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# A BILL TO AMEND THE INTERNAL REVENUE CODE OF 1986 TO CLARIFY THE SPECIAL RULES FOR ACCIDENT AND HEALTH PLANS OF CERTAIN GOVERNMENTAL ENTITIES, AND FOR OTHER PURPOSES

APRIL 14, 2015.—Ordered to be printed

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

## REPORT

[To accompany S. 910]

The Committee on Finance, having considered an original bill, S. 910, to amend the Internal Revenue Code of 1986 to clarify the special rules for accident and health plans of certain governmental entities, and for other purposes, 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. 910, a bill to amend the Internal Revenue Code of 1986 to clarify the special rules for accident and health plans of certain governmental entities, and for other purposes, reports favorably thereon without amendment and recommends that the bill do pass.

49–010

*Background and need for legislative action*

*Background.*—Based on a proposal recommended by Senators Cantwell and Crapo, and on S. 2660 (113th Cong., 2nd Sess.) cosponsored by Senators Cantwell, Crapo, Risch, Klobuchar, Merkley, and Murray, the Committee on Finance marked up original legislation (a bill to amend the Internal Revenue Code of 1986 to clarify the special rules for accident and health plans of certain governmental entities, and for other purposes) on February 11, 2015, and, with a majority present, ordered the bill favorably reported.

*Need for legislative action.*—In general, in order for contributions and benefits under an employer-sponsored accident or health plan to be excluded from income, the plan must cover only employees and their spouses, dependents, and children under age 27, or, in the case of a deceased employee, the employee's surviving spouse, dependents and children under age 27. A plan that provides for the reimbursement of the medical expenses of any other beneficiary of a deceased employee causes the entire plan to lose tax-favored treatment.

Present law provides a special rule under which tax-favored treatment applies to certain governmental accident or health plans that, on or before January 1, 2008, provide for the reimbursement of the medical expenses of a beneficiary of a deceased employee other than a surviving spouse, dependent or child under age 27. However, the present-law rule applies only to a limited group of accident or health plans, for example, an accident or health plan that is provided in connection with a public retirement system and has been authorized by a State legislature. Expansion of the rule to additional governmental accident or health plans will enable these plans to continue providing benefits in the manner promised to employees and their beneficiaries.

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. CLARIFICATION OF SPECIAL RULE FOR CERTAIN GOVERNMENTAL PLANS (SEC.1 OF THE BILL AND SEC.105(j) OF THE CODE)

#### PRESENT LAW

Reimbursements under an employer-provided accident or health plan for medical care expenses for employees, their spouses, their dependents, and adult children under age 27 are excludible from gross income.[1] However, in order for these reimbursements to be excluded from income, the plan may reimburse expenses of only the employee and the employee's spouse, dependents, and children under age 27. In the case of a deceased employee, the plan generally may reimburse medical expenses of only the employee's surviving spouse, dependents and children under age 27. If a plan reimburses expenses of any other beneficiary, all expense reimburse-

[1] Sec. 105(b). Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

ments under the plan are included in income, including reimbursements of expenses of the employee and the employee's spouse, dependents and children under age 27 (or the employee's surviving spouse, dependents and children under age 27).[2]

Under a limited exception, reimbursements under a plan do not fail to be excluded from income solely because the plan provides for reimbursements of medical expenses of a deceased employee's beneficiary, without regard to whether the beneficiary is the employee's surviving spouse, dependent, or child under age 27.[3] In order for the exception apply, the plan must have provided, on or before January 1, 2008, for reimbursement of the medical expenses of a deceased employee's beneficiary. In addition, the plan must be funded by a medical trust (1) that is established in connection with a public retirement system, and (2) that either has been authorized by a State legislature, or has received a favorable ruling from the IRS that the trust's income is not includible in gross income by reason of the exclusion for income of a State or political subdivision.[4] This exception preserves the exclusion for reimbursements of expenses of the employee and the employee's spouse, dependents, and children under age 27 (or the employee's surviving spouse, dependents, and children under age 27). Reimbursements of expenses of other beneficiaries are included in income.

### REASONS FOR CHANGE

In the past, certain governmental accident or health plans have provided for the reimbursement, after an employee's death, of medical expenses of a beneficiary other than the employee's surviving spouse, dependents and children under age 27, in order to avoid the forfeiture of unused amounts remaining under the plan at the time of the employee's death. Present law allows certain governmental plans with this design on or before January 1, 2008, to continue using this design, subject to eligibility conditions, such as that the accident or health plan be provided in connection with a public retirement system and have been authorized by a State legislature. However, the eligibility conditions under the present-law rule have the effect of excluding plans merely because of minor differences, for example if the governmental accident or health plan is not provided in connection with a public retirement system or is established by a local government rather than authorized by a State legislature. The Committee considers it appropriate to expand the present-law rule by providing alternative eligibility conditions, so that the rule applies to additional governmental accident or health plans.

