



Legislative BulletinMarch 2, 2011

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H.R. 4—The Small Business Paperwork Mandate Elimination Act of 2011.

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Order of Business: H.R. 4 will be considered under a closed rule ([H.Res. 129](#)). The rule provides for two and half hours of debate equally divided and controlled by the chair and ranking minority member of the Committee on Ways and Means and allows for one motion to recommit with or without instructions. The text of a related bill (H.R. 705, *The Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011*), [reported](#) out by the Committee on Ways and Means, shall be considered as adopted as an amendment in the nature of a substitute to H.R. 4.

Summary: H.R. 4 addresses one of the most widely unpopular provisions included in the Patient Protection and Affordable Care Act (“PPACA”) by making three changes to existing federal law. *First*, it repeals the expanded Internal Revenue Service (IRS) Form 1099-MISC information reporting requirement enacted in section 9006 of PPACA that amends section 6041 (i) of the Internal Revenue Code. *Secondly*, it repeals the information reporting requirements with respect to real estate expenses enacted last year in section 2101 of the [Small Business Jobs Act of 2010](#) (“SBJA”). *Lastly*, it increases the amount of required repayments of overpayments of health care subsidies enacted in PPACA.

Earlier this month, the Senate repealed the 1099 requirement as an amendment to the Federal Aviation Administration Air Transportation Modernization and Safety Improvement Act. It offset the repeal by authorizing the Office of Management and Budget to identify unobligated funds of up to \$44 billion for elimination.

Additional Background: A description of the three substantive sections of H.R. 4 is analyzed below (*Section 1* is the Short Title).

→ *Section 2. Repeal of Expansion of Information Reporting Requirements to Payments Made to Corporations and to Payments for Property and Other Gross Proceeds.*

Beginning on January 1, 2012, Section 9006 of PPACA requires businesses to provide an annual Form 1099-MISC statement to both any recipient of payments for goods or

service in excess of \$600 and to the IRS. Additionally, information reporting requirements were expanded to include gross proceeds paid in consideration of any type of property. Section 9006 had nothing legislatively to do with health care reform and everything to do with financing the government takeover of our health care industry. Initial estimates for this provision expected to generate \$17.1 billion in new federal taxes.

Initial supporters of this burdensome provision purported to address the tax gap challenge, i.e. the difference between the amounts of taxes owed by taxpayers and the amount paid to the IRS, by forcing increased disclosure of taxable income on their IRS income tax filings. The Committee, the business community, and American taxpayers assert that the compliance burden of this expanded reporting provision outweighs the potential benefit of improved tax compliance of taxpayers. **This provision of H.R. 4 repeals section 9006 of PPACA effective as of December 31, 2011.**

→ *Section 3. Repeal of Expansion of Information Reporting Requirements for Rental Property Expense Payments.*

Beginning this year, Section 2101 of the Small Business Jobs Act of 2010, signed into law on September 27, 2010, further expanded this burdensome 1099 reporting requirement to individuals and families who rent out a vacation home, spare bedroom, or other real estate. Section 2101 requires recipients of rental income from real estate to be subject to the same information reporting requirements as those taxpayers that are engaged in the trade or business of renting real estate. Specifically, rental income recipients that make payments of \$600 or more to a service provider (carpenter, painter, plumber, Home Depot, etc.) in the course of earning rental income are required to provide a Form 1099 to the service provider and the IRS. Exemptions to this reporting requirement exist for (i) individuals who rent their principal residence on a temporary basis, including military members or intelligence community employees; (ii) individuals who receive only minimum amounts of rental income, as determined by regulations yet to be promulgated; and (iii) individuals for whom the Secretary of the Treasury determines to be subjected to undue hardship by this requirement. **This provision of H.R. 4 repeals Section 2101 of the SBJA effective as of December 31, 2010.**

→ *Sec. 4. Increase in Amount of Overpayment of Health Care Credit Which is Subject to Recapture.*

Beginning January 1, 2014, individuals and families with household incomes between 100% and 400% of the Federal Poverty Level (“FPL”), who purchase health insurance plans through a state-based exchange will receive a “premium assistance credit” (“credit”) to help offset the cost of the insurance plan. To become eligible for this credit, an enrollee in a plan offered through an exchange will report his or her household income to the exchange.¹ The enrollee will receive an advance credit (determined by a sliding

¹ *Note: These credits are only available to individuals and families who do not receive health insurance through an employer or a spouse’s employer except when an employee (or employee spouse) is offered employer-provided health insurance deemed unaffordable or the employer-provided health insurance plan’s share of total allowed cost of provided benefits is less than 60% of such costs.*

scale basis ranging from 2% to 9.5% of income) payable from the Treasury Department directly to the insurance plan. Then, the enrollee will pay to the insurance plan the dollar difference between the credit amount and the total premium charged for the plan.

