

ASSEMBLY, No. 671

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen BAGGER and ROMA

1 AN ACT concerning medical savings accounts, amending
2 N.J.S.54A:5-1 and N.J.S.54A:9-6 and supplementing Title 54A of
3 the New Jersey Statutes.

4

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

7

8 1. (New section) As used in this act:

9 "Account holder" means the individual on whose behalf a medical
10 savings account is opened.

11 "Director" means the Director of the Division of Taxation.

12 "Eligible expense" means any qualified medical expense of an
13 account holder or the account holder's qualified dependents and
14 includes the expense of purchasing a health benefits plan and paying
15 any deductible or copayment on that plan for the first year of the plan
16 for a qualified dependent who has lost eligibility to receive health
17 benefits from the account holder's employer. "Eligible expense"
18 includes disbursements from a medical savings account pursuant to a
19 filing for protection by an account holder under Title 11 of the United
20 States Code, 11 U.S.C. § 101 et seq. and shall not be included in the
21 account holder's gross income for the year of disbursement in
22 determining taxes due under the "New Jersey Gross Income Tax Act,"
23 N.J.S.54A:1-1 et seq. "Eligible expense" does not include the payment
24 of a medical expense that has been or will be, otherwise paid,
25 including, but not limited to, medical expenses paid or reimbursed
26 under a policy of motor vehicle insurance, worker's compensation
27 insurance or plans, or an employer-funded health benefits plan.

28 "Health benefits plan" means a hospital and medical expense
29 insurance policy, hospital, medical or health service corporation
30 contract, or health maintenance organization subscriber contract,
31 which policy or contract is delivered or issued for delivery in this
32 State.

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

Matter underlined thus is new matter.

1 "Insurer" means any person authorized by the laws of this State to
2 transact the business of accident and health insurance in New Jersey.

3 "Medical savings account" or "account" means a custodial account
4 or trust created in this State to pay for the eligible expenses of an
5 account holder or the account holder's qualified dependents.

6 "Qualified dependent" means the spouse of an account holder or the
7 child of an account holder when the child is: (1) under 19 years of
8 age at the close of the taxable year, or under 23 years of age at the
9 close of the taxable year and a full-time student at an accredited
10 college or university; (2) not self-sufficient due to mental or physical
11 incapacitation; or (3) legally entitled to the provisions of proper or
12 necessary subsistence, education, medical care, or other care necessary
13 for the dependent's guidance, or well-being and is not otherwise
14 emancipated, self-supporting, married or a member of the armed forces
15 of the United States.

16

17 2. (New section) a. An employer may open a medical savings
18 account on behalf of any employee to pay the employee's eligible
19 expenses and the eligible expenses of the employee's qualified
20 dependents.

21 b. (1) An initial deposit of \$1,000 shall be required to open a
22 medical savings account.

23 (2) An employer may deposit additional monies into the account up
24 to a maximum of \$3,000 in any taxable year.

25 (3) An employee who is the account holder of a medical savings
26 account may deposit money into the account up to an amount equaling
27 the difference between the employer's deposits to the account during
28 the taxable year and the employer's maximum allowable deposit.

29 c. Each employer that opens a medical savings account for an
30 employee shall inform the employee, in writing, at the time the medical
31 savings account is opened, of the federal and State tax status of
32 deposits made to the account.

33 d. The owners of interest in a medical savings account are the
34 account holder and the account holder's qualified dependents. Such
35 interest is nonforfeitable.

36 e. An account holder may withdraw funds from the account
37 holder's medical savings account at any time. Withdrawals for
38 expenses other than eligible expenses shall be subject to penalties
39 pursuant to subsection m. of N.J.S.54A:9-6.

40 f. Funds withdrawn from a medical savings account shall not be
41 used to pay eligible expenses that have been, or will be, otherwise
42 paid, including, but not limited to, medical expenses paid or
43 reimbursed under a policy of motor vehicle insurance, by workers'
44 compensation insurance or plans, or by an employer-funded health
45 benefits plan.

46 g. If an employer makes deposits to an employee's medical savings

1 account on a periodic installment basis, the employer may advance to
2 the employee, interest free, an amount needed to cover the employee's
3 eligible expenses when such expenses exceed the amount then
4 available in the employee's medical savings account, if the employee
5 agrees to repay the advance from future installments or upon the
6 termination of the employee's employment.

