

**ASSEMBLY, No. 105**

---

**STATE OF NEW JERSEY**

**219th LEGISLATURE**

---

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblyman CHRISTOPHER P. DEPHILLIPS**

**District 40 (Bergen, Essex, Morris and Passaic)**

**Assemblyman KEVIN J. ROONEY**

**District 40 (Bergen, Essex, Morris and Passaic)**

**Assemblyman ERIK PETERSON**

**District 23 (Hunterdon, Somerset and Warren)**

**Co-Sponsored by:**

**Assemblymen Wirths, Space, Webber, Assemblywoman Dunn and  
Assemblyman Zwicker**

**SYNOPSIS**

Extends certain federal income tax advantages of individual health savings accounts to individual taxpayers under the New Jersey gross income tax.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 7/20/2020)**

1 AN ACT extending tax advantages of individual health savings  
2 accounts to individual taxpayers under the New Jersey gross  
3 income tax, amending P.L.1992, c.161, and amending and  
4 supplementing Title 54A of the New Jersey Statutes.

5

6 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
7 *of New Jersey:*

8

9 1. Section 6 of P.L.1992, c.161 (C.17B:27A-7) is amended to  
10 read as follows:

11 6. The board shall establish the policy and contract forms and  
12 benefit levels to be made available by all carriers for the health  
13 benefits plans required to be issued pursuant to section 3 of  
14 P.L.1992, c.161 (C.17B:27A-4), and shall adopt such modifications  
15 to one or more plans as the board determines are necessary to make  
16 available a "high deductible health plan" or plans consistent with  
17 **[**section 301 of Title III of the "Health Insurance Portability and  
18 Accountability Act of 1996," Pub.L.104-191**]** the provisions of  
19 paragraph (2) of subsection (c) of section 220 of the federal Internal  
20 Revenue Code of 1986, 26 U.S.C. s.220, regarding tax-deductible  
21 medical savings accounts, within 60 days after the enactment of  
22 P.L.1997, c.414 (C.54A:3-4 et al.), and shall adopt such  
23 modifications to one or more plans as the board determines are  
24 necessary to make available a "high deductible health plan" or plans  
25 consistent with the provisions of paragraph (2) of subsection (c) of  
26 section 223 of the federal Internal Revenue Code of 1986, 26  
27 U.S.C. s.223, regarding tax-deductible health savings accounts,  
28 within 60 days after the enactment of P.L. , c. (C. ) (now  
29 pending before the Legislature as this bill). The board shall provide  
30 the commissioner with an informational filing of the policy and  
31 contract forms and benefit levels it establishes.

32 a. The individual health benefits plans established by the board  
33 may include cost containment measures such as, but not limited to:  
34 utilization review of health care services, including review of  
35 medical necessity of hospital and physician services; case  
36 management benefit alternatives; selective contracting with  
37 hospitals, physicians, and other health care providers; and  
38 reasonable benefit differentials applicable to participating and  
39 nonparticipating providers; and other managed care provisions.

40 b. An individual health benefits plan offered pursuant to  
41 section 3 of P.L.1992, c.161 (C.17B:27A-4) shall contain a  
42 limitation of no more than 12 months on coverage for preexisting  
43 conditions. An individual health benefits plan offered pursuant to  
44 section 3 of P.L.1992, c.161 (C.17B:27A-4) shall not contain a

**EXPLANATION** – Matter enclosed in bold-faced brackets **[ thus ]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 preexisting condition limitation of any period under the following  
2 circumstances:

3 (1) to an individual who has, under creditable coverage, with no  
4 intervening lapse in coverage of more than 31 days, been treated or  
5 diagnosed by a physician for a condition under that plan or satisfied  
6 a 12-month preexisting condition limitation; or

7 (2) to a federally defined eligible individual who applies for an  
8 individual health benefits plan within 63 days of termination of the  
9 prior coverage.

10 c. In addition to the five standard individual health benefits  
11 plans provided for in section 3 of P.L.1992, c.161 (C.17B:27A-4),  
12 the board may develop up to five rider packages. Premium rates for  
13 the rider packages shall be determined in accordance with section 8  
14 of P.L.1992, c.161 (C.17B:27A-9).

