109TH CONGRESS
2D Session

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.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) TABLE OF CONTENTS.—The table of contents for 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 savings 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 savings accounts.
Sec. 6. HSA-qualified insurance portability.

SEC. 2. EXPANSION OF HEALTH SAVINGS ACCOUNTS.

(a) USE OF ACCOUNT FOR INDIVIDUAL HIGH DEDUCTIBLE HEALTH PLAN PREMIUMS.—Section 223(d)(2)(C) of the Internal Revenue Code of 1986 (relating to exceptions) is amended by striking “or” at the end of clause (iii), by striking the period at the end of clause (iv) and inserting “, or”, and by adding at the end the following new clause:

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

“(I) the plan is not a group health plan (as defined in section 5000(b)(1) without regard to section 5000(d)), and
“(II) the expenses are for coverage for a month with respect to which the account beneficiary is an eligible individual by reason of the coverage under the plan.

For purposes of clause (v), an arrangement which constitutes individual health insurance shall not be treated as a group health plan, notwithstanding that an employer or employee organization negotiates the cost of benefits of such arrangement.”.

(b) Special Rule for Certain Medical Expenses Incurred Before Establishment of Account.—Section 223(d)(2) of the Internal Revenue Code of 1986 (relating to qualified medical expenses) is amended by adding at the end the following new subparagraph:

“(D) Certain medical expenses incurred before establishment of account treated as qualified.—An expense shall not fail to be treated as a qualified medical expense solely because such expense was incurred before the establishment of the health savings account if such expense was incurred—

“(i) during either—
“(I) the taxable year in which the health savings account was established, or

“(II) the preceding taxable year in the case of a health savings account established after the taxable year in which such expense was incurred but before the time prescribed by law for filing the return for such taxable year (not including extensions thereof), and

“(ii) for medical care of an individual during the period beginning on the date such individual first became an eligible individual.

For purposes of clause (ii), an individual shall be treated as an eligible individual for any portion of a month the individual is described in subsection (c)(1), determined without regard to whether the individual is covered under a high deductible health plan on the 1st day of such month.”.

(e) INCREASE IN MONTHLY CONTRIBUTION LIMIT.—
(1) IN GENERAL.—Paragraph (2) of section 223(b) of the Internal Revenue Code of 1986 (relating to limitations) is amended to read as follows:

“(2) MONTHLY LIMITATION.—

“(A) IN GENERAL.—In the case of an eligible individual who has coverage under a high deductible health plan, the monthly limitation for any month of such coverage is 1/12 of the lesser of—

“(i) the sum of the annual deductible and the other annual out-of-pocket expenses (other than for premiums) required to be paid under the plan by the eligible individual for covered benefits, or

“(ii) in the case of an eligible individual with—

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

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

“(B) SPECIAL RULES RELATING TO OUT-OF-POCKET EXPENSES.—
“(i) Reduction for separate plan.—The annual out-of-pocket expenses taken into account under subparagraph (A)(i) with respect to any eligible individual shall be reduced by any out-of-pocket expense payable under a separate plan covering the individual.

“(ii) Secretarial authority.—The Secretary may by regulations provide that annual out-of-pocket expenses will not be taken into account under subparagraph (A)(i) to the extent that there is only a remote likelihood that such amounts will be required to be paid.”.

(2) Application of special rules for married individuals.—Paragraph (5) of section 223(b) of such Code (relating to limitations) is amended to read as follows:

“(5) Special rules for married individuals.—

“(A) In general.—In the case of individuals who are married to each other and who are both eligible individuals, the limitation under paragraph (1) for each spouse shall be equal to
the spouse’s applicable share of the combined
marital limit.

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

“(i) the lesser of—

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

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

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

“(C) SPECIAL RULE WHERE BOTH
SPouses have family coverage under
same plan.—For purposes of subparagraph
(B)(i)(I), if either spouse has family coverage
which covers both spouses, both spouses shall
be treated as having only such coverage (and if
both spouses each have such coverage under
different plans, shall be treated as having only
family coverage with the plan with respect to
which the lowest amount is determined under
paragraph (2)(A)(i)).

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

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

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

“(4) COVERAGE.—
“(A) FAMILY COVERAGE.—The term ‘family coverage’ means any coverage other than self-only coverage.

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

(4) CONFORMING AMENDMENTS.—

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

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

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

“(ii) CERTAIN ITEMS DISREGARDED IN COMPUTING MONTHLY LIMITATION.— Such plan’s annual deductible, and such plan’s annual out-of-pocket limitation, for services provided outside of such network shall not be taken into account for purposes of subsection (b)(2).”
(D) Paragraph (1) of section 223(g) of such Code is amended to read as follows:

“(1) IN GENERAL.—Each dollar amount in subsection (c)(2)(A) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins determined by substituting ‘calendar year 1997’ for ‘calendar year 1992’ in subparagraph (B) thereof.”.