7 h. The assets of the medical savings account shall not be
8 commingled with other property except in a common trust fund or
9 common investment fund.

10
11 3. (New section) a. An employer shall designate an administrator
12 for the medical savings account at the time the account is opened.

13 b. A medical savings account shall be administered by one of the
14 following:

15 (1) a federally or State chartered bank, savings and loan
16 association, savings bank or credit union;

17 (2) a trust company authorized to act as a fiduciary;

18 (3) an insurer;

19 (4) a third-party administrator;

20 (5) a certified public accountant;

21 (6) an employer that administers an employee benefit plan subject
22 to regulation under the federal "Employee Retirement Income Security
23 Act of 1974," 29 U.S.C. §1001 et seq., or that maintains medical
24 savings accounts for its employees; or

25 (7) such other person that demonstrates to the satisfaction of the
26 director that the manner in which the account will be managed will be
27 consistent with the requirements of this section.

28 c. Each administrator shall send to the account holder, at least
29 annually, a statement setting forth the balance remaining in the account
30 holder's medical savings account and detailing the activity in the
31 account since the last statement was issued.

32 d. When an account holder documents the payment of an eligible
33 expense to the administrator of the account holder's medical savings
34 account, the administrator shall reimburse the account holder from the
35 account for that expense if sufficient funds are available. The
36 reimbursement shall be made within 30 days of the administrator's
37 receipt of the documentation. The administrator shall keep a record
38 of the amounts disbursed from the medical savings account for
39 documented eligible expenses and of the dates on which the expenses
40 were incurred. This record shall be made available to any accident and
41 health insurer or other third-party payer providing a health benefits
42 plan to the account holder, for use in determining whether the account
43 holder has met the deductible or other obligation required for the
44 receipt of benefits from the insurer or third-party payer.

45
46 4. (New section) a. If an account holder later ceases to be

1 employed by the employer who has opened the medical savings
2 account, the account holder may, within 60 days of the final date of
3 employment with that employer, request in writing that the
4 administrator of the account continue to administer the account. If the
5 administrator agrees to continue to administer the medical savings
6 account, the account shall continue.

7 b. If the account holder becomes employed by a new employer that
8 opens a new medical savings account on his behalf, the account holder
9 may transfer any funds remaining in a prior account to the medical
10 savings account opened by his new employer. Such a transfer is not
11 a withdrawal.

12 c. If the administrator does not agree to retain the medical savings
13 account, or if the account holder requests that the medical savings
14 account be closed, the administrator shall close the medical savings
15 account and mail a check for the account balance as of that date to the
16 account holder. Such a withdrawal is not an eligible expense.

17

18 5. (New section) There shall be allowed as a deduction: a.
19 amounts deposited in a medical savings account established pursuant
20 to section 2 of this act; and b. all interest, dividends or gain earned by
21 a medical savings account.

22

23 6. N.J.S.54A:5-1 is amended to read as follows:

24 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
25 income shall consist of the following categories of income:

26 a. Salaries, wages, tips, fees, commissions, bonuses, and other
27 remuneration received for services rendered whether in cash or in
28 property, including all withdrawals from a medical savings account
29 that are not for eligible expenses as defined in section 1 of P.L. , c.
30 (C.)(pending in the Legislature as this bill).

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

37 (1) taxes based on income;

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

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

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

15 c. Net gains or income from disposition of property. Net gains or
16 net income, less net losses, derived from the sale, exchange or other
17 disposition of property, including real or personal, whether tangible or
18 intangible as determined in accordance with the method of accounting
19 allowed for federal income tax purposes. For the purpose of
20 determining gain or loss, the basis of property shall be the adjusted
21 basis used for federal income tax purposes, except as expressly
22 provided for under this act, but without a deduction for penalties,
23 fines, or economic benefits excepted pursuant to paragraph (2), or for
24 treble damages excepted pursuant to paragraph (3) of subsection b. of
25 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 allowed
30 and deducted from income for federal income tax purposes, not
31 including any personal net operating loss deductions, to the extent that
32 such net losses were not offset by the taxpayer's pro rata share of S
33 corporation income otherwise subject to taxation pursuant to
34 subsection p. of this section in respect of another S corporation,
35 subject to rules of priority and assignment determined by the director.