15 d. After the board's establishment of the individual health  
16 benefits plans required pursuant to section 3 of P.L.1992, c.161  
17 (C.17B:27A-4), and notwithstanding any law to the contrary, a  
18 carrier shall file the policy or contract forms with the board and  
19 certify to the board that the health benefits plans to be used by the  
20 carrier are in substantial compliance with the provisions in the  
21 corresponding board approved plans. The certification shall be  
22 signed by the chief executive officer of the carrier. Upon receipt by  
23 the board of the certification, the certified plans may be used until  
24 the board, after notice and hearing, disapproves their continued use.

25 e. Effective immediately for an individual health benefits plan  
26 issued on or after the effective date of P.L.1995, c.316 (C.17:48E-  
27 35.10 et al.) and effective on the first 12-month anniversary date of  
28 an individual health benefits plan in effect on the effective date of  
29 P.L.1995, c.316 (C.17:48E-35.10 et al.), the individual health  
30 benefits plans required pursuant to section 3 of P.L.1992, c.161  
31 (C.17B:27A-4), including any plan offered by a federally qualified  
32 health maintenance organization, shall contain benefits for expenses  
33 incurred in the following:

34 (1) Screening by blood lead measurement for lead poisoning for  
35 children, including confirmatory blood lead testing as specified by  
36 the Department of Health pursuant to section 7 of P.L.1995, c.316  
37 (C.26:2-137.1); and medical evaluation and any necessary medical  
38 follow-up and treatment for lead poisoned children.

39 (2) All childhood immunizations as recommended by the  
40 Advisory Committee on Immunization Practices of the United  
41 States Public Health Service and the Department of Health pursuant  
42 to section 7 of P.L.1995, c.316 (C.26:2-137.1). A carrier shall  
43 notify its insureds, in writing, of any change in the health care  
44 services provided with respect to childhood immunizations and any  
45 related changes in premium. Such notification shall be in a form  
46 and manner to be determined by the Commissioner of Banking and  
47 Insurance.

48 (3) Screening for newborn hearing loss by appropriate

1 electrophysiologic screening measures and periodic monitoring of  
2 infants for delayed onset hearing loss, pursuant to P.L.2001, c.373  
3 (C.26:2-103.1 et al.). Payment for this screening service shall be  
4 separate and distinct from payment for routine new baby care in the  
5 form of a newborn hearing screening fee as negotiated with the  
6 provider and facility.

7 The benefits shall be provided to the same extent as for any other  
8 medical condition under the health benefits plan, except that no  
9 deductible shall be applied for benefits provided pursuant to this  
10 subsection. This subsection shall apply to all individual health  
11 benefits plans in which the carrier has reserved the right to change  
12 the premium.

13 f. Effective immediately for a health benefits plan issued on or  
14 after the effective date of P.L.2001, c.361 (C.17:48-6z et al.) and  
15 effective on the first 12-month anniversary date of a health benefits  
16 plan in effect on the effective date of P.L.2001, c.361 (C.17:48-6z  
17 et al.), the health benefits plans required pursuant to section 3 of  
18 P.L.1992, c.161 (C.17B:27A-4) that provide benefits for expenses  
19 incurred in the purchase of prescription drugs shall provide benefits  
20 for expenses incurred in the purchase of specialized non-standard  
21 infant formulas, when the covered infant's physician has diagnosed  
22 the infant as having multiple food protein intolerance and has  
23 determined such formula to be medically necessary, and when the  
24 covered infant has not been responsive to trials of standard non-cow  
25 milk-based formulas, including soybean and goat milk. The  
26 coverage may be subject to utilization review, including periodic  
27 review, of the continued medical necessity of the specialized infant  
28 formula.

29 The benefits shall be provided to the same extent as for any other  
30 prescribed items under the health benefits plan.

31 This subsection shall apply to all individual health benefits plans  
32 in which the carrier has reserved the right to change the premium.

