

109TH CONGRESS
2D SESSION

S. _____

To amend the Internal Revenue Code of 1986 to expand the permissible use of health savings accounts to include health insurance payments, to increase the dollar limitation for contributions to health savings accounts, to allow the rollover of unused funds from health reimbursement arrangements to health savings accounts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. COBURN (for himself, Mr. DEMINT, Mr. INHOFE, Mr. CORNYN, and Mr. VITTER) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to expand the permissible use of health savings accounts to include health insurance payments, to increase the dollar limitation for contributions to health savings accounts, to allow the rollover of unused funds from health reimbursement arrangements to 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Tax-Free Healthcare Savings, Access, and Portability
4 Act”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for
6 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Expansion of health savings accounts.

Sec. 3. Exception to requirement for employers to make comparable health sav-
ings account contributions.

Sec. 4. Deduction of premiums for high deductible health plans.

Sec. 5. Credit for certain employment taxes paid with respect to premiums for
high deductible health plans and contributions to health sav-
ings accounts.

Sec. 6. HSA-qualified insurance portability.

7 **SEC. 2. EXPANSION OF HEALTH SAVINGS ACCOUNTS.**

8 (a) **USE OF ACCOUNT FOR INDIVIDUAL HIGH DE-**
9 **DUCTIBLE HEALTH PLAN PREMIUMS.**—Section
10 223(d)(2)(C) of the Internal Revenue Code of 1986 (relat-
11 ing to exceptions) is amended by striking “or” at the end
12 of clause (iii), by striking the period at the end of clause
13 (iv) and inserting “, or”, and by adding at the end the
14 following new clause:

15 “(v) a high deductible health plan, but
16 only if—

17 “(I) the plan is not a group
18 health plan (as defined in section
19 5000(b)(1) without regard to section
20 5000(d)), and

1 “(II) the expenses are for cov-
2 erage for a month with respect to
3 which the account beneficiary is an el-
4 igible individual by reason of the cov-
5 erage under the plan.

6 For purposes of clause (v), an arrangement
7 which constitutes individual health insurance
8 shall not be treated as a group health plan, not-
9 withstanding that an employer or employee or-
10 ganization negotiates the cost of benefits of
11 such arrangement.”.

12 (b) SPECIAL RULE FOR CERTAIN MEDICAL EX-
13 PENSES INCURRED BEFORE ESTABLISHMENT OF AC-
14 COUNT.—Section 223(d)(2) of the Internal Revenue Code
15 of 1986 (relating to qualified medical expenses) is amend-
16 ed by adding at the end the following new subparagraph:

17 “(D) CERTAIN MEDICAL EXPENSES IN-
18 CURRED BEFORE ESTABLISHMENT OF ACCOUNT
19 TREATED AS QUALIFIED.—An expense shall not
20 fail to be treated as a qualified medical expense
21 solely because such expense was incurred before
22 the establishment of the health savings account
23 if such expense was incurred—

24 “(i) during either—

1 “(I) the taxable year in which the
2 health savings account was estab-
3 lished, or

4 “(II) the preceding taxable year
5 in the case of a health savings ac-
6 count established after the taxable
7 year in which such expense was in-
8 curred but before the time prescribed
9 by law for filing the return for such
10 taxable year (not including extensions
11 thereof), and

12 “(ii) for medical care of an individual
13 during the period beginning on the date
14 such individual first became an eligible in-
15 dividual.

16 For purposes of clause (ii), an individual shall
17 be treated as an eligible individual for any por-
18 tion of a month the individual is described in
19 subsection (c)(1), determined without regard to
20 whether the individual is covered under a high
21 deductible health plan on the 1st day of such
22 month.”.

