GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN 2016

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PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON TAXATION

February 2017

JCX-4-17

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SUMMARY CONTENTS

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INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation in consultation with the staffs of the House Committee on Ways and Means and the Senate Committee on Finance, provides an explanation of tax legislation enacted in 2016. The explanation follows the chronological order of the tax legislation as signed into law.

For each provision, the document includes a description of present law, reasons for change (if provided by a Committee report), explanation of the provision and effective date. Present law describes the law in effect immediately prior to enactment and does not reflect changes to the law made by the provision or by subsequent legislation. In a case where a Committee report accompanies a bill, this document is based on the language of the report.

Section references are to the Internal Revenue Code of 1986, as amended, (the "Code") unless otherwise indicated.

Part One is an explanation of the revenue provision of the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. No. 114-125).

Part Two is an explanation of the revenue provisions of the Airport and Airway Extension Act of 2016 (Pub. L. No. 114-141) and the FAA Extension, Safety and Security Act of 2016 (Pub. L. No. 114-190).

Part Three is an explanation of the Recovering Missing Children Act (Pub L. No. 114-184).

Part Four is an explanation of the United States Appreciation for Olympians and Paralympians Act of 2016 (Pub. L. No. 114-239).

Part Five is an explanation of the revenue provisions of the 21st Century Cures Act (Pub. L. No. 114-255).

Part Six is an explanation of the Combat-Injured Veterans Tax Fairness Act of 2016 (Pub. L. No. 114-292).

The Appendix provides the estimated budget effects of tax legislation enacted in 2016.

The first footnote in each Part gives the legislative history of the Act explained in that Part.

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[1] This document may be cited as follows: Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in 2016* (JCX-4-17), February 2017.

PART ONE: TRADE FACILITATION AND TRADE ENFORCEMENT ACT OF 2015 (PUBLIC LAW 114-125)[2]

A. Increase in Penalty for Failure to File a Tax Return (sec. 921 of the Act and Sec. 6651 of the Code)

Present Law

The Federal tax system is one of "self-assessment," *i.e.*, taxpayers are required to declare their income, expenses, and ultimate tax due, while the IRS has the ability to propose subsequent changes. This voluntary system requires that taxpayers comply with deadlines and adhere to the filing requirements. While taxpayers may obtain extensions of time in which to file their returns, the Federal tax system consists of specific due dates of returns. In order to foster compliance in meeting these deadlines, Congress has enacted a penalty for the failure to timely file tax returns.[3]

A taxpayer who fails to file a tax return on or before its due date is subject to a penalty equal to five percent of the net amount of tax due for each month that the return is not filed, up to a maximum of 25 percent of the net amount.[4] If the failure to file a return is fraudulent, the taxpayer is subject to a penalty equal to 15 percent of the net amount of tax due for each month the return is not filed, up to a maximum of 75 percent of the net amount.[5] The net amount of tax due is the amount of tax required to be shown on the return reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credits against tax which may be claimed on the return.[6] The penalty will not apply if it is shown that the failure to file was due to reasonable cause and not willful neglect.[7]

If a return is filed more than 60 days after its due date, and unless it is shown that such failure is due to reasonable cause, then the failure to file penalty may not be less than the lesser of $135 or 100 percent of the amount required to be shown as tax on the return. If a penalty for failure to file and a penalty for failure to pay tax shown on a return both apply for the same month, the amount of the penalty for failure to file for such month is reduced by the amount of

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[2] H.R. 644. The House Committee on Ways and Means reported H.R. 644 ("Fighting Hunger Incentive Act of 2015") on February 9, 2015 (H.R. Rep. No. 114-18). The House passed H.R. 644 on February 12, 2015. The Senate passed the bill with an amendment on May 14, 2015. A conference was held and the Conference Report was filed on December 9, 2015 (H. R. Rep. No. 114-376). The Conference Report was agreed to in the House on December 11, 2015 and agreed to in the Senate on February 11, 2016. The President signed the bill on February 24, 2016.

[3] See *United States v. Boyle*, 469 U.S. 241, 245 (1985).

[4] Sec. 6651(a)(1).

[5] Sec. 6651(f).

[6] Sec. 6651(b)(1).

[7] Sec. 6651(a)(1).

the penalty for failure to pay tax shown on a return.[8] If a return is filed more than 60 days after its due date, then the penalty for failure to pay tax shown on a return may not reduce the penalty for failure to file below the lesser of $135 or 100 percent of the amount required to be shown on the return.[9]

The failure to file penalty applies to all returns required to be filed under subchapter A of Chapter 61 (relating to income tax returns of an individual, fiduciary of an estate or trust, or corporation; self-employment tax returns, and estate and gift tax returns), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), and subchapter A of chapter 53 (relating to machine guns and certain other firearms).[10] The failure to file penalty is adjusted annually to account for inflation. The failure to file penalty does not apply to any failure to pay estimated tax required to be paid by section 6654 or 6655.[11]

Explanation of Provision

Under the provision, if a return is filed more than 60 days after its due date, and unless it is shown that such failure is due to reasonable cause, then the failure to file penalty may not be less than the lesser of $205 or 100 percent of the amount required to be shown as tax on the return.

Effective Date

The provision applies to returns with filing due dates (including extensions) after December 31, 2015.

[8] Sec. 6651(c)(1).

[9] *Ibid.*

[10] Sec. 6651(a)(1).

[11] Sec. 6651(e).

PART TWO: AIRPORT AND AIRWAY EXTENSIONS (PUBLIC LAWS 114-141[12] AND 114-190[13])

A. Extensions of Spending Authority and Taxes Funding Airport and Airway Trust Fund (secs. 4083, 4801, 4261, 4271, and 9502 of the Code)

Present Law

Taxes dedicated to the Airport and Airway Trust Fund

Excise taxes are imposed on amounts paid for commercial air passenger and freight transportation and on fuels used in commercial and noncommercial (*i.e.*, transportation that is not "for hire") aviation to fund the Airport and Airway Trust Fund.[14] The present aviation excise taxes and rates are as follows:

Tax (and Code section)	Tax Rates
Domestic air passengers (sec. 4261)	7.5 percent of fare, plus $4.00 (2016) per domestic flight segment generally[15]

[12] H.R. 4721. The House passed H.R. 4721 on March 14, 2016. The Senate passed the bill with an amendment on March 17, 2016. The House agreed to the Senate amendment on March 21, 2016. The President signed the bill on March 30, 2016.

[13] H.R. 636. The House Committee on Ways and Means reported H.R. 636 ("America's Small Business Tax Relief Act of 2015") on February 9, 2015 (H.R. Rep. No. 114-21, Part I). The House passed the bill on February 13, 2015. The Senate passed the bill with amendments on April 19, 2016. The House agreed to the Senate amendments with further amendments on July 11, 2016. The Senate agreed to the House amendments to the Senate amendments on July 13, 2016. The President signed the bill on July 15, 2016.

[14] Air transportation through U.S. airspace that neither lands in nor takes off from a point in the United States (or the 225-mile zone, described below) is exempt from the aviation excise taxes, but the transportation provider is subject to certain "overflight fees" imposed by the Federal Aviation Administration pursuant to Congressional authorization.

[15] The domestic flight segment portion of the tax is adjusted annually (effective each January 1) for inflation (adjustments based on the changes in the consumer price index (the "CPI")). Special rules apply to air transportation between the continental United States and Alaska or Hawaii and between Alaska and Hawaii. The portion of such transportation that is not within the United States (*e.g.*, the portion over the Pacific Ocean) is not subject to the 7.5-percent domestic air passenger excise tax. In addition to this pro rated *ad valorem* tax, an $8.90 (2016) international tax rate for the excluded portion of the travel is imposed. The domestic flight segment component of tax applies under the same rules as for flights within the continental United States. Further, transportation within Alaska or Hawaii is taxed in the same manner as domestic transportation within the continental United States.

