

# **Section 223.—Health Savings Accounts**

## **Rev. Proc. 2004-22**

### **SECTION 1. PURPOSE**

This revenue procedure provides transition relief from Revenue Ruling 2004-38 for determining an “eligible individual” under section 223 who may make contributions to a Health Savings Account (HSA). The transition relief covers the months before January 1, 2006, in the case of an individual who is covered by both a high deductible health plan (HDHP) and by a separate plan or rider that provides prescription drug benefits before the minimum annual deductible of the HDHP is satisfied.

## SECTION 2. BACKGROUND

Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108–173, added section 223 to the Internal Revenue Code to permit eligible individuals to establish HSAs for taxable years beginning after December 31, 2003. Generally, an “eligible individual” is an individual who is covered by an HDHP and no health plan that is not an HDHP. Revenue Ruling 2004–38, clarifies that an individual who is covered by a health plan that provides prescription drug benefits before the minimum annual deductible of an HDHP has been satisfied, is not an “eligible individual” under section 223(c)(1)(A) and may not make contributions to an HSA. Because of the short period between the enactment of HSAs and the effective date of section 223, many employers and health insurance providers have been unable to

modify the benefits provided under their existing health plans to conform to the statutory requirements for an HDHP. Thus, it is appropriate to provide transition relief to allow individuals to contribute to an HSA who would otherwise qualify as eligible individuals but for coverage by a prescription drug benefit provided under a separate plan or rider that is not an HDHP.

## SECTION 3. APPLICATION

For months before January 1, 2006, an individual who would otherwise be an “eligible individual” under section 223(c)(1)(A), but is covered by both an HDHP that does not provide benefits for prescription drugs and by a separate health plan or rider that provides prescription drug benefits before the minimum annual deductible of the HDHP is satisfied (*i.e.*, the separate prescription drug plan is not an HDHP), will continue to be an “eligible

individual” and may make contributions to an HSA based on the annual deductible of the HDHP.

## SECTION 4. EFFECT ON OTHER DOCUMENTS

The holding of Revenue Ruling 2004–38 is suspended in part and replaced by the transition relief provided in this revenue procedure for months before January 1, 2006.

## DRAFTING INFORMATION

The principal author of this revenue procedure is Shoshanna Tanner of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, contact Ms. Tanner at (202) 622–6080 (not a toll-free call).