Revenue Provisions Included in the

America's Affordable Health Choices Act of 2009

General Provisions

Health care surcharge on the top 1.2% of earners. The bill would require the top 1.2% of earners – households with adjusted gross income in excess of $350,000 (married filing a joint return) and $280,000 (single) – to contribute towards the cost of providing access to affordable health care for all Americans through a new health care surcharge. According to the nonpartisan Joint Committee on Taxation, this surcharge would have no impact on 98.8% of households in the United States and would only affect, at most, 4.1% of all small business owners in the United States. The health care surcharge would be imposed at progressive rates so that for married households income in excess of $350,000 and below $500,000 would be subject to a surcharge of 1%, income in excess of $500,000 and below $1 million would be subject to a surcharge of 1.5% and income in excess of $1 million would be subject to a surcharge of 5.4%. The first two rates would be increased to 2% and 3%, respectively, in the event that certain health cost savings are not achieved. *This proposal is estimated to raise $544 billion over 10 years.*

Delay implementation of worldwide allocation of interest. In 2004, Congress provided taxpayers with an election to take advantage of a liberalized rule for allocating interest expense between United States sources and foreign sources for purposes of determining a taxpayer's foreign tax credit limitation. Although enacted in 2004, this election was not available to taxpayers until taxable years beginning after 2008. Last year, the House of Representatives delayed the phase-in of this new liberalized rule for two years (for taxable years beginning after 2010) as part of the *Housing and Economic Recovery Act of 2008* (P.L. 108-289). The bill would further delay the phase-in of this new rule for an additional nine years (for taxable years beginning after 2019). During the 110th Congress, the House of Representatives voted numerous times on a bipartisan basis to delay the implementation of this future tax benefit as part of: H.R. 3920 by a vote of 264 to 157 (with 38 House Republicans joining 226 House Democrats in support); H.R. 3221 (May vote) by a vote of 322 to 94 (with 95 House Republicans joining 227 House Democrats in support); H.R. 3221 (August vote) by a vote 241 to 172 (with 26 Republicans joining 215 Democrats in support); and H.R. 6049 by a vote of 272-152 (with 45 House Republicans joining 227 House Democrats in support). *This proposal is estimated to raise $26.1 billion over 10 years.*

Prevention of Tax Avoidance

Limitation on treaty benefits for certain deductible payments. The bill would prevent foreign multinational corporations incorporated in tax haven countries from avoiding tax on income earned in the United States by routing their income through structures in which a United

States subsidiary of the foreign multinational corporation makes a deductible payment to a country with which the United States has a tax treaty before ultimately repatriating these earning in the tax haven country. This provision has been modified from a previous version approved by the House of Representatives as part of H.R. 2419 (110th Congress) by a vote of 231 to 191 (with 19 House Republicans joining 212 House Democrats in support) to ensure that foreign multinational corporations incorporated in treaty partner countries will not be affected by this provision. *This proposal is estimated to raise $7.5 billion over 10 years.*

Clarification of the economic substance doctrine. The economic substance doctrine is a judicial doctrine that has been used by the courts to deny tax benefits when the transaction generating these tax benefits lacks economic substance. The courts have not applied the economic substance doctrine uniformly. The bill would clarify the manner in which the economic substance doctrine should be applied by the courts. However, the bill does not change current-law standards used by courts in determining when to utilize an economic substance analysis. Under the provision, in any case in which the economic substance doctrine is relevant to a transaction, the economic substance doctrine would be satisfied only if (1) the transaction changes in a meaningful way (apart from federal income tax consequences) the taxpayer's economic position, and (2) the taxpayer has a substantial non-federal tax purpose for entering into such transaction. The provision also imposes a 20% penalty on understatements attributable to a transaction lacking economic substance (penalty increased to 40% in the case of transactions in which the relevant facts affecting the tax treatment of the transaction are not adequately disclosed). This provision was previously approved by the House of Representatives as part of H.R. 4351 (110th Congress) by a vote of 226 to 193. *This proposal is estimated to raise $3.6 billion over 10 years.*