

Union Calendar No.

108TH CONGRESS
1ST SESSION

H. R. 2351

[Report No. 108-]

To amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings accounts and to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2003

Mr. THOMAS (for himself, Mr. LIPINSKI, Mrs. JOHNSON of Connecticut, Mr. SAM JOHNSON of Texas, Mr. HAYWORTH, Mr. LEWIS of Kentucky, Mr. BRADY of Texas, Mr. ENGLISH, Mr. SESSIONS, Mr. OSE, Mr. FOSSELLA, Mr. PAUL, Mr. SMITH of New Jersey, Mr. WELDON of Florida, Mr. RYUN of Kansas, Mr. DELAY, Mr. TOOMEY, Mr. BARTON of Texas, Mr. WALSH, Mr. BALLENGER, Mr. CAMP, Mr. COLLINS, Mr. RYAN of Wisconsin, Mr. KELLER, Mr. HERGER, Mr. DOOLITTLE, Mr. DEMINT, and Mr. NORWOOD) introduced the following bill; which was referred to the Committee on Ways and Means

JUNE , 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 5, 2003]

A BILL

To amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings accounts and to provide for the disposition



of unused health benefits in cafeteria plans and flexible spending arrangements.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Health Savings Account*
5 *Availability Act”.*

6 **SEC. 2. HEALTH SAVINGS ACCOUNTS.**

7 *(a) IN GENERAL.—Part VII of subchapter B of chapter*
8 *1 of the Internal Revenue Code of 1986 (relating to addi-*
9 *tional itemized deductions for individuals) is amended by*
10 *redesignating section 223 as section 224 and by inserting*
11 *after section 222 the following new section:*

12 **“SEC. 223. HEALTH SAVINGS ACCOUNTS.**

13 *“(a) DEDUCTION ALLOWED.—In the case of an indi-*
14 *vidual who is an eligible individual for any month during*
15 *the taxable year, there shall be allowed as a deduction for*
16 *the taxable year an amount equal to the aggregate amount*
17 *paid in cash during such taxable year by such individual*
18 *to a health savings account of such individual.*

19 *“(b) LIMITATIONS.—*

20 *“(1) IN GENERAL.—The amount allowable as a*
21 *deduction under subsection (a) to an individual for*
22 *the taxable year shall not exceed the sum of the*
23 *monthly limitations for months during such taxable*
24 *year that the individual is an eligible individual.*



1 “(2) *MONTHLY LIMITATION.*—*The monthly limi-*
2 *tation for any month is 1/12 of—*

3 “(A) \$2,000, *in the case of an eligible indi-*
4 *vidual who—*

5 “(i) *has self-only coverage under a*
6 *minimum deductible plan as of the first*
7 *day of such month, or*

8 “(ii) *is uninsured as of the first day of*
9 *such month and is not described in sub-*
10 *paragraph (B)(ii) with respect to the tax-*
11 *able year which includes such month,*

12 “(B) \$4,000, *in the case of an eligible indi-*
13 *vidual who—*

14 “(i) *has family coverage under a min-*
15 *imum deductible plan as of the first day of*
16 *such month, or*

17 “(ii) *is uninsured as of the first day of*
18 *such month and, with respect to the taxable*
19 *year which includes such month—*

20 “(I) *is entitled to a deduction for*
21 *a dependent under section 151(c) (or*
22 *would be so entitled but for paragraph*
23 *(2) or (4) of section 152(e)), or*

24 “(II) *files a joint return, and*

25 “(C) *zero in any other case.*



1 “(3) *ADDITIONAL CONTRIBUTIONS FOR INDIVID-*
2 *UALS 55 OR OLDER.—*

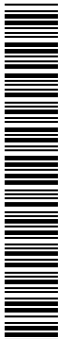
3 “(A) *IN GENERAL.—In the case of an indi-*
4 *vidual who has attained the age of 55 before the*
5 *close of the taxable year, paragraph (2) shall be*
6 *applied by increasing the \$2,000 amount in*
7 *paragraph (2)(A) and the \$4,000 amount in*
8 *paragraph (2)(B) by the additional contribution*
9 *amount.*

10 “(B) *ADDITIONAL CONTRIBUTION*
11 *AMOUNT.—For purposes of this section, the addi-*
12 *tional contribution amount is the amount deter-*
13 *mined in accordance with the following table:*

“For taxable years beginning in:	The additional contribution amount is:
2004	\$500
2005	\$600
2006	\$700
2007	\$800
2008	\$900
2009 and thereafter	\$1,000.

14 “(4) *LIMITATION BASED ON ADJUSTED GROSS IN-*
15 *COME.—*

16 “(A) *IN GENERAL.—The dollar amount in*
17 *paragraph (2)(A) and the dollar amount in*
18 *paragraph (2)(B) (in each case as increased*
19 *under paragraph (3)) shall each be reduced (but*
20 *not below zero) by an amount which bears the*
21 *same ratio to such dollar amount as—*



1 “(i) the excess of—

2 “(I) the taxpayer’s adjusted gross
3 income for such taxable year, over

4 “(II) the applicable dollar
5 amount, bears to

6 “(ii) \$10,000 (\$20,000 in the case of a
7 joint return for a taxable year beginning
8 after December 31, 2006).

