DESCRIPTION OF H.R. 4723, THE "PROTECTING TAXPAYERS BY RECOVERING IMPROPER OBAMACARE SUBSIDY OVERPAYMENTS ACT"

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on March 16, 2016

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 4723, the "Protecting Taxpayers by Recovering Improper Obamacare Subsidy Overpayments Act," a bill to amend the Internal Revenue Code of 1986 to provide for the recovery of improper overpayments resulting from certain Federally subsidized health insurance, on March 16, 2016. This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 4723, the "Protecting Taxpayers by Recovering Improper Obamacare Subsidy Overpayments Act"* (JCX-10-16), March 15, 2016. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Recovery of Improper Overpayments Resulting From Certain Federally Subsidized Health Insurance

Present Law

Premium assistance credit - in general

A refundable tax credit (the "premium assistance credit") is available for certain taxpayers who purchase health insurance (referred to as a "qualified health plan") for themselves and their families through an American Health Benefit Exchange ("Exchange").[2] The premium assistance credit, which is payable in advance directly to the insurer, subsidizes the purchase of a qualified health plan through an Exchange.[3]

The premium assistance credit is available for taxpayers with household incomes between 100 and 400 percent of the Federal poverty level ("FPL") for the family size involved who do not receive health insurance through an employer or a spouse's employer, as discussed below, and are not eligible for certain other types of coverage, such as Medicare or Medicaid. Household income is defined as the sum of (1) the taxpayer's modified adjusted gross income, plus (2) the aggregate modified adjusted gross incomes of all other individuals taken into account in determining that taxpayer's family size who are required to file a tax return for the taxable year. Modified adjusted gross income is defined as adjusted gross income increased by: (1) any amount excluded from gross income for citizens or residents living abroad,[4] (2) any tax-exempt interest received or accrued during the tax year, and (3) an amount equal to the portion of the taxpayer's social security benefits that is not included in gross income (that is, the amount of the taxpayer's social security benefits that are excluded from gross income).[5] To be eligible for the premium assistance credit, taxpayers who are married must file a joint return. Individuals who are listed as dependents on a return are ineligible for the premium assistance credit.

Generally, a taxpayer who is an employee and is offered minimum essential coverage[6] under an employer-sponsored health plan is ineligible for the premium assistance credit. However, if an employee's share of the premium for self-only coverage exceeds 9.66 percent (for 2016) of the employee's household income, or the plan's share of total allowed costs of benefits provided under the plan is less than 60 percent of such costs, and the employee declines the employer-offered coverage, the employee may be eligible for the premium assistance credit.

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[2] Sec. 36B. Unless otherwise specified, all section references are made to the Internal Revenue Code of 1986, as amended.

[3] Sections 1411 and 1412 of the Patient Protection and Affordable Care Act ("PPACA"), Pub. L. No. 111-148, provide rules relating to advance payment of the premium assistance credit.

[4] Sec. 911.

[5] The amount of social security benefits included in gross income is determined under section 86.

[6] Minimum essential coverage is defined in section 5000A(f).

Amount of credit

The premium assistance credit amount is generally the lower of (1) the premium for the qualified health plan in which the individual or family enrolls and (2) the premium for the second lowest cost silver plan[7] in the rating area where the individual resides, reduced by the individual's or family's share of premiums.[8] As shown in Table 1 below, an individual's or family's share of premiums is a certain percentage of household income for household income up to 133 percent of FPL and is determined on a sliding scale in a linear manner as household income rises from 133 percent of FPL to 400 percent of FPL.

Table 1.−Taxpayer's Share of Premiums (for 2016)[9]

Household income (expressed as a percent of FPL)	***Initial percentage of household income***	***Final percentage of household income***
100% up to 133%	2.03	2.03
133% up to 150%	3.05	4.07
150% up to 200%	4.07	6.41
200% up to 250%	6.41	8.18
250% up to 300%	8.18	9.66
300% up to 400%	9.66	9.66

[7] A qualified health plan is categorized by level (bronze, silver, gold or platinum), depending on its actuarial value, that is, the percentage of the plan's share of the total costs of benefits under the plan. A silver level plan must have an actuarial value of 70 percent.

