

**DESCRIPTION OF H.R. 4,
THE “SMALL BUSINESS PAPERWORK MANDATE
ELIMINATION ACT OF 2011”**

Scheduled for Markup
By the
HOUSE COMMITTEE ON WAYS AND MEANS
on February 17, 2011

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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CONTENTS

	<u>Page</u>
INTRODUCTION	1
A. Repeal of Expansion of Information Reporting Requirements (sec. 2 of the bill and sec. 6041 of the Code).....	2

INTRODUCTION

The House Committee on Ways and Means has scheduled a markup on February 17, 2011. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of H.R. 4, the “Small Business Paperwork Mandate Elimination Act of 2011.”

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 4, the “Small Business Paperwork Mandate Elimination Act of 2011,”* (JCX-7-11), February 11, 2011. This document can also be found on our website at www.jct.gov.

**A. Repeal of Expansion of Information Reporting Requirements
(sec. 2 of the bill and sec. 6041 of the Code)**

Present Law

A variety of information reporting requirements apply under present law.² The primary provision governing information reporting by payors requires an information return by every person engaged in a trade or business who makes payments to any one payee aggregating \$600 or more in any taxable year in the course of that payor's trade or business.³ Reportable payments include compensation for both goods and services, and may include gross proceeds. Certain enumerated types of payments that are subject to other specific reporting requirements are carved out of reporting under this general rule by regulation.⁴ Another carveout excepts payments to corporations from reporting requirements.⁵

For payments made after December 31, 2011, the class of payments subject to reporting was expanded in two ways.⁶ First, the regulatory carveout for payments to corporations was expressly overridden by the addition of section 6041(i). In addition, information reporting requirements were expanded to include gross proceeds paid in consideration for any type of property. The payor is required to provide the recipient of the payment with an annual statement showing the aggregate payments made and contact information for the payor.⁷ The regulations generally except from reporting payments to exempt organizations, governmental entities, international organizations, or retirement plans.

Additionally, the requirement that businesses report certain payments is generally not applicable to payments by persons engaged in a passive investment activity. However, beginning in 2011, recipients of rental income from real estate generally are subject to the same

² Secs. 6031 through 6060.

³ Sec. 6041(a). Information returns are generally submitted electronically on Forms 1096 and Forms 1099, although certain payments to beneficiaries or employees may require use of Forms W-3 and W-2, respectively. Treas. Reg. sec. 1.6041-1(a)(2).

⁴ Sec. 6041(a) requires reporting of payments "other than payments to which section 6042(a)(1), 6044(a)(1), 6047(c), 6049(a) or 6050N(a) applies and other than payments with respect to which a statement is required under authority of section 6042(a), 6044(a)(2) or 6045[.]" The payments thus excepted include most interest, royalties, and dividends.

⁵ Treas. Reg. sec. 1.6041-3(p).

⁶ The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, sec. 9006 (March 23, 2010).

⁷ Sec. 6041(d). Specifically, the recipient of the payment is required to provide a Form W-9 to the payor, which enables the payee to provide the recipient of the payment with an annual statement showing the aggregate payments made and contact information for the payor. If a Form W-9 is not provided, the payor is required to "backup withhold" tax at a rate of 28 percent of the gross amount of the payment unless the payee has otherwise established that the income is exempt from backup withholding. The backup withholding tax may be credited by the payee against regular income tax liability, i.e., it is effectively an advance payment of tax, similar to the withholding of tax from wages.

information reporting requirements as taxpayers engaged in a trade or business.⁸ In particular, rental income recipients making payments of \$600 or more to a service provider (such as a plumber, painter, or accountant) in the course of earning rental income are required to provide an information return (typically Form 1099-MISC) to the IRS and to the service provider. Exceptions to this reporting requirement are made for (i) individuals who rent their principal residence on a temporary basis, including members of the military or employees of the intelligence community (as defined in section 121(d)(9)), (ii) individuals who receive only minimal amounts of rental income, as determined by the Secretary in accordance with regulations, and (iii) individuals for whom the requirements would cause hardship, as determined by the Secretary in accordance with regulations.⁹

Detailed rules are provided for the reporting of various types of investment income, including interest, dividends, and gross proceeds from brokered transactions (such as a sale of stock).¹⁰ In general, the requirement to file Form 1099 applies with respect to amounts paid to U.S. persons and is linked to the backup withholding rules of section 3406. Thus, a payor of interest, dividends or gross proceeds generally must request that a U.S. payee (other than certain exempt recipients) furnish a Form W-9 providing that person's name and taxpayer identification number.¹¹ That information is then used to complete the Form 1099.

Failure to comply with the information reporting requirements results in penalties, which may include a penalty for failure to file the information return,¹² and a penalty for failure to furnish payee statements¹³ or failure to comply with other various reporting requirements.¹⁴

⁸ Sec. 6041(h); Small Business Jobs Act of 2010, Pub. L. No. 111-240, sec. 2101 (Sept. 27, 2010).

⁹ Treasury has not promulgated regulations defining these "minimal amounts of rental income" or "hardship" cases.

¹⁰ Secs. 6042 (dividends), 6045 (broker reporting) and 6049 (interest), as well as the Treasury regulations thereunder.

¹¹ See Treas. Reg. sec. 31.3406(h)-3.

¹² Sec. 6721. The penalty for failure to file an information return generally is \$50 for each return for which such failure occurs. The total penalty imposed on a person for all failures during a calendar year cannot exceed \$250,000. Additionally, special rules apply to reduce the per-failure and maximum penalties where the failure is corrected within a specified period.

¹³ Sec. 6722. The penalty for failure to provide a correct payee statement is \$50 for each statement with respect to which such failure occurs, with the total penalty for a calendar year not to exceed \$100,000. Special rules apply that increase the per-statement and total penalties where there is intentional disregard of the requirement to furnish a payee statement.

¹⁴ Sec. 6723. The penalty for failure to timely comply with a specified information reporting requirement is \$50 per failure, not to exceed \$100,000 for a calendar year.

Explanation of Provision

Under the provision, the changes to section 6041 enacted under section 9006 of the Patient Protection and Affordable Care Act that provide rules for payments to corporations, provide additional regulatory authority and impose a reporting requirement with respect to gross proceeds from property, are repealed in their entirety.

Effective Date

The provision is effective upon date of enactment.