9 “(B) NO REDUCTION BELOW \$200 UNTIL
10 COMPLETE PHASE-OUT.—No dollar amount shall
11 be reduced below \$200 under subparagraph (A)
12 unless (without regard to this subparagraph)
13 such limitation is reduced to zero.

14 “(C) ROUNDING.—Any amount determined
15 under this paragraph which is not a multiple of
16 \$10 shall be rounded to the next lowest \$10.

17 “(D) ADJUSTED GROSS INCOME.—For pur-
18 poses of this paragraph, adjusted gross income
19 shall be determined—

20 “(i) without regard to this section or
21 section 911, and

22 “(ii) after application of sections 86,
23 135, 137, 219, 221, 222, and 469.

24 “(E) APPLICABLE DOLLAR AMOUNT.—For
25 purposes of this paragraph, the term ‘applicable



1 *dollar amount' has the meaning given such term*
2 *in section 219(g)(3)(B). The rule of section*
3 *219(g)(4) (relating to special rule for married*
4 *individuals filing separately and living apart)*
5 *shall apply for purposes of the preceding sen-*
6 *tence.*

7 “(5) *COORDINATION WITH OTHER CONTRIBU-*
8 *TIONS.—The limitation which would (but for this*
9 *paragraph) apply under this subsection to the tax-*
10 *payer for any taxable year shall be reduced (but not*
11 *below zero) by the sum of—*

12 “(A) *the aggregate amount which would*
13 *(but for section 125(h)(1)(B) and subsections (b)*
14 *and (d) of section 106) be includible in the tax-*
15 *payer's gross income for such taxable year, and*

16 “(B) *the aggregate amount paid during*
17 *such taxable year by such individual to Archer*
18 *MSAs of such individual.*

19 “(6) *SPECIAL RULES FOR MARRIED INDIVIDUALS,*
20 *DEPENDENTS, AND MEDICARE ELIGIBLE INDIVID-*
21 *UALS.—Rules similar to the rules of paragraphs (3),*
22 *(6), and (7) of section 220(b) shall apply for purposes*
23 *of this section.*

24 “(c) *DEFINITIONS.—For purposes of this section—*

25 “(1) *ELIGIBLE INDIVIDUAL.—*



1 “(A) *IN GENERAL.*—*The term ‘eligible indi-*
2 *vidual’ means, with respect to any month, any*
3 *individual unless such individual is covered, as*
4 *of the first day of such month, under any health*
5 *plan which is not a minimum deductible plan.*

6 “(B) *CERTAIN COVERAGE DISREGARDED.*—
7 *Subparagraph (A) shall be applied without re-*
8 *gard to—*

9 “(i) *coverage for any benefit provided*
10 *by permitted insurance, and*

11 “(ii) *coverage (whether through insur-*
12 *ance or otherwise) for accidents, disability,*
13 *dental care, vision care, or long-term care.*

14 “(2) *MINIMUM DEDUCTIBLE PLAN.*—

15 “(A) *IN GENERAL.*—*The term ‘minimum*
16 *deductible plan’ means a health plan—*

17 “(i) *in the case of self-only coverage,*
18 *which has an annual deductible which is*
19 *not less than \$500, and*

20 “(ii) *in the case of family coverage,*
21 *which has an annual deductible which is*
22 *not less than twice the dollar amount in*
23 *clause (i) (as increased under subparagraph*
24 *(B)).*



1 “(B) *COST-OF-LIVING ADJUSTMENT FOR AN-*
2 *NUAL DEDUCTIBLES.—*

3 “(i) *IN GENERAL.—In the case of any*
4 *taxable year beginning in a calendar year*
5 *after 2004, the \$500 amount in subpara-*
6 *graph (A)(i) shall be increased by an*
7 *amount equal to—*

8 “(I) *such dollar amount, multi-*
9 *plied by*

10 “(II) *the cost-of-living adjustment*
11 *determined under section 1(f)(3) for*
12 *the calendar year in which such tax-*
13 *able year begins by substituting ‘cal-*
14 *endar year 2003’ for ‘calendar year*
15 *1992’ in subparagraph (B) thereof.*

16 “(ii) *ROUNDING.—If any increase*
17 *under clause (i) is not a multiple of \$50,*
18 *such increase shall be rounded to the nearest*
19 *multiple of \$50.*

20 “(C) *SPECIAL RULES.—*

21 “(i) *EXCLUSION OF CERTAIN PLANS.—*
22 *Such term does not include a health plan if*
23 *substantially all of its coverage is coverage*
24 *described in paragraph (1)(B).*



1 “(ii) *SAFE HARBOR FOR ABSENCE OF*
2 *PREVENTIVE CARE DEDUCTIBLE.*—A plan
3 shall not fail to be treated as a minimum
4 deductible plan by reason of failing to have
5 a deductible for preventive care.

