

**DESCRIPTION OF H.R. 1892, THE
“TRADE ADJUSTMENT ASSISTANCE ACT (TAA),
AND FOR OTHER PURPOSES OF 2015”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on April 23, 2015

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



April 22, 2015
JCX-77-15

CONTENTS

| | <u>Page</u> |
|--|-------------|
| INTRODUCTION | 1 |
| A. Extension and Modification of Health Coverage Tax Credit | 2 |
| B. Child Tax Credit Not Refundable For Taxpayers Electing To Exclude Foreign Earned Income From Tax | 8 |
| C. Time for Payment of Corporate Estimated Taxes..... | 11 |

INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 1892, the “Trade Adjustment Assistance Act (TAA), and for Other Purposes of 2015,” a bill to extend the trade adjustment assistance program, and for other purposes, on April 23, 2015. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the revenue provisions of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R.1892, the “Trade Adjustment Assistance Act (TAA), and for other Purposes of 2015,”* (JCX-77-15), April 22, 2015. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Extension and Modification of Health Coverage Tax Credit

Present Law

Health Coverage Tax Credit

Eligible coverage months

In the case of an eligible individual, a refundable tax credit is provided for 72.5 percent of the individual's premiums for qualified health insurance of the individual and qualifying family members for each eligible coverage month beginning in the taxable year.² The credit is commonly referred to as the health coverage tax credit ("HCTC"). The credit is available only with respect to amounts paid by the individual for the qualified health insurance.

Eligibility for the credit is determined on a monthly basis. In general, an eligible coverage month is any month if (1) the month begins before January 1, 2014, and (2) as of the first day of the month, the individual is an eligible individual, is covered by qualified health insurance, the premium for which is paid by the individual, does not have other specified coverage, and is not imprisoned under Federal, State, or local authority. In the case of a joint return, the eligibility requirements are met if at least one spouse satisfies the requirements.

Eligible individuals

An eligible individual is an individual who is (1) an eligible Trade Adjustment Assistance ("TAA") recipient, (2) an eligible alternative TAA recipient, or (3) an eligible Pension Benefit Guaranty Corporation ("PBGC") pension recipient. In general, an individual is an eligible TAA recipient for a month if the individual (1) receives for any day of the month a trade readjustment allowance under the Trade Act of 1974 or would be eligible to receive such an allowance but for the requirement that the individual exhaust unemployment benefits before being eligible to receive an allowance and (2) with respect to such allowance, is covered under a required certification. An individual is an eligible alternative TAA recipient for a month if the individual participates in a certain program under the Trade Act of 1974 and receives a related benefit for the month. Generally, an individual is an eligible PBGC pension recipient for any month if the individual (1) is age 55 or over as of the first day of the month and (2) receives a benefit for the month, any portion of which is paid by the PBGC. A person who may be claimed as a dependent on another person's tax return is not an eligible individual. In addition, an otherwise eligible individual is not eligible for the credit for a month if, as of the first day of the month, the individual has certain specified coverage, such as certain employer-provided coverage or coverage under certain governmental health programs.

² Sec. 35. Qualifying family members are the individual's spouse and any dependent for whom the individual is entitled to claim a dependency exemption. Any individual who has certain specified coverage is not a qualifying family member. Except where otherwise specified, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

Qualified health insurance

Qualified health insurance eligible for the credit is: (1) coverage under a COBRA continuation provision;³ (2) State-based continuation coverage provided by the State under a State law that requires such coverage; (3) coverage offered through a qualified State high risk pool; (4) coverage under a health insurance program offered to State employees or a comparable program; (5) coverage through an arrangement entered into by a State and a group health plan, an issuer of health insurance coverage, an administrator, or an employer; (6) coverage offered through a State arrangement with a private sector health care coverage purchasing pool; (7) coverage under a State-operated health plan that does not receive any Federal financial participation; (8) coverage under a group health plan that is available through the employment of the eligible individual's spouse; (9) coverage under individual health insurance⁴ if the eligible individual was covered under individual health insurance during the entire 30-day period that ends on the date the individual became separated from the employment which qualified the individual for the TAA allowance, the benefit for an eligible alternative TAA recipient, or a pension benefit from the PBGC, whichever applies ("30-day requirement"); and (10) coverage under an employee benefit plan funded by a voluntary employee beneficiary association ("VEBA")⁵ established pursuant to an order of a bankruptcy court (or by agreement with an authorized representative).⁶

Qualified health insurance does not include any State-based coverage (*i.e.*, coverage described in (2)-(7) in the preceding paragraph) unless the State has elected to have such coverage treated as qualified health insurance and such coverage meets certain consumer-protection requirements.⁷ Such State coverage must provide that each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs eligibility certificate and pays the remainder of the premium. In addition, the State-based coverage cannot impose any pre-existing condition limitation with respect to qualifying individuals. State-based coverage cannot require a qualifying individual to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual who is not a qualified individual. Finally, benefits under the State-based coverage must be the same as (or substantially similar to) benefits provided to similarly situated individuals who are not qualifying individuals.