Tax (and Code section)	Tax Rates
International air passengers (sec. 4261)	$17.80 (2016) per arrival or departure[16]
Amounts paid for right to award free or reduced rate passenger air transportation (sec. 4261)	7.5 percent of amount paid
Air cargo (freight) transportation (sec. 4271)	6.25 percent of amount charged for domestic transportation; no tax on international cargo transportation
Aviation fuels (sec. 4081):[17]	
Commercial aviation	4.3 cents per gallon
Non-commercial (general) aviation:	
Aviation gasoline	19.3 cents per gallon
Jet fuel	21.8 cents per gallon
Fractional aircraft fuel surtax (sec. 4043)	14.1 cents per gallon

The Airport and Airway Trust Fund excise taxes (except for 4.3 cents per gallon of the taxes on aviation fuels and the 14.1 cents per gallon fractional aircraft fuel surtax) are scheduled to expire after March 31, 2016. The 4.3-cents-per-gallon fuels tax rate is permanent.

With respect to fractional aircraft, the exemption from the excise tax on commercial transportation for fractional aircraft is scheduled to expire after March 31, 2016.[18] The fractional aircraft fuel surtax expires after September 30, 2021.

Airport and Airway Trust Fund expenditure provisions

The Airport and Airway Trust Fund was established in 1970 to finance a major portion of national aviation programs (previously funded entirely with General Fund revenues). Operation of the Trust Fund is governed by parallel provisions of the Code and authorizing statutes.[19] The Code provisions govern deposit of revenues into the Trust Fund and approve expenditure

[16] The international arrival and departure tax rate is adjusted annually for inflation (measured by changes in the CPI).

[17] Like most other taxable motor fuels, aviation fuels are subject to an additional 0.1-cent-per-gallon excise tax to fund the Leaking Underground Storage Tank ("LUST") Trust Fund.

[18] Sec. 4261(i).

[19] Sec. 9502 and 49 U.S.C. sec. 48101, *et. seq*.

purposes in authorizing statutes as in effect on the date of enactment of the latest authorizing Act. The authorizing Acts provide for specific Trust Fund expenditure programs.

No expenditures are permitted to be made from the Airport and Airway Trust Fund after March 31, 2016. The purposes for which Airport and Airway Trust Fund monies are permitted to be expended are fixed as of the date of enactment of the Airport and Airway Extension Act of 2015; therefore, the Code must be amended in order to authorize new Airport and Airway Trust Fund expenditure purposes.[20] The Code contains a specific enforcement provision to prevent expenditure of Trust Fund monies for purposes not authorized under section 9502.[21] This provision provides that, should such unapproved expenditures occur, no further aviation excise tax receipts will be transferred to the Trust Fund. Rather, the aviation taxes will continue to be imposed, but the receipts will be retained in the General Fund.

Explanation of Provisions

Pub. L. No. 114-141 ("Airport and Airway Extension Act of 2016")

Sections 201 and 202 of the Act extend the taxes, expenditure authority, and exemption for fractional aircraft transportation from the taxes on commercial aviation transportation through July 15, 2016.

Pub. L. No. 114-190 ("FAA Extension, Safety and Security Act of 2016")

Sections 1201 and 1202 of the Act extend the taxes, expenditure authority, and exemption for fractional aircraft transportation from the taxes on commercial aviation transportation through September 30, 2017.

[20] Sec. 9502(d).

[21] Sec. 9502(e)(1).

PART THREE: RECOVERING MISSING CHILDREN ACT (PUBLIC LAW 114-184)[22]

A. Disclosure of Certain Return Information Relating to Missing or Exploited Children Investigations (sec. 2 of the Act and sec. 6103 of the Code)

Present Law

Overview of Section 6103

General rule: returns and return information are confidential

Section 6103 provides the general rule that returns and return information are confidential. Section 6103 also states that returns and return information are not to be disclosed unless such disclosure is specifically authorized in section 6103 or other provision of the Code.[23]

Definition of return

A "return" means any tax or information return, declaration of estimated tax, or claim for refund which, under the Code, is required (or permitted) to be filed on behalf of, or with respect to, any person. It also includes any amendment, supplemental schedule or attachment filed with the tax return, information return, declaration of estimated tax, or claim for refund. For example, Form W-2, Wage and Tax Statement, is an information return, and is the return of both the employer who filed it with the IRS and the employee with respect to whom it was filed.

Definition of return information

The Code defines "return information" broadly. It includes a taxpayer's identity (the name of the person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (Taxpayer Identification Number or Social Security number or a combination

[22] H.R. 3209. The Committee on Ways and Means reported H.R. 3209 on May 10, 2016 (H.R. Rep. No. 114-542) and the House passed the bill on the same date. The Senate Committee on Finance was discharged from further consideration of the bill on June 16, 2016, and the Senate passed the bill on the same date. The President signed the bill on June 30, 2016.

[23] See section 6103(c) (disclosure by taxpayer consent); 6103(d) (disclosure to State tax officials); 6103(e) (disclosure to persons having material interest); 6103(f) (disclosure to committees of Congress); 6103(g) (disclosure to the President and certain other persons); 6103(h) (disclosure to Federal officers and employees for tax administration purposes); 6103(i) (disclosure to Federal officers and employees for administration of Federal laws not relating to tax administration); 6103(j) (statistical use); 6103(k) (disclosure of certain returns and return information for tax administration purposes); 6103(l) (disclosure for purposes other than tax administration); 6103(m) (disclosure of taxpayer identity information); 6103(n) (tax administration contractors); and 6103(o) (disclosure of return and return information with respect to certain taxes).

thereof). In addition to taxpayer identity, return information includes any information gathered by the IRS with regard to taxpayer's liability under the Code.[24]

Definition of "taxpayer return information"

"Taxpayer return information" is another defined term for purposes of section 6103 and is a subset of return information. "Taxpayer return information" means return information that is filed with, or furnished to, the IRS by or on behalf of the taxpayer to whom such return information relates. For example, information filed with the IRS by a taxpayer's attorney or accountant is taxpayer return information. Information transcribed directly from a taxpayer's return is taxpayer return information. The distinction between return information and taxpayer return information is significant for disclosures in non-tax criminal matters for which a court order generally is required to obtain "taxpayer return information."

Recordkeeping, safeguards, penalties for unauthorized disclosure

Section 6103 requires that certain recordkeeping and safeguard requirements be met by the certain recipients of returns and return information (section 6103(p)(4)) as a condition of receiving such information. These requirements establish a system of records to keep track of disclosure requests and disclosures, ensure that the information is securely stored, and that access to the information is restricted to authorized persons. These requirements and restrictions are intended to ensure that an individual's right to privacy is not unduly compromised and the information is not misused or improperly disclosed. The IRS also must submit reports to the

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[24] In addition to a taxpayer's identity, return information also is:

- the nature, source or amount of income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments;
- whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing;
- any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense;
- any part of any written determination or any background file document relating to such written determination which is not open to public inspection under section 6110;
- any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to the agreement or any application for an advance pricing agreement; and
- any agreement under section 7121 (relating to closing agreements), and any similar agreement, and any background information related to such agreement or request for such agreement (sec. 6103(b)(2)).

The term "return information" does not include data in a form that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. However, return information with the identifiers (name, address, SSN) simply removed is still protected by section 6103.