6 “(3) *PERMITTED INSURANCE.*—The term ‘per-
7 mitted insurance’ has the meaning given such term in
8 section 220(c)(3).

9 “(4) *FAMILY COVERAGE.*—The term ‘family cov-
10 erage’ has the meaning given such term in section
11 220(c)(5).

12 “(5) *ARCHER MSA.*—The term ‘Archer MSA’ has
13 the meaning given such term in section 220(d).

14 “(d) *HEALTH SAVINGS ACCOUNT.*—For purposes of
15 this section—

16 “(1) *IN GENERAL.*—The term ‘health savings ac-
17 count’ means a trust created or organized in the
18 United States as a health savings account exclusively
19 for the purpose of paying the qualified medical ex-
20 penses of the account beneficiary, but only if the writ-
21 ten governing instrument creating the trust meets the
22 following requirements:

23 “(A) Except in the case of a rollover con-
24 tribution from an Archer MSA, or a health sav-



1 *ings account, which is not includible in gross in-*
2 *come, no contribution will be accepted—*

3 *“(i) unless it is in cash and is contrib-*
4 *uted by—*

5 *“(I) the account beneficiary,*

6 *“(II) a member of the family of*
7 *the account beneficiary, or*

8 *“(III) an employer of the account*
9 *beneficiary, and*

10 *“(ii) to the extent such contribution,*
11 *when added to previous contributions to the*
12 *trust for the calendar year, exceeds the dol-*
13 *lar amount in subsection (b)(2)(B) in-*
14 *creased by the additional contribution*
15 *amount for taxable years beginning in such*
16 *calendar year.*

17 *“(B) The trustee is a bank (as defined in*
18 *section 408(n)), an insurance company (as de-*
19 *finied in section 816), or another person who*
20 *demonstrates to the satisfaction of the Secretary*
21 *that the manner in which such person will ad-*
22 *minister the trust will be consistent with the re-*
23 *quirements of this section.*

24 *“(C) No part of the trust assets will be in-*
25 *vested in life insurance contracts.*



1 “(D) *The assets of the trust will not be com-*
2 *mingled with other property except in a common*
3 *trust fund or common investment fund.*

4 “(E) *The interest of an individual in the*
5 *balance in his account is nonforfeitable.*

6 “(2) *MEMBER OF THE FAMILY.—The term ‘mem-*
7 *ber of the family’ has the meaning given such term*
8 *in section 2032A(e)(2).*

9 “(3) *QUALIFIED MEDICAL EXPENSES.—The term*
10 *‘qualified medical expenses’ has the meaning given*
11 *such term in section 220(d)(2), except that—*

12 “(A) *subparagraph (B)(i) thereof shall not*
13 *apply to—*

14 “(i) *insurance which constitutes a*
15 *minimum deductible plan if no portion of*
16 *the cost of such insurance is paid by an em-*
17 *ployer or former employer of the account*
18 *beneficiary or the spouse of such bene-*
19 *ficiary, and*

20 “(ii) *any health insurance (other than*
21 *health insurance substantially all of its cov-*
22 *erage is coverage described in subsection*
23 *(c)(1)(B)) if the account beneficiary has at-*
24 *tained age 65, and*



1 “(B) subparagraph (C) thereof shall not
2 apply for purposes of this section.

3 “(4) ACCOUNT BENEFICIARY.—The term ‘account
4 beneficiary’ means the individual on whose behalf the
5 health savings account was established.

6 “(5) CERTAIN RULES TO APPLY.—Rules similar
7 to the following rules shall apply for purposes of this
8 section:

9 “(A) Section 219(d)(2) (relating to no de-
10 duction for rollovers).

11 “(B) Section 219(f)(3) (relating to time
12 when contributions deemed made).

13 “(C) Except as provided in section 106(d),
14 section 219(f)(5) (relating to employer pay-
15 ments).

16 “(D) Section 408(g) (relating to community
17 property laws).

18 “(E) Section 408(h) (relating to custodial
19 accounts).

20 “(6) CONTRIBUTIONS FROM FLEXIBLE SPENDING
21 ACCOUNTS TREATED AS MADE BY THE EMPLOYER.—
22 Any contribution from a flexible spending account to
23 a health savings account which is not includible in
24 the gross income of the employee by reason of section



1 125(h) shall be treated as a contribution made by the
2 employer for purposes of this section.

3 “(e) *TAX TREATMENT OF ACCOUNTS.*—

4 “(1) *IN GENERAL.*—A health savings account is
5 exempt from taxation under this subtitle unless such
6 account has ceased to be a health savings account.
7 Notwithstanding the preceding sentence, any such ac-
8 count is subject to the taxes imposed by section 511
9 (relating to imposition of tax on unrelated business
10 income of charitable, etc. organizations).

11 “(2) *ACCOUNT TERMINATIONS.*—Rules similar to
12 the rules of paragraphs (2) and (4) of section 408(e)
13 shall apply to health savings accounts, and any
14 amount treated as distributed under such similar
15 rules shall be treated as not used to pay qualified
16 medical expenses.

