



OVERVIEW OF H.R. 4 AND H.R. ____

(As scheduled for markup on February 17, 2011)

On February 17, 2011, the Committee on Ways and Means is scheduled to mark up two bills that would repeal the onerous new Form 1099 information reporting requirements that were imposed on small businesses under the Democrats' new health care law. The first bill, H.R. 4, as introduced by Rep. Dan Lungren (R-CA), would repeal only those particular 1099 reporting requirements on small businesses, and it contains no offsets. The second bill, H.R. ____ (the "Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011", would: (1) repeal those same 1099 requirements, (2) repeal an additional Form 1099 information reporting requirement on owners of rental real estate, and (3) add an offset that would reduce improper overpayments of Exchange subsidies established under the new health care law. According to the Joint Committee on Taxation (JCT), while H.R. 4, as introduced, would increase the deficit by \$21.9 billion over the 2011-2021 period, H.R. ____ would, on net, reduce the deficit by \$166 million over that same time period.

In light of the overwhelming bipartisan support for repealing the new 1099 reporting requirements on small businesses – as evidenced by the fact that H.R. 4 has already garnered more than 270 cosponsors from across the political spectrum – Chairman Camp believes it is in the best interests of the Committee to build the legislative history of H.R. 4. At the same time, the Chairman believes that the Committee should identify and include an appropriate offset in order to ensure the legislation does not add to the Federal deficit.

Accordingly, at the outset of the markup of H.R. 4, which the Committee will consider first, the Chairman will offer an amendment in the nature of a substitute that would incorporate the provisions of H.R. ____ into H.R. 4. It is the Chairman's hope that the Committee will then be able to proceed with a full, open debate on H.R. 4, culminating in a vote on the Chairman's fully-offset amendment in the nature of a substitute and a final vote to report the bill, as amended, to the House of Representatives. Under that scenario, since the provisions of H.R. ____ would have been incorporated into H.R. 4, there would be no need to mark up H.R. ____ separately, so the Committee could then adjourn.

Should Democrats raise procedural objections to the Chairman's fully-offset amendment in the nature of a substitute to H.R. 4, the Chairman intends to have the Committee favorably report H.R. 4 as introduced and then consider H.R. ____ as a separate business item. While the Committee would, under this alternative scenario, be deprived of the opportunity to build its legislative history of H.R. 4, the Committee would still have the opportunity to consider, debate, and vote on a proposal to repeal the onerous new 1099 reporting requirements in the form of H.R. ____ without increasing the deficit.

A summary of the provisions of H.R. 4, as introduced, and of H.R. ____ is provided below.

I. Repeal of the Health Law's Form 1099 Reporting Requirements on Small Businesses (Included in Both H.R. 4, as introduced, and in H.R. ___)

- The new health care law expanded tax information reporting requirements to require businesses to issue a Form 1099 for any payments to corporations (rather than just to individuals) and for any payments for property (rather than just for services or investment income) that exceed \$600 per year per payee.
- This new requirement will impose a huge tax compliance burden on small businesses, forcing them to devote resources to tax filing instead of to business expansion and job creation.
- In a recent report,¹ the Internal Revenue Service's own National Taxpayer Advocate highlighted significant problems with this requirement.
 - "The Office of the Taxpayer Advocate is concerned that the new reporting burden, particularly as it falls on small businesses, may turn out to be disproportionate as compared with any resulting improvement in tax compliance."
 - "[B]usinesses will have to produce and transmit information reports, including many not previously required. For this purpose, small businesses may have to acquire new software or pay for additional accounting services, incurring additional costs."
- According to the National Federation of Independent Business (NFIB), this provision will have a "direct negative impact on small businesses."²
- According to testimony received from small business owners at recent hearings of the Ways and Means Committee:
 - "This is a massive new paperwork and reporting requirement making complying with the tax code more complicated and expensive. [It] should be repealed."³
 - "My business can't afford the luxury of hiring an HR or accounting consultant, or a new employee to fill out all of the new government paperwork... Simply put, if this part of the legislation is not rescinded this will impair... [my] ability to grow my business and the same would apply to the millions of other... small businesses in this country."⁴
- According to JCT, the repeal of the new Form 1099 reporting requirements on small businesses would reduce Federal revenues by \$21.9 billion over 2011-2021.

¹ National Taxpayer Advocate, *Report to Congress: Fiscal Year 2011 Objectives*, (June 30, 2010).

² "Small Businesses Push for Removal of 1099 Provision in Healthcare Law," NFIB Small Business News (July 13, 2010).

³ Warren Hudak, Written testimony for Committee on Ways and Means Hearing on Fundamental Tax Reform (January 20, 2011).

⁴ Joe Olivo, Written testimony for Committee on Ways and Means Hearing on the Health Care Law's Impact on Jobs, Employers, and the Economy (January 26, 2011).

