

**DESCRIPTION OF BUDGET RECONCILIATION
LEGISLATIVE RECOMMENDATIONS RELATING TO
REPEAL OF CERTAIN CONSUMER TAXES**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on March 8, 2017

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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CONTENTS

	<u>Page</u>
INTRODUCTION	1
A. Repeal of Annual Fee on Branded Prescription Pharmaceutical Manufacturers and Importers	2
B. Repeal of Annual Fee on Health Insurance Providers	4
C. Estimated Revenue Effects.....	5

INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of Budget Reconciliation Legislative Recommendations Relating to Repeal of Certain Consumer Taxes on March 8, 2017.¹ This document,² prepared by the staff of the Joint Committee on Taxation, provides a description of the legislative recommendations.

¹ As used herein, the Affordable Care Act (or “ACA”) refers to the combination of the Patient Protection and Affordable Care Act (“PPACA”), Pub. L. No. 111-148, and the Healthcare and Education Reconciliation Act of 2010 (“HCERA”), Pub. L. No. 111-152.

² This document may be cited as follows: Joint Committee on Taxation, *Description of Budget Reconciliation Legislative Recommendations Relating to Repeal of Certain Consumer Taxes* (JCX-10-17), March 7, 2017. This document can be found also on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended, unless otherwise stated.

A. Repeal of Annual Fee on Branded Prescription Pharmaceutical Manufacturers and Importers

Present Law

An annual fee is imposed on covered entities engaged in the business of manufacturing or importing branded prescription drugs for sale to any specified government program or pursuant to coverage under any such program.³ Fees collected are credited to the Medicare Part B trust fund.

The aggregate annual fee imposed on all covered entities is \$4 billion for calendar year 2017, \$4.1 billion for calendar year 2018, and \$2.8 billion for calendar year 2019 and thereafter. The aggregate fee is apportioned among the covered entities each year based on their relative share of branded prescription drug sales taken into account during the previous calendar year.

A covered entity's relative market share for a calendar year is the entity's branded prescription drug sales taken into account during the preceding calendar year as a percentage of the aggregate branded prescription drug sales of all covered entities taken into account during the preceding calendar year. Sales taken into account during any calendar year with respect to a covered entity is: (1) zero percent of sales not more than \$5 million; (2) 10 percent of sales over \$5 million but not more than \$125 million; (3) 40 percent of sales over \$125 million but not more than \$225 million; (4) 75 percent of sales over \$225 million but not more than \$400 million; and (5) 100 percent of sales over \$400 million.

A covered entity is any manufacturer or importer with gross receipts from branded prescription drug sales. All persons treated as a single employer under section 52(a) or (b) or under section 414(m) or (o) are treated as a single covered entity. In applying the single employer rules under 52(a) and (b), foreign corporations are not excluded. If more than one person is liable for payment of the fee, all such persons are jointly and severally liable for payment of such fee.

Branded prescription drug sales are sales of branded prescription drugs made to any specified government program, or pursuant to coverage under any such program. The term branded prescription drugs includes any drug which is subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act and for which an application was submitted under section 351(a) of such Act. Branded prescription drug sales do not include sales of any drug or biological product with respect to which an orphan drug tax credit was allowed for any taxable year under section 45C. The exclusion for orphan drug sales does not apply to any drug or biological product after such drug or biological product is approved by the Food and Drug Administration for marketing for any indication other than the rare disease or condition with respect to which the section 45C credit was allowed.

Specified government programs include: (1) the Medicare Part D program under part D of title XVIII of the Social Security Act; (2) the Medicare Part B program under part B of title XVIII of the Social Security Act; (3) the Medicaid program under title XIX of the Social

³ Sec. 9008 of PPACA, as amended.

Security Act; (4) any program under which branded prescription drugs are procured by the Department of Veterans Affairs; (5) any program under which branded prescription drugs are procured by the Department of Defense; or (6) the TRICARE retail pharmacy program under section 1074g of title 10, United States Code.

The fees are treated in the same manner as those excise taxes identified in subtitle F, “Procedure and Administration” for which the only avenue for judicial review is a civil action for refund. Thus, the fees may be assessed and collected using the procedures in subtitle F without regard to the restrictions on assessment in section 6213.

The fee is required to be paid no later than an annual payment date determined by the Secretary of the Treasury, but in no event later than September 30th each calendar year.

For purposes of section 275, relating to the nondeductibility of specified taxes, the fee is considered to be a nondeductible tax described in section 275(a)(6).

Description of Proposal

Under the proposal, the annual fee on branded prescription pharmaceutical manufacturers and importers applies for calendar years ending before 2018. Thus, the annual fee does not apply for any calendar year beginning after 2017.

Effective Date

The proposal is effective upon enactment.

B. Repeal of Annual Fee on Health Insurance Providers

Present Law

An annual fee applies to any covered entity engaged in the business of providing health insurance with respect to United States (“U.S.”) health risks.⁴ The aggregate annual fee for all covered entities is the applicable amount. The applicable amount is \$8 billion for calendar year 2014, \$11.3 billion for calendar years 2015 and 2016, \$13.9 billion for calendar year 2017, and \$14.3 billion for calendar year 2018. However, a one-year moratorium applies to the annual fee on health insurance providers for calendar year 2017. For calendar years after 2018, the applicable amount is indexed to the rate of premium growth.

The aggregate annual fee is apportioned among the providers based on a ratio designed to reflect relative market share of U.S. health insurance business. For each covered entity, the fee for a calendar year is an amount that bears the same ratio to the applicable amount as (1) the covered entity’s net premiums written during the preceding calendar year with respect to health insurance for any U.S. health risk, bears to (2) the aggregate net written premiums of all covered entities during such preceding calendar year with respect to such health insurance.

Description of Proposal

Under the proposal, the annual fee on health insurance providers applies only for calendar years beginning after 2013 and before 2017. Thus, the annual fee does not apply for any calendar year beginning after 2016.

Effective Date

The proposal is effective upon enactment.

⁴ Sec. 9010 of PPACA.

C. Estimated Revenue Effects

<u>Item</u>	<u>Fiscal Years</u> <u>[Billions of Dollars]</u>											
	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2017-21</u>	<u>2017-26</u>
Repeal annual fee on branded prescription pharmaceutical manufacturers and importers.....	---	-3.1	-2.7	-2.7	-2.7	-2.7	-2.7	-2.7	-2.7	-2.7	-11.2	-24.8
Repeal of annual fee on health insurance providers.....	---	-12.8	-13.5	-14.3	-15.1	-15.9	-16.8	-17.8	-18.7	-19.7	-55.7	-144.7

NOTE: Details may not add to totals due to rounding.