17 “(f) *TAX TREATMENT OF DISTRIBUTIONS.*—

18 “(1) *AMOUNTS USED FOR QUALIFIED MEDICAL*
19 *EXPENSES.*—Any amount paid or distributed out of
20 a health savings account which is used exclusively to
21 pay qualified medical expenses of any account bene-
22 ficiary shall not be includible in gross income.

23 “(2) *INCLUSION OF AMOUNTS NOT USED FOR*
24 *QUALIFIED MEDICAL EXPENSES.*—



1 “(A) *IN GENERAL.*—Any amount paid or
2 *distributed out of a health savings account which*
3 *is not used exclusively to pay the qualified med-*
4 *ical expenses of the account beneficiary shall be*
5 *included in the gross income of such beneficiary*
6 *in the manner provided under section 72.*

7 “(B) *SPECIAL RULES FOR APPLYING SEC-*
8 *TION 72.*—For purposes of applying section 72 to
9 *any amount described in subparagraph (A)—*

10 “(i) *all health savings accounts shall be*
11 *treated as 1 contract,*

12 “(ii) *all distributions during any tax-*
13 *able year shall be treated as 1 distribution,*

14 “(iii) *the value of the contract, income*
15 *on the contract, and investment in the con-*
16 *tract shall be computed as of the close of the*
17 *calendar year in which the taxable year be-*
18 *gins, and*

19 “(iv) *such distributions shall be treated*
20 *as made from contributions from members*
21 *of the family of the account beneficiary to*
22 *the extent that such distribution, when*
23 *added to all previous distributions from the*
24 *health savings account taken into account*
25 *under this clause, do not exceed the aggre-*



1 *gate contributions from members of such*
2 *family.*

3 “(3) *EXCESS CONTRIBUTIONS RETURNED BE-*
4 *FORE DUE DATE OF RETURN.—*

5 “(A) *IN GENERAL.—If any excess contribu-*
6 *tion is contributed for a taxable year to any*
7 *health savings account of an individual, para-*
8 *graph (2) shall not apply to distributions from*
9 *the health savings accounts of such individual*
10 *(to the extent such distributions do not exceed the*
11 *aggregate excess contributions to all such ac-*
12 *counts of such individual for such year) if—*

13 “(i) *such distribution is made on or*
14 *before the last day prescribed by law (in-*
15 *cluding extensions of time) for filing the ac-*
16 *count beneficiary’s return for such taxable*
17 *year,*

18 “(ii) *no deduction is allowed under*
19 *this section with respect to such contribu-*
20 *tion,*

21 “(iii) *such distribution is accompanied*
22 *by the amount of net income attributable to*
23 *such excess contribution, and*

24 “(iv) *such distribution satisfies the re-*
25 *quirements of subparagraph (B).*



1 “(B) *RULES RELATED TO ORDERING.*—

2 “(i) *DISTRIBUTIONS LIMITED TO CON-*
3 *TRIBUTIONS.*—*Subparagraph (A) shall*
4 *apply to distributions to a person only to*
5 *the extent of the contributions of such per-*
6 *son to such accounts during such taxable*
7 *year.*

8 “(ii) *CLASSES OF CONTRIBUTORS.*—
9 *Subparagraph (A) shall apply only to dis-*
10 *tributions of such contributions which are*
11 *made in the following order:*

12 “(I) *first, to members of the fam-*
13 *ily of the account beneficiary,*

14 “(II) *second, to the account bene-*
15 *ficiary,*

16 “(III) *third, to employers of the*
17 *account beneficiary with respect to*
18 *contributions under section 125(h),*
19 *and*

20 “(IV) *fourth, to employers of the*
21 *account beneficiary with respect to*
22 *contributions under section 106(d).*

23 “(iii) *LAST-IN FIRST-OUT.*—*If dis-*
24 *tributions could be made to more than one*
25 *person under any subclause of clause (ii),*



1 *subparagraph (A) shall not apply to any*
2 *such distribution unless such distribution is*
3 *of the most recent excess contribution which*
4 *has not been distributed to the contributor.*

5 “(C) *TREATMENT OF NET INCOME.—Any*
6 *net income described in subparagraph (A)(iii)*
7 *shall be included in the gross income of the per-*
8 *son receiving the distribution for the taxable*
9 *year in which received.*

10 “(D) *EXCESS CONTRIBUTION.—For pur-*
11 *poses of subparagraph (A), the term ‘excess con-*
12 *tribution’ means any contribution (other than a*
13 *rollover contribution from another health savings*
14 *account, or from an Archer MSA, which is not*
15 *includible in gross income) to the extent such*
16 *contribution results in the aggregate contribu-*
17 *tions to health savings accounts of the account*
18 *beneficiary for the taxable year to be in excess of*
19 *the limitation under subsection (b) (determined*
20 *without regard to paragraph (5) thereof) which*
21 *applies to such beneficiary for such year.*