33 (cf: P.L.2001, c.373, s.14)

34

35 2. Section 17 of P.L.1992, c.161 (C.17B:27A-33) is amended  
36 to read as follows:

37 17. Subject to the approval of the commissioner, the board shall  
38 formulate the five health benefits plans to be made available by  
39 small employer carriers in accordance with the provisions of this  
40 act, and shall promulgate five standard forms pursuant thereto. The  
41 board may establish benefit levels, deductibles and co-payments,  
42 exclusions, and limitations for such health benefits plans in  
43 accordance with the law. The board shall ensure that the means  
44 exist for a carrier to offer high deductible health benefits plan  
45 options that are consistent with [section 301 of Title III of the  
46 "Health Insurance Portability and Accountability Act of 1996,"  
47 Pub.L. 104-191,] the provisions of paragraph (2) of subsection (c)  
48 of section 220 of the federal Internal Revenue Code of 1986, 26

1 U.S.C. s.220, regarding tax-deductible medical savings accounts  
2 and with the provisions of paragraph (2) of subsection (c) of  
3 section 223 of the federal Internal Revenue Code of 1986, 26  
4 U.S.C. s.223, regarding tax-deductible health savings accounts.

5 The board shall submit the forms so established to the  
6 commissioner for approval. The commissioner shall approve the  
7 forms if the commissioner finds them to be consistent with the  
8 provisions of section 3 of P.L.1992, c. 162 (C.17B:27A-19). Any  
9 form submitted to the commissioner by the board shall be deemed  
10 approved if not expressly disapproved in writing within 60 days of  
11 its receipt by the commissioner. Such forms may contain, but shall  
12 not be limited to, the following provisions:

13 a. Utilization review of health care services, including review  
14 of medical necessity of hospital and physician services;

15 b. Managed care systems, including large case management;

16 c. Provisions for selective contracting with hospitals,  
17 physicians, and other participating and nonparticipating providers;

18 d. Reasonable benefits differentials which are applicable to  
19 participating and nonparticipating providers;

20 e. Notwithstanding the provisions of section 4 of P.L.1992,  
21 c.162 (C.17B:27A-20) to the contrary, the board may, from time to  
22 time, adjust coinsurance and deductibles;

23 f. Such other provisions which may be quantifiably established  
24 to be cost containment devices;

25 g. The department shall publish annually a list of the premiums  
26 charged for each of the five small employer health benefits plans  
27 and for any rider package by all carriers writing such plans. The  
28 department shall also publish the toll free telephone number of each  
29 such carrier.

30 (cf: P.L.1997, c.146, s.13)

31

32 3. N.J.S.54A:3-3 is amended to read as follows:

33 54A:3-3. Medical expenses. (a) Each taxpayer shall be allowed  
34 to deduct from the taxpayer's gross income medical expenses for the  
35 taxpayer, the taxpayer's spouse, and the taxpayer's dependents with  
36 respect to such expenses that were paid during the taxable year and  
37 to the extent that such medical expenses exceed 2% of the  
38 taxpayer's gross income. In the case of a nonresident, gross income  
39 shall mean gross income which such nonresident would have  
40 reported if the taxpayer had been subject to tax during the entire  
41 taxable year as a resident.

42 (b) Special Rule for Decedents.

43 (1) Treatment of expenses paid after death. Expenses for the  
44 medical care of the taxpayer which are paid out of the taxpayer's  
45 estate during the one-year period beginning with the day after the  
46 day of the death shall be treated as paid by the taxpayer at the time  
47 incurred.

48 (2) Limitation. Paragraph (1) shall not apply if the amount paid

1 is not allowable as a deduction in computing medical expense  
2 deductions for federal income tax purposes.

3 (c) Disallowance of amounts allowed for other purposes.

4 (1) Any expenses allowed as a deduction of expenses for  
5 household and dependent care services necessary for gainful  
6 employment shall not be allowed as an expense paid for medical  
7 care for purposes of this section.

8 (2) Any amounts paid or distributed out of a medical savings  
9 account that are excluded from gross income pursuant to section 5  
10 of P.L.1997, c.414 (C.54A:6-27), or paid or distributed out of a  
11 health savings account that are excluded from gross income  
12 pursuant to section 6 of P.L. , c. (C. ) (now pending before  
13 the Legislature as this bill), shall not be allowed as an expense paid  
14 for medical care for purposes of this section.

15 (3) Any amounts allowed as a deduction for the health insurance  
16 costs of the self-employed pursuant to section 1 of P.L.1999, c.222  
17 (C.54A:3-5) shall not be allowed as an expense paid for medical  
18 care for purposes of this section.

