

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1182 Session of
2007

INTRODUCED BY FOLMER, EICHELBERGER, PICCOLA, WAUGH, BROWNE,
REGOLA AND M. WHITE, DECEMBER 7, 2007

REFERRED TO FINANCE, DECEMBER 7, 2007

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," providing for a small business health savings
11 account tax credit.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
15 the Tax Reform Code of 1971, is amended by adding an article to
16 read:

17 ARTICLE XVII-F

18 SMALL BUSINESS HEALTH SAVINGS ACCOUNT TAX CREDIT

19 Section 1701-F. Scope.

20 This article relates to small business health savings account
21 tax credit.

22 Section 1702-F. Definitions.

1 The following words and phrases when used in this article
2 shall have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "Department." The Department of Revenue of the Commonwealth.

5 "Employee" or "employees." An individual or group of
6 individuals employed by a small business. The term shall also
7 include a sole proprietor.

8 "Health insurance policy." An individual or group health,
9 sickness or accident policy or subscriber contract or
10 certificate issued by an entity subject to any one of the
11 following:

12 (1) The act of May 17, 1921 (P.L.682, No.284), known as
13 The Insurance Company Law of 1921.

14 (2) The act of December 29, 1972 (P.L.1701, No.364),
15 known as the Health Maintenance Organization Act.

16 (3) The act of May 18, 1976 (P.L.123, No.54), known as
17 the Individual Accident and Sickness Insurance Minimum
18 Standards Act.

19 (4) 40 Pa.C.S. Ch. 61 (relating to hospital plan
20 corporations) or 63 (relating to professional health services
21 plan corporations).

22 "Health Savings Account." As defined in section 223(d) of
23 the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.
24 § 223(d)).

25 "Qualified high deductible health plan." A health insurance
26 policy that would qualify as a high deductible health plan under
27 section 223(c)(2) of the Internal Revenue Code of 1986 (Public
28 Law 99-514, 26 U.S.C. § 223(c)(2)).

29 "Qualified tax liability." The liability for taxes imposed
30 under Article III, IV or VI. The term shall include the

1 liability for taxes imposed under Article III on an owner of a
2 pass-through entity.

3 "Pass-through entity." Any of the following:

4 (1) A partnership, limited partnership, limited
5 liability company, business trust or other unincorporated
6 entity that for Federal income tax purposes is taxable as a
7 partnership.

8 (2) A Pennsylvania S corporation.

9 "Secretary." The Secretary of Revenue of the Commonwealth.

10 "Small business." An employer who, on at least 50% of its
11 working days during the taxable year, employed fewer than 100
12 employees.

13 "Tax credit." The small business health savings account tax
14 credit authorized under this article.

15 "Taxpayer." A small business subject to tax under Article
16 III, IV or VI. The term includes:

17 (1) the partner, shareholder, owner or member of a pass-
18 through entity; or

19 (2) a sole proprietor.

20 Section 1703-F. Credit for Health Savings Account
21 contributions.

22 (a) Application.--A taxpayer who purchases and provides a
23 qualified high deductible health plan to employees and makes a
24 contribution to a health savings account on behalf of employees
25 in a taxable year may apply for a tax credit as provided in this
26 article. By September 15, a taxpayer must submit an application
27 to the department for the aggregate contribution made by the
28 taxpayer to employee health savings accounts in the taxable year
29 that ended in the prior calendar year.

30 (b) Computation.--A taxpayer who qualifies under subsection

1 (a) shall receive a tax credit for the taxable year in
2 accordance with the following:

3 (1) Fifty percent of the aggregate contribution made by
4 the taxpayer to employee health savings accounts when the
5 contribution is provided for the benefit of employees,
6 spouses and dependents for the taxable year.

7 (2) Twenty-five percent of the aggregate contribution
8 made by the taxpayer to employee health savings accounts when
9 the contribution is provided solely for the benefit of an
10 employee.

11 (c) Notification.--By December 15 of the calendar year
12 following the close of the taxable year during which the
13 contribution to employee health savings accounts was made, the
14 department shall notify the taxpayer of the amount of the
15 taxpayer's tax credit approved by the department.