Joint Committee on Taxation and to the public regarding requests for and disclosures made of returns and return information 90 days after the close of the calendar year (sec. 6103(p)(3)).

Criminal sanctions apply to the unauthorized disclosure or inspection of returns and return information (secs. 7213, 7213A, and 7431) including fines, jail time, and for Federal employees, dismissal or discharge from office upon conviction.

Disclosure exception for non-tax criminal purposes

Disclosure of returns and return information pursuant to *ex parte* court order

A Federal agency enforcing a non-tax criminal law must obtain an *ex parte* court order to receive a return or taxpayer return information (*i.e.*, that information submitted by or on behalf of a taxpayer to the IRS) (sec. 6103(i)(1)).[25] Only specified Federal law enforcement officials--the Attorney General, Deputy Attorney General, Assistant Attorney Generals, United States Attorneys, Independent Counsels, or an attorney in charge of an organized crime strike force may authorize an application for the order.

A judge or magistrate may grant the application for court order if it is determined, on the basis of the facts submitted by the applicant, that:

- there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;
- there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act;
- the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act; and
- the information sought reasonably cannot be obtained, under the circumstances, from another source.

Pursuant to the *ex parte* order, the information may be disclosed to officers and employees of the Federal agency who are personally and directly engaged in (1) the preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is a party, (2) any investigation which may result in such a proceeding, or (3) any Federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party. The information can be used solely by such officers and employees in such preparation, investigation or grand jury proceeding.

With respect to terrorist activities, an order may be granted if there is (1) reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to a terrorist incident, threat or activity, and (2)

[25] Return information other than that submitted by the taxpayer may be obtained by *ex parte* court order under this provision as well.

the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat or activity. The information may be shared with a State and local law enforcement agency if such law enforcement agency is part of a team with the Federal law enforcement agency and then only disclosed to such State and local law enforcement officers and employees who are personally and directly engaged in the investigation or response to terrorist activity and can be used only for that purpose.

Disclosure without a court order (information obtained from a source other than the taxpayer)

A court order is not required for the disclosure of return information obtained from a source other than the taxpayer. This authority allows the IRS to make disclosures of return information (other than "taxpayer return information") to apprise the appropriate Federal officials of possible violations of Federal criminal law, and to respond to requests from the head of any Federal agency and certain other Federal officials responsible for non-tax Federal criminal purposes.

The IRS may also disclose return information to Federal and State law enforcement agencies in cases of imminent danger of death or physical injury. The statute does not grant authority, however, to disclose return information to local law enforcement, such as city, county, or town police.

Reasons for Change

According to the U.S. Department of Justice, each year, more than 200,000 children are abducted by a family member.[26] The Treasury Inspector General for Tax Administration conducted a study of missing child cases for which either the Social Security numbers of the missing children or the alleged abductor were available. When matched with IRS data, IRS data showed Social Security numbers had been used on tax returns to file or claim exemptions and/or dependents for 520 of the missing children and 305 of the alleged abductors. The study revealed potentially new addresses for 237 of the 520 missing children (46 percent) and for 104 of the 305 alleged abductors (34 percent).[27] Return information, such as this, could be critical in finding a missing or exploited child. Therefore, the Congress believes the sharing of this information with local law enforcement who are part of a task force with a Federal agency for the purpose of

[26] Statement of Laurie O. Robinson, Assistant Attorney General, U.S. Department of Justice, Office of Justice Programs, *The Crime of Family Abduction: A Child's and Parent's Perspective* (May 2010). https://www.ncjrs.gov/pdffiles1/ojjdp/229933.pdf U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children* (October 2002). https://www.ncjrs.gov/pdffiles1/ojjdp/196469.pdf. This survey, conducted during a 12-month period (1999), found that an estimated 203,000 children were the victims of a family abduction in that year. Of these, the number counted as "caretaker missing" (*i.e*., the caretaker did not know where the child was, became alarmed for at least an hour, and looked for the child) was estimated to be 117,200 (about 57 percent of all children who experienced a family abduction) *Id*. at 3 and 4.

[27] Treasury Inspector General for Tax Administration, *The Internal Revenue Service Provides Valuable Assistance In Locating Missing Children* (Report No. 2007-40-029, February 20, 2007) at 8. A "new address" is an address different from one where the child and/or alleged abductor lived at the time of the abduction.

missing or exploited child investigations is warranted after a determination by a Federal judge or magistrate and subject to other appropriate safeguards.

Explanation of Provision

The provision permits specified Federal law enforcement officials to seek an *ex parte* court order for the disclosure of return and return information in cases of missing or exploited children. A judge or magistrate may grant the application if, on the basis of facts submitted by the applicant, it is determined that (1) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed; (2) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act; and (3) the return or return information is sought exclusively, for use in a criminal investigation or proceeding in the case of a matter relating to a missing or exploited child, and the information sought reasonably cannot be obtained, under the circumstances, from another source.

Upon the grant of the *ex parte* court order, the information may be disclosed to Federal officers and employees who are personally and directly engaged in:

- the preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is a party or pertaining to the case of a missing or exploited child,
- any investigation which may result in such a proceeding, or
- any Federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party or pertaining to such a case of a missing or exploited child.

The provision allows, upon the grant of an *ex parte* court order application made by a specified Federal law enforcement official, the head of the Federal agency (or his designee) to disclose returns (including tax returns and information returns) and return information to officers and employees of State or local law enforcement agencies who are (1) part of a team with the Federal agency in investigations of missing or exploited child cases, and (2) who are personally and directly engaged in such investigations. The provision limits the use of such information to locating a missing child, use in a grand jury proceeding, or use in any preparation for judicial or administrative proceedings.

The recipient State and local law enforcement agency and its personnel are subject to the general rule of confidentiality, safeguard requirements, and civil and criminal penalties for the unauthorized disclosure or inspection of returns or return information.

Under the provision, the term "missing child" means any individual less than 18 years of age whose whereabouts are unknown to such individual's legal custodian.[28] An "exploited child" means a minor with respect to whom there is reason to believe that a specified offense against a minor (as defined by section 117(7) of the Sex Offender Registration and Notification Act) has occurred or is occurring.[29] Such specified offenses include (1) an offense involving (unless committed by a parent or guardian) kidnapping; (2) an offense (unless committed by a parent or guardian) involving false imprisonment; (3) solicitation to engage in sexual conduct; (4) use in a sexual performance; (5) solicitation to practice prostitution; (6) video voyeurism as described in section 1801 of Title 18; (7) possession, production, or distribution of child pornography; (8) criminal sexual conduct involving a minor or the use of the Internet to facilitate or attempt such conduct; or (9) any conduct that by its nature is a sex offense against a minor.

Effective Date

The provision is effective for disclosures made after the date of enactment (June 30, 2016).

[28] The meaning given such term by section 403 of the Missing Children's Assistance Act. (42 U.S.C. sec. 5772).

[29] 42 U.S.C. sec. 116911(7).

