

**DESCRIPTION OF H.R. 1173,
THE “FISCAL RESPONSIBILITY AND
RETIREMENT SECURITY ACT OF 2011”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on January 18, 2012

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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CONTENTS

	<u>Page</u>
INTRODUCTION	1
A. Repeal of CLASS Program.....	2

INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 1173, the “Fiscal Responsibility and Retirement Security Act of 2011,” on January 18, 2012. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the revenue provision of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 1173, the “Fiscal Responsibility and Retirement Security Act of 2011”* (JCX-4-12), January 13, 2012. This document can also be found on our website at www.jct.gov.

A. Repeal of CLASS Program

Present Law

CLASS program

The “Community Living Assistance Services and Supports Act,” also called the “CLASS Act,”² amended the Public Health Service Act (the “PHSA”) to provide for the establishment of the CLASS program by the U.S. Department of Health and Human Services (“HHS”).³ The CLASS program would be a national voluntary insurance program allowing individuals to purchase insurance to provide benefits in the case of functional limitations, e.g., the inability to perform activities of daily living (such as bathing and dressing) or the need for supervision because of a cognitive impairment. The CLASS Act provides general criteria for premiums, vesting, benefits and other elements of the CLASS program, including that the program be actuarially sound and solvent throughout a 75-year period.

HHS has suspended work on establishment of the CLASS program because of the inability to develop a program meeting the applicable criteria.⁴

Tax treatment of qualified long-term care insurance

Favorable tax treatment applies with respect to premiums paid for and benefits under a qualified long-term care insurance contract providing coverage of qualified long-term care services.⁵ Qualified long-term care services are necessary diagnostic, preventive, therapeutic, curing, treating, mitigating and rehabilitative services, and maintenance or personal care services that are required by a chronically ill individual and that are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

Premiums paid for a qualified long-term care insurance contract generally are deductible as medical expenses, subject to a dollar limit on the deductible amount of the premium per year based on the insured person’s age (e.g., between ages 40 and 50) at the end of the taxable year.⁶ Subject to the same dollar limit, premiums paid for qualified long-term care insurance by a self-employed individual generally are deductible⁷.

² Title VIII of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, March 23, 2010.

³ Secs. 3201-3210 of the PHSA, 42 U.S.C. 30011 et seq.

⁴ Letter from HHS Secretary Kathleen Sebelius to Congress, October 14, 2011, available at www.hhs.gov/secretary/letter10142011.html.

⁵ Sec. 7702B. Except as otherwise stated, all section references herein are to the Internal Revenue Code of 1986, as amended (the “Code”).

⁶ Secs. 7702B(a)(4) and 213(d)(10). Under section 213, medical expenses are generally allowed as a deduction only to the extent they exceed 7.5 percent of adjusted gross income (10 percent of adjusted gross income as of 2013).

⁷ Sec. 162(l).

A qualified long-term care insurance contract is treated as an accident and health insurance contract, and amounts received under the contract are excludable from income as amounts received for personal injuries or sickness, subject to per-day dollar limits in certain cases.⁸ Amounts received under a qualified long-term care insurance contract (regardless of whether the contract reimburses expenses or pays benefits on a per diem or other periodic basis) are treated as reimbursement for expenses actually incurred for medical care.⁹

A plan of an employer providing coverage under a long-term care insurance contract generally is treated as an accident and health plan, and employer-provided coverage and benefits under the contract generally are excludable from income.¹⁰

Under the CLASS Act, the CLASS program is treated for purposes of the Code in the same manner as a qualified long-term insurance care contract for qualified long-term care services.¹¹

Description of Proposal

The proposal repeals the statutory provisions relating to the CLASS program. Thus, the provision treating the CLASS Program for Code purposes in the same manner as a qualified long-term care insurance contract for qualified long-term care services is repealed.

Effective Date

The proposal is effective on the date of enactment.

Budgetary Effect

The Congressional Budget Office (the “CBO”) estimates that legislation to repeal the provisions of law establishing the CLASS program has no budgetary effect relative to present law and that enacting H.R. 1173 would have no impact on Federal revenues.¹²

⁸ Secs. 7702B(a)(1), (a)(2), and (d) and 104(a)(3).

⁹ Sec. 7702B(a)(2).

¹⁰ Secs. 7702B(a)(3), 105 and 106. However, the exclusion does not apply to qualified long-term care insurance provided through a flexible spending arrangement within the meaning of section 106 (c). Further, under section 125(f), long-term care insurance is not permitted to be offered under a cafeteria plan.

¹¹ Sec. 3210 of the PHSA, 42 U.S.C. 3001l-9.

¹² House Committee on Energy and Commerce Report to accompany H.R. 1173, H.R. Rep. No. 112-342, Part 1, December 23, 2001, pp. 11-12. As reported by the House Committee on Energy and Commerce, H.R. 1173 also contains a provision relating to funds for the National Clearinghouse for Long-Term Care Insurance Information, which the CBO estimates to have a budgetary effect.