

SMALL BUSINESS PAPERWORK MANDATE ELIMINATION ACT OF 2011

FEBRUARY 22, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CAMP, from the Committee on Ways and Means,
submitted the following

R E P O R T

[To accompany H.R. 4]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4) to repeal the expansion of information reporting requirements for payments of \$600 or more to corporations, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 4 (the “Small Business Paperwork Mandate Elimination Act of 2011”), as reported by the Committee on Ways and Means, provides that section 9006 of the Patient Protection and Affordable Care Act of 2010 (“PPACA”), Pub. L. No. 111–148 (March 23, 2010), is repealed. As a result, section 6041 of the Internal Revenue Code is amended to no longer require reporting with respect to payments to corporations or with respect to gross proceeds for

property. Further, the additional regulatory authority granted to the Secretary is repealed.

B. BACKGROUND AND NEED FOR LEGISLATION

Originally enacted in 2010 to help finance the cost of PPACA, the new provisions requiring expanded tax information reporting by businesses have generated considerable concern among taxpayers and policymakers alike. It is now widely acknowledged that, if allowed to go into effect, the expansion of these information reporting requirements will impose a substantial tax compliance burden on small businesses, forcing them to devote scarce resources to tax filing instead of to business expansion and job creation. Because the burdens on small businesses resulting from the imposition of these new requirements outweigh any potential improvement in tax compliance, the bill reflects a consensus that these new rules should be repealed.

C. LEGISLATIVE HISTORY

Background

H.R. 4 was introduced on January 12, 2011, and was referred to the Committee on Ways and Means.

Committee action

The Committee on Ways and Means marked up the bill on February 17, 2011, and ordered the bill favorably reported by voice vote.

Committee hearings

The Committee on Ways and Means held a full Committee hearing on January 20, 2011, on fundamental tax reform. This hearing focused on the economic and administrative burdens imposed by the current structure of the Federal income tax, including with respect to the burdens associated with the expanded Form 1099 reporting requirements imposed under section 9006 of PPACA.

The Committee on Ways and Means held a full Committee hearing on January 26, 2011, on the health care law's impact on jobs, employers, and the economy, including the impact of PPACA's expanded Form 1099 reporting requirements.

The Committee on Ways and Means held a full Committee hearing on February 15, 2011, on the President's Fiscal Year 2012 Budget with Secretary of the Treasury Timothy F. Geithner, including the President's proposal relating to information reporting on payments to corporations and payments for property.

II. EXPLANATION OF THE BILL

A. REPEAL OF EXPANSION OF INFORMATION REPORTING REQUIREMENTS (SEC. 2 OF THE BILL AND SEC. 6041 OF THE CODE)

Present law

A variety of information reporting requirements apply under present law.¹ The primary provision governing information reporting by payors requires an information return by every person en-

¹ Secs. 6031 through 6060.

gaged in a trade or business who makes payments to any one payee aggregating \$600 or more in any taxable year in the course of that payor's trade or business.² Reportable payments include compensation for both goods and services, and may include gross proceeds. Certain enumerated types of payments that are subject to other specific reporting requirements are carved out of reporting under this general rule by regulation.³ Another carveout excepts payments to corporations from reporting requirements.⁴

For payments made after December 31, 2011, the class of payments subject to reporting was expanded in two ways.⁵ First, the regulatory carveout for payments to corporations was expressly overridden by the addition of section 6041(i). In addition, information reporting requirements were expanded to include gross proceeds paid in consideration for any type of property. The payor is required to provide the recipient of the payment with an annual statement showing the aggregate payments made and contact information for the payor.⁶ The regulations generally except from reporting payments to exempt organizations, governmental entities, international organizations, or retirement plans.

Additionally, the requirement that businesses report certain payments is generally not applicable to payments by persons engaged in a passive investment activity. However, beginning in 2011, recipients of rental income from real estate generally are subject to the same information reporting requirements as taxpayers engaged in a trade or business.⁷ In particular, rental income recipients making payments of \$600 or more to a service provider (such as a plumber, painter, or accountant) in the course of earning rental income are required to provide an information return (typically Form 1099-MISC) to the IRS and to the service provider. Exceptions to this reporting requirement are made for (i) individuals who rent their principal residence on a temporary basis, including members of the military or employees of the intelligence community (as defined in section 121(d)(9)), (ii) individuals who receive only minimal amounts of rental income, as determined by the Secretary in accordance with regulations, and (iii) individuals for whom the requirements would cause hardship, as determined by the Secretary in accordance with regulations.⁸

Detailed rules are provided for the reporting of various types of investment income, including interest, dividends, and gross pro-

²Sec. 6041(a). Information returns are generally submitted electronically on Forms 1096 and Forms 1099, although certain payments to beneficiaries or employees may require use of Forms W-3 and W-2, respectively. Treas. Reg. sec. 1.6041-1(a)(2).