19 (cf: P.L.1999, c.222, s.2)

20

21 4. N.J.S.54A:5-1 is amend to read as follows:

22 54A:5-1. New Jersey Gross Income Defined. New Jersey gross  
23 income shall consist of the following categories of income:

24 a. Salaries, wages, tips, fees, commissions, bonuses, and other  
25 remuneration received for services rendered whether in cash or in  
26 property, and amounts paid or distributed, or deemed paid or  
27 distributed, out of a medical savings account that are not excluded  
28 from gross income pursuant to section 5 of P.L.1997, c.414  
29 (C.54A:6-27), or out of a health savings account that are not  
30 excluded from gross income pursuant to section 6 of  
31 P.L. ,c. (C. ) (now pending before the Legislature as this  
32 bill).

33 b. Net profits from business. The net income from the  
34 operation of a business, profession or other activity after provision  
35 for all costs and expenses incurred in the conduct thereof,  
36 determined either on a cash or accrual basis in accordance with the  
37 method of accounting allowed for federal income tax purposes but  
38 without deduction of the amount of:

39 (1) taxes based on income;

40 (2) a civil, civil administrative, or criminal penalty or fine,  
41 including a penalty or fine under an administrative consent order,  
42 assessed and collected for a violation of a State or federal  
43 environmental law, an administrative consent order, or an  
44 environmental ordinance or resolution of a local governmental  
45 entity, and any interest earned on the penalty or fine, and any  
46 economic benefits having accrued to the violator as a result of a  
47 violation, which benefits are assessed and recovered in a civil, civil  
48 administrative, or criminal action, or pursuant to an administrative

1 consent order. The provisions of this paragraph shall not apply to a  
2 penalty or fine assessed or collected for a violation of a State or  
3 federal environmental law, or local environmental ordinance or  
4 resolution, if the penalty or fine was for a violation that resulted  
5 from fire, riot, sabotage, flood, storm event, natural cause, or other  
6 act of God beyond the reasonable control of the violator, or caused  
7 by an act or omission of a person who was outside the reasonable  
8 control of the violator; and

9 (3) treble damages paid to the Department of Environmental  
10 Protection pursuant to subsection a. of section 7 of P.L.1976, c.141  
11 (C.58:10-23.11f) for costs incurred by the department in removing,  
12 or arranging for the removal of, an unauthorized discharge upon the  
13 failure of the discharger to comply with a directive from the  
14 department to remove, or arrange for the removal of, a discharge.

15 c. Net gains or income from disposition of property. Net gains  
16 or net income, less net losses, derived from the sale, exchange or  
17 other disposition of property, including real or personal, whether  
18 tangible or intangible as determined in accordance with the method  
19 of accounting allowed for federal income tax purposes. For the  
20 purpose of determining gain or loss, the basis of property shall be  
21 the adjusted basis used for federal income tax purposes, except as  
22 expressly provided for under this act, but without a deduction for  
23 penalties, fines, or economic benefits excepted pursuant to  
24 paragraph (2), or for treble damages excepted pursuant to paragraph  
25 (3) of subsection b. of this section.

26 A taxpayer's net gain or loss on the sale, exchange or other  
27 disposition of a share of an S corporation shall be calculated by  
28 increasing the adjusted basis of the share by an amount equal to the  
29 shareholder's net losses and deductions in respect of the share  
30 allowed and deducted from income for federal income tax purposes,  
31 not including any personal net operating loss deductions, to the  
32 extent that such net losses were not offset by the taxpayer's pro rata  
33 share of S corporation income otherwise subject to taxation  
34 pursuant to subsection p. of this section in respect of another S  
35 corporation, subject to rules of priority and assignment determined  
36 by the director.