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

46 The term "net gains or income" shall not include gains or income

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

17 For purposes of this clause, the term "reorganization" means:

18 (i) A statutory merger or consolidation;

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

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

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

40 (v) A recapitalization;

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

43 (vii) The acquisition by one corporation, in exchange for stock of
44 a corporation (referred to in this subclause as "controlling
45 corporation") which is in control of the acquiring corporation, of
46 substantially all of the properties of another corporation which in the

1 transaction is merged into the acquiring corporation shall not
2 disqualify a transaction under subclause (i) if such transaction would
3 have qualified under subclause (i) if the merger had been into the
4 controlling corporation, and no stock of the acquiring corporation is
5 used in the transaction;

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

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

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

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

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

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

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

46 The term "dividends" shall not include distributions paid by a

1 qualified investment fund as defined in section 2 of P.L.1987, c.310
2 (C.54A:6-14.1), to the extent provided in that section.

3 g. Gambling winnings.

4 h. Net gains or income derived through estates or trusts.

5 i. Income in respect of a decedent.

6 j. Amounts distributed or withdrawn from an employee trust
7 attributable to contributions to the trust which were excluded from
8 gross income under the provisions of chapter 6 of Title 54A of the
9 New Jersey Statutes and pensions and annuities except to the extent
10 of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding the
11 provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41),
12 P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17
13 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14,
14 P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22
15 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964,
16 c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13
17 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5
18 (C.43:13-37.5).

19 k. Distributive share of partnership income.

20 l. Amounts received as prizes and awards, except as provided in
21 N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

22 m. Rental value of a residence furnished by an employer or a rental
23 allowance paid by an employer to provide a home.

24 n. Alimony and separate maintenance payments to the extent that
25 such payments are required to be made under a decree of divorce or
26 separate maintenance but not including payments for support of minor
27 children.

28 o. Income, gain or profit derived from acts or omissions defined as
29 crimes or offenses under the laws of this State or any other
30 jurisdiction.

31 p. Net pro rata share of S corporation income.

32 (cf: P.L.1993, c.173, s.9)

33

34 7. N.J.S.54A:9-6 is amended to read as follows:

35 54A:9-6. Additions to tax and civil penalties. (a) Failure to file tax
36 return. In case of failure to file a tax return under this act on or before
37 the prescribed date (determined with regard to any extension of time
38 for filing), unless it is shown that such failure is due to reasonable
39 cause and not due to willful neglect, there shall be added to the
40 amount required to be shown as tax on such return such amount as is
41 required under the State Tax Uniform Procedure Law, R.S.54:48-1 et
42 seq. For this purpose, the amount of tax required to be shown on the
43 return shall be reduced by the amount of any part of the tax which is
44 paid on or before the date prescribed for payment of the tax and by the
45 amount of any credit against the tax which may be claimed upon the
46 return.

1 (b) Deficiency due to negligence.If any part of a deficiency is due
2 to negligence or intentional disregard of this act or rules or regulations
3 hereunder (but without intent to defraud), there shall be added to the
4 tax an amount equal to 10% of the deficiency.

5 (c) Failure to file declaration or underpayment of estimated tax. If
6 any taxpayer fails to file a declaration of estimated tax or fails to pay
7 all or any part of an installment of estimated tax, he shall be deemed
8 to have made an underpayment of estimated tax. There shall be added
9 to the tax for the taxable year an amount at the rate as is required
10 under the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.,
11 upon the amount of the underpayment for the period of the
12 underpayment but not beyond the 15th day of the fourth month
13 following the close of the taxable year. The amount of underpayment
14 shall be the excess of the amount of the installment which would be
15 required to be paid if the estimated tax were equal to 80% of the tax
16 (two-thirds of the tax for farmers referred to in subsection (e) of
17 section 54A:8-4) shown on the return for the taxable year (or if no
18 return was filed, of the tax for such year) over the amount, if any, of
19 the installment paid on or before the last day prescribed for such
20 payment. No underpayment shall be deemed to exist with respect to
21 a declaration or installment otherwise due on or after the taxpayer's
22 death.