PART FOUR: UNITED STATES APPRECIATION FOR OLYMPIANS AND PARALYMPIANS ACT OF 2016 (PUBLIC LAW 114-239)[30]

A. Exclusion from Gross Income for the Value of Medals Awarded at Olympic or Paralympic Games and for Certain Prizes or Awards Paid by the U.S. Olympic Committee to Competitors (sec. 2 of the Act and sec. 74 of the Code)

Present Law

U.S. citizens and residents are subject to U.S. taxation on their worldwide income, from whatever source derived,[31] absent a specific statutory exception. Prizes and awards are specifically included in income.[32] If prizes or awards are provided in the form of goods or services, the fair market value of the goods or services provided is the amount to be included in income.[33]

There are three exceptions to the general rule of inclusion of prizes and awards: First, qualified scholarships described in section 117; second, certain employee achievement awards; and third, awards for religious, charitable, scientific, educational, artistic, literary or civic achievement, provided that the recipient takes no action to be considered for the award, requests that the monetary award be transferred to a designated governmental unit or tax-exempt organization to which deductible charitable contributions are permitted, and is not required to render future substantial services as a condition of the award.[34] Examples of awards that may qualify for the third exception if the monies associated with the award are timely donated include the Nobel and Pulitzer prizes. In contrast, prizes or awards in recognition of athletic achievement are generally ineligible for the exception.[35]

The United States Olympic Committee ("USOC") is a corporation created by statute to serve as a coordinating body for United States participation in international competitive amateur

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[30] H.R. 5946. The Senate passed S. 2650, a bill similar to H.R. 5946, on July 12, 2016. The House Committee on Ways and Means reported H.R. 5946 on September 20, 2016 (H.R. Rep. No. 114-762). The House passed the bill on September 22, 2016. The Senate passed the bill without amendment on September 29, 2016. The President signed the bill on October 7, 2016.

[31] Sec. 61.

[32] Sec. 74.

[33] Treas. Reg. sec. 1.74-1(a)(2).

[34] Treas. Reg. sec. 1.74-1(b).

[35] *Wills v. Commissioner*, 48 T.C. 308 (1967), aff'd 411 F.2d 537 (9th Cir. 1969), in which the Court held that the value of the S. Rae Hickock Belt, awarded to baseball player Maury Wills as outstanding professional athlete of the year, was includible in income as a prize or award given for athletic achievement, and ineligible for the exception available for awards based on educational, civil, literary, scientific or artistic achievement.

sports, in order to provide "the most competent amateur representation possible in each event" in the Olympic, Paralympic and Pan-American Games.[36] As part of its activities, the USOC awards each U.S. Olympic athlete prize money for each medal won, in the amounts of $25,000 for each gold medal, $15,000 for each silver medal, and $10,000 for each bronze medal. U.S. Paralympic athletes receive $5,000, $3,500 and $2,500 respectively for each gold, silver and bronze medal awarded.[37] All U.S. Olympians and U.S. Paralympians are required to be U.S. citizens.[38] As a result, these performance awards from the USOC are includible as prizes and awards, regardless of whether the athletes derive the income for activities performed inside, or outside, the United States.[39] Both the prize money awarded to U.S. athletes by the USOC, as well as the fair market value of gold, silver, and bronze medals, are includible in gross income.

Reasons for Change

The Congress believes that the athletes who represent the United States on the global stage at the Olympic and Paralympic games perform a valuable patriotic service. The athletes do so only after years of personal sacrifice to attain the level of excellence required to compete at the Olympic and Paralympic games. The Congress also believes that during their years of

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[36] See generally, 36 U.S.C. secs. 220501 through 220512. The organization does not generally receive Federal funding, although specific programs for veterans of U.S. military service receive Federal assistance. Instead, the organization raises funds from donors as well as revenue from licensing of use of the US Olympic team name and insignia, as well as granting of broadcast rights in the United States. The purposes of the organization are enumerated in section 220503, and include promotion of physical fitness and sports participation generally, financial assistance to athletes or sport federations, development of training facilities and technical support to amateur athletic programs that support sports that are included in the Olympics, Paralympics and Pan-Am games. The USOC provides a quadrennial report to Congress on its operations. The most recent report, covering the period 2009 through 2012, was issued June 1, 2013, and is available at http://www.teamusa.org/Footer/Legal/Governance-Documents.

[37] Based on recent metal prices, the approximate value of the medals awarded at the Rio games are $565 for the gold, $305 for the silver and $5 for the bronze. See, Reid Carlson, "The Monetary Worth of the 2016 Rio Olympic Medals," SwimSwam, available at https://swimswam.com/monetary-worth-rio-medals.

[38] The international governing bodies of the Olympic and Paralympic games permit certain exceptions for athletes from countries that do not have national organizations eligible to enter teams in the games. See, Rule 41 and related by-laws, *The International Olympic Committee Charter*, available at http://www.teamusa.org/About-the-USOC/Inside-the-USOC/Olympic-Movement/Structure, and Chapter 3.1, *The International Paralympic Committee Handbook*, available at https://www.paralympic.org/sites/default/files/document/160523070735592_Rio%2BQG_23_May_2016.pdf. Peter Spiro, "Citizenship and the Olympics," 5 *Insights*, (Spring 2016), published by American Bar Association, http://www.americanbar.org/publications/insights_on_law_andsociety/16/spring-2016/citizenship-and-the-olympics.

[39] A credit may be allowed for any foreign income tax imposed on awards for games held outside the United States. Many Olympic host countries (including the United States) exempt nonresident athletes from income tax on awards. As in the United States, these exemptions may be part of a host country's tax law, and some contracts between the International Olympic Committee and Olympic host cities confirm the exemption. Under a typical contract, the host city and the host city's Organizing Committee promise either that the host country will not tax performance awards or, if the host country does tax performance awards, that the host city or Organizing Committee will reimburse athletes for the amount of the tax. For example, Rio de Janeiro entered into a Host City Contract containing this clause. A draft contract corresponding to the 2022 Olympics in China also contains this clause.

training and preparation, many athletes representing the United States in the games earn little or no money from participation in their chosen sports, and often defer pursuit of careers outside sports. Monetary prizes awarded by the USOC to medalists on the United States teams are intended to reward such sacrifices and to provide incentives to other athletes who seek to represent the United States on a global stage. The Congress believes that providing this exclusion for the receipt of an Olympic or Paralympic medal and other prizes awarded by the USOC generally should be without tax consequences.

Explanation of Provision

The provision creates a new exception to the general rule requiring inclusion of prizes and awards in gross income. Under the terms of the exception, neither the value of the medals awarded to U.S. Olympic or Paralympic athletes nor the cash prizes given by the USOC are includible in income for Federal tax purposes. This exclusion does not apply to taxpayers whose adjusted gross income (determined without regard to the value of such medals or rewards) is in excess of $1,000,000 (or half such amount in the case of a married taxpayer filing a separate return).

Effective Date

The provision applies to prizes and awards received after December 31, 2015.

PART FIVE: 21ST CENTURY CURES ACT (PUBLIC LAW 114-255)[40]

A. Mental Health Parity[41]
(secs. 13001-13007 of the Act and sec. 9812 of the Code)

Present Law

Group health plan requirements

The Code, the Employee Retirement Income Security Act of 1974 ("ERISA"), and the Public Health Service Act ("PHSA") impose various requirements with respect to employer-sponsored health plans, referred to for this purpose as group health plans.[42] The Code requirements are within the jurisdiction of the Secretary of the Treasury and the Internal Revenue Service ("IRS"); the ERISA requirements are within the jurisdiction of the Secretary of Labor and the Employee Benefits Security Administration ("EBSA"); and the PHSA requirements are within the jurisdiction of the Secretary of Health and Human Services ("HHS").[43]

Under the Code, an employer is generally subject to an excise tax of $100 a day per employee if it sponsors a group health plan that fails to meet any of these requirements.[44] If the failure is due to reasonable cause and not to willful neglect, the maximum tax that can be imposed for failures during a taxable year is the lesser of 10 percent of the employer's group health plan expenses for the prior year or $500,000. In some cases, the excise tax does not apply if the failure is due to reasonable cause and not to willful neglect and the failure is corrected within a certain period. In addition, in some cases in which failure is due to reasonable cause

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[40] H.R. 34. The House passed H.R. 34 (the "Tsunami Warning, Education, and Research Act of 2015") on January 7, 2015. The Senate passed the bill with an amendment on October 6, 2015. The House passed an amendment (the "21st Century Cures Act") to the Senate amendment on November 30, 2016. The Senate agreed to the House amendment on December 7, 2016. The President signed the bill on December 13, 2016.