22 “(4) *ADDITIONAL TAX ON DISTRIBUTIONS NOT*
23 *USED FOR QUALIFIED MEDICAL EXPENSES.—*

24 “(A) *IN GENERAL.—The tax imposed by*
25 *this chapter on the account beneficiary for any*



1 *taxable year in which there is a payment or dis-*
2 *tribution from a health savings account of such*
3 *beneficiary which is includible in gross income*
4 *under paragraph (2) shall be increased by 15*
5 *percent of the amount which is so includible.*

6 “(B) *EXCEPTION FOR DISABILITY OR*
7 *DEATH.*—*Subparagraph (A) shall not apply if*
8 *the payment or distribution is made after the ac-*
9 *count beneficiary becomes disabled within the*
10 *meaning of section 72(m)(7) or dies.*

11 “(C) *EXCEPTION FOR DISTRIBUTIONS*
12 *AFTER MEDICARE ELIGIBILITY.*—*Subparagraph*
13 *(A) shall not apply to any payment or distribu-*
14 *tion after the date on which the account bene-*
15 *ficiary attains the age specified in section 1811*
16 *of the Social Security Act.*

17 “(5) *SPECIAL RULES.*—*Rules similar to the rules*
18 *of paragraphs (5), (6), (7), and (8) of section 220(f)*
19 *shall apply for purposes of this section.*

20 “(g) *REPORTS.*—*The Secretary may require the trustee*
21 *of a health savings account to make such reports regarding*
22 *such account to the Secretary and to the account beneficiary*
23 *with respect to contributions, distributions, and such other*
24 *matters as the Secretary determines appropriate. The re-*
25 *ports required by this subsection shall be filed at such time*



1 *and in such manner and furnished to such individuals at*
2 *such time and in such manner as may be required by the*
3 *Secretary.*

4 “(h) *REGULATIONS.—The Secretary may issue regula-*
5 *tions to carry out the purposes of this section, including*
6 *regulations regarding the proper treatment of distributions*
7 *described in subsection (f)(3) and nondeductible contribu-*
8 *tions by members of the family of the account beneficiary.”.*

9 (b) *DEDUCTION ALLOWED WHETHER OR NOT INDI-*
10 *VIDUAL ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of*
11 *section 62 of such Code is amended by inserting after para-*
12 *graph (18) the following new paragraph:*

13 “(19) *HEALTH SAVINGS ACCOUNTS.—The deduc-*
14 *tion allowed by section 223.”.*

15 (c) *ROLLOVERS FROM ARCHER MSAS PERMITTED.—*
16 *Subparagraph (A) of section 220(f)(5) of such Code (relat-*
17 *ing to rollover contribution) is amended by inserting “or*
18 *a health savings account (as defined in section 223(d))”*
19 *after “paid into an Archer MSA”.*

20 (d) *EXCLUSIONS FOR EMPLOYER CONTRIBUTIONS TO*
21 *HEALTH SAVINGS ACCOUNTS.—*

22 (1) *EXCLUSION FROM INCOME TAX.—Section 106*
23 *of such Code (relating to contributions by employer to*
24 *accident and health plans) is amended by adding at*
25 *the end the following new subsection:*



1 “(d) *CONTRIBUTIONS TO HEALTH SAVINGS AC-*
2 *COUNTS.—*

3 “(1) *IN GENERAL.—In the case of an employee*
4 *who is an eligible individual, amounts contributed by*
5 *such employee’s employer to any health savings ac-*
6 *count of such employee shall be treated as employer-*
7 *provided coverage for medical expenses under an acci-*
8 *dent or health plan to the extent such amounts do not*
9 *exceed the excess of—*

10 “(A) *the limitation under section 223(b)*
11 *(determined without regard to this subsection)*
12 *which is applicable to such employee for such*
13 *taxable year, over*

14 “(B) *the aggregate amount treated as em-*
15 *ployer-provided coverage for medical expenses*
16 *under an accident or health plan under sub-*
17 *section (b).*

18 “(2) *SPECIAL RULES.—Rules similar to the rules*
19 *of paragraphs (2), (3), (4), and (5) of subsection (b)*
20 *shall apply for purposes of this subsection.*

21 “(3) *DEFINITIONS.—For purposes of this sub-*
22 *section, the terms ‘eligible individual’ and ‘health sav-*
23 *ings account’ have the respective meanings given to*
24 *such terms by section 223.*



1 “(4) *CROSS REFERENCE.*—

 “***For penalty on failure by employer to make comparable contributions to the health savings accounts of comparable employees, see section 4980G.***”

2 (2) *EXCLUSION FROM EMPLOYMENT TAXES.*—

3 (A) *RAILROAD RETIREMENT TAX.*—Sub-
4 section (e) of section 3231 of such Code is
5 amended by adding at the end the following new
6 paragraph:

7 “(11) *HEALTH SAVINGS ACCOUNT CONTRIBU-*
8 *TIONS.*—The term ‘compensation’ shall not include
9 any payment made to or for the benefit of an em-
10 ployee if at the time of such payment it is reasonable
11 to believe that the employee will be able to exclude
12 such payment from income under section 106(d).”