23 (c) INCREASE IN MONTHLY CONTRIBUTION LIMIT.—

1 (1) IN GENERAL.—Paragraph (2) of section
2 223(b) of the Internal Revenue Code of 1986 (relat-
3 ing to limitations) is amended to read as follows:

4 “(2) MONTHLY LIMITATION.—

5 “(A) IN GENERAL.—In the case of an eligi-
6 ble individual who has coverage under a high
7 deductible health plan, the monthly limitation
8 for any month of such coverage is $\frac{1}{12}$ of the
9 lesser of—

10 “(i) the sum of the annual deductible
11 and the other annual out-of-pocket ex-
12 penses (other than for premiums) required
13 to be paid under the plan by the eligible
14 individual for covered benefits, or

15 “(ii) in the case of an eligible indi-
16 vidual with—

17 “(I) self-only coverage, the dollar
18 amount in effect under subclause (I)
19 of subsection (c)(2)(A)(ii), or

20 “(II) family coverage, the dollar
21 amount in effect under subclause (II)
22 of subsection (c)(2)(A)(ii).

23 “(B) SPECIAL RULES RELATING TO OUT-
24 OF-POCKET EXPENSES.—

1 “(i) REDUCTION FOR SEPARATE
2 PLAN.—The annual out-of-pocket expenses
3 taken into account under subparagraph
4 (A)(i) with respect to any eligible indi-
5 vidual shall be reduced by any out-of-pock-
6 et expense payable under a separate plan
7 covering the individual.

8 “(ii) SECRETARIAL AUTHORITY.—The
9 Secretary may by regulations provide that
10 annual out-of-pocket expenses will not be
11 taken into account under subparagraph
12 (A)(i) to the extent that there is only a re-
13 mote likelihood that such amounts will be
14 required to be paid.”.

15 (2) APPLICATION OF SPECIAL RULES FOR MAR-
16 RIED INDIVIDUALS.—Paragraph (5) of section
17 223(b) of such Code (relating to limitations) is
18 amended to read as follows:

19 “(5) SPECIAL RULES FOR MARRIED INDIVID-
20 UALS.—

21 “(A) IN GENERAL.—In the case of individ-
22 uals who are married to each other and who are
23 both eligible individuals, the limitation under
24 paragraph (1) for each spouse shall be equal to

1 the spouse's applicable share of the combined
2 marital limit.

3 “(B) COMBINED MARITAL LIMIT.—For
4 purposes of subparagraph (A), the combined
5 marital limit is the excess (if any) of—

6 “(i) the lesser of—

7 “(I) subject to subparagraph (C),
8 the sum of the limitations computed
9 separately under paragraph (1) for
10 each spouse (including any additional
11 contribution amount under paragraph
12 (3)), or

13 “(II) the dollar amount in effect
14 under subsection (c)(2)(A)(ii)(II),
15 over

16 “(ii) the aggregate amount paid to
17 Archer MSAs of such spouses for the tax-
18 able year.

19 “(C) SPECIAL RULE WHERE BOTH
20 SPOUSES HAVE FAMILY COVERAGE UNDER
21 SAME PLAN.—For purposes of subparagraph
22 (B)(i)(I), if either spouse has family coverage
23 which covers both spouses, both spouses shall
24 be treated as having only such coverage (and if
25 both spouses each have such coverage under

1 different plans, shall be treated as having only
2 family coverage with the plan with respect to
3 which the lowest amount is determined under
4 paragraph (2)(A)(i)).

5 “(D) APPLICABLE SHARE.—For purposes
6 of subparagraph (A), a spouse’s applicable
7 share is one-half of the combined marital limit
8 unless both spouses agree on a different divi-
9 sion.

10 “(E) COUPLES NOT MARRIED ENTIRE
11 YEAR.—The Secretary shall prescribe rules for
12 the application of this paragraph in the case of
13 any taxable year for which the individuals were
14 not married to each other during all months in-
15 cluded in the taxable year, including rules
16 which allow individuals in appropriate cases to
17 take into account coverage prior to marriage in
18 computing the combined marital limit for pur-
19 poses of this paragraph.”.

20 (3) SELF-ONLY COVERAGE.—Paragraph (4) of
21 section 223(c) of such Code (relating to definitions
22 and special rules) is amended to read as follows:

23 “(4) COVERAGE.—

1 “(A) FAMILY COVERAGE.—The term ‘fam-
2 ily coverage’ means any coverage other than
3 self-only coverage.