[41] The mental health parity provisions are contained in Division B of Pub. L. No. 114-255, the "Helping Families in Mental Health Crisis Reform Act of 2016."

[42] Code sec. 4980B (relating to continuation coverage or "COBRA" requirements) and Chapter 100 (secs. 9801-9834, relating to various additional requirements, such as prohibitions on preexisting condition exclusions and discrimination based on health status); Title I, Parts 6 and 7, of ERISA; Title XXVII of the PHSA. Code section 5000 also imposes Medicare secondary payor requirements on group health plans. The PHSA also imposes requirements, some of which parallel the group health plan requirements, with respect to health insurance offered in the individual and group markets.

[43] The agencies work together in issuing regulations and other guidance relating to these requirements.

[44] Section 4980B(a) and (b) apply to a violation of the COBRA requirements, subject to an exception for plans of employers with fewer than 20 employees. Section 4980D(a) and (b) apply to a violation of the requirements under Chapter 100, subject to an exception for a plan of an employer with no more than 50 employees if coverage is provided solely through insurance. In some cases, a party other than the employer, such as a multiemployer plan, may be liable for the tax.

and not to willful neglect, some or all of the excise tax may be waived to the extent payment of the tax would be excessive relative to the failure involved.

Parity in mental health and substance use disorder benefits

Certain requirements (referred to herein as "parity" requirements) apply in the case of a group health plan that provides both medical and surgical benefits and mental health or substance use disorder benefits.[45] The parity requirements do not apply to group health plans of small employers (generally, an employer that employs an average of 2 to 50 employees) or if the application of the requirements would cause an increase in the costs of the plan that exceeds one percent of the total costs (two percent in the case of the first plan year).

Under the parity requirements, the financial requirements and treatment limitations for mental health and substance use disorder benefits cannot be more restrictive than the predominant financial requirements and treatment limitations that are applied to substantially all medical and surgical benefits covered by the plan. In addition, no separate cost-sharing requirements or treatment limitations may apply only to mental health or substance use disorder benefits. Financial requirement includes for this purpose deductibles, copayments, coinsurance, and out-of-pocket expenses. Treatment limitation includes limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment. A financial requirement or treatment limit is considered to be predominant if it is the most common or frequent of such type of limit or requirement.

Parity is required also with respect to coverage of mental health and substance use disorder benefits with respect to out-of-network providers if the group health plan provides coverage for medical or surgical benefits provided by out-of-network providers. In addition, an administrator of a group health plan must make the criteria for medical necessity determinations for mental health and substance use disorder benefits available upon request to current and potential plan participants and beneficiaries, and to contracting providers. Similarly, the reason for a denial of mental health and substance use disorder benefits must be made available by the plan administrator upon request by a participant or beneficiary.

Explanation of Provisions

Overview

The provisions amend the parity requirements under the PHSA, and the amendments apply also for purposes of the Code and ERISA. The amendments relate to--

- measures to enhance compliance with the parity requirements,

[45] Code sec. 9812; ERISA sec. 712; and PHSA sec. 2726 (applicable also to health insurance offered in the individual and group markets). These provisions do not require group health plans to provide mental health or substance use disorder benefits. However, section 2707 of the PHSA requires health insurance offered in the individual or small group market to provide certain benefits (referred to as "essential health benefits"), including mental health and substance use disorder services.

- an action plan for enhanced enforcement of the mental health parity and addiction equity requirements,[46]
- reports on investigations regarding compliance with the parity requirements,
- a GAO study on compliance with the parity requirements, and
- application of the parity requirements to coverage of eating disorders.

Enhanced compliance with parity requirements

Compliance program guidance document

The provision requires that, not later than 12 months after the date of enactment of the Helping Families in Mental Health Crisis Reform Act of 2016 ("date of enactment," that is, December 13, 2016), the Secretary of HHS, the Secretary of Labor, and the Secretary of the Treasury (referred to collectively herein as the Secretaries), in consultation with the Inspector General of the Department of HHS, the Inspector General of the Department of Labor, and the Inspector General of the Department of the Treasury (referred to collectively herein as the Inspectors General), issue a compliance program guidance document to help improve compliance with the parity requirements. In issuing the compliance program guidance document, the Secretaries may take into consideration the 2016 publication by the Department of HHS and the Department of Labor of "Warning Signs - Plan or Policy Non-Quantitative Treatment Limitations (NQTLs) that Require Additional Analysis to Determine Mental Health Parity Compliance."[47]

The compliance program guidance document is to provide illustrative, de-identified examples (without the disclosure of any protected health information or individually identifiable information) of previous findings of compliance and noncompliance with the parity requirements, based on investigations of violations of the requirements. The examples are to include examples illustrating requirements for information disclosures and nonquantitative treatment limitations and descriptions of the violations uncovered during the course of investigations. To the extent that an example involves a finding of compliance or noncompliance with regard to any requirement for nonquantitative treatment limitations, the example must provide sufficient detail to explain the finding fully, including a full description of the criteria involved for approving medical and surgical benefits and the criteria involved for approving mental health and substance use disorder benefits.

In developing and issuing the compliance program guidance document, the Secretaries are to enter into interagency agreements with the Inspectors General to share findings of compliance and noncompliance with the parity requirements. In addition, the Secretaries are

[46] As defined in the provision relating to the action plan for enhanced enforcement, below, the term "mental health parity and addiction equity requirements" refers to the parity requirements under the Code, ERISA and the PHSA and comparable provisions of State law.

[47] Available at https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/laws/mental-health-parity/warning-signs-plan-or-policy-nqtls-that-require-additional-analysis-to-determine-mhpaea-compliance.pdf.

directed to seek to enter into agreements with States to share information on findings of compliance and noncompliance.

The compliance program guidance document is to include recommendations to advance compliance with the parity requirements and to encourage the development and use of internal controls to monitor adherence to applicable statutes, regulations, and program requirements. Internal controls may include illustrative examples of nonquantitative treatment limitations on mental health and substance use disorder benefits that may fail to comply with the parity requirements in relation to nonquantitative treatment limitations on medical and surgical benefits.

The Secretaries, in consultation with the Inspectors General, are to update the compliance program guidance document every two years to include illustrative, de-identified examples (without the disclosure any protected health information or individually identifiable information) of previous findings of compliance and noncompliance with the parity requirements.

Additional guidance

The provision requires that, not later than 12 months after date of enactment (December 13, 2016), the Secretaries issue guidance to group health plans and health insurance issuers offering group or individual health insurance coverage to assist plans and issuers in satisfying the parity requirements. The guidance is to include clarifying information and illustrative examples of methods that group health plans and health insurance issuers may use for (1) disclosing information to ensure compliance with the parity requirements (and any regulations relating to the parity requirements); and (2) providing a participant, beneficiary, contracting provider, or authorized representative, as applicable, with documents containing information that the plans or issuers are required to disclose to these persons to ensure compliance with the parity requirements (and any regulations relating to the parity requirements of any other applicable law or regulation).

The guidance is also to include information that is comparative in nature with respect to--

- nonquantitative treatment limitations for both medical and surgical benefits and mental health and substance use disorder benefits,
- the processes, strategies, evidentiary standards, and other factors used to apply those limitations, and
- the application of those limitations to ensure that the limitations are applied in parity with respect to both medical and surgical benefits and mental health and substance use disorder benefits.