37 For the tax year 1976, any taxpayer with a tax liability under this  
38 subsection, or under the "Tax on Capital Gains and Other Unearned  
39 Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be  
40 subject to payment of an amount greater than the amount he would  
41 have paid if either return had covered all capital transactions during  
42 the full tax year 1976; provided, however, that the rate which shall  
43 apply to any capital gain shall be that in effect on the date of the  
44 transaction. To the extent that any loss is used to offset any gain  
45 under P.L.1975, c.172, it shall not be used to offset any gain under  
46 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

47 The term "net gains or income" shall not include gains or income  
48 derived from obligations which are referred to in clause (1) or (2) of

1 N.J.S.54A:6-14 of this act or from securities which evidence  
2 ownership in a qualified investment fund as defined in section 2 of  
3 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income"  
4 shall not include gains or income from transactions to the extent to  
5 which nonrecognition is allowed for federal income tax purposes.  
6 The term "sale, exchange or other disposition" shall not include the  
7 exchange of stock or securities in a corporation a party to a  
8 reorganization in pursuance of a plan of reorganization, solely for  
9 stock or securities in such corporation or in another corporation a  
10 party to the reorganization and the transfer of property to a  
11 corporation by one or more persons solely in exchange for stock or  
12 securities in such corporation if immediately after the exchange  
13 such person or persons are in control of the corporation. For  
14 purposes of this clause, stock or securities issued for services shall  
15 not be considered as issued in return for property.

16 For purposes of this clause, the term "reorganization" means--

17 (i) A statutory merger or consolidation;

18 (ii) The acquisition by one corporation, in exchange solely for all  
19 or part of its voting stock (or in exchange solely for all or a part of  
20 the voting stock of a corporation which is in control of the acquiring  
21 corporation) of stock of another corporation if, immediately after  
22 the acquisition, the acquiring corporation has control of such other  
23 corporation (whether or not such acquiring corporation had control  
24 immediately before the acquisition);

25 (iii) The acquisition by one corporation, in exchange solely for  
26 all or part of its voting stock (or in exchange solely for all or a part  
27 of the voting stock of a corporation which is in control of the  
28 acquiring corporation), of substantially all of the properties of  
29 another corporation, but in determining whether the exchange is  
30 solely for stock the assumption by the acquiring corporation of a  
31 liability of the other, or the fact that property acquired is subject to  
32 a liability, shall be disregarded;

33 (iv) A transfer by a corporation of all or a part of its assets to  
34 another corporation if immediately after the transfer the transferor,  
35 or one or more of its shareholders (including persons who were  
36 shareholders immediately before the transfer), or any combination  
37 thereof, is in control of the corporation to which the assets are  
38 transferred;

39 (v) A recapitalization;

40 (vi) A mere change in identity, form, or place of organization  
41 however effected; or

42 (vii) The acquisition by one corporation, in exchange for stock  
43 of a corporation (referred to in this subclause as "controlling  
44 corporation") which is in control of the acquiring corporation, of  
45 substantially all of the properties of another corporation which in  
46 the transaction is merged into the acquiring corporation shall not  
47 disqualify a transaction under subclause (i) if such transaction  
48 would have qualified under subclause (i) if the merger had been into



1 the controlling corporation, and no stock of the acquiring  
2 corporation is used in the transaction;

3 (viii) A transaction otherwise qualifying under subclause (i) shall  
4 not be disqualified by reason of the fact that stock of a corporation  
5 (referred to in this subclause as the "controlling corporation") which  
6 before the merger was in control of the merged corporation is used  
7 in the transaction, if after the transaction, the corporation surviving  
8 the merger holds substantially all of its properties and of the  
9 properties of the merged corporation (other than stock of the  
10 controlling corporation distributed in the transaction); and in the  
11 transaction, former shareholders of the surviving corporation  
12 exchanged, for an amount of voting stock of the controlling  
13 corporation, an amount of stock in the surviving corporation which  
14 constitutes control of such corporation.

15 For purposes of this clause, the term "control" means the  
16 ownership of stock possessing at least 80% of the total combined  
17 voting power of all classes of stock entitled to vote and at least 80%  
18 of the total number of shares of all other classes of stock of the  
19 corporation.

20 For purposes of this clause, the term "a party to a reorganization"  
21 includes a corporation resulting from a reorganization, and both  
22 corporations, in the case of a reorganization resulting from the  
23 acquisition by one corporation of stock or properties of another. In  
24 the case of a reorganization qualifying under subclause (i) by reason  
25 of subclause (vii) the term "a party to a reorganization" includes the  
26 controlling corporation referred to in such subclause (vii).

