

CHAPTER 352

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**TAXATION**

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**HOUSE BILL 94-1058**

BY REPRESENTATIVES Pankey, Agler, Berry, Lawrence, and Morrison;  
also SENATORS Hopper, Bird, Bishop, Blickensderfer, Johnson, Lacy, Norton, Owens, R. Powers, Roberts, Schaffer, Tebedo, and Traylor.

**AN ACT**

**CONCERNING THE ESTABLISHMENT OF MEDICAL SAVINGS ACCOUNTS.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 39-22-103, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**39-22-103. Definitions - construction of terms.** As used in this article, unless the context otherwise requires:

(5.8) "QUALIFIED HIGHER DEDUCTIBLE HEALTH PLAN" HAS THE SAME MEANING AS THAT SET FORTH IN SECTION 39-22-504.6 (3.5).

**SECTION 2.** 39-22-104 (3), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**39-22-104. Income tax imposed on individuals, estates, and trusts - single rate.** (3) There shall be added to federal taxable income:

(f) ANY AMOUNT WITHDRAWN FROM A MEDICAL SAVINGS ACCOUNT PURSUANT TO SECTION 39-22-504.7 (3) (b) (II) OR (3) (b) (III).

**SECTION 3.** 39-22-104 (4), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**39-22-104. Income tax imposed on individuals, estates, and trusts - single rate.** (4) There shall be subtracted from federal taxable income:

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(h) ANY AMOUNT CONTRIBUTED TO A MEDICAL SAVINGS ACCOUNT BY AN EMPLOYER PURSUANT TO SECTION 39-22-504.7(2) (e), TO THE EXTENT SUCH AMOUNT IS NOT CLAIMED AS A DEDUCTION ON THE TAXPAYER'S FEDERAL TAX RETURN.

**SECTION 4.** Part 1 of article 22 of title 39, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**39-22-104.6. Pre-tax payments - medical saving accounts.** AMOUNTS WITHHELD FROM AN INDIVIDUAL'S WAGES WHICH ARE CONTRIBUTED TO SUCH INDIVIDUAL'S MEDICAL SAVINGS ACCOUNT, PURSUANT TO SECTION 39-22-504.7, ARE EXCLUDED FROM AN INDIVIDUAL'S FEDERAL TAXABLE INCOME FOR PURPOSES OF THE STATE INCOME TAX IMPOSED BY SECTION 39-22-104.

**SECTION 5.** 39-22-304 (3), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**39-22-304. Net income of corporation.** (3) There shall be subtracted from federal taxable income:

(k) ANY AMOUNT CONTRIBUTED TO A MEDICAL SAVINGS ACCOUNT PURSUANT TO SECTION 39-22-504.7 (2) (e), TO THE EXTENT SUCH AMOUNT IS NOT CLAIMED AS A DEDUCTION ON THE TAXPAYER'S FEDERAL TAX RETURN.

**SECTION 6.** 39-22-504.5, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**39-22-504.5. Short title.** Sections 39-22-504.5 to 39-22-504.7 shall be known and may be cited as the "~~Individual~~ Medical SAVINGS Account Act of 1986 1994".

**SECTION 7.** 39-22-504.6, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**39-22-504.6. Definitions.** As used in sections 39-22-504.5 to 39-22-504.7, unless the context otherwise requires:

(1) ~~"Account holder" means the individual on whose behalf the individual medical account is established.~~ "ACCOUNT ADMINISTRATOR" MEANS:

(a) A STATE CHARTERED BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, OR TRUST COMPANY AUTHORIZED TO ACT AS A FIDUCIARY AND UNDER THE SUPERVISION OF THE FINANCIAL INSTITUTIONS BUREAU OF THE UNITED STATES DEPARTMENT OF COMMERCE;

(b) A NATIONAL BANKING ASSOCIATION, FEDERAL SAVINGS AND LOAN ASSOCIATION, OR CREDIT UNION AUTHORIZED TO ACT AS A FIDUCIARY IN THIS STATE;

(c) AN INSURANCE COMPANY; OR

(d) AN EMPLOYER IF SUCH EMPLOYER MAINTAINS A SELF-INSURED HEALTH PLAN

MEETING THE REQUIREMENTS OF THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT", AS AMENDED.

(1.3) "ACCOUNT HOLDER" MEANS AN EMPLOYEE ON WHOSE BEHALF A MEDICAL SAVINGS ACCOUNT IS ESTABLISHED.

(2) "Dependent child" means any person WHO IS:

(a) Under the age of twenty-one years; ~~or~~

(b) ~~any person who is~~ Legally entitled to or the subject of a court order for the provision of proper or necessary subsistence, education, medical care, or any other care necessary for his OR HER health, guidance, or well-being and who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) ~~who is~~ So mentally or physically incapacitated that he OR SHE cannot provide for himself OR HERSELF.

(2.4) "ELIGIBLE MEDICAL EXPENSE" MEANS ANY MEDICAL EXPENSE THAT IS DEDUCTIBLE FOR PURPOSES OF SECTION 213 (d) OF THE INTERNAL REVENUE CODE.

