

**DESCRIPTION OF H.R. ____,
THE “COMPREHENSIVE 1099 TAXPAYER PROTECTION
AND REPAYMENT OF EXCHANGE SUBSIDY
OVERPAYMENTS 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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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. ____, the “Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011.”

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. ____, The “Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011”* (JCX-9-11), February 14, 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

This provision is effective for payments made after December 31, 2011.

**B. Repeal of Information Reporting Requirements
with Respect to Real Estate Expenses
(sec. 3 of the bill and sec. 6041 of the Code)**

Present Law

A variety of information reporting requirements apply under present law.¹⁵ 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.¹⁶ 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.¹⁷ Another carveout excepts payments to corporations from reporting requirements.¹⁸

For payments made after December 31, 2011, the class of payments subject to reporting was expanded in two ways.¹⁹ 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.²⁰ 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,

¹⁵ Secs. 6031 through 6060.

¹⁶ 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).

¹⁷ 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.

¹⁸ Treas. Reg. sec. 1.6041-3(p).

¹⁹ The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, sec. 9006 (March 23, 2010).

²⁰ 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.

beginning in 2011, recipients of rental income from real estate generally are subject to the same information reporting requirements as taxpayers engaged in a trade or business.²¹ 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.²²

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).²³ 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.²⁴ 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,²⁵ and a penalty for failure to furnish payee statements²⁶ or failure to comply with other various reporting requirements.²⁷

²¹ Sec. 6041(h); Small Business Jobs Act of 2010, Pub. L. No. 111-240, sec. 2101 (Sept. 27, 2010).

²² Treasury has not promulgated regulations defining these "minimal amounts of rental income" or "hardship" cases.

²³ Secs. 6042 (dividends), 6045 (broker reporting) and 6049 (interest), as well as the Treasury regulations thereunder.

²⁴ See Treas. Reg. sec. 31.3406(h)-3.

²⁵ 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.

²⁶ 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.

²⁷ 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, recipients of rental income from real estate who are not otherwise considered to be engaged in a trade or business of renting property are not subject to the same information reporting requirements as taxpayers who are considered to be engaged in a trade or business. As a result, 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 not required to provide an information return (typically Form 1099-MISC) to the IRS and to the service provider.

Effective Date

The provision is effective for payments made after December 31, 2010.

**C. Change Limitation on Repayment of Advance Premium Assistance
Credits for Coverage Under a Qualified Health Plan
(sec. 4 of the bill and sec. 36B of the Code)**

Present Law

Premium assistance credit

For taxable years ending after December 31, 2013, section 36B provides a refundable tax credit (the “premium assistance credit”) for eligible individuals and families who purchase health insurance through an exchange.²⁸ The premium assistance credit, which is refundable and payable in advance directly to the insurer, subsidizes the purchase of certain health insurance plans through an exchange.

To become entitled to an advance premium assistance credit under section 36B, an eligible individual enrolls in a plan offered through an exchange and reports his or her income to the exchange.²⁹ Based on the information provided to the exchange, the individual receives an advance premium assistance credit based on income and the Treasury pays the premium assistance credit amount directly to the insurance plan in which the individual is enrolled. The individual then pays to the plan in which he or she is enrolled the dollar difference between the premium assistance credit amount and the total premium charged for the plan.³⁰ Individuals who fail to pay all or part of the remaining premium amount are given a mandatory three-month grace period prior to an involuntary termination of their participation in the plan. Eligibility for the advance premium assistance credit is generally based on the individual’s income for the taxable year ending two years prior to the enrollment period.

The premium assistance credit is available for individuals (single or joint filers) 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.³¹ 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 (but only if such individuals are required to file a tax return for the taxable year). Modified adjusted gross income is defined as

²⁸ Individuals enrolled in multistate plans, pursuant to section 1334 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, are also eligible for the credit.

²⁹ Sec. 1412 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, describes the program for advance payment of the premium assistance credit.

³⁰ Although the credit is generally payable in advance directly to the insurer, individuals may elect to purchase health insurance out-of-pocket and apply to the IRS for the credit at the end of the taxable year. The amount of the reduction in premium as a result of the assistance credit is required to be included with each bill sent to the individual.