[8] The premium assistance amount is determined on a monthly basis and the credit for a year is the sum of the monthly amounts.

[9] Rev. Proc. 2014-62, 2014-2 C.B. 948. The percentages are indexed to the excess of premium growth over income growth for the preceding calendar year. After 2018, if the aggregate amount of premium assistance credits (and cost-sharing reductions under section 1402 of PPACA) exceeds 0.504 percent of the gross domestic product for that year, the percentage of income is also adjusted to reflect the excess (if any) of premium growth over the rate of growth in the consumer price index for the preceding calendar year.

Reconciliation

A taxpayer on whose behalf advance payments of the premium assistance credit for a taxable year are made is required to file an income tax return to reconcile the advance payments with the credit to which the taxpayer is entitled for the taxable year.[10]

If the advance payments of the premium assistance credit exceed the amount of credit to which the taxpayer is entitled, the excess ("excess advance payments") is treated as an additional tax liability on the taxpayer's income tax return for the taxable year, subject to a limitation on the amount of liability in some cases.[11] For persons with household income below 400 percent of FPL, the liability for the overpayment for a taxable year is limited to a specific dollar amount (the "applicable dollar amount") as shown in Table 2 below.

Table 2.–Reconciliation Limit on Additional Tax Liability (for 2016)[12]

Household income (expressed as a percent of FPL)	***Applicable dollar amount***
Less than 200%	$600
At least 200% but less than 300%	$1,500
At least 300% but less than 400%	$2,550

If the advance payments of the premium assistance credit for a taxable year are less than the amount of the credit to which the taxpayer is entitled, the additional credit amount is also reflected on the taxpayer's income tax return for the year.

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[10] A taxpayer is not required to apply for advance payments and may instead just claim the credit on his or her income tax return.

[11] Section 35 also provides an advanceable, refundable credit for the purchase of health insurance, the health coverage tax credit ("HCTC"), for certain individuals. Section 35(g)(12) provides rules for coordination between HCTC and premium assistance credit eligibility and advance payments.

[12] Rev. Proc. 2015-53, 2015-44 I.R.B. 615. The applicable dollar amounts are indexed to reflect cost-of-living increases, with the amount of any increase rounded down to the next lowest multiple of $50. One-half of the applicable dollar amount shown in Table 2 applies to an unmarried individual who is not a surviving spouse or a head of household.

Description of Proposal

The proposal repeals the present-law provision under which, in the case of a taxpayer with household income below 400 percent of FPL, the additional tax liability resulting from excess advance payments is limited to the applicable dollar amount.[13] Thus, under the proposal, the full amount of the excess advance payments is treated as an additional tax liability.

Effective Date

The proposal is effective for taxable years beginning after December 31, 2016.

[13] The proposal includes a conforming change to section 35(g)(12).

B. Estimated Revenue Effect of the Proposal

The proposal is estimated to have the following effect on Federal fiscal year budget receipts for the period 2016-2026:

Fiscal Years
[Billions of Dollars]

Item	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
On-budget revenues……	---	0.3	1.6	1.7	1.7	1.7	1.8	1.8	1.9	2.0	2.0	7.1	16.6
Off-budget revenues……	---	[1]	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.1	-0.3	-0.7
Outlays [2]…	---	2.7	4.2	4.3	4.3	4.5	4.7	4.9	5.2	5.4	5.6	19.9	45.8
Total………	**---**	**3.0**	**5.7**	**5.9**	**6.0**	**6.1**	**6.4**	**6.7**	**7.0**	**7.3**	**7.5**	**26.7**	**61.6**

NOTE: Details may not add to totals due to rounding.
[1] Loss of less than $50 million.
[2] Reduction in outlays.