4 “(B) SELF-ONLY COVERAGE.—If more
5 than 1 individual is covered by a high deduct-
6 ible health plan but only 1 of the individuals is
7 an eligible individual, the coverage shall be
8 treated as self-only coverage.”.

9 (4) CONFORMING AMENDMENTS.—

10 (A) Section 223(b)(3)(A) of such Code is
11 amended by striking “subparagraphs (A) and
12 (B) of”.

13 (B) Section 223(d)(1)(A)(ii)(I) of such
14 Code is amended by striking “subsection
15 (b)(2)(B)(ii)” and inserting “subsection
16 (c)(2)(A)(ii)(II)”.

17 (C) Clause (ii) of section 223(c)(2)(D) of
18 such Code is amended to read as follows:

19 “(ii) CERTAIN ITEMS DISREGARDED
20 IN COMPUTING MONTHLY LIMITATION.—
21 Such plan’s annual deductible, and such
22 plan’s annual out-of-pocket limitation, for
23 services provided outside of such network
24 shall not be taken into account for pur-
25 poses of subsection (b)(2).”

1 (D) Paragraph (1) of section 223(g) of
2 such Code is amended to read as follows:

3 “(1) IN GENERAL.—Each dollar amount in sub-
4 section (e)(2)(A) shall be increased by an amount
5 equal to—

6 “(A) such dollar amount, multiplied by

7 “(B) the cost-of-living adjustment deter-
8 mined under section 1(f)(3) for the calendar
9 year in which such taxable year begins deter-
10 mined by substituting ‘calendar year 1997’ for
11 ‘calendar year 1992’ in subparagraph (B)
12 thereof.”.

13 (d) CERTAIN HEALTH REIMBURSEMENT ARRANGE-
14 MENT ROLLOVERS PERMITTED.—

15 (1) ROLLOVER FROM HEALTH REIMBURSEMENT
16 ARRANGEMENT PERMITTED.—For purposes of the
17 Internal Revenue Code of 1986, a health reimburse-
18 ment arrangement (as defined by rulings in effect on
19 the date of the enactment of this Act) shall not fail
20 to be treated as such an arrangement if such ar-
21 rangement allows for the distribution within 1 year
22 after the last day of the taxable year in which such
23 date of enactment occurs of the remaining balance
24 (determined as of such last day) of the amount to
25 be received in reimbursements under such arrange-

1 ment into a health savings account established pur-
2 suant to section 223 of such Code for the benefit of
3 the beneficiary of such arrangement.

4 (2) ROLLOVER TO HEALTH SAVINGS ACCOUNT
5 PERMITTED.—Section 223(f) of the Internal Rev-
6 enue Code of 1986 (relating to tax treatment of dis-
7 tributions) is amended by adding at the end the fol-
8 lowing new paragraph:

9 “(9) HEALTH REIMBURSEMENT ARRANGEMENT
10 ROLLOVER CONTRIBUTION.—

11 “(A) IN GENERAL.—An amount is de-
12 scribed in this paragraph as a rollover contribu-
13 tion if such amount is described in section
14 2(e)(1) of the Tax-Free Healthcare Savings,
15 Access, and Portability Act and is paid or dis-
16 tributed from a health reimbursement arrange-
17 ment established for the benefit of the account
18 beneficiary to a health savings account of such
19 account beneficiary. Any rollover contribution
20 described in the preceding sentence shall not be
21 considered an employer contribution for pur-
22 poses of section 4980G.

23 “(B) TAX TREATMENT RELATING TO CON-
24 TRIBUTIONS.—For purposes of this title—

1 “(i) INCOME TAX.—Gross income
2 shall not include the amount of any con-
3 tribution under this paragraph.

4 “(ii) EMPLOYMENT TAXES.—Amounts
5 contributed under this paragraph shall be
6 treated as a payment described in section
7 106(d).