The guidance is also to include clarifying information and illustrative examples of methods, processes, strategies, evidentiary standards, and other factors that group health plans and health insurance issuers offering group or individual health insurance coverage may use regarding the development and application of nonquantitative treatment limitations to ensure

compliance with the parity requirements (and any regulations relating to the parity requirements). In particular the guidance is to include−

- examples of methods of determining appropriate types of nonquantitative treatment limitations with respect to both medical and surgical benefits and mental health and substance use disorder benefits, including nonquantitative treatment limitations pertaining to medical management standards based on medical necessity or appropriateness, or whether a treatment is experimental or investigative, limitations with respect to prescription drug formulary design, and use of fail-first or step therapy protocols,
- examples of methods of determining network admission standards (such as credentialing) and factors used in provider reimbursement methodologies (such as service type, geographic market, demand for services, and provider supply, practice size, training, experience, and licensure) as the factors apply to network adequacy,
- examples of sources of information that may serve as evidentiary standards for the purposes of making determinations regarding the development and application of nonquantitative treatment limitations,
- examples of specific factors, and the evidentiary standards used to evaluate such factors, used by plans or issuers in performing a nonquantitative treatment limitation analysis,
- examples of how specific evidentiary standards may be used to determine whether treatments are considered experimental or investigative,
- examples of how specific evidentiary standards may be applied to each service category or classification of benefits,
- examples of methods of reaching appropriate coverage determinations for new mental health or substance use disorder treatments, such as evidence-based early intervention programs for individuals with a serious mental illness and types of medical management techniques,
- examples of methods of reaching appropriate coverage determinations for which there is an indirect relationship between the covered mental health or substance use disorder benefit and a traditional covered medical and surgical benefit, such as residential treatment or hospitalizations involving voluntary or involuntary commitment, and
- additional illustrative examples of methods, processes, strategies, evidentiary standards, and other factors for which the Secretary of HHS determines that additional guidance is necessary to improve compliance with the parity requirements.

Before issuing any final guidance, the Secretary of HHS is to provide a public comment period of not less than 60 days during which any member of the public may provide comments on a draft of the guidance.

Availability of plan information

The provision requires that, not later than six months after date of enactment (December 13, 2016), the Secretaries solicit feedback from the public on how the disclosure request process for documents containing information that health plans or health insurance issuers are required under Federal or State law to disclose to participants, beneficiaries, contracting providers, or authorized representatives to ensure compliance with existing mental health parity and addiction equity requirements can be improved while continuing to ensure consumers' rights to access all information required by Federal or State law to be disclosed. In addition, not later than 12 months after date of enactment, the Secretaries are to make any feedback publicly available.

The Secretaries are to share feedback obtained as described above with the National Association of Insurance Commissioners ("NAIC") to the extent the feedback includes recommendations for the development of simplified information disclosure tools to provide consistent information for consumers. This feedback may be taken into consideration by the NAIC and other appropriate entities for the voluntary development and voluntary use of common templates and other sample standardized forms to improve consumer access to plan information.

Improving compliance

If one of the Secretaries determines that a group health plan or health insurance issuer offering group or individual health insurance coverage has violated the parity requirements at least five times, the appropriate Secretary is to audit plan documents for the health plan or issuer in the plan year following the Secretary's determination in order to help improve compliance with such section. Nothing in this provision is to be construed to limit the authority, as in effect on the day before date of enactment, of any of the Secretaries to audit documents of health plans or health insurance issuers.

Action plan for enhanced enforcement

The provision requires the Secretary of HHS, not later than six months after date of enactment (December 13, 2016), to convene a public meeting of stakeholders described below to produce an action plan for improved Federal and State coordination related to the enforcement of the mental health parity and addiction equity requirements (that is, the parity requirements and any comparable provisions of State law). Stakeholders for this purpose include each of the following:

- the Federal Government, including representatives from the Department of HHS, the Department of the Treasury, the Department of Labor, and the Department of Justice,
- State governments, including State health insurance commissioners, appropriate State agencies, including agencies on public health or mental health, and State attorneys general or other representatives of State entities involved in the enforcement of mental health parity and addiction equity requirements, and

- representatives from key stakeholder groups, including the NAIC, health insurance issuers, providers of mental health and substance use disorder treatment, employers, and patients or their advocates.

Not later than six months after the conclusion of the public meeting described above, the Secretary of HHS is to finalize the action plan and make it plainly available on the Internet website of the Department of HHS. The action plan is to−

- take into consideration the recommendations of the Mental Health and Substance Use Disorder Parity Task Force in its final report issued in October 2016,[48] and any subsequent Federal and State actions in relation to such recommendations,
- reflect the input of the stakeholders participating in the public meeting,
- identify specific strategic objectives regarding how the various Federal and State agencies charged with enforcement of mental health parity and addiction equity requirements will collaborate to improve enforcement of such requirements,
- provide a timeline for implementing the action plan, and
- provide specific examples of how the objectives may be met.

These examples may include−

- providing common educational information and documents, such as the "Consumer Guide to Disclosure Rights,"[49] to patients about their rights under mental health parity and addiction equity requirements,
- facilitating the centralized collection of, monitoring of, and response to patient complaints or inquiries relating to mental health parity and addiction equity requirements, which may be through the development and administration of a single, toll-free telephone number and a new parity website to help consumers find the appropriate Federal or State agency to assist with their parity complaints, appeals, and other actions and that takes into consideration, but is not duplicative of, the parity beta site being tested, and released for public comment, by the Department of HHS as of date of enactment,[50]
- Federal and State law enforcement agencies entering into memoranda of understanding to better coordinate enforcement responsibilities and information sharing, including whether the agencies should make the results of enforcement

[48] Available at https://www.hhs.gov/sites/default/files/mental-health-substance-use-disorder-parity-task-force-final-report.PDF.

[49] Available at https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/laws/mental-health-parity/disclosure-guide-making-the-most-of-your-mental-health-and-substance-use-disorder-benefits.pdf.

[50] The website required by the provision has replaced the beta test site and is available at https://www.hhs.gov/mental-health-and-addiction-insurance-help#.

actions related to mental health parity and addiction equity requirements publicly available, and which may include State Policy Academies on Parity Implementation for State Officials and other forums to bring together national experts to provide technical assistance to teams of State officials on strategies to advance compliance with mental health parity and addiction equity requirements in both the commercial market, and in the Medicaid program and the State Children's Health Insurance Program ("SCHIP"),[51] and

- recommendations to the Congress regarding the need for additional legal authority to improve enforcement of mental health parity and addiction equity requirements, including the need for additional legal authority to ensure that nonquantitative treatment limitations are applied, and the extent and frequency of the applications of such limitations, both to medical and surgical benefits and to mental health and substance use disorder benefits in a comparable manner.

Reports on investigations regarding benefit parity

The provision requires that, not later than one year after date of enactment (December 13, 2016) and annually thereafter for the subsequent five years, the Assistant Secretary of Labor of EBSA, in collaboration with the Administrator of the Centers for Medicare & Medicaid Services and the Secretary of the Treasury, submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report summarizing the results of all closed Federal investigations completed during the preceding 12-month period with findings of any serious violation regarding compliance with the parity requirements.

The report is to include each of the following with respect to investigations, but must exclude any individually identifiable information consistent with protections under the health privacy and security rules under the Health Insurance Portability and Accountability Act of 1996 (referred to as HIPAA):[52]

- the number of closed Federal investigations conducted during the covered reporting period,
- each benefit classification examined by any investigation conducted during the covered reporting period,
- each subject matter, including compliance with requirements for quantitative and nonquantitative treatment limitations, of any investigation conducted during the covered reporting period, and

[51] The Medicaid program is governed by Title XIX of the Social Security Act and SCHIP is governed by Title XXI of the Social Security Act.