13 (B) *UNEMPLOYMENT TAX.*—Subsection (b)
14 of section 3306 of such Code is amended by strik-
15 ing “or” at the end of paragraph (16), by strik-
16 ing the period at the end of paragraph (17) and
17 inserting “; or”, and by inserting after para-
18 graph (17) the following new paragraph:

19 “(18) any payment made to or for the benefit of
20 an employee if at the time of such payment it is rea-
21 sonable to believe that the employee will be able to ex-
22 clude such payment from income under section
23 106(d).”



1 (C) *WITHHOLDING TAX.*—Subsection (a) of
2 section 3401 of such Code is amended by striking
3 “or” at the end of paragraph (20), by striking
4 the period at the end of paragraph (21) and in-
5 serting “; or”, and by inserting after paragraph
6 (21) the following new paragraph:

7 “(22) any payment made to or for the benefit of
8 an employee if at the time of such payment it is rea-
9 sonable to believe that the employee will be able to ex-
10 clude such payment from income under section
11 106(d).”.

12 (3) *EMPLOYER CONTRIBUTIONS REQUIRED TO BE*
13 *SHOWN ON W-2.*—Subsection (a) of section 6051 of
14 such Code is amended by striking “and” at the end
15 of paragraph (10), by striking the period at the end
16 of paragraph (11) and inserting “, and”, and by in-
17 serting after paragraph (11) the following new para-
18 graph:

19 “(12) the amount contributed to any health sav-
20 ings account (as defined in section 223(d)) of such
21 employee or such employee’s spouse.”.

22 (4) *PENALTY FOR FAILURE OF EMPLOYER TO*
23 *MAKE COMPARABLE HEALTH SAVINGS ACCOUNT CON-*
24 *TRIBUTIONS.*—



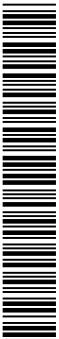
1 (A) *IN GENERAL.*—Chapter 43 of such Code
2 is amended by adding after section 4980F the
3 following new section:

4 **“SEC. 4980G. FAILURE OF EMPLOYER TO MAKE COM-**
5 **PARABLE HEALTH SAVINGS ACCOUNT CON-**
6 **TRIBUTIONS.**

7 “(a) *GENERAL RULE.*—In the case of an employer who
8 makes a contribution to the health savings account of any
9 employee with respect to coverage under a minimum de-
10 ductible plan of the employer during a calendar year, there
11 is hereby imposed a tax on the failure of such employer
12 to meet the requirements of subsection (d) for such calendar
13 year.

14 “(b) *AMOUNT OF TAX.*—The amount of the tax im-
15 posed by subsection (a) on any failure for any calendar
16 year is the amount equal to 35 percent of the aggregate
17 amount contributed by the employer to health savings ac-
18 counts of employees for taxable years of such employees end-
19 ing with or within such calendar year.

20 “(c) *WAIVER BY SECRETARY.*—In the case of a failure
21 which is due to reasonable cause and not to willful neglect,
22 the Secretary may waive part or all of the tax imposed by
23 subsection (a) to the extent that the payment of such tax
24 would be excessive relative to the failure involved.



1 “(d) *EMPLOYER REQUIRED TO MAKE COMPARABLE*
2 *HEALTH SAVINGS ACCOUNT CONTRIBUTIONS FOR ALL PAR-*
3 *TICIPATING EMPLOYEES.*—*An employer meets the require-*
4 *ments of this subsection for any calendar year if the em-*
5 *ployer meets the requirements of section 4980E(d) applied*
6 *by—*

7 “(1) *substituting ‘health savings account’ for ‘Ar-*
8 *cher MSA’ each place it appears, and*

9 “(2) *not taking into account any contribution*
10 *made under section 125.*

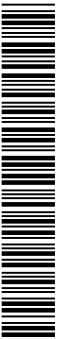
11 “(e) *CONTROLLED GROUPS.*—*For purposes of this sec-*
12 *tion, all persons treated as a single employer under sub-*
13 *section (b), (c), (m), or (o) of section 414 shall be treated*
14 *as 1 employer.*

15 “(f) *DEFINITIONS.*—*Terms used in this section which*
16 *are also used in section 223 have the respective meanings*
17 *given such terms in section 223.”.*

18 “(B) *CLERICAL AMENDMENT.*—*The table of*
19 *sections for chapter 43 of such Code is amended*
20 *by adding after the item relating to section*
21 *4980F the following new item:*

 “*Sec. 4980G. Failure of employer to make comparable health savings account*
 contributions.”.