8 “(iii) COMPARABILITY EXCISE TAX.—
9 Section 4980G shall not apply to contribu-
10 tions made under this paragraph.”.

11 (3) CONFORMING AMENDMENTS.—

12 (A) Section 223(d)(1)(A) of such Code is
13 amended by inserting “or (f)(9)” after “(f)(5)”.

14 (B) Section 223(f)(3)(B) of such Code is
15 amended by inserting “or (9)” after “para-
16 graph (5)”.

17 (e) EFFECTIVE DATE.—The provisions of, and
18 amendments made by, this section shall apply to taxable
19 years beginning after December 31, 2006.

20 **SEC. 3. EXCEPTION TO REQUIREMENT FOR EMPLOYERS TO**
21 **MAKE COMPARABLE HEALTH SAVINGS AC-**
22 **COUNT CONTRIBUTIONS.**

23 (a) GREATER EMPLOYER-PROVIDED CONTRIBU-
24 TIONS TO HSAS FOR ACUTELY OR CHRONICALLY ILL EM-
25 PLOYEES TREATED AS MEETING COMPARABILITY RE-

1 REQUIREMENTS.—Subsection (b) of section 4980G of the In-
2 ternal Revenue Code of 1986 (relating to failure of em-
3 ployer to make comparable health savings account con-
4 tributions) is amended to read as follows:

5 “(b) RULES AND REQUIREMENTS.—

6 “(1) IN GENERAL.—Except as provided in para-
7 graph (2), rules and requirements similar to the
8 rules and requirements of section 4980E shall apply
9 for purposes of this section.

10 “(2) TREATMENT OF EMPLOYER-PROVIDED
11 CONTRIBUTIONS TO HSAS FOR ACUTELY OR CHRON-
12 ICALLY ILL EMPLOYEES.—For purposes of this sec-
13 tion—

14 “(A) IN GENERAL.—Any contribution by
15 an employer to a health savings account of an
16 employee who is (or the spouse or any depend-
17 ent of the employee who is) an acutely or
18 chronically ill individual in an amount which is
19 greater than a contribution to a health savings
20 account of a comparable participating employee
21 who is not an acutely or chronically ill indi-
22 vidual shall not fail to be considered a com-
23 parable contribution.

24 “(B) NONDISCRIMINATION REQUIRE-
25 MENT.—Subparagraph (A) shall not apply un-

1 less the excess employer contributions described
2 in subparagraph (A) are the same for all acute-
3 ly or chronically ill individuals who are similarly
4 situated.

5 “(C) ACUTELY OR CHRONICALLY ILL INDI-
6 VIDUAL.—For purposes of this paragraph, the
7 term ‘acutely or chronically ill individual’ means
8 any individual whose qualified medical expenses
9 for any taxable year (based on age and health
10 status) are more than 50 percent greater than
11 the average qualified medical expenses of all
12 employees of the employer for such year.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 this section shall apply to taxable years beginning after
15 December 31, 2006.

16 **SEC. 4. DEDUCTION OF PREMIUMS FOR HIGH DEDUCTIBLE**
17 **HEALTH PLANS.**

18 (a) IN GENERAL.—Part VII of subchapter B of chap-
19 ter 1 of the Internal Revenue Code of 1986 (relating to
20 additional itemized deductions for individuals) is amended
21 by redesignating section 224 as section 225 and by insert-
22 ing after section 223 the following new section:

1 **“SEC. 224. PREMIUMS FOR HIGH DEDUCTIBLE HEALTH**
2 **PLANS.**

3 “(a) DEDUCTION ALLOWED.—In the case of an indi-
4 vidual, there shall be allowed as a deduction for the tax-
5 able year the aggregate amount paid by such individual
6 as premiums under a high deductible health plan with re-
7 spect to months during such year for which such indi-
8 vidual is an eligible individual with respect to such health
9 plan.

10 “(b) DEFINITIONS.—For purposes of this section—

11 “(1) ELIGIBLE INDIVIDUAL.—The term ‘eligible
12 individual’ has the meaning given such term by sec-
13 tion 223(c)(1).