Eligibility for the credit is generally based on the individual’s income for the previous two taxable years prior to enrolling in an exchange plan.

If the advanced credit received by an enrollee exceeds the amount of credit to which the enrollee is entitled to for the taxable year, the dollar amount for the excess payment must be reflected on the enrollee’s income tax return. Initially, PPACA limited the amount of federal overpaid credit assistance that could be recaptured from an enrollee earning up to 400% of the FLP to \$400/families (\$250/individuals) if an enrollee received a greater subsidy credit than he or she were entitled. The [Medicare and Medicaid Extenders Act of 2010](#) (H.R. 4994, Public Law 111-309, sec. 208) increased the amounts of overpaid credit assistance the Treasury could recapture—in order to “pay for” H.R. 4944— to the following amounts reflected in the table below (the amounts for individuals are 50% of the amounts below):

Household Income (expressed as a percent of FPL) Applicable Dollar Amount

Less than 200%	\$600
At least 200% but less than 250%	\$1,000
At least 250% but less than 300%	\$1,500
At least 300% but less than 350%	\$2,000
At least 350% but less than 400%	\$2,500
At least 400% but less than 450%	\$3,000
At least 450% but less than 500%	\$3,500

This section of H.R. 4 changes the recapture amount of overpaid credit subsidies by increasing the above current repayment rate for enrollees with household incomes of at least 200% but less than 400% of FPL (as shown in the table below—the amounts for individuals are 50% of the amounts below). Also, although credits are only available to individuals with incomes under 400% of FPL, those above 400% of FPL who receive them inappropriately would still be subject to paying back the entire subsidy. This provision is effective on January 1, 2014.

Household Income (expressed as a percent of poverty line) Applicable Dollar Amount

Less than 200%	\$600
At least 200% but less than 300%	\$1,500
At least 300% but less than 400%	\$2,500

Committee Action: H.R. 4 was introduced on January 12, 2011 and referred to the Committee on Ways and Means. The Committee marked up the bill on February 17, 2011, and ordered the bill, as amended favorably reported. Previous full-committee hearings with respect to the burdens of this new Form 1099 reporting requirements were held on January 20th, January 26th, February 15th, and February 16th, 2011. On March 1, 2011, the Committee on Rules reported out a rule (H.Res. 129) substituting the text of H.R. 705 as an amendment in the nature of a substitute for the text of H.R. 4.

Outside Groups Supporting the Bill: Hundreds of trade associations, business groups, medical specialty associations, and other taxpayer advocates support a full repeal of the 1099-MISC expanded reporting requirements including the Americans for Tax Reform, American Osteopathic Association, American Farm Bureau Federation, National Federation of Independent Business, National Association of Home Builders, National Association of Realtors, National Association of Manufacturers, and the U.S. Chamber of Commerce to name a few. Additionally, Americans for Tax Reform, American Osteopathic Association, and U.S. Chamber of Commerce have officially endorsed the amended H.R.4.

Administration Position: The Administration released a Statement of Administrative Policy ([SAP](#)) on March 1, 2011 that “strongly supports efforts to repeal the provision ...” However, the SAP continued stating it “strongly opposes the House’s offset to pay for this repeal in H.R. 4...”

Cost to Taxpayers: The Congressional Budget Office (CBO) issued a cost estimate on February 18, 2011. It stated that based on staff estimates at the Joint Committee on Taxation, enacting the bill would reduce revenues over the 2011-2021 period by \$19.7 billion, and reduce outlays by \$19.9 billion. The estimate states the bill would reduce federal budget deficits by \$166 million over the ten year period.

Does the Bill Expand the Size and Scope of the Federal Government?: The bill reduces the size of the Federal government by repealing two, newly created IRS reporting requirements for taxpayers that were signed into law last year and by recapturing excess federal tax credits for health care subsidies beginning in 2014. The bill also reduces federal revenues by \$19.7 billion and federal spending by \$19.9 billion.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. The bill contains one private sector mandate involving changes to limitations on amounts required for repayment on reconciliation of advance premium assistance tax credits associated with health insurance plans offered through state-based exchanges beginning in 2014. There are no Federal intergovernmental mandates on State, local, or tribal governments.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: With respect to clause 9 of rule XXI of the Rules of the House of Representatives, provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

Constitutional Authority: The Constitutional Authority Statement submitted into the Congressional Record upon introduction of the bill states: “Congress has the power to enact this legislation pursuant to the following: Clause 1 of Section 8 of Article I of the United States Constitution and Amendment XVI of the United States Constitution.”

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