22 “(e) *TAX ON EXCESS CONTRIBUTIONS.*—*Section 4973*
23 *of such Code (relating to tax on excess contributions to cer-*
24 *tain tax-favored accounts and annuities) is amended—*



1 (1) by striking “or” at the end of paragraph (3)
2 of subsection (a),

3 (2) by inserting “or” at the end of paragraph (4)
4 of subsection (a),

5 (3) by inserting after paragraph (4) of sub-
6 section (a) the following new paragraph:

7 “(5) a health savings account (within the mean-
8 ing of section 223(d)),” and

9 (4) by adding at the end the following new sub-
10 section:

11 “(g) *EXCESS CONTRIBUTIONS TO HEALTH SAVINGS*
12 *ACCOUNTS.*—For purposes of this section, in the case of
13 health savings accounts (within the meaning of section
14 223(d)), the term ‘excess contributions’ means the sum of—

15 “(1) the aggregate amount contributed for the
16 taxable year to the accounts (other than a rollover
17 contribution from another health savings account, or
18 from an Archer MSA, which is not includible in gross
19 income) which is in excess of the limitation under sec-
20 tion 223(b) (determined without regard to paragraph
21 (5) thereof), and

22 “(2) the amount determined under this sub-
23 section for the preceding taxable year, reduced by the
24 sum of—



1 “(A) the distributions out of the accounts
2 which were included in gross income under sec-
3 tion 223(f)(2), and

4 “(B) the excess (if any) of—

5 “(i) the sum of limitations described in
6 paragraph (1), over

7 “(ii) the amount contributed to the ac-
8 counts for the taxable year.

9 For purposes of this subsection, any contribution which is
10 distributed out of the health savings account in a distribu-
11 tion to which section 223(f)(3) applies shall be treated as
12 an amount not contributed.”.

13 (f) TAX ON PROHIBITED TRANSACTIONS.—

14 (1) Section 4975 of such Code (relating to tax on
15 prohibited transactions) is amended by adding at the
16 end of subsection (c) the following new paragraph:

17 “(6) SPECIAL RULE FOR HEALTH SAVINGS AC-
18 COUNTS.—An individual for whose benefit a health
19 savings account (within the meaning of section
20 223(d)) is established shall be exempt from the tax
21 imposed by this section with respect to any trans-
22 action concerning such account (which would other-
23 wise be taxable under this section) if, with respect to
24 such transaction, the account ceases to be a health



1 *savings account by reason of the application of sec-*
2 *tion 223(e)(2) to such account.”.*

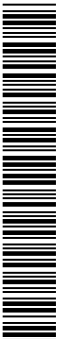
3 *(2) Paragraph (1) of section 4975(e) of such*
4 *Code is amended by redesignating subparagraphs (E)*
5 *and (F) as subparagraphs (F) and (G), respectively,*
6 *and by inserting after subparagraph (D) the following*
7 *new subparagraph:*

8 *“(E) a health savings account described in*
9 *section 223(d),”.*

10 *(g) FAILURE TO PROVIDE REPORTS ON HEALTH SAV-*
11 *INGS ACCOUNTS.—Paragraph (2) of section 6693(a) of such*
12 *Code (relating to reports) is amended by redesignating sub-*
13 *paragraphs (C) and (D) as subparagraphs (D) and (E),*
14 *respectively, and by inserting after subparagraph (B) the*
15 *following new subparagraph:*

16 *“(C) section 223(g) (relating to health sav-*
17 *ings accounts),”.*

18 *(h) EXCEPTION FROM CAPITALIZATION OF POLICY AC-*
19 *QUISITION EXPENSES.—Subparagraph (B) of section*
20 *848(e)(1) of such Code (defining specified insurance con-*
21 *tract) is amended by striking “and” at the end of clause*
22 *(iii), by striking the period at the end of clause (iv) and*
23 *inserting “, and”, and by adding at the end the following*
24 *new clause:*



1 “(v) any contract which is a health
2 savings account (as defined in section
3 223(d)).”.

4 (i) *HEALTH SAVINGS ACCOUNTS MAY BE OFFERED*
5 *UNDER CAFETERIA PLANS.*—Paragraph (2) of section
6 125(d) (relating to cafeteria plan defined) is amended by
7 adding at the end the following new subparagraph:

8 “(D) *EXCEPTION FOR HEALTH SAVINGS AC-*
9 *COUNTS.*—Subparagraph (A) shall not apply to
10 a plan to the extent of amounts which a covered
11 employee may elect to have the employer pay as
12 contributions to a health savings account estab-
13 lished on behalf of the employee.”.

14 (j) *CONFORMING AMENDMENTS.*—

15 (1) *The table of sections for part VII of sub-*
16 *chapter B of chapter 1 of such Code is amended by*
17 *striking the last item and inserting the following:*

 “Sec. 223. *Health savings accounts.*

 “Sec. 224. *Cross reference.*”.