### EXPLANATION OF PROVISION

The provision expands the exception to apply to plans funded by medical trusts in addition to those covered under present law. As expanded, the exception would apply to a plan funded by a medical trust (1) that is either established in connection with a public retirement system or established by or on behalf of a State or polit-

[2] Rev. Rul. 2006–36, 2006–2 C.B. 353. The ruling is effective for plan years beginning after December 31, 2008, in the case of plans including certain reimbursement provisions on or before August 14, 2006.

[3] Sec. 105(j).

[4] This exclusion is provided under Code section 115.

ical subdivision thereof, and (2) that either has been authorized by a State legislature or has received a favorable ruling from the IRS that the trust's income is not includible in gross income by reason of either the exclusion for income of a State or political subdivision or the exemption from income tax for a voluntary employees' beneficiary association ("VEBA").[5] The plan would still be required to have provided, on or before January 1, 2008, for reimbursement of the medical expenses of a deceased employee's beneficiary, without regard to whether the beneficiary is the employee's surviving spouse, dependent, or child under age 27.

The provision also clarifies that this exception preserves the exclusion for reimbursements of expenses of the employee and the employee's spouse, dependents, and children under age 27, or the employee's surviving spouse, dependents, and children under age 27 (referred to under the provision as "qualified taxpayers") and that, as under present law, reimbursements of expenses of other beneficiaries are included in income.

#### EFFECTIVE DATE

The provision is effective with respect to payments made after the date of enactment of the provision.

### B. Increase Continuous Levy Authority on Payments to Medicare Providers and Suppliers (sec. 2 of the bill and sec. 6331(h) 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.[6] Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,[7] the property is not exempt from levy,[8] and the IRS has provided both notice of intention to levy[9] and notice of the right to an administrative hearing (the notice is referred to as a "collections due process notice" or "CDP notice" and the hearing is referred to as the "CDP hearing")[10] at least 30 days before the levy is made. A levy on salary or wages generally is continuously in effect until released.[11] 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.[12]

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 appli-

[5] Tax-exempt status for a VEBA is provided under Code section 501(c)(9).

[6] 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.

[7] *Ibid*.

[8] Sec. 6334.

[9] Sec. 6331(d).

[10] Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.

[11] Secs. 6331(e) and 6343.

[12] Sec. 6321.

cable when determining whether assessment of tax without following the normal deficiency procedures is permitted.[13]

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.[14]

*Federal payment levy program*

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997[15] 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.[16] 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.[17]

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.

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

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

[13] Secs. 6331(d)(3), 6861.
[14] Sec. 6330(f).
[15] Pub. L. No. 105–34.
[16] Sec. 6331(h)(3).
[17] Pub. L. No. 113–295, Division B.

### 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 to amend the Internal Revenue Code of 1986 to clarify the special rules for accident and health plans of certain governmental entities, and for other purposes, as reported.

The bill is estimated to have the following effects on Federal budget receipts for fiscal years 2015–2025:

**ESTIMATED BUDGET EFFECTS OF**
**A BILL TO AMEND THE INTERNAL REVENUE CODE OF 1986**
**TO CLARIFY THE SPECIAL RULES FOR ACCIDENT AND HEALTH PLANS OF CERTAIN GOVERNMENTAL ENTITIES,**
**AND FOR OTHER PURPOSES**
**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. Clarify the Special Rules for Accident and Health Plans of Certain Governmental Entities [1] | pma DOE | [2] | [2] | [2] | [2] | [2] | [2] | -1 | -1 | -1 | -1 | -1 | -3 | -5 |
| 2. Increase Continuous Levy Authority to 35% on Payments to Medicare Providers and Suppliers | pma 180da DOE | --- | 6 | 6 | 6 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 32 | 67 |
| **NET TOTAL** | | **[2]** | **6** | **6** | **6** | **7** | **7** | **6** | **6** | **6** | **6** | **6** | **29** | **62** |

Joint Committee on Taxation

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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
180da = 180 days after

| | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2015-20 | 2015-25 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| [1] Estimate contains the following off-budget effects | [2] | [2] | [2] | [2] | [2] | [2] | [2] | [2] | [2] | [2] | [2] | -2 | -3 |

[2] Loss of less than $500,000.

### 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 certain 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, the bill to amend the Internal Revenue Code of 1986 to clarify the special rules for accident and health plans of certain governmental entities, and for other purposes, 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.

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

The bill expands the scope of a special rule under which medical expense reimbursements under certain governmental accident or health plans are excluded from income. 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.

### 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).

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