³Sec. 6041(a) requires reporting of payments "other than payments to which section 6042(a)(1), 6044(a)(1), 6047(c), 6049(a) or 6050N(a) applies and other than payments with respect to which a statement is required under authority of section 6042(a), 6044(a)(2) or 6045[.]" The payments thus excepted include most interest, royalties, and dividends.

⁴Treas. Reg. sec. 1.6041-3(p).

⁵The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, sec. 9006 (March 23, 2010).

⁶Sec. 6041(d). Specifically, the recipient of the payment is required to provide a Form W-9 to the payor, which enables the payee to provide the recipient of the payment with an annual statement showing the aggregate payments made and contact information for the payor. If a Form W-9 is not provided, the payor is required to "backup withhold" tax at a rate of 28 percent of the gross amount of the payment unless the payee has otherwise established that the income is exempt from backup withholding. The backup withholding tax may be credited by the payee against regular income tax liability, i.e., it is effectively an advance payment of tax, similar to the withholding of tax from wages.

⁷Sec. 6041(h); Small Business Jobs Act of 2010, Pub. L. No. 111-240, sec. 2101 (Sept. 27, 2010).

⁸Treasury has not promulgated regulations defining these "minimal amounts of rental income" or "hardship" cases.

ceeds from brokered transactions (such as a sale of stock).⁹ In general, the requirement to file Form 1099 applies with respect to amounts paid to U.S. persons and is linked to the backup withholding rules of section 3406. Thus, a payor of interest, dividends or gross proceeds generally must request that a U.S. payee (other than certain exempt recipients) furnish a Form W-9 providing that person's name and taxpayer identification number.¹⁰ That information is then used to complete the Form 1099.

Failure to comply with the information reporting requirements results in penalties, which may include a penalty for failure to file the information return,¹¹ a penalty for failure to furnish payee statements,¹² or failure to comply with other various reporting requirements.¹³

Reasons for change

The Committee understands that there is a significant tax gap, or difference between the amount of tax owed by taxpayers and the amount voluntarily paid to the IRS, that must be addressed. The Committee also recognizes that information reporting requirements generally improve taxpayer compliance. However, the Committee is concerned that the expansion of the information reporting requirements imposes a substantial tax compliance burden on small businesses, including costs to acquire new software or pay for additional accounting services. The Committee believes this burden is disproportionate as compared with any resulting improvement in tax compliance and therefore believes that these requirements should be repealed in their entirety. The Committee will continue to explore other potential solutions to the tax gap problem.

Explanation of provision

Under the provision, the changes to section 6041 enacted under section 9006 of the Patient Protection and Affordable Care Act that provide rules for payments to corporations, provide additional regulatory authority and impose a reporting requirement with respect to gross proceeds from property, are repealed in their entirety.

Effective date

This provision is effective for payments made after December 31, 2011.

⁹ Secs. 6042 (dividends), 6045 (broker reporting) and 6049 (interest), as well as the Treasury regulations thereunder.

¹⁰ See Treas. Reg. sec. 31.3406(h)-3.

¹¹ Sec. 6721.

¹² Sec. 6722.

¹³ Sec. 6723.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 4, the “Small Business Paperwork Mandate Elimination Act of 2011.”

MOTION TO REPORT RECOMMENDATIONS

H.R. 4 was ordered favorably reported by voice vote (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 4 as reported.

