

## Calendar No. 39

114TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
{ 114-16

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A BILL TO AMEND THE INTERNAL REVENUE CODE OF 1986 TO INCREASE  
THE LIMITATION ON ELIGIBILITY FOR THE ALTERNATIVE TAX FOR CER-  
TAIN SMALL INSURANCE COMPANIES

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APRIL 14, 2015.—Ordered to be printed

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Mr. HATCH, from the Committee on Finance,  
submitted the following

### R E P O R T

[To accompany S. 905]

The Committee on Finance, having considered an original bill, S. 905, to amend the Internal Revenue Code of 1986 to increase the limitation on eligibility for the alternative tax for certain small insurance companies, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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#### I. LEGISLATIVE BACKGROUND

The Committee on Finance, having considered S. 905, a bill to amend the Internal Revenue Code of 1986 to increase the limitation on eligibility for the alternative tax for certain small insurance companies, reports favorably thereon without amendment and recommends that the bill do pass.

##### *Background and need for legislative action*

*Background.*—Based on a proposal recommended by Senator Grassley, the Senate Committee on Finance marked up original

legislation (a bill to amend the Internal Revenue Code of 1986 to increase the limitation on eligibility for the alternative tax for certain small insurance companies) on February 11, 2015, and with a majority present, ordered the bill favorably reported, with amendments on that date. A related bill, S. 1346, was introduced in the 113th Congress by Senators Harkin, Grassley, Klobuchar, Rockefeller, and Blunt.

*Need for legislative action.*—The \$1,200,000 ceiling on net or direct written premiums, which limits a property and casualty insurance company’s eligibility to elect the alternative tax under section 831(b) of the Internal Revenue Code, has not been adjusted for inflation since it was set in 1986. The need to provide an inflation adjustment should be addressed by setting the amount at \$2,200,000, with indexing of the amount starting after 2015. Further, there may be a need to address abuse of captive insurance companies for estate planning purposes. A Treasury Department study should be conducted of abuse of captive insurance companies for estate planning purposes, so Congress can better understand the scope of this problem and whether legislation is necessary to address it. In addition, it has been reported that many thousands of Medicare providers and suppliers have outstanding Federal employment and income tax liability, which contribute to the tax gap. The permissible percentage of payments to a Medicare provider subject to levy should be increased.

## II. EXPLANATION OF THE BILL

### A. MODIFICATION TO ALTERNATIVE TAX FOR CERTAIN SMALL INSURANCE COMPANIES (SEC. 1 OF THE BILL AND SEC. 831(B) OF THE CODE)

#### PRESENT LAW

Under present law, the taxable income of a property and casualty insurance company is the sum of the amount earned from underwriting income and from investment income (as well as gains and other income items), reduced by allowable deductions. For this purpose, underwriting income and investment income are computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Association of Insurance Commissioners. Insurance companies are subject to tax at regular corporate income tax rates.

In lieu of the tax otherwise applicable, certain property and casualty insurance companies may elect to be taxed only on taxable investment income under section 831(b).<sup>1</sup> The election is available to mutual and stock companies with net written premiums or direct written premiums (whichever is greater) that do not exceed \$1,200,000.

#### REASONS FOR CHANGE

The Committee has observed that the \$1,200,000 ceiling on net or direct written premiums, which limits eligibility to elect the alternative tax under section 831(b), has not been adjusted for infla-

<sup>1</sup>Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”).

tion since it was set in 1986.<sup>2</sup> The Committee believes that setting the amount at \$2,200,000 reflects inflation from that year, and that the amount should be adjusted over time for inflation.

The Committee notes that the provision does not include a related proposal that would narrow eligibility to elect the alternative tax in a manner intended to address abuse potential, but that may cause problems for certain States. The Committee therefore wants the Treasury Department to study the abuse of captive insurance companies for estate planning purposes, so Congress can better understand the scope of this problem and whether legislation is necessary to address it.

#### EXPLANATION OF PROVISION

The provision modifies the section 831(b) eligibility rule for a property and casualty insurance company to elect to be taxed only on taxable investment income. The provision increases the amount of the limit on net written premiums or direct written premiums (whichever is greater) from \$1,200,000 to \$2,200,000 and indexes this amount for inflation starting in 2016. The base year for calculating the inflation adjustment is 2013.

