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(Original Signature of Member)

112TH CONGRESS  
2D SESSION

# H. R. 5858

To amend the Internal Revenue Code of 1986 to improve health savings accounts, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. HERGER introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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## A BILL

To amend the Internal Revenue Code of 1986 to improve health savings accounts, and for other purposes.

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. TABLE OF CONTENTS.**

4 The table of contents for this Act is as follows:

- Sec. 1. Table of contents.
- Sec. 2. Saver's credit for contributions to health savings accounts.
- Sec. 3. Special rule for certain medical expenses incurred before establishment of account.
- Sec. 4. Allow both spouses to make catch-up contributions to the same health savings account.
- Sec. 5. Individuals eligible for veterans benefits for a service-connected disability.
- Sec. 6. Distributions by certain early retirees for health coverage treated as qualified medical expense.

1 **SEC. 2. SAVER'S CREDIT FOR CONTRIBUTIONS TO HEALTH**  
2 **SAVINGS ACCOUNTS.**

3 (a) **ALLOWANCE OF CREDIT.**—Subsection (a) of sec-  
4 tion 25B of the Internal Revenue Code of 1986 is amend-  
5 ed by inserting “aggregate qualified HSA contributions  
6 and” after “so much of the”.

7 (b) **QUALIFIED HSA CONTRIBUTIONS.**—Subsection  
8 (d) of section 25B of such Code is amended by redesignig-  
9 nating paragraph (2) as paragraph (3) and by inserting  
10 after paragraph (1) the following new paragraph:

11 “(2) **QUALIFIED HSA CONTRIBUTIONS.**—The  
12 term ‘qualified HSA contribution’ means, with re-  
13 spect to any taxable year, any contribution to a  
14 health savings account (as defined in section  
15 223(d)(1)) if—

16 “(A) such contribution is allowable as a  
17 deduction to the taxpayer under section 223(a)  
18 for such taxable year, or

19 “(B) such contribution is made by an em-  
20 ployer of the taxpayer at the election of the tax-  
21 payer under a cafeteria plan (as defined in sec-  
22 tion 125(d)) and is not includible in the gross  
23 income of the taxpayer by reason of section  
24 125.”.

1 (c) REPORTING OF HSA ELECTIVE CONTRIBU-  
2 TIONS.—Paragraph (12) of section 6051(a) of such Code  
3 is amended to read as follows:

4 “(12) the total amount contributed to health  
5 savings accounts (as defined in section 223(d)) of  
6 the employee or the employee’s spouse and the por-  
7 tion of such total amount contributed at the election  
8 of the employee under any cafeteria plan (as defined  
9 in section 125(d)),”.

10 (d) CONFORMING AMENDMENTS.—Section 25B(d)(3)  
11 of such Code, as redesignated by subsection (b), is amend-  
12 ed—

13 (1) by striking the first sentence of subpara-  
14 graph (A) and inserting the following: “The aggre-  
15 gate qualified retirement savings contributions deter-  
16 mined under paragraph (1) and qualified HSA con-  
17 tributions determined under paragraph (2) shall be  
18 reduced (but not below zero) by the aggregate dis-  
19 tributions received by the individual during the test-  
20 ing period from any entity of a type to which con-  
21 tributions under paragraph (1) or paragraph (2) (as  
22 the case may be) may be made.”, and

23 (2) by inserting “223(f)(1) or (3),” after “sec-  
24 tion 72(p)” in subparagraph (C)(i).

1 (e) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2012.

4 **SEC. 3. SPECIAL RULE FOR CERTAIN MEDICAL EXPENSES**  
5 **INCURRED BEFORE ESTABLISHMENT OF AC-**  
6 **COUNT.**

7 (a) IN GENERAL.—Paragraph (2) of section 223(d)  
8 of the Internal Revenue Code of 1986 is amended by add-  
9 ing at the end the following new subparagraph:

10 “(D) TREATMENT OF CERTAIN MEDICAL  
11 EXPENSES INCURRED BEFORE ESTABLISHMENT  
12 OF ACCOUNT.—If a health savings account is  
13 established during the 60-day period beginning  
14 on the date that coverage of the account bene-  
15 ficiary under a high deductible health plan be-  
16 gins, then, solely for purposes of determining  
17 whether an amount paid is used for a qualified  
18 medical expense, such account shall be treated  
19 as having been established on the date that  
20 such coverage begins.”.