³¹ Individuals who are lawfully present in the United States but are not eligible for Medicaid because of their immigration status are treated as having a household income equal to 100 percent of FPL (and thus eligible for the premium assistance credit) as long as their household income does not actually exceed 100 percent of FPL.

adjusted gross income increased by: (1) the amount (if any) normally excluded by section 911 (the exclusion from gross income for citizens or residents living abroad), plus (2) any tax-exempt interest received or accrued during the tax year. To be eligible for the premium assistance credit, taxpayers who are married (within the meaning of section 7703) must file a joint return. Individuals who are listed as dependents on a return are ineligible for the premium assistance credit.

As described in Table 1 below, premium assistance credits are available on a sliding scale basis for individuals and families with household incomes between 100 and 400 percent of FPL to help offset the cost of private health insurance premiums. The premium assistance credit amount is determined based on the percentage of income the cost of premiums represents, rising from two percent of income for those at 100 percent of FPL for the family size involved to 9.5 percent of income for those at 400 percent of FPL for the family size involved. Beginning in 2014, the percentages of income are indexed to the excess of premium growth over income growth for the preceding calendar year. Beginning in 2018, if the aggregate amount of premium assistance credits and cost-sharing reductions³² 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. For purposes of calculating household size, individuals who are in the country illegally are not included.

Premium assistance credits, or any amounts that are attributable to them, cannot be used to pay for abortions for which federal funding is prohibited. Premium assistance credits are not available for months in which an individual has a free choice voucher under section 139A.

The low income premium credit phase-out

The premium assistance credit increases, on a sliding scale in a linear manner, as shown in the table below.

³² As described in section 1402 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148.

TABLE 1

| Household Income (expressed as a percent of FPL) | Initial Premium (percentage) | Final Premium (percentage) |
|---|---|---------------------------------------|
| 100% up to 133% | 2.0 | 2.0 |
| 133% up to 150% | 3.0 | 4.0 |
| 150% up to 200% | 4.0 | 6.3 |
| 200% up to 250% | 6.3 | 8.05 |
| 250% up to 300% | 8.05 | 9.5 |
| 300% up to 400% | 9.5 | 9.5 |

The premium assistance credit amount is tied to the cost of the second lowest-cost silver plan (adjusted for age) which: (1) is in the rating area where the individual resides, (2) is offered through an exchange in the area in which the individual resides, and (3) provides self-only coverage in the case of an individual who purchases self-only coverage, or family coverage in the case of any other individual. If the plan in which the individual enrolls offers benefits in addition to essential health benefits,³³ even if the State in which the individual resides requires such additional benefits, the portion of the premium that is allocable to those additional benefits is disregarded in determining the premium assistance credit amount.³⁴ Premium assistance credits may be used for any plan purchased through an exchange, including bronze, silver, gold and platinum level plans and, for those eligible,³⁵ catastrophic plans.

³³ As defined in section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148.

³⁴ A similar rule applies to additional benefits that are offered in multi-State plans, under section 1334 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148.

³⁵ Those eligible to purchase catastrophic plans either must have not reached the age of 30 before the beginning of the plan year, or have certification of an affordability or hardship exemption from the individual responsibility payment, as described in sections 5000A(e)(1) and 5000A(e)(5), respectively.

Minimum essential coverage and employer offer of health insurance coverage

Generally, if an employee is offered minimum essential coverage³⁶ in the group market, including employer-provided health insurance coverage, the individual is ineligible for the premium assistance credit for health insurance purchased through a State exchange.

If an employee is offered unaffordable coverage by his or her employer or the plan's share of provided benefits is less than 60 percent, the employee can be eligible for the premium assistance credit, but only if the employee declines to enroll in the coverage and satisfies the conditions for receiving a tax credit through an exchange. Unaffordable is defined as coverage with a premium required to be paid by the employee that is more than 9.5 percent of the employee's household income, based on self-only coverage.³⁷ The percentage of income that is considered unaffordable is indexed in the same manner as the percentage of income is indexed for purposes of determining eligibility for the credit (as discussed above). The Secretary of the Treasury is informed of the name and employer identification number of every employer that has one or more employees receiving a premium assistance credit.