23 (d) Exception to addition for underpayment of estimated tax. The
24 addition to tax under subsection (c) with respect to any underpayment
25 of any installment shall not be imposed if the total amount of all
26 payments of estimated tax made on or before the last date prescribed
27 for the payment of such installment equals or exceeds whichever of the
28 following is the lesser--

29 (1) The amount which would have been required to be paid on or
30 before such date if the estimated tax were whichever of the following
31 is the least--

32 (A) The tax shown on the return of the individual for the preceding
33 taxable year, if a return showing a liability for tax was filed by the
34 individual for the preceding taxable year and such preceding year was
35 a taxable year of 12 months, or

36 (B) An amount equal to the tax computed, at the rates applicable
37 to the taxable year, on the basis of the taxpayer's status with respect
38 to his personal exemptions for the taxable year, but otherwise on the
39 basis of the facts shown on his return for, and the law applicable to,
40 the preceding taxable year, or

41 (C) An amount equal to 80% of the tax for the taxable year
42 (two-thirds of the tax for farmers referred to in subsection (e) of
43 section 54A:8-4) computed by placing on an annualized basis the
44 income for the months in the taxable year ending before the month in
45 which the installment is required to be paid. For purposes of this
46 subparagraph, the income shall be placed on an annualized basis by--

1 (i) Multiplying by 12 (or, in the case of a taxable year of less than
2 12 months, the number of months in the taxable year) the income for
3 the months in the taxable year ending before the month in which the
4 installment is required to be paid,

5 (ii) Dividing the resulting amount by the number of months in the
6 taxable year ending before the month in which such installment date
7 falls, and

8 (iii) Deducting from such amount the deductions for personal
9 exemptions allowable for the taxable year (such personal exemptions
10 being determined as of the last date prescribed for payment of the
11 installment); or

12 (2) An amount equal to 90% of the tax computed, at the rates
13 applicable to the taxable year, on the basis of the actual income for the
14 months in the taxable year ending before the month in which the
15 installment is required to be paid.

16 (e) Deficiency due to fraud. If any part of a deficiency is due to
17 fraud, there shall be added to the tax an amount equal to 50% of the
18 deficiency. This amount shall be in lieu of any other addition to tax
19 imposed by subsection (a) or (b).

20 (f) Nonwillful failure to pay withholding tax. If any employer,
21 without intent to evade or defeat any tax imposed by this act or the
22 payment thereof, shall fail to make a return and pay a tax withheld by
23 him at the time required by or under the provisions of section 54A:7-4,
24 such employer shall be liable for such tax and shall pay the same
25 together with interest thereon and the addition to tax provided in
26 subsection (a), and such interest and addition to tax shall not be
27 charged to or collected from the employee by the employer. The
28 director shall have the same rights and powers for the collection of
29 such tax, interest and addition to tax against such employer as are now
30 prescribed by this act for the collection of tax against an individual
31 taxpayer.

32 (g) Willful failure to collect and pay over tax. Any person required
33 to collect, truthfully account for, and pay over the tax imposed by this
34 act who willfully fails to collect such tax or truthfully account for and
35 pay over such tax or willfully attempts in any manner to evade or
36 defeat the tax or the payment thereof, shall, in addition to other
37 penalties provided by law, be liable to a penalty equal to the total
38 amount of the tax evaded, or not collected, or not accounted for and
39 paid over. No addition to tax under subsection (b) or (c) shall be
40 imposed for any offense to which this subsection applies.

41 (h) Failure to file certain information returns. In case of each
42 failure to file a statement of a payment to another person, required
43 under authority of subsection (c) of section 54A:8-6 (relating to
44 information at source, including the duplicate statement of tax
45 withheld on wages) on the date prescribed therefor (determined with
46 regard to any extension of time for filing), unless it is shown that such

1 failure is due to reasonable cause and not to willful neglect, there shall,
2 upon notice and demand by the director and in the same manner as tax,
3 be paid by the person so failing to file the statement, a penalty of \$2.00
4 for each statement not so filed, but the total amount imposed on the
5 delinquent person for all such failures during any calendar year shall
6 not exceed \$2,000.00.

7 (i) Additional penalty. Any person who with fraudulent intent shall
8 fail to pay, or to deduct or withhold and pay, any tax, or to make,
9 render, sign or certify any return or declaration of estimated tax or to
10 supply any information within the time required by or under this act,
11 shall be liable to penalty of not more than \$5,000.00, in addition to any
12 other amounts required under this act, to be imposed, assessed and
13 collected by the director. The director shall have the power, in his
14 discretion, to waive, reduce or compromise any penalty under this
15 subsection.