27 Notwithstanding any provisions hereof, upon every such  
28 exchange or conversion, the taxpayer's basis for the stock or  
29 securities received shall be the same as the taxpayer's actual or  
30 attributed basis for the stock, securities or property surrendered in  
31 exchange therefor.

32 d. Net gains or net income derived from or in the form of rents,  
33 royalties, patents, and copyrights.

34 e. Interest, except interest referred to in clause (1) or (2) of  
35 N.J.S.54A:6-14, or distributions paid by a qualified investment fund  
36 as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the  
37 extent provided in that section.

38 f. Dividends. "Dividends" means any distribution in cash or  
39 property made by a corporation, association or business trust that is  
40 not an S corporation, (1) out of accumulated earnings and profits, or  
41 (2) out of earnings and profits of the year in which such dividend is  
42 paid and any distribution in cash or property made by an S  
43 corporation, as specifically determined pursuant to section 16 of  
44 P.L.1993, c.173 (C.54A:5-14).

45 The term "dividends" shall not include distributions paid by a  
46 qualified investment fund as defined in section 2 of P.L.1987, c.310  
47 (C.54A:6-14.1), to the extent provided in that section.

48 g. Gambling winnings.

- 1 h. Net gains or income derived through estates or trusts.
- 2 i. Income in respect of a decedent.
- 3 j. Amounts distributed or withdrawn from an employee trust  
4 attributable to contributions to the trust which were excluded from  
5 gross income under the provisions of chapter 6 of Title 54A of the  
6 New Jersey Statutes, amounts rolled over from an IRA, as defined  
7 pursuant to subsection (a) of section 408 of the federal Internal  
8 Revenue Code of 1986, 26 U.S.C. s.408, that is not a Roth IRA, as  
9 defined pursuant to subsection b. of section 2 of P.L.1998, c.57  
10 (C.54A:6-28) to an IRA that is a Roth IRA, and pensions and  
11 annuities except to the extent of exclusions in N.J.S.54A:6-10  
12 hereunder, notwithstanding the provisions of N.J.S.18A:66-51,  
13 P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53  
14 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965,  
15 c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22  
16 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954,  
17 c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60),  
18 R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44,  
19 and P.L.1943, c.189, s.5 (C.43:13-37.5).
- 20 k. Distributive share of partnership income.
- 21 l. Amounts received as prizes and awards, except as provided  
22 in N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.
- 23 m. Rental value of a residence furnished by an employer or a  
24 rental allowance paid by an employer to provide a home.
- 25 n. Alimony and separate maintenance payments to the extent  
26 that such payments are required to be made under a decree of  
27 divorce or separate maintenance but not including payments for  
28 support of minor children.
- 29 o. Income, gain or profit derived from acts or omissions  
30 defined as crimes or offenses under the laws of this State or any  
31 other jurisdiction.
- 32 p. Net pro rata share of S corporation income.  
33 (cf: P.L.1998, c.57, s.1)  
34
- 35 5. (New section) A taxpayer may deduct from the taxpayer's  
36 gross income an amount equal to the contributions to a health  
37 savings account that the taxpayer is allowed for the taxable year as  
38 a deduction for federal income tax purposes pursuant to section 223  
39 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.223.  
40
- 41 6. (New section) Gross income shall not include any increase  
42 in the value of a taxpayer's health savings account or the payments  
43 or distributions from a health savings account of a taxpayer that are  
44 excluded from the taxpayer's federal gross income pursuant to  
45 section 223 of the federal Internal Revenue Code of 1986, 26  
46 U.S.C. s.223. Gross income shall not include a rollover  
47 contribution to a taxpayer's health savings account that if it meets  
48 the requirements of a rollover contribution for federal income tax

1 purposes described in paragraph (5) of subsection (f) of section 223  
2 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.223, or in  
3 paragraph (5) of subsection (f) of section 220 of the federal Internal  
4 Revenue Code of 1986, 26 U.S.C. s.220.

5  
6 7. This act shall take effect immediately and apply to taxable  
7 years beginning after December 31, 2017.