³ COBRA continuation provision is defined by section 9832(d)(1).

⁴ For this purpose, "individual health insurance" means any insurance that constitutes medical care offered to individuals other than in connection with a group health plan. Such term does not include Federal- or State-based health insurance coverage.

⁵ See section 501(c)(9) for the definition of a VEBA.

⁶ See 11 U.S.C. sec. 114.

⁷ For guidance on how a State elects a health program to be qualified health insurance for purposes of the credit, see Rev. Proc. 2004-12, 2004-1 C.B. 528.

A qualifying individual is an eligible individual who seeks to enroll in the State-based coverage and who has aggregate periods of creditable coverage⁸ of three months or longer, does not have other specified coverage, and is not imprisoned. However, State-based coverage that satisfies any or all of the consumer-protection requirements for State-based coverage with respect to all eligible individuals is also qualified health insurance for purposes of HCTC.⁹

Qualified health insurance does not include coverage under a flexible spending or similar arrangement or any insurance if substantially all of the coverage is for excepted benefits.

Advance payment of HCTC

The credit is available on an advance payment basis by means of payments by the Department of the Treasury (“Treasury”) once a qualified health insurance costs credit eligibility certificate is in effect.¹⁰ In some cases, Treasury may also make retroactive payments on behalf of a certified individual for qualified health insurance coverage for eligible coverage months occurring before the first month for which an advance payment is otherwise made on behalf of the individual. With respect to any taxable year, the amount which is allowed as HCTC for an eligible individual for a taxable year is reduced (but not below zero) by the aggregate amount of advance HCTC payments on behalf of the eligible individual for months beginning in the taxable year.

Premium assistance credit

For taxable years ending after December 31, 2013, a refundable tax credit (the “premium assistance credit”) is provided for eligible individuals and families who purchase health insurance through an American Health Benefit Exchange.¹¹ 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 American Health Benefit Exchange.

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 are not eligible for certain other health insurance. 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

⁸ Creditable coverage is determined under section 9801(c).

⁹ See Q&A-10 of Notice 2005-50, 2005-2 C.B. 14.

¹⁰ Sec. 7527.

¹¹ Section 36B.

plan¹² in the rating area where the individual resides, reduced by the individual's or family's share of premiums.

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 overpayment 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 400 percent of FPL, the liability for the overpayment for a taxable year is limited to a specific dollar amount which ranges from \$600 to \$2,500, depending on household income as a percentage of FPL.

Description of Proposal

Extension of HCTC

The proposal amends the definition of eligible coverage month for HCTC purposes to include months beginning before January 1, 2020, if the requirements for an eligible coverage month are otherwise met.¹³

Election of HCTC

In order to coordinate eligibility for the premium assistance credit with eligibility for HCTC, the proposal provides that, in order to be eligible for the HCTC for any eligible coverage month during a taxable year, the eligible individual must elect allowance of the HCTC. Further, except as the Secretary of Treasury may provide, the election applies for that coverage month and all subsequent eligible coverage months during the taxable year, must be made no later than the due date, with any extension, for filing his or her income tax return for the year, and is irrevocable. Further, the period for assessing any deficiency attributable to the election (or revocation of the election, if permitted) does not expire before one year after the date on which the Secretary of Treasury is notified of the election (or revocation). The taxpayer is not entitled to the premium assistance credit for any coverage month for which the individual elects the HCTC.

Qualified health insurance

The proposal eliminates the 30-day requirement as a requirement for individual health insurance to be qualified health insurance for purposes of the HCTC, but the proposal adds a requirement that the individual health insurance not be purchased through an American Health

¹² 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.

¹³ The proposal generally also provides for extension of the expired provisions of the Trade Act of 1974, Pub. L. No. 93-618, as amended, including provisions related to individuals eligible for trade adjustment assistance.

Benefit Exchange. The proposal otherwise extends pre-2014 law for qualified health insurance, including the rules for State-based coverage, and the treatment of COBRA continuation coverage and coverage under certain VEBA as qualified health insurance.