14 “(2) HIGH DEDUCTIBLE HEALTH PLAN.—The
15 term ‘high deductible health plan’ has the meaning
16 given such term by section 223(c)(2).

17 “(c) SPECIAL RULES.—

18 “(1) DEDUCTION LIMITS.—

19 “(A) DEDUCTION ALLOWABLE FOR ONLY 1
20 PLAN.—For purposes of this section, in the
21 case of an individual covered by more than 1
22 high deductible health plan for any month, the
23 individual may only take into account amounts
24 paid for such month for the plan with the low-
25 est premium.

1 “(B) PLANS COVERING INELIGIBLE INDI-
2 VIDUALS.—If 2 or more individuals are covered
3 by a high deductible health plan for any month
4 but only 1 of such individuals is an eligible indi-
5 vidual for such month, only 50 percent of the
6 aggregate amount paid by such eligible indi-
7 vidual as premiums under the plan with respect
8 to such month shall be taken into account for
9 purposes of this section.

10 “(2) GROUP HEALTH PLAN COVERAGE.—

11 “(A) IN GENERAL.—No deduction shall be
12 allowed to an individual under subsection (a)
13 for any amount paid for coverage under a high
14 deductible health plan for a month if that indi-
15 vidual participates in any coverage under a
16 group health plan (within the meaning of sec-
17 tion 5000 without regard to section 5000(d)).

18 “(B) EXCEPTION FOR PLANS ONLY PRO-
19 VIDING CONTRIBUTIONS TO HEALTH SAVINGS
20 ACCOUNTS.—Subparagraph (A) shall not apply
21 to an individual if the individual’s only coverage
22 under a group health plan for a month consists
23 of contributions by an employer to a health sav-
24 ings account with respect to which the indi-
25 vidual is the account beneficiary.

1 “(C) EXCEPTION FOR CERTAIN PER-
2 MITTED COVERAGE.—Subparagraph (A) shall
3 not apply to an individual if the individual’s
4 only coverage under a group health plan for a
5 month is coverage described in clause (i) or (ii)
6 of section 223(c)(1)(B).

7 “(3) MEDICAL AND HEALTH SAVINGS AC-
8 COUNTS.—Subsection (a) shall not apply with re-
9 spect to any amount which is paid or distributed out
10 of an Archer MSA or a health savings account which
11 is not included in gross income under section 220(f)
12 or 223(f), as the case may be.

13 “(4) COORDINATION WITH DEDUCTION FOR
14 HEALTH INSURANCE OF SELF-EMPLOYED INDIVID-
15 UALS.—Any amount taken into account by the tax-
16 payer in computing the deduction under section
17 162(l) shall not be taken into account under this
18 section.

19 “(5) COORDINATION WITH MEDICAL EXPENSE
20 DEDUCTION.—Any amount taken into account by
21 the taxpayer in computing the deduction under this
22 section shall not be taken into account under section
23 213.”.

24 (b) DEDUCTION ALLOWED WHETHER OR NOT INDI-
25 VIDUAL ITEMIZES OTHER DEDUCTIONS.—Section 62(a)

1 of the Internal Revenue Code of 1986 (defining adjusted
2 gross income) is amended by inserting before the last sen-
3 tence at the end the following new paragraph:

4 “(21) PREMIUMS FOR HIGH DEDUCTIBLE
5 HEALTH PLANS.—The deduction allowed by section
6 224.”.

7 (c) COORDINATION WITH SECTION 35 HEALTH IN-
8 SURANCE COSTS CREDIT.—Section 35(g)(2) of the Inter-
9 nal Revenue Code of 1986 (relating to coordination with
10 other deductions) is amended by striking “or 213” and
11 inserting “, 213, or 224”.

12 (d) CLERICAL AMENDMENT.—The table of sections
13 for part VII of subchapter B of chapter 1 of the Internal
14 Revenue Code of 1986 is amended by redesignating the
15 item relating to section 224 as an item relating to section
16 225 and by inserting before such item the following new
17 item:

“Sec. 224. Premiums for high deductible health plans.”.