16 Section 1704-F. Limitation on credits.

17 (a) Limit.--The total amount of credits approved by the
18 department shall not exceed \$30,000,000 in any fiscal year.

19 (b) Calculation.--If the total amount of small business
20 health savings account tax credits applied for by all taxpayers
21 exceeds the amount allocated for those credits, then the small
22 business health savings account tax credit to be received by
23 each applicant shall be the product of the allocated amount
24 multiplied by the quotient of the small business health savings
25 account tax credit applied for by the applicant divided by the
26 total of all small business health savings account credits
27 applied for by all applicants, the algebraic equivalent of which
28 is:

29 taxpayer's small business health savings account tax
30 credit=amount allocated for those credits X (small

1 business health savings account tax credit applied for by
2 the applicant/total of all small business health savings
3 account tax credits applied for by all applicants).

4 Section 1705-F. Carryover, carryback, refund and assignment of
5 credit.

6 (a) Carryover.--If the taxpayer cannot use the entire amount
7 of the tax credit for the taxable year in which the tax credit
8 is first approved, then the excess may be carried over to
9 succeeding taxable years and used as a credit against the
10 qualified tax liability of the taxpayer for those taxable years.
11 Each time that the tax credit is carried over to a succeeding
12 taxable year, it is to be reduced by the amount that was used as
13 a credit during the immediately preceding taxable year. The tax
14 credit may be carried over and applied to succeeding taxable
15 years for no more than 15 taxable years following the first
16 taxable year for which the taxpayer was entitled to claim the
17 credit.

18 (b) Application of credit.--A tax credit approved by the
19 department for monetary contributions made to employee health
20 savings accounts in a taxable year first shall be applied
21 against the taxpayer's qualified tax liability for the current
22 taxable year as of the date on which the credit was approved
23 before the tax credit is applied against any tax liability under
24 subsection (a).

25 (c) Prohibition.--A taxpayer is not entitled to assign,
26 carry back or obtain a refund of an unused tax credit.

27 Section 1706-F. Shareholder, owner or member pass-through.

28 (a) Shareholder's calculation.--If a Pennsylvania S
29 corporation does not have an eligible tax liability against
30 which the tax credit may be applied, a shareholder of the

1 Pennsylvania S corporation is entitled to a tax credit equal to
2 the tax credit determined for the Pennsylvania S corporation for
3 the taxable year multiplied by the percentage of the
4 Pennsylvania S corporation's distributive income to which the
5 shareholder is entitled.

6 (b) Owner or member calculation.--If a pass-through entity
7 other than a Pennsylvania S corporation does not have an
8 eligible tax liability against which the tax credit may be
9 applied, an owner or member of the pass-through entity is
10 entitled to a tax credit equal to the tax credit determined for
11 the pass-through entity for the taxable year multiplied by the
12 percentage of the pass-through entity's distributive income to
13 which the owner or member is entitled.

14 (c) Application; restrictions.--The credit provided under
15 subsection (a) or (b) is in addition to any tax credit to which
16 a shareholder, owner or member of a pass-through entity is
17 otherwise entitled under this article. However, a pass-through
18 entity and a shareholder, owner or member of a pass-through
19 entity may not claim a credit under this article for the same
20 contributions made to employee health savings accounts.

21 Section 1707-F. Report to General Assembly.

22 The secretary shall submit an annual report to the General
23 Assembly indicating the effectiveness of the credit provided by
24 this article no later than March 15 following the year in which
25 the credits were approved. The report shall include the names of
26 all taxpayers utilizing the credit as of the date of the report
27 and the amount of credits approved and utilized by each
28 taxpayer. Notwithstanding any law providing for the
29 confidentiality of tax records, the information contained in the
30 report shall be public information. The report may also include

1 any recommendations for changes in the calculation or
2 administration of the credit.

3 Section 1708-F. Regulations.

4 The secretary shall promulgate regulations necessary for the
5 implementation and administration of this article.

6 Section 2. This act shall apply to all tax years beginning
7 after December 31, 2006.

8 Section 3. This act shall take effect immediately.