The provision directs the Treasury Department to study the abuse of captive insurance companies for estate planning purposes, so Congress can better understand the scope of this problem and whether legislation is necessary to address it. A written report is to be submitted to the Senate Committee on Finance not later than February 11, 2016. The report is to include legislative recommendations for addressing any such abuses.

#### EFFECTIVE DATE

The provision is effective for taxable years beginning after the date of enactment.

#### B. INCREASE CONTINUOUS LEVY AUTHORITY ON PAYMENTS TO MEDICARE PROVIDERS AND SUPPLIERS (SEC. 2 OF THE BILL AND SEC. 6331 OF THE CODE)

#### PRESENT LAW

##### *In general*

Levy is the administrative authority of the IRS to seize a taxpayer's property, or rights to property, to pay the taxpayer's tax liability.<sup>3</sup> Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,<sup>4</sup> the property is not exempt from levy,<sup>5</sup> and the IRS has provided both notice of intention to levy<sup>6</sup> and notice of the right to an administrative hearing (the notice is referred to as a "collections due

<sup>2</sup>Tax Reform Act of 1986, Pub. L. No. 99-514, sec. 1024. The 1986 Act repealed the special rates, deductions and exemptions for small mutual companies under prior law, and substituted a single provision, the section 831(b) alternative tax. For more background, see Joint Committee on Taxation, *General Explanation of the Tax Reform Act of 1986* (JCS-10-87), May 4, 1987, pages 619-621, and the legislative history cited there.

<sup>3</sup>Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.

<sup>4</sup>*Ibid.*

<sup>5</sup>Sec. 6334.

<sup>6</sup>Sec. 6331(d).

process notice” or “CDP notice” and the hearing is referred to as the “CDP hearing”) <sup>7</sup> at least 30 days before the levy is made. A levy on salary or wages generally is continuously in effect until released.<sup>8</sup> A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.<sup>9</sup>

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.<sup>10</sup>

The CDP notice (and pre-levy CDP hearing) is not required if: (1) the Secretary finds that collection would be jeopardized by delay; (2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund; (3) the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served; or (4) the Secretary has served a Federal contractor levy. In each of these four cases, however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.<sup>11</sup>

#### *Federal payment levy program*

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997 <sup>12</sup> authorized the establishment of the Federal Payment Levy Program (“FPLP”), which allows the IRS to continuously levy up to 15 percent of certain “specified payments” by the Federal government if the payees are delinquent on their tax obligations. With respect to payments to vendors of goods, services, or property sold or leased to the Federal government, the continuous levy may be up to 100 percent of each payment.<sup>13</sup> For payments to Medicare providers and suppliers, the levy is up to 15 percent for payments made within 180 days after December 19, 2014. For payments made after that date, the levy is up to 30 percent.<sup>14</sup>

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by Treasury’s Bureau of Fiscal Service (“BFS”), such as certain Social Security benefit and Federal wage records. When these records match, the delinquent taxpayer is provided both the notice of intention to levy and the CDP notice. If the taxpayer does not respond after 30 days, the IRS can instruct BFS to levy the taxpayer’s Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or the IRS releases the levy.

<sup>7</sup> Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.

<sup>8</sup> Secs. 6331(e) and 6343.

<sup>9</sup> Sec. 6321.

<sup>10</sup> Secs. 6331(d)(3) and 6861.

<sup>11</sup> Sec. 6330(f).

<sup>12</sup> Pub. L. No. 105–34.

<sup>13</sup> Sec. 6331(h)(3).

<sup>14</sup> Pub. L. No. 113–295, Division B.

## REASONS FOR CHANGE

It has been reported that many thousands of Medicare providers and suppliers have outstanding Federal employment and income tax liability, which contribute to the tax gap. Consequently, the Committee believes that it is appropriate to increase the permissible percentage of payments to a Medicare provider subject to levy.

## EXPLANATION OF PROVISION

The provision provides that the present limitation of 30 percent of certain specified payments be increased by an amount sufficient to offset the estimated revenue loss of the provision described in Part A, above.

