

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 121 Session of 2007

INTRODUCED BY BOYD, CAUSER, BAKER, KAUFFMAN, HUTCHINSON, NAILOR, DENLINGER, REICHLEY, KILLION, READSHAW, CAPPELLI, CLYMER, HICKERNELL, YOUNGBLOOD, TRUE, R. STEVENSON, SAYLOR, O'NEILL, METCALFE, MUSTIO, RUBLEY, CALTAGIRONE, BELFANTI, HENNESSEY, McILHATTAN, WATSON, MENSCH, CREIGHTON, FAIRCHILD, STERN, REED, S. H. SMITH, ROAE, SIPTROTH, DALLY, PYLE, RAPP, HESS, BENNINGHOFF, HERSHEY, MARSICO, M. KELLER, SCAVELLO, CIVERA, SWANGER, ROHRER, GEIST, GRELL, SABATINA, CUTLER, M. SMITH, GINGRICH, HARPER, PICKETT, EVERETT, MARKOSEK, BARRAR, COX, GIBBONS, MICOZZIE, MILLARD, SCHRODER, YUDICHAK AND PETRARCA, JANUARY 31, 2007

REFERRED TO COMMITTEE ON FINANCE, JANUARY 31, 2007

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:

ARTICLE XVII-D

SMALL BUSINESS HEALTH SAVINGS ACCOUNT TAX CREDIT

1 Section 1701-D. Scope.

2 This article relates to small business health savings account  
3 tax credit.

4 Section 1702-D. Definitions.

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

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

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

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

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

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

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

23 (4) 40 Pa.C.S. Ch. 61 (relating to hospital plan  
24 corporations) or 63 (relating to professional health services  
25 plan corporations).

26 "Health Savings Account." As defined in section 223(d) of  
27 the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.  
28 § 223(d)).

29 "Qualified high deductible health plan." A health insurance  
30 policy that would qualify as a high deductible health plan under

1 section 223(c)(2) of the Internal Revenue Code of 1986 (Public  
2 Law 99-514, 26 U.S.C. § 223(c)(2)).

3 "Qualified tax liability." The liability for taxes imposed  
4 under Article III, IV or VI. The term shall include the  
5 liability for taxes imposed under Article III on an owner of a  
6 pass-through entity.

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

8 (1) A partnership, limited partnership, limited  
9 liability company, business trust or other unincorporated  
10 entity that for Federal income tax purposes is taxable as a  
11 partnership.

12 (2) A Pennsylvania S corporation.

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

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

17 "Tax credit." The small business health savings account tax  
18 credit authorized under this article.

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

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

23 (2) a sole proprietor.

24 Section 1703-D. Credit for Health Savings Account  
25 contributions.

26 (a) Application.--A taxpayer who purchases and provides a  
27 qualified high deductible health insurance policy to employees  
28 and makes a contribution to a health savings account on behalf  
29 of employees in a taxable year may apply for a tax credit as  
30 provided in this article. By September 15, a taxpayer must

1 submit an application to the department for the aggregate  
2 contribution made by the taxpayer to employee health savings  
3 accounts in the taxable year that ended in the prior calendar  
4 year.

5 (b) Computation.--A taxpayer who qualifies under subsection  
6 (a) shall receive a tax credit for the taxable year in  
7 accordance with the following:

8 (1) Fifty percent of the aggregate contribution made by  
9 the taxpayer to employee health savings accounts when the  
10 contribution is provided for the benefit of employees,  
11 spouses and dependents for the taxable year.

12 (2) Twenty-five percent of the aggregate contribution  
13 made by the taxpayer to employee health savings accounts when  
14 the contribution is provided solely for the benefit of an  
15 employee.

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

21 Section 1704-D. Limitation on credits.

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

24 (b) Calculation.--If the total amount of small business  
25 health savings account tax credits applied for by all taxpayers  
26 exceeds the amount allocated for those credits, then the small  
27 business health savings account tax credit to be received by  
28 each applicant shall be the product of the allocated amount  
29 multiplied by the quotient of the small business health savings  
30 account tax credit applied for by the applicant divided by the

total of all small business health savings account credits applied for by all applicants, the algebraic equivalent of which is:

taxpayer's small business health savings account tax 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-D. 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,

1 carry back or obtain a refund of an unused tax credit.

2 Section 1706-D. Shareholder, owner or member pass-through.

3 (a) Shareholder's calculation.--If a Pennsylvania S  
4 corporation does not have an eligible tax liability against  
5 which the tax credit may be applied, a shareholder of the  
6 Pennsylvania S corporation is entitled to a tax credit equal to  
7 the tax credit determined for the Pennsylvania S corporation for  
8 the taxable year multiplied by the percentage of the  
9 Pennsylvania S corporation's distributive income to which the  
10 shareholder is entitled.

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

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

26 Section 1707-D. Report to General Assembly.

27 The secretary shall submit an annual report to the General  
28 Assembly indicating the effectiveness of the credit provided by  
29 this article no later than March 15 following the year in which  
30 the credits were approved. The report shall include the names of

1 all taxpayers utilizing the credit as of the date of the report  
2 and the amount of credits approved and utilized by each  
3 taxpayer. Notwithstanding any law providing for the  
4 confidentiality of tax records, the information contained in the  
5 report shall be public information. The report may also include  
6 any recommendations for changes in the calculation or  
7 administration of the credit.

8 Section 1708-D. Regulations.

9 The secretary shall promulgate regulations necessary for the  
10 implementation and administration of this article.

11 Section 2. This act shall apply to all tax years beginning  
12 after December 31, 2006.

13 Section 3. This act shall take effect immediately.