The bill, as reported, is estimated to have the following effects on budget receipts for fiscal years 2011–2021:

ESTIMATED REVENUE EFFECTS OF H.R. 4, "THE SMALL BUSINESS PAPERWORK MANDATE ELIMINATION ACT OF 2011," AS REPORTED BY THE COMMITTEE ON WAYS
AND MEANS—FISCAL YEARS 2011–2021

[Millions of dollars]

Provision	Effective	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2011–16	2011–21
1. Repeal 1099 information reporting requirements for certain payments of more than \$600	DOE		–263	–2,785	–1,995	–2,064	–2,135	–2,309	–2,413	–2,523	–2,636	–2,782	–9,242	–21,905
Net total			–263	–2,785	–1,995	–2,064	–2,135	–2,309	–2,413	–2,523	–2,636	–2,782	–9,242	–21,905

Joint Committee on Taxation
Note: Details may not add to totals due to rounding.
Legend for "Effective" column: DOE = date of enactment.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX
EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 18, 2011.

Hon. DAVE CAMP,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4, the Small Business Paperwork Mandate Elimination Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The staff contacts are Kalyani Parthasarathy (CBO) and Pamela Moomau (JCT).

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

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

H.R. 4 would repeal certain scheduled expansions in information reporting requirements. The staff of the Joint Committee on Taxation (JCT) estimates that enacting the legislation would increase federal budget deficits by \$21.9 billion over the 2011–2021 period, reflecting reductions in revenues.

The legislation would repeal an expansion currently scheduled to take effect in 2012 of information that businesses must report to the recipients of certain payments, as well as to the Internal Revenue Service, on form 1099. Beginning in 2012, certain payments not previously subject to 1099 reporting requirements, including those made to corporations and those made for property, will become subject to the reporting requirements. The repeal of this expansion would reduce revenues by an estimated \$21.9 billion over the 2011–2021 period, as shown in the following table. Because enacting H.R. 4 would affect revenues, pay-as-you-go procedures apply. (All effects are on-budget.)

	By fiscal year, in millions of dollars—										
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Estimated Revenue Effect	0	— 263	— 2,785	— 1,995	— 2,064	— 2,135	— 2,309	— 2,413	— 2,523	— 2,636	— 2,782
										— 9,242	— 21,905

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Kalyani Parthasarathy. The estimate was approved by Frank Sammartino.

D. MACROECONOMIC IMPACT ANALYSIS

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: The effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning the tax compliance burden on taxpayers that the Committee concluded that it is appropriate to report the bill favorably to the House of Representatives with the recommendation that the bill do pass.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

E. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the “IRS Reform Act”) requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses. The staff of the Joint Committee on Taxation has identified only one such provision, which is discussed below. Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, a summary description of that provision is provided, along with an estimate of the number and type of affected taxpayers, and a discussion regarding the relevant complexity and administrative issues.

Following the analysis of the staff of the Joint Committee on Taxation are the comments of the IRS and Treasury.

REPEAL OF EXPANDED INFORMATION REPORTING FOR PAYMENTS WITH
RESPECT TO PROPERTY OR PAYMENTS MADE TO CORPORATIONS

Summary description of provision

Under the provision, section 6041 is amended to delete references to gross proceeds from property, a requirement that payments to corporations be reported, and a grant of additional regulatory authority. Accordingly, the changes to section 6041 enacted under section 9006 of the Patient Protection and Affordable Care Act are repealed in their entirety.

As a result of the repeal, taxpayers are not required to file an information return for all payments aggregating \$600 or more in a calendar year to any single corporation payee (except a tax-exempt corporation). Second, the payments to be reported do not include gross proceeds paid in consideration for property.

Number of affected taxpayers

It is estimated that the provision will affect more than 10 percent of individual or small business tax returns.

Discussion

According to the Government Accountability Office, only eight percent of approximately 50 million small businesses with less than \$10 million in assets filed miscellaneous information return Form 1099-MISC.¹⁴ If greater reporting from small businesses were available, it is possible that the IRS could more readily identify areas of underreported income of the payees. In general, the more payments to which information reporting and/or withholding applies, the greater the improvement in compliance.¹⁵ However,

¹⁴ Government Accountability Office, *IRS Could Do More to Promote Compliance by Third Parties with Miscellaneous Income Reporting Requirements*, GAO-09-238 (January 2009).

¹⁵ See e.g., “Tax Year 2001 Individual Income Tax Underreporting Gap,” <http://www.irs.gov/pub/irs-utl/tax_gap_update_070212.pdf> at 2, finding that information reporting is the pri-

since the reporting requirements were expanded, numerous critics have pointed to disproportionate additional administrative burden on those required to comply with the reporting obligations. Thus, requiring information reporting for all payments aggregating \$600 or more in a calendar year to a corporation and for payments for property may outweigh the enhanced taxpayer compliance.