18 (e) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 December 31, 2006.

1 **SEC. 5. CREDIT FOR CERTAIN EMPLOYMENT TAXES PAID**
2 **WITH RESPECT TO PREMIUMS FOR HIGH DE-**
3 **DUCTIBLE HEALTH PLANS AND CONTRIBU-**
4 **TIONS TO HEALTH SAVINGS ACCOUNTS.**

5 (a) ALLOWANCE OF CREDIT.—Subpart C of part IV
6 of subchapter A of chapter 1 of the Internal Revenue Code
7 of 1986 (relating to refundable credits) is amended by re-
8 designating section 36 as section 37 and by inserting after
9 section 35 the following new section:

10 **“SEC. 36. EMPLOYMENT TAXES PAID WITH RESPECT TO**
11 **PREMIUMS FOR HIGH DEDUCTIBLE HEALTH**
12 **PLANS AND CONTRIBUTIONS TO HEALTH**
13 **SAVINGS ACCOUNTS.**

14 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
15 dividual, there shall be allowed as a credit against the tax
16 imposed by this subtitle for the taxable year an amount
17 equal to the product of—

18 “(1) the sum of the rates of tax in effect under
19 sections 3101(a), 3101(b), 3111(a), and 3111(b) for
20 the calendar year in which the taxable year begins,
21 multiplied by

22 “(2) the sum of—

23 “(A) the aggregate amount paid by such
24 individual as premiums under a high deductible
25 health plan which is allowed as a deduction
26 under section 224 for the taxable year, and

1 “(B) the aggregate amount paid to a
2 health savings account of such individual which
3 is allowed as a deduction under section 223 for
4 the taxable year.

5 “(b) CREDIT LIMITED TO CERTAIN EMPLOYMENT
6 TAXES.—

7 “(1) IN GENERAL.—The credit allowed under
8 subsection (a) with respect to any individual for any
9 taxable year shall not exceed the specified employ-
10 ment taxes with respect to such individual for such
11 taxable year.

12 “(2) SPECIFIED EMPLOYMENT TAXES.—For
13 purposes of this subsection, the term ‘specified em-
14 ployment taxes’ means, with respect to any indi-
15 vidual for any taxable year, the sum of—

16 “(A) the taxes imposed under sections
17 3101(a), 3101(b), 3111(a), 3111(b), 3201(a),
18 3211(a), and 3221(a) (taking into account any
19 adjustments or refunds under section 6413)
20 with respect to wages and compensation re-
21 ceived by such individual during the calendar
22 year in which such taxable year begins, and

23 “(B) the taxes imposed under subsections
24 (a) and (b) of section 1401 with respect to the

1 self-employment income of such individual for
2 such taxable year.

3 “(c) SPECIAL RULE FOR EMPLOYMENT COMPENSA-
4 TION IN EXCESS OF SOCIAL SECURITY CONTRIBUTION
5 BASE.—

6 “(1) IN GENERAL.—If the aggregate amount of
7 employment compensation received by any individual
8 during the calendar year in which the taxable year
9 begins exceeds the contribution and benefit base (as
10 determined under section 230 of the Social Security
11 Act), the amount of the credit determined under
12 subsection (a) (determined before application of sub-
13 section (b)) shall be equal to the sum of—

14 “(A) the amount determined under sub-
15 section (a) by only taking into account so much
16 of the amount determined under subsection
17 (a)(2) as does not exceed such excess and by
18 only taking into account the rates of tax in ef-
19 fect under section 3101(b) and 3111(b), and

20 “(B) the amount determined under sub-
21 section (a) by only taking into account so much
22 of the amount determined under subsection
23 (a)(2) as is not taken into account under sub-
24 paragraph (A) and by taking into account each

1 of the rates of tax referred to in subsection
2 (a)(1).