[52] Pub. L. No. 104-191, Part C of Title XI of the Social Security Act.

- a summary of the basis of the final decision rendered for each closed investigation conducted during the covered reporting period that resulted in a finding of a serious violation.

GAO study

The provision requires, not later than three years after date of enactment (December 13, 2016), the Comptroller General of the United States, in consultation with the Secretaries, to submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report detailing the extent to which group health plans or health insurance issuers offering group or individual health insurance coverage that provides both medical and surgical benefits and mental health or substance use disorder benefits, Medicaid managed care organizations,[53] and health plans provided under SCHIP comply with the parity requirements.

The report is to include−

- how nonquantitative treatment limitations, including medical necessity criteria, of plans or issuers comply with the parity requirements,
- how the responsible Federal departments and agencies ensure that plans or issuers comply with the parity requirements, including an assessment of how the Secretary of HHS has used its authority to conduct audits of plans to ensure compliance,
- a review of how the various Federal and State agencies responsible for enforcing mental health parity requirements have improved enforcement of the requirements in accordance with the objectives and timeline described in the action plan required as described above, and
- recommendations for how additional enforcement, education, and coordination activities by responsible Federal and State departments and agencies could better ensure compliance with the parity requirements, including recommendations regarding the need for additional legal authority.

Eating disorders

Information and awareness

The Secretary of HHS, acting through the Director of the Office on Women's Health ("OWH"), may−

- update information, related fact sheets, and resource lists related to eating disorders that are available on the public Internet website of the National Women's Health Information Center sponsored by the OWH to include updated findings and current research related to eating disorders, as appropriate, and information about eating disorders, including information related to males and females,

[53] Sec. 1903(m) of the Social Security Act.

- incorporate, as appropriate, and in coordination with the Secretary of Education, information from publicly available resources into appropriate obesity prevention programs developed by the OWH, and
- make publicly available (through a public Internet website or other method) information, related fact sheets, and resource lists related to eating disorders, as updated as described above, and the information incorporated into appropriate obesity prevention programs described above.

The Secretary of HHS may advance also public awareness on−

- the types of eating disorders,
- the seriousness of eating disorders, including prevalence, comorbidities, and physical and mental health consequences,
- methods to identify, intervene, refer for treatment, and prevent behaviors that may lead to the development of eating disorders,
- discrimination and bullying based on body size,
- the effects of media on self-esteem and body image, and
- the signs and symptoms of eating disorders.

Education and training

The Secretary of HHS may facilitate the identification of model programs and materials for educating and training health professionals in effective strategies to−

- identify individuals with eating disorders,
- provide early intervention services for individuals with eating disorders,
- refer patients with eating disorders for appropriate treatment,
- prevent the development of eating disorders, and
- provide appropriate treatment services for individuals with eating disorders.

Clarification of existing parity rules

If a group health plan or a health insurance issuer offering group or individual health insurance coverage provides coverage for eating disorder benefits, including residential treatment, the group health plan or health insurance issuer must provide those benefits consistent with the parity requirements.

Effective Date

The provisions are effective on date of enactment (December 13, 2016).

B. Exception from Group Health Plan Requirements for Qualified Small Employer Health Reimbursement Arrangements (sec. 18001 of the Act and secs. 36B, 106, 4980I, 6051 and 9831 of the Code)[54]

Present Law

Exclusion for employer-provided health benefits

An employee may exclude from gross income amounts provided through an arrangement under which (1) an employer pays or reimburses premiums for health insurance for the employee and family members purchased in the individual insurance market (referred to as an employer payment plan), or (2) an employer reimburses the employee for medical expenses generally of the employee and family members (referred to as a health reimbursement arrangement or "HRA").[55] For employer payments or reimbursements under these arrangements to be excluded from gross income, premiums and other expenses must be substantiated and an employee must be entitled to receive payments from the employer only if he or she incurs qualifying expenses.[56]

The exclusion applies also to amounts paid or reimbursed from funds withheld from an employee's salary under a cafeteria plan ("salary reduction amounts").[57]

The value of employer-provided health benefits for a year is generally required to be reported by the employer on an employee's Form W-2, Wage and Tax Statement, for the year.[58]

Group health plan requirements

As discussed in Part A, the Code, ERISA, and the PHSA impose various requirements with respect to employer-sponsored health plans, referred to for this purpose as group health

[54] A similar provision is contained in H.R. 5447, the Small Business Health Care Relief Act of 2016, reported by the House Committee on Ways and Means on June 21, 2016 (H. Rep. No. 114-634, Part 1) and passed by the House on June 21, 2016.

[55] Secs. 105(b) and 106; Rev. Rul. 61-146, 1961-2 C.B. 25; Notice 2002-45, 2002-2 C.B. 93, and Rev. Rul. 2002-41, 2002-2 C.B. 75. Under section 105(h), a self-insured medical reimbursement plan must meet certain nondiscrimination requirements in order for the benefits provided to a highly compensated individual to be excluded from income. For this purpose, the following groups of employees may be excluded: employees who have not completed three years of service with the employer, employees under age 25, part-time or seasonal employees, employees covered by a collective bargaining agreement if health benefits were the subject of good faith bargaining, and nonresident aliens with no earned income from sources within the United States. Employer payments and reimbursements for health insurance and medical expenses are also excluded from wages for employment tax purposes. Secs. 3121(a)(2), 3231(e)(1), 3306(b)(2), 3401(a)(20), Rev. Rul. 56-632, 1956-2 C.B. 101.

[56] Treas. Reg. sec. 1.105-2.

[57] Sec. 125. An HRA cannot include salary reduction amounts.

[58] Sec. 6051(a)(14).

plans.[59] Under the Code, an employer is generally subject to an excise tax of $100 a day per affected individual if it sponsors a group health plan that fails to meet any of these requirements.[60] In some cases, the excise tax does not apply if the failure is due to reasonable cause and not to willful neglect and the failure is corrected within a certain period. In addition, in some cases in which failure is due to reasonable cause and not to willful neglect, some or all of the excise tax may be waived to the extent payment of the tax would be excessive relative to the failure involved.

IRS guidance holds that employer payment plans generally fail to meet certain group health plan requirements.[61] In addition, an HRA fails to meet those requirements unless the HRA has complied with IRS rules relating to HRAs provided in conjunction with (or "integrated" with) certain other employer-sponsored coverage that meets the group health plan requirements. An HRA that is integrated with such employer-sponsored coverage is often referred to as an "integrated" HRA, and an HRA that is not integrated with such employer-sponsored coverage is often referred to as a "stand-alone" HRA. Thus, an employer may be subject to an excise tax if it provides an employer payment plan or a stand-alone HRA.

Other health rules under the Code

Individuals are generally required to have health coverage, referred to as minimum essential coverage.[62] Unless an exception applies, an individual who fails to have minimum essential coverage may be subject to a tax penalty. Minimum essential coverage includes employer-sponsored coverage under a group health plan, other than certain types of limited coverage, such as coverage only for vision or dental medical services. Minimum essential coverage also includes coverage purchased in the individual insurance market, other than certain types of limited coverage, such as coverage only for vision or dental medical services.

An advanceable, refundable income tax credit ("premium assistance credit") is available to certain individuals who purchase health insurance coverage in the individual market though an American Health Benefit Exchange ("Exchange coverage").[63] However, an individual is

[59] Secs. 4980B (relating to continuation coverage or "COBRA" requirements) and 5000 (relating to Medicare secondary payor requirements) and Chapter 100 (secs. 9801-9834, relating to various additional requirements, such as prohibitions on preexisting condition exclusions and discrimination based on health status); Title I, Parts 6 and 7, of ERISA; Title XXVII of the PHSA.