16 (j) Additions treated as tax. The additions to tax and penalties
17 provided by this section shall be paid upon notice and demand and
18 shall be assessed, collected and paid in the same manner as taxes and
19 any reference in this act to income tax or tax imposed by this act, shall
20 be deemed also to refer to the additions to tax and penalties provided
21 by this section. For purposes of section 54A:9-2, this subsection shall
22 not apply to:

23 (1) Any addition to tax under subsection (a) except as to that
24 portion attributable to a deficiency;

25 (2) Any addition to tax under subsection (e); and

26 (3) Any additional penalty under subsection (i).

27 (k) Determination of deficiency. For purposes of subsections (b)
28 and (c), the amount shown as the tax by the taxpayer upon his return
29 shall be taken into account in determining the amount of the deficiency
30 only if such return was filed on or before the last day prescribed for
31 the filing of such return, determined with regard to any extension of
32 time for such filing.

33 (l) Person defined. For purposes of subsections (f), (g), (h) and (i),
34 the term person or employer includes an individual, corporation or
35 partnership or an officer or employee of any corporation (including a
36 dissolved corporation) or a member or employee of any partnership,
37 who as such officer, employee, or member is under a duty to perform
38 the act in respect of which the violation occurs.

39 m. There shall be added to the tax due for a taxable year a penalty
40 for the early withdrawal of amounts from a medical savings account
41 for purposes that are not eligible expenses as defined in section 1 of
42 P.L. , c. (C.)(pending in the Legislature as this bill). The
43 penalty shall be equal to 10% of the amount of withdrawals from the
44 account that exceeds the amount of withdrawals for eligible expenses
45 for the taxable year but that does not exceed the amount deposited in
46 the account and is allowed as a deduction pursuant to subsection a. of

1 section 5 of P.L. , c. (C.) in the taxable year. No penalty shall
2 be assessed for a withdrawal pursuant to subsection c. of section 4 of
3 that act.

4 (cf: P.L.1987, c.76, s.59)

5

6 8. This act shall take effect immediately and sections 5 through 7
7 shall apply to deductions for taxable years beginning on or after
8 January 1 next following enactment.

9

10

11

STATEMENT

12

13 This bill establishes certain standards for medical savings accounts
14 opened by employers and permits employees who are account holders
15 of medical savings accounts to deduct from gross income the amount
16 deposited in such an account and any interest, dividends or gain earned
17 thereon under certain circumstances.

18 Under the provisions of the bill, a minimum deposit of \$1,000 is
19 required to establish a medical savings account, and no more than
20 \$3,000 may be deposited in any tax year.

21 An employer opening a medical savings account is required to
22 designate an administrator for the account, when it is opened.
23 Administrators that may be designated include:

24 (1) federally or State chartered banks, savings and loan
25 associations, savings banks or credit unions;

26 (2) trust companies authorized to act as a fiduciaries;

27 (3) insurers authorized by the State to transact the business of
28 accident and health insurance in New Jersey;

29 (4) a third-party administrator;

30 (5) a certified public accountant;

31 (6) an employer that administers an employee benefit plan subject
32 to regulation under the federal "Employee Retirement Income Security
33 Act of 1974," 29 U.S.C.§1001 et seq., or that maintains medical
34 savings accounts for its employees; or

35 (7) such other person that demonstrates to the satisfaction of the
36 director that the manner in which the account will be managed will be
37 consistent with the requirements of this section.

38 The bill requires an employer to notify employees at the time a
39 medical savings account is opened of the federal and State tax status
40 of deposits made to the account.

41 The bill provides that funds withdrawn from a medical savings
42 account that are used to pay eligible expenses are not subject to State
43 income tax, however, funds withdrawn from the account to pay
44 expenses, other than eligible expenses, would generally not be
45 deductible from gross income and therefore would be subject to
46 income tax and may, additionally, be subject to a penalty.

1 Under the provisions of the bill, an employee leaving the employ of
2 an employer who has opened a medical savings account for the
3 employee would have the option to: (1) retain the account, upon the
4 approval of the account administrator; (2) transfer the account to
5 another employer, if the new employer opens a medical savings
6 account on his behalf; or (3) close the account and have the funds
7 forwarded to him. If the account is closed, the funds would be
8 included in the employee's gross income, but would not be subject to
9 any penalty.

10

11

12

13

14 Establishes certain standards for medical savings accounts and allows
15 for a deduction from gross income for income deposited in or received
16 as interest, dividends or gain on such accounts under certain
17 circumstances.