

**DESCRIPTION OF THE CHAIRMAN'S AMENDMENT  
IN THE NATURE OF A SUBSTITUTE TO H.R. 5825,  
TO AMEND THE INTERNAL REVENUE CODE OF 1986  
TO PROVIDE FOR REPORTING BY CERTAIN INVESTORS WITH  
RESPECT TO CERTAIN SPECIFIED MEDICAL CARE PROVIDERS**

Scheduled for Markup  
by the  
HOUSE COMMITTEE ON WAYS AND MEANS  
on February 12, 2020

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 on February 12, 2020 of H.R. 5825, to Amend The Internal Revenue Code of 1986 to Provide for Reporting by Certain Investors With Respect to Certain Specified Medical Care Providers.<sup>1</sup> This document, prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman’s Amendment in the Nature of a Substitute to H.R. 5825.<sup>2</sup>

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<sup>1</sup> H.R. 5825 was introduced on February 10, 2020. The Chairman’s Amendment in the Nature of a Substitute to H.R. 5825 makes a number of changes to the bill as introduced. This document describes the provisions of the Chairman’s Amendment in the Nature of a Substitute, and also includes descriptions of present law.

<sup>2</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman’s Amendment in the Nature of a Substitute to H.R. 5825, to Amend The Internal Revenue Code of 1986 to Provide for Reporting by Certain Investors With Respect to Certain Specified Medical Care Providers*, (JCX-5-20), February 11, 2020. This document can also be found on the Joint Committee on Taxation website at [www.jct.gov](http://www.jct.gov). All section references herein are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

## **A. Reporting by Certain Investors with Respect to Certain Specified Medical Care Providers**

### **Present Law**

#### **Public disclosure of information returns**

Tax-exempt organizations generally are required to file annual information returns, which generally are made public by law.<sup>3</sup> In particular, certain tax-exempt organizations must make their three most recent annual returns and application for tax exemption available for public inspection and copying.<sup>4</sup> In addition, the IRS must make available to the public annual returns of certain exempt organizations, certain charitable trusts, and certain deferred compensation plans.<sup>5</sup> The public can view electronic images of such returns, purchase hard or soft copies from the IRS, or request an inspection at an IRS office.<sup>6</sup> For tax years beginning after July 1, 2019, the IRS must make any return of an exempt organization required to be filed electronically available to the public in a machine-readable format as soon as practicable.<sup>7</sup>

#### **Penalties for failure to comply with information reporting requirements**

A variety of information reporting requirements apply to participants in certain transactions.<sup>8</sup> For example, a partnership is required to file an annual information return setting forth items of partnership information necessary to carry out the income tax (Form 1065).<sup>9</sup> A partnership also is required to furnish to each partner a statement of such partnership information as is relevant to the partner's income tax (Schedule K-1).<sup>10</sup> Failure to comply with the information reporting requirements may result in penalties.<sup>11</sup> Penalties may be imposed for a failure to file a required return or a failure to include any of the information required to be shown on such a return or to show the correct information. Certain penalties are calculated as a specific

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<sup>3</sup> Sec. 6104(b). Returns of unrelated business income tax ("UBIT") filed by exempt organizations also are made public. *Ibid.*

<sup>4</sup> Sec. 6104(d).

<sup>5</sup> Sec. 6104(b).

<sup>6</sup> See <https://www.irs.gov/charities-non-profits/copies-of-990-returns-available>, last updated January 10, 2020.

<sup>7</sup> Sec. 6104(b).

<sup>8</sup> Secs. 6031 through 6060.

<sup>9</sup> Sec. 6031(a).

<sup>10</sup> Sec. 6031(b).

<sup>11</sup> See, e.g., secs. 6652 and 6721 through 6725.

dollar amount for each day during which the failure continues, up to a specified maximum penalty.<sup>12</sup>

### **Partnership profits interests held in connection with performance of investment services**

Under section 1061, a three-year holding period applies in the case of certain net long-term capital gain with respect to any applicable partnership interest held by the taxpayer.<sup>13</sup>

An applicable partnership interest is any interest in a partnership that, directly or indirectly, is transferred to (or held by) the taxpayer in connection with the performance of services in any applicable trade or business.<sup>14</sup> The services may be performed by the taxpayer or by any other related person or persons in any applicable trade or business.