3 “(2) EMPLOYMENT COMPENSATION.—For pur-
4 poses of this subsection, the term ‘employment com-
5 pensation’ means, with respect to any individual for
6 any taxable year, the sum of—

7 “(A) the wages (as defined in section
8 3121(a)) and compensation (as defined in sec-
9 tion 3231(e)) received by such individual during
10 the calendar year in which such taxable year
11 begins, and

12 “(B) the self-employment income (as de-
13 fined in section 1402(b)) of such individual for
14 such taxable year.

15 “(d) COORDINATION WITH OTHER DEDUCTIONS.—
16 Amounts taken into account under this section shall not
17 be taken into account in determining any deduction al-
18 lowed under section 162(l), 223, or 224.”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Paragraph (2) of section 1324(b) of title
21 31, United States Code, is amended by inserting “or
22 section 36” after “section 35”.

23 (2) The table of sections for subpart C of part
24 IV of subchapter A of chapter 1 of the Internal Rev-
25 enue Code of 1986 is amended by striking the item

1 relating to section 36 and by inserting after the item
2 relating to section 35 the following new items:

“Sec. 36. Employment taxes paid with respect to premiums for high deductible
health plans and contributions to health savings accounts.

“Sec. 37. Overpayments of tax.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2006.

6 **SEC. 6. HSA-QUALIFIED INSURANCE PORTABILITY.**

7 (a) DEDUCTIBILITY OF FUTURE CONVERSION PRE-
8 MIUMS.—Section 213(d)(1)(D) of the Internal Revenue
9 Code of 1986 (defining medical care) is amended by in-
10 serting “and also including amounts paid to an insurer
11 for the right to the future purchase of insurance under
12 certain terms agreed to at the time of the payment” after
13 “for the aged”.

14 (b) ALLOWANCE OF TAXABLE EMPLOYER CONTRIBU-
15 TIONS TO INDIVIDUAL MARKET HSA-QUALIFIED
16 HEALTH INSURANCE FOR EMPLOYEES.—

17 (1) HIPAA.—Section 9832(a) of the Internal
18 Revenue Code of 1986 (defining group health plan)
19 is amended by adding at the end the following new
20 sentence: “For purposes of the preceding sentence,
21 an arrangement shall not constitute a group health
22 plan to the extent that it is a high deductible health
23 plan within the meaning of section 223 (or is a pay-
24 ment by an employer or employee organization with

1 respect to such plan), if the plan constitutes indi-
2 vidual health insurance, as determined by regula-
3 tions issued by the Secretary, notwithstanding that
4 an employer or employee organization negotiates the
5 cost or benefits of the plan.”.

6 (2) COBRA.—Section 4980B(g)(2) of such
7 Code is amended by inserting “and such term shall
8 not include an arrangement to the extent that it is
9 a high deductible health plan within the meaning of
10 section 223 (or is a payment by an employer or em-
11 ployee organization with respect to such plan), if the
12 plan constitutes individual health insurance, as de-
13 termined by regulations issued by the Secretary, not-
14 withstanding that an employer or employee organiza-
15 tion negotiates the cost or benefits of the plan” after
16 “section 7702B(c)”.

17 (3) ERISA.—Section 4 of the Employee Retirement
18 Income Security Act of 1974 is amended—

19 (A) by striking “subsection (b) or (c)” in
20 subsection (a) and inserting “subsection (b),
21 (c), or (d)”, and

22 (B) by adding at the end the following new
23 subsection:

24 “(d) The provisions of this title shall not apply to—

1 “(1) a high deductible health plan within the
2 meaning of section 223 of the Internal Revenue
3 Code of 1986, or any payment by an employer or
4 employee organization with respect to such plan, if
5 the plan constitutes individual health insurance, as
6 determined by regulations issued by the Secretary of
7 the Treasury, and notwithstanding that an employer
8 or employee organization negotiates the cost or bene-
9 fits of the plan; or

10 “(2) any health savings account within the
11 meaning of section 223 of the Internal Revenue
12 Code of 1986.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning after
15 December 31, 2006.