c) Application and restrictions.--The credit provided under subsection (a) or (b) is in addition to any tax credit to which a shareholder, owner or member of a pass-through entity is otherwise entitled under this article. However, a pass-through entity and a shareholder, owner or member of a pass-through entity may not claim a credit under this article for the same contributions made to employee health savings accounts.

Section 1707-G. Report to General Assembly.

The secretary shall submit an annual report to the General Assembly indicating the effectiveness of the credit provided by this article no later than March 15 following the year in which the credits were approved. The report shall include the names of all taxpayers utilizing the credit as of the date of the report and the amount of credits approved and utilized by each taxpayer. Notwithstanding any law providing for the confidentiality of tax records, the information contained in the report shall be public information. The report may also include

1 any recommendations for changes in the calculation or
2 administration of the credit.

3 Section 1708-G. Regulations.

4 The secretary shall promulgate regulations necessary for the
5 implementation and administration of this article.

6 Section 2. This act shall apply to all tax years beginning
7 after December 31, 2011.

8 Section 3. This act shall take effect immediately.