DESCRIPTION OF THE CHAIRMAN'S MARK OF A PROPOSAL TO CLARIFY SPECIAL RULE FOR CERTAIN GOVERNMENTAL PLANS

Scheduled for Markup
by the
SENATE COMMITTEE ON FINANCE
on February 11, 2015

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

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INTRODUCTION

The Senate Committee on Finance has scheduled a committee markup on February 11, 2015, of a proposal to clarify a special rule for certain governmental health plans. This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the proposal.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Mark of a Proposal to Clarify Special Rule for Certain Government Plans* (JCX-26-15), February 9, 2015. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Clarification of Special Rule for Certain Governmental Plans

Present Law

Reimbursements under an employer-provided accident or health plan for medical care expenses for employees, their spouses, their dependents, and adult children under age 27 are excludible from gross income.[2] However, in order for these reimbursements to be excluded from income, the plan may reimburse expenses of only the employee and the employee's spouse, dependents, and children under age 27. In the case of a deceased employee, the plan generally may reimburse medical expenses of only the employee's surviving spouse, dependents and children under age 27. If a plan reimburses expenses of any other beneficiary, all expense reimbursements under the plan are included in income, including reimbursements of expenses of the employee and the employee's spouse, dependents and children under age 27 (or the employee's surviving spouse, dependents and children under age 27).[3]

Under a limited exception, reimbursements under a plan do not fail to be excluded from income solely because the plan provides for reimbursements of medical expenses of a deceased employee's beneficiary, without regard to whether the beneficiary is the employee's surviving spouse, dependent, or child under age 27.[4] In order for the exception apply, the plan must have provided, on or before January 1, 2008, for reimbursement of the medical expenses of a deceased employee's beneficiary. In addition, the plan must be funded by a medical trust (1) that is established in connection with a public retirement system, and (2) that either has been authorized by a State legislature, or has received a favorable ruling from the IRS that the trust's income is not includible in gross income by reason of the exclusion for income of a State or political subdivision.[5] This exception preserves the exclusion for reimbursements of expenses of the employee and the employee's spouse, dependents, and children under age 27 (or the employee's surviving spouse, dependents, and children under age 27). Reimbursements of expenses of other beneficiaries are included in income.

Description of Proposal

The proposal expands the exception to apply to plans funded by medical trusts in addition to those covered under present law. As expanded, the exception would apply to a plan funded by a medical trust (1) that is either established in connection with a public retirement system or established by or on behalf of a State or political subdivision thereof, and (2) that either has been authorized by a State legislature or has received a favorable ruling from the IRS that the trust's income is not includible in gross income by reason of either the exclusion for income of a State

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[2] Sec. 105(b). Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

[3] Rev. Rul. 2006-36, 2006-2 C.B. 353. The ruling is effective for plan years beginning after December 31, 2008, in the case of plans including certain reimbursement provisions on or before August 14, 2006.

[4] Sec. 105(j).

[5] This exclusion is provided under Code section 115.

or political subdivision or the exemption from income tax for a voluntary employees' beneficiary association ("VEBA").[6] The plan would still be required to have provided, on or before January 1, 2008, for reimbursement of the medical expenses of a deceased employee's beneficiary.

The proposal also clarifies that this exception preserves the exclusion for reimbursements of expenses of the employee and the employee's spouse, dependents, and children under age 27 (or the employee's surviving spouse, dependents, and children under age 27) and that, as under present law, reimbursements of expenses of other beneficiaries are included in income.

Effective Date

The proposal is effective with respect to payments made after the date of enactment of the proposal.

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[6] Tax-exempt status for a VEBA is provided under Code section 501(c)(9).

B. Estimated Revenue Effect

Fiscal Years [Millions of Dollars]													
Item	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**	**2025**	**2015-20**	**2015-25**
Total Revenues…...	[1]	[1]	[1]	[1]	[1]	[1]	-1	-1	-1	-1	-1	-3	-5
Off-budget effects…...….	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[1]	-2	-3

NOTE: Details may not add to totals due to rounding.
[1] Loss of less than $500,000.

C. Increase Continuous Levy Authority on Payments to Medicare Providers and Suppliers

Present Law

In general

Levy is the administrative authority of the IRS to seize a taxpayer's property, or rights to property, to pay the taxpayer's tax liability.[7] Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,[8] the property is not exempt from levy,[9] and the IRS has provided both notice of intention to levy[10] and notice of the right to an administrative hearing (the notice is referred to as a "collections due process notice" or "CDP notice" and the hearing is referred to as the "CDP hearing")[11] at least 30 days before the levy is made. A levy on salary or wages generally is continuously in effect until released.[12] A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.[13]

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.[14]

The CDP notice (and pre-levy CDP hearing) is not required if: (1) the Secretary finds that collection would be jeopardized by delay; (2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund; (3) the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served; or (4) the Secretary has served a Federal contractor levy. In each of these four cases,

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[7] Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.

[8] *Ibid*.

[9] Sec. 6334.

[10] Sec. 6331(d).

[11] Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.

[12] Secs. 6331(e) and 6343.

[13] Sec. 6321.

[14] Secs. 6331(d)(3), 6861.

however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.[15]

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997[16] authorized the establishment of the Federal Payment Levy Program ("FPLP"), which allows the IRS to continuously levy up to 15 percent of certain "specified payments" by the Federal government if the payees are delinquent on their tax obligations. With respect to payments to vendors of goods, services, or property sold or leased to the Federal government, the continuous levy may be up to 100 percent of each payment.[17] For payments to Medicare providers and suppliers, the levy is up to 15 percent for payments made within 180 days after December 19, 2014. For payments made after that date, the levy is up to 30 percent.[18]

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by Treasury's Bureau of Fiscal Service ("BFS"), such as certain Social Security benefit and Federal wage records. When these records match, the delinquent taxpayer is provided both the notice of intention to levy and the CDP notice. If the taxpayer does not respond after 30 days, the IRS can instruct BFS to levy the taxpayer's Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or the IRS releases the levy.

Description of Proposal

The proposal provides that the present limitation of 30 percent of certain specified payments be increased by an amount sufficient to offset the estimated revenue loss of the provision described in Part A, above.

Effective Date

The proposal is effective for payments made after 180 days after the date of enactment.

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[15] Sec. 6330(f).

[16] Pub. L. No. 105-34.

[17] Sec. 6331(h)(3).

[18] Pub. L. No. 113-295, Division B.