Procedures for determining eligibility

For purposes of the premium assistance credit, during the open enrollment period for coverage during the next calendar year, exchange participants must provide information from their tax return from two years prior. For example, if during the 2013 open enrollment period an individual applies for a premium assistance credit for 2014, the individual must provide his or her tax return from 2012. The IRS is authorized to disclose to the Department of Health and Human Services limited tax return information to verify a taxpayer's income based on the most recent return information available to establish eligibility for the premium assistance credit. Existing privacy and safeguard requirements apply. Individuals who do not qualify for the premium assistance credit on the basis of their prior year income may apply for the premium assistance credit based on specified changes in circumstances. For individuals and families who did not file a tax return in the prior tax year, the Secretary of Health and Human Services is directed to establish alternative income documentation that may be provided to determine income eligibility for the premium assistance credit.

Reconciliation

If the premium assistance credit received through advance payment exceeds the amount of premium assistance credit to which the taxpayer is entitled for the taxable year, the liability for the excess advance payment must be reflected on the taxpayer's income tax return for the taxable year subject to a limitation on the amount of such liability. For persons with household income below 500 percent of FPL, the liability for the excess payment for a taxable year is limited to a specific dollar amount (the "applicable dollar amount") as shown in Table 2 below

³⁶ As defined in section 5000A(f).

³⁷ The 9.5 percent amount is indexed for calendar years beginning after 2014.

(one half of the applicable dollar amount shown in Table 2 for unmarried individuals who are not surviving spouses or filing as heads of households).³⁸

TABLE 2

| Household Income (expressed as a percent of FPL) | Applicable Dollar Amount |
|---|---------------------------------|
| Less than 200% | \$600 |
| At least 200% but less than 250% | \$1,000 |
| At least 250% but less than 300% | \$1,500 |
| At least 300% but less than 350% | \$2,000 |
| At least 350% but less than 400% | \$2,500 |
| At least 400% but less than 450% | \$3,000 |
| At least 450% but less than 500% | \$3,500 |

If the premium assistance credit for a taxable year received through advance payment is less than the amount of the credit to which the taxpayer is entitled for the year, the shortfall in the credit is also reflected on the taxpayer's tax return for the year.

The eligibility for and amount of the advance premium assistance credit is generally determined in advance of the coverage year, on the basis of household income and family size shown on the taxpayer's return for the taxable year from two years prior, and the monthly premiums for qualified health plans in the individual market in which the taxpayer, spouse and any dependent enroll in an exchange. Any advance premium assistance credit is paid during the year for which coverage is provided by the exchange. In the subsequent year, the amount of advance premium assistance credit is required to be reconciled with the allowable refundable premium assistance credit for the year of coverage. Generally, this reconciliation is to be

³⁸ Medicare and Medicaid Extenders Act of 2010, Pub. L. No. 111-309, sec. 208. Prior to the Medicare and Medicaid Extenders Act of 2010, for persons whose household income was below 400 percent of the FPL, the amount of the increase in tax was limited to \$400 (\$250 for unmarried individuals who are not surviving spouses or filing as heads of households).

accomplished on the tax return filed for the year of coverage, based on that year’s actual household income, family size, and premiums.

Separately, the provision requires that the exchange, or any person with whom it contracts to administer the insurance program, must report to the Secretary with respect to any taxpayer’s participation in the health plan offered by the Exchange. The information to be reported is information necessary to determine whether a person has received excess advance payments, identifying information about the taxpayer (such as name, taxpayer identification number, months of coverage) and any other person covered by that policy; the level of coverage purchased by the taxpayer; the total premium charged for the coverage, as well as the aggregate advance payments credited to that taxpayer; and information provided to the exchange for the purpose of establishing eligibility for the program, including changes of circumstances of the taxpayer since first purchasing the coverage. Finally, the party submitting the report must provide a copy to the taxpayer whose information is the subject of the report.

Explanation of Provision

Under the provision, the applicable dollar amount with respect to any excess advance payment of a taxpayer’s allowable premium assistance credit for a taxable year is revised as shown in Table 3 below (one half of the applicable dollar amount shown in Table 3 for unmarried individuals who are not surviving spouses or filing as heads of households).

TABLE 3

| Household Income (expressed as a percent of poverty line) | Applicable Dollar Amount |
|--|---------------------------------|
| Less than 200% | \$600 |
| At least 200% but less than 300% | \$1,500 |
| At least 300% but less than 400% | \$2,500 |

Persons with household incomes of 400 percent of FPL and above must repay the full amount of the premium assistance credit received through an advance payment.

Effective Date

The provision is effective for taxable years beginning after December 31, 2013.