21 (b) EFFECTIVE DATE.—The amendment made by  
22 this section shall apply with respect to coverage beginning  
23 after the date of the enactment of this Act.

1 **SEC. 4. ALLOW BOTH SPOUSES TO MAKE CATCH-UP CON-**  
2 **TRIBUTIONS TO THE SAME HEALTH SAVINGS**  
3 **ACCOUNT.**

4 (a) IN GENERAL.—Paragraph (5) of section 223(b)  
5 of the Internal Revenue Code of 1986 is amended to read  
6 as follows:

7 “(5) SPECIAL RULE FOR MARRIED INDIVIDUALS  
8 WITH FAMILY COVERAGE.—

9 “(A) IN GENERAL.—In the case of individ-  
10 uals who are married to each other, if both  
11 spouses are eligible individuals and either  
12 spouse has family coverage under a high de-  
13 ductible health plan as of the first day of any  
14 month—

15 “(i) the limitation under paragraph  
16 (1) shall be applied by not taking into ac-  
17 count any other high deductible health  
18 plan coverage of either spouse (and if such  
19 spouses both have family coverage under  
20 separate high deductible health plans, only  
21 one such coverage shall be taken into ac-  
22 count),

23 “(ii) such limitation (after application  
24 of clause (i)) shall be reduced by the ag-  
25 gregate amount paid to Archer MSAs of  
26 such spouses for the taxable year, and

1           “(iii) such limitation (after application  
2           of clauses (i) and (ii)) shall be divided  
3           equally between such spouses unless they  
4           agree on a different division.

5           “(B) TREATMENT OF ADDITIONAL CON-  
6           TRIBUTION AMOUNTS.—If both spouses referred  
7           to in subparagraph (A) have attained age 55  
8           before the close of the taxable year, the limita-  
9           tion referred to in subparagraph (A)(iii) which  
10          is subject to division between the spouses shall  
11          include the additional contribution amounts de-  
12          termined under paragraph (3) for both spouses.  
13          In any other case, any additional contribution  
14          amount determined under paragraph (3) shall  
15          not be taken into account under subparagraph  
16          (A)(iii) and shall not be subject to division be-  
17          tween the spouses.”.

18          (b) EFFECTIVE DATE.—The amendment made by  
19          this section shall apply to taxable years beginning after  
20          December 31, 2012.

21       **SEC. 5. INDIVIDUALS ELIGIBLE FOR VETERANS BENEFITS**  
22                               **FOR A SERVICE-CONNECTED DISABILITY.**

23          (a) IN GENERAL.—Paragraph (1) of section 223(e)  
24          of the Internal Revenue Code of 1986 is amended by add-  
25          ing at the end the following new subparagraph:

1                   “(C) SPECIAL RULE FOR INDIVIDUALS ELI-  
2                   GIBLE FOR CERTAIN VETERANS BENEFITS.—An  
3                   individual shall not fail to be treated as an eli-  
4                   gible individual for any period merely because  
5                   the individual receives hospital care or medical  
6                   services under any law administered by the Sec-  
7                   retary of Veterans Affairs for a service-con-  
8                   nected disability (within the meaning of section  
9                   101(16) of title 38, United States Code).”.

10           (b) EFFECTIVE DATE.—The amendment made by  
11 this section shall apply to months beginning after Decem-  
12 ber 31, 2012.

13 **SEC. 6. DISTRIBUTIONS BY CERTAIN EARLY RETIREES FOR**  
14                   **HEALTH COVERAGE TREATED AS QUALIFIED**  
15                   **MEDICAL EXPENSE.**

16           (a) IN GENERAL.—Subparagraph (C) of section  
17 223(d)(2) of the Internal Revenue Code of 1986 is amend-  
18 ed by striking “or” at the end of clause (iii), by striking  
19 the period at the end of clause (iv) and inserting “, or”,  
20 and by adding at the end the following new clause:

21                   “(v) in the case of an account bene-  
22                   ficiary who has attained age 55 but not the  
23                   age specified in section 1811 of the Social  
24                   Security Act, any group health plan (as de-  
25                   fined in section 5000(b)(1)) in which such

1 account beneficiary is enrolled by reason of  
2 being a former employee or a surviving  
3 spouse of a former employee.”.

4 (b) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to amounts paid for coverage for  
6 periods after December 31, 2012.