8  
9  
10 STATEMENT

11  
12 This bill allows gross income tax advantages in connection with  
13 Health Savings Accounts in conformity with the federal income tax  
14 advantages extended to these accounts under recent federal law.  
15 The bill provides a gross income tax deduction for deposits to, and  
16 an exemption for withdrawals from, health savings accounts.  
17 Individuals can use these accounts to cover out-of-pocket medical  
18 care costs under high-deductible medical care plans. The bill also  
19 excludes the earnings in an account from gross income taxation, as  
20 the account earnings are excluded from federal income taxation.

21 The federal Medicare Prescription Drug, Improvement, and  
22 Modernization Act of 2003 permits eligible individuals to establish  
23 health savings accounts (HSAs) for taxable years beginning on or  
24 after January 1, 2004. Under the federal income tax, HSA  
25 contributions are deductible from adjusted gross income,  
26 contributions grow tax-free over the years, and amounts can be  
27 distributed tax-free to pay or reimburse qualified medical expenses.  
28 HSAs are similar to Archer medical savings accounts (MSAs)  
29 established as tax-advantaged accounts under the federal income tax  
30 and accorded similar tax-free treatment under the New Jersey gross  
31 income tax. However, HSAs are more flexible and available to  
32 many more individuals than MSAs. Taxpayers can be expected to  
33 embrace them enthusiastically because the federal tax benefits are  
34 generous; HSAs are akin to tax-favored accounts like IRAs or  
35 401(k)s.

36 Eligible individuals are individuals who are covered by a high-  
37 deductible health plan. A high-deductible health plan is a health  
38 plan that has a deductible that is at least \$1,000 for self-only  
39 coverage or \$2,000 for family coverage. The policy must also have  
40 an out-of-pocket maximum that can be no greater than \$5,000 for  
41 self-only coverage and \$10,000 for family coverage. Out-of-pocket  
42 expense includes deductibles, copayments, and other amounts  
43 (other than premiums) that the individual must pay for covered  
44 benefits under their medical care plan.

45 This bill makes contributions made by or on behalf of an eligible  
46 individual that are deductible for federal income tax purposes  
47 deductible by the individual for gross income tax purposes. Also,  
48 the bill makes employer contributions to an HSA excludible from

1 gross income to the extent the contribution would be deductible if  
2 made by the employee. The maximum aggregate annual  
3 contribution that can be made to an HSA, as set by federal law, is  
4 the lesser of 100 percent of the annual deductible under the high-  
5 deductible health plan, or the maximum deductible permitted under  
6 an MSA as adjusted for inflation. Contributions can be made to  
7 individual HSAs by individual and their employers. For 2018, the  
8 amount of the maximum high deductible is estimated to be \$6,650  
9 in the case of self-only coverage and \$13,300 in the case of family  
10 coverage.

11 Under the gross income tax as under the federal income tax, tax-  
12 free rollover contributions from Archer MSAs and other HSAs into  
13 an HSA will be permitted. Rollovers will not be subject to the  
14 annual contribution limits.

15 Under the bill, distributions from an HSA for qualified medical  
16 expense (most medical expenses defined as deductible for federal  
17 income tax purposes) for the taxpayer, the taxpayer's spouse, and  
18 dependents generally will be excludable from New Jersey gross  
19 income. Distributions from an HSA that are not for qualified  
20 medical expenses will be includable in New Jersey gross income.  
21 However, distributions that are not for qualified medical expenses  
22 will not be includable in gross income if they are made after death  
23 or disability, or after the individual attains the age of Medicare  
24 eligibility (age 65).

25 HSAs give workers the opportunity to save tax-free for routine  
26 medical bills like doctor visits or medicines, the security of funds to  
27 cover the out-of-pocket expenses of a major illness, and the  
28 freedom of knowing that the account is worker-owned, not under  
29 the control of an insurance company, and is portable whenever a  
30 worker changes employers. During years when an individual's  
31 family health care spending is low, the money remaining in the  
32 HSA earns tax-free interest, dividends or gains and is available in  
33 the future when unexpected medical expenses arise.

34 Health savings accounts are a new option which will give  
35 families access to affordable health care will reducing health  
36 insurance premiums. The tax advantages provided under federal  
37 law are not available under the current New Jersey gross income  
38 tax. This bill will extend that tax conformity.