(d) CERTAIN HEALTH REIMBURSEMENT ARRANGEMENT ROLLOVERS PERMITTED.—

(1) ROLLOVER FROM HEALTH REIMBURSEMENT ARRANGEMENT PERMITTED.—For purposes of the Internal Revenue Code of 1986, a health reimbursement arrangement (as defined by rulings in effect on the date of the enactment of this Act) shall not fail to be treated as such an arrangement if such arrangement allows for the distribution within 1 year after the last day of the taxable year in which such date of enactment occurs of the remaining balance (determined as of such last day) of the amount to be received in reimbursements under such arrange-
ment into a health savings account established pur-
suant to section 223 of such Code for the benefit of
the beneficiary of such arrangement.

(2) Rollover to Health Savings Account
permitted.—Section 223(f) of the Internal Rev-

enue Code of 1986 (relating to tax treatment of dis-

tributions) is amended by adding at the end the fol-

lowing new paragraph:
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(9) Health Reimbursement Arrangement

Rollover Contribution.—
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“(A) In General.—An amount is de-
scribed in this paragraph as a rollover contribu-
tion if such amount is described in section
2(c)(1) of the Tax-Free Healthcare Savings,
Access, and Portability Act and is paid or dis-
tributed from a health reimbursement arrange-
ment established for the benefit of the account
beneficiary to a health savings account of such
account beneficiary. Any rollover contribution
described in the preceding sentence shall not be
considered an employer contribution for pur-
poses of section 4980G.

“(B) Tax Treatment Relating to Con-
tributions.—For purposes of this title—
“(i) INCOME TAX.—Gross income shall not include the amount of any contribution under this paragraph.

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

“(iii) COMPARABILITY EXCISE TAX.—Section 4980G shall not apply to contributions made under this paragraph.”.

(3) CONFORMING AMENDMENTS.—

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

(B) Section 223(f)(3)(B) of such Code is amended by inserting “or (9)” after “paragraph (5)”.

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

SEC. 3. EXCEPTION TO REQUIREMENT FOR EMPLOYERS TO MAKE COMPARABLE HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.

(a) GREATER EMPLOYER-PROVIDED CONTRIBUTIONS TO HSAS FOR ACUTELY OR CHRONICALLY ILL EMPLOYEES TREATED AS MEETING COMPARABILITY RE-
quirements.—Subsection (b) of section 4980G of the Internal Revenue Code of 1986 (relating to failure of employer to make comparable health savings account contributions) is amended to read as follows:

“(b) Rules and Requirements.—

“(1) In general.—Except as provided in paragraph (2), rules and requirements similar to the rules and requirements of section 4980E shall apply for purposes of this section.

“(2) Treatment of employer-provided contributions to HSAs for acutely or chronically ill employees.—For purposes of this section—

“(A) In general.—Any contribution by an employer to a health savings account of an employee who is (or the spouse or any dependent of the employee who is) an acutely or chronically ill individual in an amount which is greater than a contribution to a health savings account of a comparable participating employee who is not an acutely or chronically ill individual shall not fail to be considered a comparable contribution.

“(B) Nondiscrimination requirement.—Subparagraph (A) shall not apply un-
less the excess employer contributions described in subparagraph (A) are the same for all acutely or chronically ill individuals who are similarly situated.

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

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

SEC. 4. DEDUCTION OF PREMIUMS FOR HIGH DEDUCTIBLE HEALTH PLANS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 224 as section 225 and by inserting after section 223 the following new section:
“SEC. 224. PREMIUMS FOR HIGH DEDUCTIBLE HEALTH PLANS.

“(a) Deduction Allowed.—In the case of an individual, there shall be allowed as a deduction for the taxable year the aggregate amount paid by such individual as premiums under a high deductible health plan with respect to months during such year for which such individual is an eligible individual with respect to such health plan.

“(b) Definitions.—For purposes of this section—

“(1) Eligible Individual.—The term ‘eligible individual’ has the meaning given such term by section 223(c)(1).

“(2) High Deductible Health Plan.—The term ‘high deductible health plan’ has the meaning given such term by section 223(c)(2).

“(c) Special Rules.—

“(1) Deduction Limits.—

“(A) Deduction Allowable for only 1 Plan.—For purposes of this section, in the case of an individual covered by more than 1 high deductible health plan for any month, the individual may only take into account amounts paid for such month for the plan with the lowest premium.
“(B) Plans covering ineligible individuals.—If 2 or more individuals are covered by a high deductible health plan for any month but only 1 of such individuals is an eligible individual for such month, only 50 percent of the aggregate amount paid by such eligible individual as premiums under the plan with respect to such month shall be taken into account for purposes of this section.

“(2) Group health plan coverage.—

“(A) In general.—No deduction shall be allowed to an individual under subsection (a) for any amount paid for coverage under a high deductible health plan for a month if that individual participates in any coverage under a group health plan (within the meaning of section 5000 without regard to section 5000(d)).

“(B) Exception for plans only providing contributions to health savings accounts.—Subparagraph (A) shall not apply to an individual if the individual’s only coverage under a group health plan for a month consists of contributions by an employer to a health savings account with respect to which the individual is the account beneficiary.
“(C) Exception for certain permitted coverage.—Subparagraph (A) shall not apply to an individual if the individual’s only coverage under a group health plan for a month is coverage described in clause (i) or (ii) of section 223(c)(1)(B).