(2.5) "EMPLOYEE" MEANS THE INDIVIDUAL FOR WHOSE BENEFIT A MEDICAL SAVINGS ACCOUNT IS ESTABLISHED.

(2.6) "EMPLOYER" MEANS A PERSON OR ENTITY EMPLOYING ONE OR MORE PERSONS IN THIS STATE, EXCLUDING THE FEDERAL GOVERNMENT.

(3) ~~Individual~~ "Medical SAVINGS account" means ~~a trust created or organized in the state of Colorado~~ AN ACCOUNT ESTABLISHED to pay the eligible medical ~~dental, and long-term care~~ expenses of ~~the~~ AN account holder AND HIS OR HER SPOUSE AND DEPENDENT CHILDREN, IF ANY.

(3.5) "QUALIFIED HIGHER DEDUCTIBLE HEALTH PLAN" MEANS A HEALTH COVERAGE POLICY, CERTIFICATE, OR CONTRACT THAT PROVIDES FOR THE PAYMENT OF COVERED BENEFITS THAT EXCEED THE DEDUCTIBLE, WHICH SHALL NOT EXCEED THREE THOUSAND DOLLARS, AND THAT IS PURCHASED BY AN EMPLOYER FOR THE BENEFIT OF AN EMPLOYEE WHO MAKES DEPOSITS INTO A MEDICAL SAVINGS ACCOUNT.

(4) ~~"Trustee" means a chartered state bank, savings and loan association, or trust company authorized to act as fiduciary and under the supervision of the banking board or the state commissioner of financial services; a national banking association or federal savings and loan association authorized to act as fiduciary in Colorado; or an insurance company.~~

**SECTION 8.** 39-22-504.7, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

**39-22-504.7. Medical savings accounts - establishment - contributions - distributions - restrictions - taxation - portability.** (1) (a) ~~For taxable years beginning on or after January 1, 1986, a resident individual shall be allowed to~~

~~deposit contributions to his individual medical account. The amount allowed as a deposit per taxable year shall not exceed:~~ **Establishment of accounts.** ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, AN EMPLOYER MAY OFFER TO ESTABLISH MEDICAL SAVINGS ACCOUNTS.

~~(a) Two thousand dollars for the account holder;~~

~~(b) Two thousand dollars for the spouse of the account holder;~~

~~(c) (b) One thousand dollars for each dependent child of the account holder.~~ AN EMPLOYEE ON WHOSE BEHALF A MEDICAL SAVINGS ACCOUNT HAS NOT BEEN ESTABLISHED BY HIS OR HER EMPLOYER MAY ESTABLISH SUCH AN ACCOUNT ON HIS OR HER OWN BEHALF.

(2) ~~Interest earned on an individual medical account shall be exempt from taxation as Colorado adjusted gross income.~~ (a) EACH YEAR AN EMPLOYER MAY CONTRIBUTE TO AN EMPLOYEE'S MEDICAL SAVINGS ACCOUNT AN AMOUNT THAT DOES NOT EXCEED THREE THOUSAND DOLLARS.

(b) IF AN EMPLOYER ESTABLISHES A MEDICAL SAVINGS ACCOUNT FOR AN EMPLOYEE BUT CONTRIBUTES LESS THAN THE MAXIMUM SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION (2), THE EMPLOYEE MAY CONTRIBUTE THE DIFFERENCE IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (d) OF THIS SUBSECTION (2).

(c) AN EMPLOYEE WHO ESTABLISHES HIS OR HER OWN MEDICAL SAVINGS ACCOUNT MAY CONTRIBUTE TO SUCH ACCOUNT AN AMOUNT THAT DOES NOT EXCEED THE MAXIMUM SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION (2). ANY SUCH CONTRIBUTION IS TO BE MADE IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (d) OF THIS SUBSECTION (2).

(d) **Employee contributions - pre-tax.** (I) ALL EMPLOYEE CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS ARE MADE ON A PRE-TAX BASIS, PURSUANT TO SECTION 39-22-104.6. SUCH CONTRIBUTIONS ARE SUBJECT TO THE SAME LIMITATIONS AS EMPLOYER CONTRIBUTIONS.

(II) AN EMPLOYEE SHALL ELECT TO MAKE CONTRIBUTIONS TO HIS OR HER MEDICAL SAVINGS ACCOUNT BY SIGNING A WRITTEN ELECTION. SUCH ELECTION IS TO BE IN THE FORM PRESCRIBED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE AND IS TO BE SIGNED PRIOR TO THE DATE THE EMPLOYER WITHHOLDS THE FIRST CONTRIBUTION.

(e) **Employer contributions - tax deduction.** EMPLOYER CONTRIBUTIONS TO EMPLOYEE MEDICAL SAVINGS ACCOUNTS CONSTITUTE A DEDUCTION FROM THE EMPLOYER'S FEDERAL TAXABLE INCOME, PURSUANT TO SECTIONS 39-22-104 (4) (h) AND 39-22-304 (3) (k).