An applicable trade or business means any activity conducted on a regular, continuous, and substantial basis (regardless of whether the activity is conducted in one or more entities) that consists in whole or in part of: (1) raising or returning capital and (2) either (a) investing in (or disposing of) specified assets (or identifying specified assets for investing or disposition) or (b) developing specified assets.<sup>15</sup>

Specified assets are securities (generally as defined under rules for mark-to-market accounting for securities dealers), commodities (as defined under rules for mark-to-market accounting for commodities dealers), real estate held for rental or investment, cash or cash equivalents, options or derivative contracts with respect to such securities, commodities, real estate, cash or cash equivalents, as well as an interest in a partnership to the extent of the partnership's proportionate interest in the foregoing.<sup>16</sup>

The Secretary is directed to require reporting (at the time and in the manner determined by the Secretary) necessary to carry out the purposes of section 1061.<sup>17</sup> The penalties otherwise applicable to a failure to report to partners under section 6031(b) apply to failure to report under this requirement.

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<sup>12</sup> See, e.g., sec. 6652(d), (e), (h), (i), (l), (o), (p).

<sup>13</sup> Sec. 1061.

<sup>14</sup> Sec. 1061(c)(1). Exceptions to the definition of an applicable partnership interest apply (sec. 1061(c)(4)). An applicable partnership interest does not include any capital interest in a partnership giving the taxpayer a right to share in partnership capital commensurate with the amount of capital contributed (as of the time the partnership interest was received), or commensurate with the value of the partnership interest that is taxed under section 83 on receipt or vesting of the partnership interest. Further, an applicable partnership interest does not include an interest in a partnership directly or indirectly held by a C corporation.

<sup>15</sup> Sec. 1061(c)(2).

<sup>16</sup> Sec. 1061(c)(3).

<sup>17</sup> Sec. 1061(e).

## **Description of Proposal**

### **General rule**

The proposal adds a reporting requirement for certain investors with respect to certain specified medical care providers. Under the proposal, reporting persons are required to file annual information returns with respect to certain specified medical care providers in which the reporting person holds an interest.

### **Reporting person**

For purposes of the proposal, a person is a reporting person only if several requirements are satisfied. First, the reporting person must directly hold an interest in a specified medical care provider. Second, the reporting person (or persons related to the reporting person) must control the specified medical care provider. Third, the reporting person (or persons related to the reporting person) must be engaged in, or receive services from a service provider that is engaged in, an applicable trade or business in which the specified medical care provider is (directly or indirectly) an expanded specified asset. The third requirement is only satisfied if one or more persons (whether or not the reporting person) receive or hold an applicable partnership interest with respect to the applicable trade or business.

### **Definitions relevant to reporting person determination**

#### **Specified medical care provider**

A specified medical care provider generally is a partnership or corporation that is enrolled as a provider qualified to participate in and eligible for payments under Medicare, enrolled as a participating provider in a State plan under Medicaid, or both. Further, a specified medical care provider generally includes a partnership or corporation that employs one or more individuals enrolled as a provider under Medicare, Medicaid, or both, in the course of a trade or business that includes the provision of medical care.

#### **Related person**

For purposes of the proposal, persons are related to each other if such persons are described in section 267(b) or 707(b)(1), each using a 20-percent, rather than a 50-percent, threshold. Thus, for example, if a management company holds a 20-percent interest in a fund, the management company and the fund are related.

#### **Control**

Under the proposal, a person controls a corporation if the person owns more than 50 percent of the corporation's stock, by vote or by value. A person controls a partnership if the person owns more than a 50-percent interest in the partnership's capital or if the person owns more than a 50-percent interest in the partnership's profits.

For purposes of the control tests, constructive ownership rules under section 6038(e) apply. Furthermore, if the investment of any person is coordinated with the investment of any other person, each person is treated as holding all such coordinated investments.

#### Applicable partnership interest, applicable trade or business, and expanded specified asset

An applicable partnership interest, for purposes of the proposal, has the meaning ascribed to such term under section 1061, except that the definition of applicable trade or business is modified.

Specifically, for purposes of the proposal, the definition of applicable trade or business is modified by replacing “specified asset” with “expanded specified asset.” Thus, an applicable trade or business means any activity conducted on a regular, continuous, and substantial basis (regardless of whether the activity is conducted in one or more entities) that consists in whole or in part of: (1) raising or returning capital, and (2) either (a) investing in (or disposing of) expanded specified assets (or identifying expanded specified assets for such investing or disposition) or (b) developing expanded specified assets.