“(3) Medical and health savings accounts.—Subsection (a) shall not apply with respect to any amount which is paid or distributed out of an Archer MSA or a health savings account which is not included in gross income under section 220(f) or 223(f), as the case may be.

“(4) Coordination with deduction for health insurance of self-employed individuals.—Any amount taken into account by the taxpayer in computing the deduction under section 162(l) shall not be taken into account under this section.

“(5) Coordination with medical expense deduction.—Any amount taken into account by the taxpayer in computing the deduction under this section shall not be taken into account under section 213.”.

(b) Deduction Allowed Whether or Not Individual Itemizes Other Deductions.—Section 62(a)
of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by inserting before the last sentence at the end the following new paragraph:

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

(c) COORDINATION WITH SECTION 35 HEALTH INSURANCE COSTS CREDIT.—Section 35(g)(2) of the Internal Revenue Code of 1986 (relating to coordination with other deductions) is amended by striking “or 213” and inserting “, 213, or 224”.

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

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

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.
SEC. 5. CREDIT FOR CERTAIN EMPLOYMENT TAXES PAID WITH RESPECT TO PREMIUMS FOR HIGH DEDUCTIBLE HEALTH PLANS AND CONTRIBUTIONS TO HEALTH SAVINGS ACCOUNTS.

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

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

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

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

multiplied by

“(2) the sum of—

“(A) the aggregate amount paid by such individual as premiums under a high deductible health plan which is allowed as a deduction under section 224 for the taxable year, and
“(B) the aggregate amount paid to a health savings account of such individual which is allowed as a deduction under section 223 for the taxable year.

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

“(1) IN GENERAL.—The credit allowed under subsection (a) with respect to any individual for any taxable year shall not exceed the specified employment taxes with respect to such individual for such taxable year.

“(2) SPECIFIED EMPLOYMENT TAXES.—For purposes of this subsection, the term ‘specified employment taxes’ means, with respect to any individual for any taxable year, the sum of—

“(A) the taxes imposed under sections 3101(a), 3101(b), 3111(a), 3111(b), 3201(a), 3211(a), and 3221(a) (taking into account any adjustments or refunds under section 6413) with respect to wages and compensation received by such individual during the calendar year in which such taxable year begins, and

“(B) the taxes imposed under subsections (a) and (b) of section 1401 with respect to the
self-employment income of such individual for such taxable year.

“(c) Special Rule for Employment Compensation in Excess of Social Security Contribution Base.—

“(1) In general.—If the aggregate amount of employment compensation received by any individual during the calendar year in which the taxable year begins exceeds the contribution and benefit base (as determined under section 230 of the Social Security Act), the amount of the credit determined under subsection (a) (determined before application of subsection (b)) shall be equal to the sum of—

“(A) the amount determined under subsection (a) by only taking into account so much of the amount determined under subsection (a)(2) as does not exceed such excess and by only taking into account the rates of tax in effect under section 3101(b) and 3111(b), and

“(B) the amount determined under subsection (a) by only taking into account so much of the amount determined under subsection (a)(2) as is not taken into account under subparagraph (A) and by taking into account each
of the rates of tax referred to in subsection
(a)(1).

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

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

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

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

(b) CONFORMING AMENDMENTS.—

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

(2) The table of sections for subpart C of part
IV of subchapter A of chapter 1 of the Internal Rev-

enue Code of 1986 is amended by striking the item
relating to section 36 and by inserting after the item 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."

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SEC. 6. HSA-QUALIFIED INSURANCE PORTABILITY.

(a) Deductibility of Future Conversion Premiums.—Section 213(d)(1)(D) of the Internal Revenue Code of 1986 (defining medical care) is amended by inserting "and also including amounts paid to an insurer for the right to the future purchase of insurance under certain terms agreed to at the time of the payment" after "for the aged".

(b) Allowance of Taxable Employer Contributions to Individual Market HSA-Qualified Health Insurance for Employees.—

(1) HIPAA.—Section 9832(a) of the Internal Revenue Code of 1986 (defining group health plan) is amended by adding at the end the following new sentence: "For purposes of the preceding sentence, an arrangement shall not constitute a group health plan to the extent that it is a high deductible health plan within the meaning of section 223 (or is a payment by an employer or employee organization with
respect to such plan), if the plan constitutes indi-
vidual health insurance, as determined by regula-
tions issued by the Secretary, notwithstanding that
an employer or employee organization negotiates the
cost or benefits of the plan.”.

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

(3) ERISA.—Section 4 of the Employee Retire-
ment Income Security Act of 1974 is amended—

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

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

“(d) The provisions of this title shall not apply to—
“(1) a high deductible health plan within the meaning of section 223 of the Internal Revenue Code of 1986, or any payment by an employer or employee organization with respect to such plan, if the plan constitutes individual health insurance, as determined by regulations issued by the Secretary of the Treasury, and notwithstanding that an employer or employee organization negotiates the cost or benefits of the plan; or

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

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