II. Repeal of Related Expansion of Form 1099 Requirements to Owners of Rental Real Estate (Included in H.R. ____)

- To help cover the cost of a subsequent small business lending law enacted in September 2010, these same Form 1099 information reporting requirements were expanded even further. Specifically, that newer 1099 provision treats recipients of rental income from real estate as engaging in the trade or business of renting property, resulting in the imposition of these 1099 requirements on owners' rental property expense payments.
- This is the first time that Form 1099 requirements have been imposed on taxpayers who are not engaged in business activity. Individuals and families that rent real property – a vacation home, a condo, or even a spare bedroom – for even just a few weeks or months out of the year, must now comply with complex new filing requirements for everyone to whom they pay more than \$600 in a year (e.g., plumbers, lawn services, pool cleaners). And unlike the provision in the health bill, which does not become effective until 2012, this expansion took effect on January 1, 2011.
- The National Association of Realtors, concerned that this new requirement for households with rental income will further depress an already reeling housing market, opined that the taxpayers who will be subject to the new requirements “often are not sophisticated taxpayers and would often be unaware of reporting requirements.”⁵
- The American Institute of Certified Public Accountants (AICPA), in urging repeal of the 1099 requirements for rental activities, explained that:
 - “[M]any individuals, who own a vacation property that is rented part of the year, or who rent a room in their home, to help defray costs, would be subject to the [new requirements].”
 - “In order to comply with these onerous requirements, taxpayers will incur a significant increase in costs and/or time with respect to the accumulation of relevant information and the preparation and mailing of Forms 1099-MISC.”⁶
- According to press reports, even the author of this provision, Senate Finance Committee Chairman Max Baucus (D-MT), has agreed that it should be repealed along with the other new 1099 requirements.⁷
- According to JCT, the repeal of the expansion of Form 1099 reporting requirements to owners of rental real estate would reduce Federal revenues by \$2.8 billion over the period 2011-2021.

⁵ Letter to Senate Finance Committee Chairman Max Baucus (February 7, 2011).

⁶ Written testimony for Committee on Ways and Means Hearing on Fundamental Tax Reform (January 20, 2011).

⁷ “Finance Approves Aviation Funding After Sidestepping Repeal of Form 1099 Rules for Landlords,” Bureau of National Affairs (February 8, 2011).

III. Reduction in Improper Exchange Subsidy Overpayments (Included in H.R. ____)

- Under the health care law, eligibility for health insurance Exchange subsidies (refundable tax credits) is based on income reported on the individual’s most recent tax return.
 - But because when subsidy payments start in January 2014, the most recent tax return will be for the 2012 tax year, subsidy eligibility will be based on financial information that is two years old.
 - Because financial circumstances can change significantly in two years (e.g., a new job, a promotion, or a spouse returns to work), subsidies could therefore be provided to many individuals with actual incomes that exceed subsidy eligibility thresholds.
 - In addition, the current health care law opens the door to waste, fraud and abuse by allowing individuals to understate their income in order to receive extra subsidies, knowing that they would only be required to repay a fraction of the subsidy if they got caught.
 - As a result, many households will receive thousands of dollars in health care subsidies to which they are not actually entitled.
- Under current law, the limits on the amount of improper Exchange subsidy overpayments that can be recaptured are as follows:

Income (as percent of poverty level)	Maximum Amount of Overpayments Recaptured from Individuals	Maximum Amount of Overpayments Recaptured from Households
Under 200%	\$300	\$600
At least 200% but less than 250%	\$500	\$1,000
At least 250% but less than 300%	\$750	\$1,500
At least 300% but less than 350%	\$1,000	\$2,000
At least 350% but less than 400%	\$1,250	\$2,500
At least 400% but less than 450%	\$1,500	\$3,000
At least 450% but less than 500%	\$1,750	\$3,500
500% or above	Full repayment	Full repayment

- H.R. ____ would increase the limits on the amount of improper Exchange subsidy payments that would have to be repaid as follows:

Income (as percent of poverty level)	Maximum Amount of Overpayments Recaptured from Individuals	Maximum Amount of Overpayments Recaptured from Households
Under 200%	\$300	\$600
At least 200% but less than 300%	\$750	\$1,500
At least 300% but less than 400%	\$1,250	\$2,500
400% or above	Full repayment	Full repayment

- Speaking of a previous increase in the amounts subject to recapture, HHS Secretary Sebelius said: “[The legislation] also changes the way overpayments of the... health insurance premium tax credit are paid back, *making it fairer for recipients and all tax payers.*”⁸ (emphasis added)
- According to JCT, the reduction in inappropriate Exchange subsidy overpayments would reduce Federal spending by \$19.9 billion over 2011-2021 and would save taxpayers \$24.9 billion overall over that period.

⁸ <http://www.hhs.gov/news/press/2010pres/12/20101209d.html>