Advance payment

In the case of an eligible individual on whose behalf advance HCTC payment or advance premium assistance payment is made for months occurring during a taxable year and who subsequently elects HCTC for any eligible months,¹⁴ the individual's income tax liability is increased by the amount of the advance payment, but then offset by the amount of the HCTC allowed to the individual.¹⁵ If the individual on whose behalf the advance HCTC payment is made does not elect HCTC but instead claims the premium assistance credit for any coverage months, the increase in tax liability equal to the advance payment is offset by the amount of the allowable premium assistance credit, and any remaining tax liability attributable to the advance payment (and advance premium assistance payment, if any) is limited in the same way as if the advance HCTC payment had instead been advance premium assistance payment.

Under the proposal, the Secretary of Treasury is directed to establish, no later than one year after date of enactment of the proposal, a new program for making advance HCTC payments to providers of insurance on behalf of enrolled eligible individuals. The program shall only provide retroactive payments for coverage months occurring after the end of such one year period.

Agency outreach

The Secretaries of the Treasury, Health and Human Services, and Labor and the Director of Pension Benefit Guaranty Corporation are directed to carry out programs of public outreach, including on the Internet, to inform potential HCTC eligible individuals of the extension of HCTC availability and the availability of the election to claim such credit retroactively for coverage months beginning after December 31, 2013.

Effective Date

The proposal is generally effective for coverage months beginning after December 31, 2013. For any taxable year beginning after December 31, 2013, but before the date of enactment of the proposal, the election to claim the HCTC may be made any time on or after the date of enactment and before the expiration of the 3-year period of limitation with respect to such taxable year,¹⁶ and may be made on an amended income tax return. The requirement that, in

¹⁴ Receipt of advance HCTC payments during a year does not in itself constitute an election of the HCTC for the year.

¹⁵ If a premium assistance credit is also allowed to the individual for months before the first month for which the HCTC is elected, the amount of the individual's premium is also taken into account in applying the offset.

¹⁶ Section 6511(a).

order to be qualified health insurance, individual health insurance not be purchased through an American Health Benefit Exchange is effective for coverage months in taxable years beginning after December 31, 2015.

B. Child Tax Credit Not Refundable For Taxpayers Electing To Exclude Foreign Earned Income From Tax

Present Law

Child tax credit

An individual may claim a tax credit for each qualifying child under the age of 17. The amount of the credit per child is \$1,000.¹⁷ A child who is not a citizen, national, or resident of the United States cannot be a qualifying child.¹⁸

The aggregate amount of child credits that may be claimed is phased out for individuals with income over certain threshold amounts. Specifically, the otherwise allowable child tax credit is reduced by \$50 for each \$1,000 (or fraction thereof) of modified adjusted gross income over \$75,000 for single individuals or heads of households, \$110,000 for married individuals filing joint returns, and \$55,000 for married individuals filing separate returns. For purposes of this limitation, modified adjusted gross income includes certain otherwise excludable income earned by U.S. citizens or residents living abroad or in certain U.S. territories, described below.¹⁹

The credit is allowable against both the regular tax and against the alternative minimum tax (“AMT”). In addition, a taxpayer is allowed an “additional child tax credit” which is refundable to the extent the credit exceeds the taxpayer’s income tax (reduced by nonrefundable credits).²⁰ The additional child tax credit is equal to 15 percent of earned income in excess of a threshold dollar amount (the “earned income” formula).²¹ The threshold dollar amount is \$3,000 for taxable years beginning before 2018 (\$10,000 indexed for inflation since 2001 for taxable years beginning after 2017). For purposes of determining the additional child credit, earned income includes only earned income that is taken into account in determining taxable income. As a result, a citizen living abroad who earns more than the maximum section 911 exclusion (discussed below) will have residual earnings taken into account in determining taxable income, and thus will potentially be eligible for the additional child credit. For example, a married couple with earnings of \$113,800 in 2015 would have earnings that exceeded the maximum section 911 exclusion by \$13,000, or \$10,000 in excess of the additional child credit refundability threshold of \$3,000. If they had two qualifying children, the family would be potentially eligible for child credits of \$1,800 (\$200 of the otherwise allowed child credits is lost due to the income based phase-out of the child credit). The couple is entitled to either a standard

¹⁷ Sec. 24(a).

¹⁸ Sec. 24(c).

¹⁹ Sec. 24(b).

²⁰ Secs. 24(d) and 6401(b).

²¹ Sec. 24(d)(1)(B)(i).

deduction or itemized deductions and a deduction for personal exemptions and thus has no taxable income and no regular tax against which to claim any nonrefundable credits. However, the couple is eligible for refundable child credits of \$1,500 (15 percent of \$10,000). In contrast to this couple, a couple earning less than the maximum section 911 exclusion and who claimed the exclusion would have no earnings taken into account in determining taxable income, and thus would not be eligible for the additional child credit. Thus certain higher income citizens working abroad face lower U.S. tax liabilities than lower income citizens working abroad.