## EFFECTIVE DATE

The provision is effective for payments made after 180 days after the date of enactment.

**III. BUDGET EFFECTS OF THE BILL**

## A. COMMITTEE ESTIMATES

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 308(a)(1) of the Congressional Budget and Impoundment Control Act of 1974, as amended (the "Budget Act"), the following statement is made concerning the estimated budget effects of the revenue provisions of the bill as reported.

The provisions are estimated to reduce Federal fiscal year budget receipts by the following amounts for the period 2015–2025:

ESTIMATED BUDGET EFFECTS OF  
 A BILL TO AMEND THE INTERNAL REVENUE CODE OF 1986  
 TO INCREASE THE LIMITATION ON ELIGIBILITY FOR THE ALTERNATIVE TAX FOR CERTAIN SMALL INSURANCE COMPANIES,  
 AS REPORTED BY THE COMMITTEE ON FINANCE

Fiscal Years 2015 - 2025

[Millions of Dollars]

| Provision  | Effective     | 2015      | 2016     | 2017     | 2018     | 2019     | 2020     | 2021     | 2022     | 2023     | 2024     | 2025       | 2015-20   | 2015-25   |
|--|---------------|-----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|------------|-----------|-----------|
| 1. Increase the Limitation on Eligibility for the Alternative Tax for Certain Small Insurance Companies..... | tyba DOE      | -9        | -12      | -13      | -14      | -14      | -15      | -16      | -17      | -18      | -19      | -20        | -77       | -167      |
| 2. Increase Continuous Levy Authority to 45% on Payments to Medicare Providers and Suppliers.....            | pma 180da DOE | ---       | 17       | 17       | 17       | 18       | 18       | 18       | 19       | 19       | 20       | 20         | 87        | 183       |
| <b>NET TOTAL</b> .....   |               | <b>-9</b> | <b>5</b> | <b>4</b> | <b>3</b> | <b>4</b> | <b>3</b> | <b>2</b> | <b>2</b> | <b>1</b> | <b>1</b> | <b>[1]</b> | <b>10</b> | <b>16</b> |

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. The date of enactment is assumed to be April 1, 2015.

Legend for "Effective" column:  
 DOE = date of enactment  
 pma = payments made after  
 tyba = taxable years beginning after  
 180da = 180 days after

[1] Negligible revenue effect.

## B. BUDGET AUTHORITY AND TAX EXPENDITURES

### *Budget authority*

In compliance with section 308(a)(1) of the Budget Act, the Committee states that no provisions of the bill as reported involve new or increased budget authority.

### *Tax expenditures*

In compliance with section 308(a)(1) of the Budget Act, the Committee states that the provisions affect the levels of tax expenditures (see revenue table in part A., above).

## C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 402 of the Budget Act, the Committee advises that the Congressional Budget Office has not submitted a statement on the bill. The letter from the Congressional Budget Office will be provided separately.

## IV. VOTES OF THE COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that, with a majority present, a bill to amend the Internal Revenue Code of 1986 to increase the limitation on eligibility for the alternative tax for certain small insurance companies, was ordered favorably reported by voice vote on February 11, 2015.

## V. REGULATORY IMPACT AND OTHER MATTERS

### A. REGULATORY IMPACT

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill as amended.

#### *Impact on individuals and businesses, personal privacy and paperwork*

The bill modifies the alternative tax election for certain small property and casualty insurance companies by increasing the \$1,200,000 limit on net or direct written premiums to \$2,200,000 and indexing this amount for inflation starting in 2016. It also increases the IRS's continuous levy authority on payments to Medicare providers and suppliers. The provisions of the bill are not expected to impose additional administrative requirements or regulatory burdens on individuals or businesses.

The provisions of the bill do not impact personal privacy.

### B. UNFUNDED MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the tax provisions of the reported bill do not contain Federal private sector mandates or Federal intergovernmental mandates on State, local, or tribal governments within the meaning of Public Law 104-4, the Unfunded Mandates Reform Act of 1995. The costs required to comply with

each Federal private sector mandate generally are no greater than the aggregate estimated budget effects of the provision.

#### C. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (“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 determined that there are no provisions that are of widespread applicability to individuals or small businesses.

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

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of Rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).