At the time the expanded provisions were under consideration, a complexity analysis¹⁶ suggested that the widespread use of computer technology to process and store business information should minimize the burden associated with generating and transmitting the information necessary to comply with the provision, regardless of the extent to which the taxpayer is currently subject to information reporting. Although the additional burden of expanded reporting would have depended on the extent to which taxpayers subject to the provision already had adequate procedures and systems in place to comply with existing information reporting requirements,¹⁷ uncertainty about the scope of the expansion, and the lack of administrative guidance to date has made it difficult for taxpayers to determine what steps would be necessary to comply with the expanded reporting. Repeal of the additional information reporting requirements avoids the need for small businesses to develop new bookkeeping systems necessary in time for implementation of the expanded reporting in 2012. In addition, it relieves the IRS of the need to develop new forms and outreach programs to educate the public about the changes in reporting obligations.

Comments from IRS and Treasury

No guidance would be required.

The relevant forms and instructions would not need to be modified (Forms 1099, 1098, 3921, 3922, 5498, and W-2G), and the instructions for certain other information returns and publications would not need to be revised to reflect the elimination of the exception for payments to corporations and the exception for payments other than for services.

The IRS would not need to modify existing tax systems to reflect this provision.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

mary differentiator in compliance rates. See also, Joseph Bankman, "Eight Truths About Collecting Taxes from the Cash Economy," 117 Tax Notes 506, 511 (2007).

¹⁶ See, Senate Finance Committee, "America's Healthy Future Act of 2009," S. Rep. 111-89 (October 19, 2009), pp. 365-366.

¹⁷ See e.g., Government Accountability Office, *Costs and Uses of Third-Party Information Returns*, November 2007, GAO-08-266, available at <<http://www.gao.gov/new.items/d08266.pdf>>, wherein the GAO, based on its case studies, found the compliance costs associated with filing information returns to be "relatively low."

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets and existing law in which no change is proposed is shown in roman):

PATIENT PROTECTION AND AFFORDABLE CARE ACT

* * * * *

TITLE IX—REVENUE PROVISIONS

SUBTITLE A—REVENUE OFFSET PROVISIONS

* * * * *

[SEC. 9006. EXPANSION OF INFORMATION REPORTING REQUIREMENTS.

[(a) IN GENERAL.—Section 6041 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsections:

[(“h) APPLICATION TO CORPORATIONS.—Notwithstanding any regulation prescribed by the Secretary before the date of the enactment of this subsection, for purposes of this section the term ‘person’ includes any corporation that is not an organization exempt from tax under section 501(a).

[(“i) REGULATIONS.—The Secretary may prescribe such regulations and other guidance as may be appropriate or necessary to carry out the purposes of this section, including rules to prevent duplicative reporting of transactions.”.

[(b) PAYMENTS FOR PROPERTY AND OTHER GROSS PROCEEDS.—Subsection (a) of section 6041 of the Internal Revenue Code of 1986 is amended—

[(1) by inserting “amounts in consideration for property,”
after “wages,”,

[(2) by inserting “gross proceeds,” after “emoluments, or other”, and

[(3) by inserting “gross proceeds,” after “setting forth the amount of such”.

[(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made after December 31, 2011.]

* * * * *

SECTION 6041 OF THE INTERNAL REVENUE CODE OF 1986

SEC. 6041. INFORMATION AT SOURCE.

(a) **PAYMENTS OF \$600 OR MORE.—**All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, [amounts in consideration for property,] premiums, annuities, compensations, remunerations, emoluments, or other [gross proceeds,] fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), 6047(e), 6049(a), or 6050N(a)

applies, and other than payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), or 6045), or \$600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such [gross proceeds,] gains, profits, and income, and the name and address of the recipient of such payment.

* * * * *

[(i) APPLICATION TO CORPORATIONS.—Notwithstanding any regulation prescribed by the Secretary before the date of the enactment of this subsection, for purposes of this section the term “person” includes any corporation that is not an organization exempt from tax under section 501(a).

[(j) REGULATIONS.—The Secretary may prescribe such regulations and other guidance as may be appropriate or necessary to carry out the purposes of this section, including rules to prevent duplicative reporting of transactions.]