Families with three or more children may determine the additional child tax credit using the “alternative formula,” if this results in a larger credit than determined under the earned income formula. Under the alternative formula, the additional child tax credit equals the amount by which the taxpayer’s social security taxes exceed the taxpayer’s earned income tax credit (“EITC”).

Earned income is defined as the sum of wages, salaries, tips, and other taxable employee compensation plus net self-employment earnings. Combat pay is treated as earned income taken into account in determining taxable income, regardless of whether it is excluded from gross income for other purposes.

Foreign earned income exclusion

A U.S. citizen or resident living abroad may be eligible to elect to exclude from U.S. taxable income certain foreign earned income and foreign housing costs.²² This exclusion applies regardless of whether any foreign tax is paid on the foreign earned income or housing costs. To qualify for these exclusions, an individual (a “qualified individual”) must have his or her tax home in a foreign country and must be either (1) a U.S. citizen²³ who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire taxable year, or (2) a U.S. citizen or resident present in a foreign country or countries for at least 330 full days in any 12-consecutive-month period.

The maximum amount of foreign earned income that an individual may exclude in 2015 is \$100,800.²⁴ The maximum amount of foreign housing costs that an individual may exclude in 2015 is, in the absence of Treasury adjustment for geographic differences in housing costs,

²² Sec. 911.

²³ Generally, only U.S. citizens may qualify under the bona fide residence test. A U.S. resident alien who is a citizen of a country with which the United States has a tax treaty may, however, qualify for the section 911 exclusions under the bona fide residence test by application of a nondiscrimination provision of the treaty.

²⁴ Sec. 911(b)(2)(D)(i). This amount is adjusted annually for inflation. The exclusion amount is taken against the lowest marginal tax rates. See sec. 911(f).

\$16,128.²⁵ The combined foreign earned income exclusion and housing cost exclusion may not exceed the taxpayer's total foreign earned income for the taxable year. The taxpayer's foreign tax credit is reduced by the amount of the credit that is attributable to excluded income.

Description of Proposal

The proposal provides that any taxpayer who elects to exclude from gross income for a taxable year any amount of foreign earned income or foreign housing costs may not claim the refundable portion of the child tax credit for the taxable year.

Effective Date

The proposal is effective for taxable years beginning after December 31, 2014.

²⁵ Sec. 911(c)(1), (2). The Treasury Secretary has authority to issue guidance making geographic cost-based adjustments. See sec. 911(c)(2)(B). The Secretary has exercised this authority annually. The most recent guidance, Notice 2015-33 (April 14, 2015), includes adjustments for many locations. Under these adjustments, the maximum housing cost exclusion for any geographic area is \$114,300 for expenses for housing in Hong Kong, China.

C. Time for Payment of Corporate Estimated Taxes

Present Law

In general, corporations are required to make quarterly estimated tax payments of their income tax liability.²⁶ For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15. The amount of any required estimated payment is 25 percent of the required annual payment.²⁷ The required annual payment is 100 percent of the tax liability for the taxable year or the preceding taxable year. The option to use the preceding taxable year is not available if the preceding taxable year was not a 12-month taxable year or the corporation did not file a return in the preceding taxable year showing a liability for tax. Further, in the case of a corporation with taxable income of at least \$1 million in any of the three immediately preceding taxable years, the option to use the preceding taxable year is only available for the first installment of such corporation's taxable year.²⁸ In addition, in the case of a corporation with assets of at least \$1 billion (determined as of the end of the preceding taxable year), payments due in July, August or September of 2017, are increased to 100.25 percent of the payment otherwise due.²⁹ For each of the periods affected, the next required payment is reduced accordingly (*i.e.*, payments due in October, November, or December of 2017 are reduced to 99.75 percent of the payment otherwise due).

Description of Proposal

In the case of a corporation with assets of at least \$1 billion (determined as of the end of the preceding taxable year), the proposal increases the amount of the required installment of estimated tax otherwise due in July, August, or September of 2020 by 2.75 percent of such amount (determined without regard to any increase in such amount not contained in the Internal Revenue Code) (*i.e.*, payments due in July, August or September of 2020, are increased to 102.75 percent of the payment otherwise due). The next required installment is reduced accordingly (*i.e.*, payments due in October, November, or December of 2020 are reduced to 97.25 percent of the payment otherwise due).

Effective Date

The proposal is effective on the date of enactment of the Act.

²⁶ Sec. 6655.

²⁷ Sec. 6655(d)(1).

²⁸ Sec. 6655(d)(2) and (g)(2).

²⁹ See also Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 112th Congress (JCS-2-13)*, February 2013, pp. 230 - 232.