(3) ~~Upon agreement between an employer and employee, an employee may either have his employer contribute to the employee's individual medical account, or continue to make contributions under the employer's existing health insurance policy or program, subject, however, to the restrictions in paragraph (a) of subsection (5) of this section.~~ **Distributions.** (a) AN ACCOUNT HOLDER SHALL SUBMIT

DOCUMENTATION OF ELIGIBLE MEDICAL EXPENSES PAID DURING THE TAX YEAR TO THE ACCOUNT ADMINISTRATOR AND THE ACCOUNT ADMINISTRATOR SHALL REIMBURSE THE ACCOUNT HOLDER FOR SUCH EXPENSES.

(b) MONEYS MAY BE DISTRIBUTED FROM A MEDICAL SAVINGS ACCOUNT ONLY FOR THE PURPOSE OF:

(I) REIMBURSING THE ELIGIBLE MEDICAL EXPENSES OF THE ACCOUNT HOLDER OR HIS OR HER SPOUSE OR DEPENDENT CHILD;

(II) CASHING OUT THE BALANCE IN THE ACCOUNT OF A DECEASED ACCOUNT HOLDER; OR

(III) (A) CASHING OUT AN ACCOUNT HOLDER'S PRIOR YEARS' BALANCE.

(B) AN ACCOUNT HOLDER MAY WITHDRAW THE BALANCE IN HIS OR HER ACCOUNT FOR ANY REASON IF SUCH WITHDRAWAL OCCURS AFTER THE END OF THE YEAR IN WHICH THE MONEYS WERE CONTRIBUTED; HOWEVER, SUCH DISTRIBUTED MONEYS ARE SUBJECT TO STATE INCOME TAX PURSUANT TO SUBSECTION (6) OF THIS SECTION.

~~(4) The account shall be established as a trust under the laws of Colorado and placed with a trustee. The trustee shall:~~

~~(a) Purchase major medical coverage for each account holder to cover all medical, dental, and long-term care expenses in excess of ten thousand dollars annually;~~

~~(b) Utilize the trust assets solely for the purpose of paying the medical, dental, and long-term care expenses of the account holder, which expenses shall include long-term care.~~

**(5) Restrictions.** The account holder shall be subject to the following restrictions:

~~(a) The account holder is responsible for the first one hundred dollars of medical, dental, or long-term care expenses incurred per taxable year.~~

~~(b) All medical, dental, and long-term care expenses incurred after payment of the one-hundred-dollar deductible shall be submitted by the account holder to the trustee for payment.~~ AN ACCOUNT HOLDER MAY NOT USE ACCOUNT MONEYS TO FUND A POLICY THAT COVERS THE DEDUCTIBLE FOR A QUALIFIED HIGHER DEDUCTIBLE HEALTH PLAN, AS DEFINED IN SECTION 39-22-504.6 (3.5).

**(6) Taxation of account moneys.** Individual medical account funds may be withdrawn by the account holder at any time for any purpose, subject to the following restrictions and penalties:

~~(a) There shall be a distribution penalty for early withdrawal of account funds by the account holder. Such penalty shall be ten percent of the amount of interest earned to date on the account, and, upon such withdrawal, the interest earned on the account during the tax year in which the withdrawal occurs shall be taxed as Colorado adjusted gross income.~~

~~(b) After an account holder reaches the age of fifty-nine and one-half years, withdrawals shall be permitted for medical, dental, or long-term care purposes without penalty.~~ ACCOUNT MONEYS, INCLUDING INTEREST INCOME, ARE NOT TO BE TAXED AS COLORADO ADJUSTED GROSS INCOME IF THEY ARE:

- (I) IN AN EMPLOYEE'S MEDICAL SAVINGS ACCOUNT; OR
- (II) WITHDRAWN TO PAY ELIGIBLE MEDICAL EXPENSES.

(c) ACCOUNT MONEYS ARE TO BE TAXED AS COLORADO ADJUSTED GROSS INCOME WHEN SUCH MONEYS ARE WITHDRAWN FOR PURPOSES OTHER THAN THE PAYMENT OF ELIGIBLE MEDICAL EXPENSES.

~~(7)~~ (d) Upon the death of the account holder, the account principal, as well as any accumulated interest, ~~thereon, shall~~ IS TO be distributed to ~~the decedent's estate~~ and taxed as part of ~~his~~ THE DECEDENT'S estate, as provided by law.

(7) **Portability.** AN ACCOUNT HOLDER IS THE OWNER OF HIS OR HER MEDICAL SAVINGS ACCOUNT AND MAY CHANGE THE ACCOUNT ADMINISTRATOR OF SUCH ACCOUNT UPON LEAVING THE EMPLOY OF HIS OR HER EMPLOYER.

**SECTION 9. Effective date.** This act shall take effect January 1, 1995.

**SECTION 10. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 7, 1994