Expanded specified assets include specified assets (securities, commodities, certain real estate, cash, cash equivalents, certain options, and certain derivative contracts) and all partnership interests, regardless of the assets held by the partnership and regardless of whether the partnership is publicly traded.

#### **Information required to be reported**

With respect to each specified medical care provider with respect to which a person is a reporting person, the reporting person must electronically file a separate annual information return. The annual return must contain specified information relating to gross receipts, acquisitions and dispositions, real estate, and payments to related persons.

The specified information relating to gross receipts received by the specified medical care provider is as follows:

- Amounts received as reimbursement for any item or service under Medicare,
- Amounts received as reimbursement for any item or service under a State plan (or waiver of such plan) under Medicaid,
- Amounts pursuant to a negotiated rate with respect to any provider of health insurance,
- Amounts received in the sale of, or other arrangement with respect to, any receivable arising in connection with the provision of medical care (*e.g.*, amounts received from the sale of accounts receivable to a collection agency), and
- Other amounts received for the provision of medical care, including a separate statement of such amounts received from any provider of health insurance.

The specified information relating to acquisitions by a reporting person (or a related person) is as follows:

- The first date the reporting person (or a related person) controls the specified medical care provider,
- The addresses of real estate owned or leased by the specified medical care provider on such first date,
- The taxable income, subject to certain modifications, of the specified medical care provider for the last taxable year ending before such first date, and
- Debt incurred, guaranteed, or secured by the specified medical care provider (or a related person) if such debt was incurred, guaranteed, or secured in connection with the reporting person's (or a related person's) acquisition of control of the specified medical care provider.

The specified information relating to dispositions by a reporting person (or a related person) is as follows:

- The person who disposed of the interest in the specified medical care provider and information sufficient to establish the relationship between such person and the specified medical care provider,
- The date of disposition,
- Whether the reporting person (or a related person) retained control of the specified medical care provider, and
- The value of all consideration received in exchange for the interest disposed of.

The specified information relating to real estate owned or leased by the specified medical care provider is as follows:

- The addresses of all such real estate,
- Amounts paid as principal or interest on any debt which is secured by real estate, and a separate statement of such amounts paid to the reporting person or any person related to the reporting person,
- Amounts paid as rent, and a separate statement of such amounts paid to the reporting person or any person related to the reporting person, and
- Amounts received by the specified medical care provider for any interest in real property, and a separate statement of such amounts received from the reporting person or any person related to the reporting person.

The specified information relating to other payments to persons related to the specified medical care provider is as follows:

- Amounts paid as principal or interest on any debt not related to real estate to the reporting person or any person related to the reporting person,
- Amounts paid as rent for any property other than real property to the reporting person or any person related to the reporting person, and

- Other amounts paid to the reporting person or any person related to the reporting person.

The Secretary may require additional information to be reported on the annual information return.

### **Public availability**

The annual information returns are to be made publicly available by the Secretary as soon as practicable in a machine-readable format.

### **Penalties**

A reporting person who fails to file a complete and correct annual information return shall pay a \$5,000 penalty for each day during which the failure continues. The maximum penalty per any one return is \$1 million. As the penalty amount is a per-return amount, a reporting person holding interests in multiple specified medical care providers may be subject to a penalty in excess of \$1 million. The penalty does not apply if the failure to file a complete and correct return is due to reasonable cause and not to willful neglect.<sup>18</sup> The penalty is not subject to deficiency procedures under subchapter B of chapter 63 with respect to assessment or collection.

### **Regulatory authority**

The Secretary is directed to prescribe regulations or other guidance necessary to carry out the purposes of the proposal. Specifically, the proposal directs the Secretary to prescribe rules to prevent, to the extent practicable, more than one person from being required to report the same information. Thus, for example, regulations may provide that only a single person is a reporting person with respect to a single specified medical care provider. In addition, guidance is to address the time and manner of filing information returns required under the proposal and to prevent the use of intermediaries, agents, nominee ownership, and other arrangements to avoid the proposal. Guidance is also to require reporting to a person (by any person related to that person) of information that is otherwise unavailable to that person, to the extent that the information is necessary for the determination of whether that person is a reporting person or is information that is required to be reported by that person.

### **Effective Date**

The proposal applies to returns for taxable years of specified medical providers beginning after the date of enactment.

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<sup>18</sup> Sec. 6724(a).