18 (2)(A) *Sections 86(b)(2)(A), 135(c)(4)(A),*
19 *137(b)(3)(A), 219(g)(3)(A)(ii), and 221(b)(2)(C)(i)*
20 *are each amended by inserting “223,” after “222,”.*

21 (B) *Section 222(b)(2)(C)(i) is amended by in-*
22 *serting “223,” before “911”.*

23 (C) *Section 469(i)(3)(F)(iii) is amended by*
24 *striking “and 222” and inserting “222, and 223”.*



1 (k) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to taxable years beginning after Decem-*
3 *ber 31, 2003.*

4 **SEC. 3. DISPOSITION OF UNUSED HEALTH BENEFITS IN**
5 **CAFETERIA PLANS AND FLEXIBLE SPENDING**
6 **ARRANGEMENTS.**

7 (a) *IN GENERAL.*—*Section 125 of the Internal Revenue*
8 *Code of 1986 (relating to cafeteria plans) is amended by*
9 *redesignating subsections (h) and (i) as subsections (i) and*
10 *(j), respectively, and by inserting after subsection (g) the*
11 *following:*

12 “(h) *CONTRIBUTIONS OF CERTAIN UNUSED HEALTH*
13 *BENEFITS.*—

14 “(1) *IN GENERAL.*—*For purposes of this title, a*
15 *plan or other arrangement shall not fail to be treated*
16 *as a cafeteria plan solely because qualified benefits*
17 *under such plan include a health flexible spending ar-*
18 *rangement under which not more than \$500 of un-*
19 *used health benefits may be—*

20 “(A) *carried forward to the succeeding plan*
21 *year of such health flexible spending arrange-*
22 *ment,*

23 “(B) *to the extent permitted by section 223,*
24 *contributed on behalf of the employee to a health*



1 *savings account (as defined in section 223(d))*
2 *maintained for the benefit of such employee, or*
3 “(C) *contributed to a qualified retirement*
4 *plan (as defined in section 4974(c)), or an eligi-*
5 *ble deferred compensation plan (as defined in*
6 *section 457(b)) of an eligible employer described*
7 *in section 457(e)(1)(A), but only to the extent*
8 *such amount would not be allowed as a deduc-*
9 *tion under section 223 if made directly by the*
10 *employee to a health savings account of the em-*
11 *ployee (determined without regard to any other*
12 *contributions made by the employee).*

13 “(2) *SPECIAL RULES FOR TREATMENT OF CON-*
14 *TRIBUTIONS TO RETIREMENT PLANS.—For purposes*
15 *of this title, contributions under paragraph (1)(C)—*

16 “(A) *shall be treated as elective deferrals (as*
17 *defined in section 402(g)(3)) in the case of con-*
18 *tributions to a qualified cash or deferred ar-*
19 *rangement (as defined in section 401(k)) or to*
20 *an annuity contract described in section 403(b),*

21 “(B) *shall be treated as employer contribu-*
22 *tions in the case of a plan (other than a plan*
23 *described in subparagraph (A)) which is de-*
24 *scribed in section 401(a) which includes a trust*
25 *exempt from tax under section 501(a),*



1 “(C) shall be treated as deferred compensa-
2 tion in the case of contributions to an eligible de-
3 ferred compensation plan (as defined in section
4 457(b)), and

5 “(D) shall be treated in the manner des-
6 ignated for purposes of section 408 or 408A in
7 the case of contributions to an individual retire-
8 ment plan.

9 “(3) *HEALTH FLEXIBLE SPENDING ARRANGE-*
10 *MENT.—For purposes of this subsection, the term*
11 *‘health flexible spending arrangement’ means a flexi-*
12 *ble spending arrangement (as defined in section*
13 *106(c)) that is a qualified benefit and only permits*
14 *reimbursement for expenses for medical care (as de-*
15 *fined in section 213(d)(1) (without regard to subpara-*
16 *graphs (C) and (D) thereof).*

17 “(4) *UNUSED HEALTH BENEFITS.—For purposes*
18 *of this subsection, with respect to an employee, the*
19 *term ‘unused health benefits’ means the excess of—*

20 “(A) *the maximum amount of reimburse-*
21 *ment allowable to the employee during a plan*
22 *year under a health flexible spending arrange-*
23 *ment, taking into account any election by the*
24 *employee, over*



1 “(B) the actual amount of reimbursement
2 during such year under such arrangement.”.

3 (b) *EFFECTIVE DATE.*—The amendment made by sub-
4 section (a) shall apply to taxable years beginning after De-
5 cember 31, 2003.

6 **SEC. 4. EXCEPTION TO INFORMATION REPORTING RE-**
7 **QUIREMENTS RELATED TO CERTAIN HEALTH**
8 **ARRANGEMENTS.**

9 (a) *IN GENERAL.*—Section 6041 (relating to informa-
10 tion at source) is amended by adding at the end the fol-
11 lowing new subsection:

12 “(f) *SECTION DOES NOT APPLY TO CERTAIN HEALTH*
13 *ARRANGEMENTS.*—This section shall not apply to any pay-
14 ment for medical care (as defined in section 213(d)) made
15 under—

16 “(1) a flexible spending arrangement (as defined
17 in section 106(c)(2)), or

18 “(2) a health reimbursement arrangement which
19 is treated as employer-provided coverage under an ac-
20 cident or health plan for purposes of section 106.”.

21 (b) *EFFECTIVE DATE.*—The amendment made by this
22 section shall apply to payments made after December 31,
23 2002.