[60] Secs. 4980B(a) and (b) (COBRA), 4980D(a) and (b) (Chapter 100), 5000(a) (Medicare secondary payor requirements). Sec. 4980B(d)(1) provides an exception for plans of employers with fewer than 20 employees. Sec. 4980D(d)(1) provides an exception for a plan of an employer with no more than 50 employees if coverage is provided solely through insurance. In some cases, a party other than the employer, such as a multiemployer plan, may be liable for the tax.

[61] Notice 2015-17, 2015-14 I.R.B. 845, and Notice 2013-54, 2013-2 C.B. 287. Notice 2015-17 provides relief from the excise tax under section 4980D for periods before July 1, 2015, for certain small employers.

[62] Sec. 5000A.

[63] Sec. 36B.

generally not eligible for the credit if his or her employer offers affordable minimum essential coverage under a group health plan and the coverage provides minimum value. For this purpose, coverage is affordable if the employee's share of the premium for self-only coverage under the group health plan is not more than 9.5 percent[64] of the employee's household income. To provide minimum value, the coverage offered under the group health plan must cover at least 60 percent of the total costs of benefits covered under the plan. An individual who applies for advance premium assistance with respect to Exchange coverage for a year must provide the Exchange with certain information, including information relating to employer-provided minimum essential coverage.[65]

If an applicable large employer fails to offer employees minimum essential coverage, or offers minimum essential coverage that either is not affordable (under the standard described above) or fails to provide minimum value, and any employee receives a premium assistance credit, the employer may be subject to a tax penalty.[66] For this purpose, applicable large employer generally means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees (including full-time equivalents) on business days during the preceding calendar year.[67]

Effective 2020, an excise tax (the high-cost coverage excise tax, commonly also referred to as the "Cadillac" tax) applies if the aggregate cost of employer-provided coverage provided to an employee under an employer's group health plans exceeds a specified amount.[68] The aggregate cost of coverage for this purpose generally includes the cost of all types of coverage provided by the employer's group health plans, other than certain types of limited coverage, such as coverage only for vision or dental medical services.

Reasons for Change

Small employers are not required to provide health insurance coverage to their employees and, for some small employers, doing so may not be feasible. Nonetheless, many small employers wish to provide pretax funds that employees may use to purchase their own health insurance or pay for expenses not covered by their insurance. However, under present law,

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[64] For years after 2014, this percentage is increased as needed to reflect cost-of-living increases. The percentage for 2016 is 9.66.

[65] Sec. 1411(b) of the Patient Protection and Affordable Care Act ("PPACA"), Pub. L. No. 110-148. This information is subject to verification during the Exchange process under section 1411(c) and (d) of PPACA.

[66] Sec. 4980H.

[67] In determining whether an employer is an applicable large employer (that is, whether the employer has at least 50 full-time employees), besides the number of full-time employees, the employer must include the number of its full time equivalent employees for a month, determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120. In addition, in determining applicable large employer status, members of the same controlled group, group under common control, and affiliated service group under section 414(b), (c), (m) and (o) are treated as a single employer.

[68] Sec. 4980I.

providing such funds may expose a small employer to a substantial excise tax. The Congress wishes to enable small employers to provide such funds without incurring an excise tax.

Explanation of Provision

Qualified small employer health reimbursement arrangement

Under the provision, a "qualified small employer health reimbursement arrangement" (referred to herein as a QSEHRA) is generally not a group health plan under the Code, ERISA or PHSA and thus is not subject to the group health plan requirements.[69] A QSEHRA is defined as an arrangement (1) that is provided on the same terms to all eligible employees of an eligible employer (with certain permitted variation, discussed below); (2) that is funded solely by the eligible employer and no salary reduction contributions may be made under the arrangement; (3) that provides, after an employee provides proof of minimum essential coverage, for the payment or reimbursement of medical expenses of the employee and family members;[70] and (4) under which the amount of payments and reimbursements for a year cannot exceed specified dollar limits. The initial dollar limits are $4,950 ($10,000 in the case of expenses of an employee and family members). For years after 2016, the dollar limits are increased as needed to reflect cost of living increases, with rounding down to the next lowest multiple of $50.[71]

The maximum dollar amount of payments or reimbursements that may be made under a QSEHRA with respect to an eligible employee for a year is the employee's "permitted benefit." An arrangement does not fail to be provided on the same terms to all eligible employees merely because employees' permitted benefits vary with the price of a health insurance policy in the individual insurance market based on the ages of the employee and family members or the number of family members covered by the arrangement, provided that the variation is determined by reference to the same insurance policy for all eligible employees.

Under the provision, "eligible employee" means any employee of an eligible employer, except that the terms of the QSEHRA may exclude employees who have not completed 90 days of service with the employer, employees under age 25, part-time or seasonal employees, employees covered by a collective bargaining agreement if health benefits were the subject of good faith bargaining, and nonresident aliens with no earned income from sources within the

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[69] A QSEHRA continues to be treated as a group health plan as defined under PHSA, for purposes of applying that definition to the privacy requirements applicable to medical information under the Health Insurance Portability and Accountability Act of 1996 (referred to as HIPAA), Part C of Title XI of the Social Security Act. In addition, as discussed below, a QSEHRA continues to be treated as a group health plan for purposes of the excise tax on high-cost coverage. Moreover, the provision does not change the extent to which a QSEHRA is an employee welfare benefit plan under ERISA and subject to ERISA requirements other than the group health plan requirements.

[70] The provision specifies that the Secretary of the Treasury or his designee may issue substantiation requirements as necessary to carry out the provision.

[71] In the case of an individual not covered by the arrangement for all 12 months of a year, the dollar amounts are prorated to reflect the number of months of coverage.

United States.[72] "Eligible employer" means an employer that (1) is not an applicable large employer as defined for purposes of the requirement that an applicable large employer offer its employees minimum essential coverage (that is, generally, an employer with fewer than 50 full-time employees and full-time equivalents during the preceding year), and (2) does not offer a group health plan to any of its employees.

Income tax treatment of QSEHRA benefits

Except as discussed in the following paragraph, coverage and payments or reimbursements under a QSEHRA are excluded from gross income to the extent they would be excluded under present law.

Because a QSEHRA is not a group health plan, coverage under a QSEHRA is not minimum essential coverage and does not satisfy the requirement that an individual have minimum essential coverage. Under the provision, if an employee's medical care expenses are paid or reimbursed under a QSEHRA and the employee does not have minimum essential coverage for the month in which the medical care was provided, the amount of the payment or reimbursement for those expenses is includible in the employee's income.[73]

Coordination with other Code rules

Under the provision, an eligible employee under a QSEHRA is not eligible for the premium assistance credit for a month if the QSEHRA constitutes affordable coverage for the month. For this purpose, a QSEHRA constitutes affordable coverage for a month if the excess of (1) the employee's monthly premium for self-only coverage under the second lowest cost silver plan offered in the Exchange, over (2) 1/12 of the employee's permitted benefit under the QSEHRA, does not exceed 1/12 of 9.5 percent[74] of the employee's household income for the year. In the case of an eligible employee under a QSEHRA who is eligible for a premium assistance credit for a year (that is, the QSEHRA does not constitute affordable coverage), the credit amount is reduced (but not below zero) by the employee's permitted benefit.

Under the provision, a QSEHRA continues to be treated as a group health plan for purposes of the excise tax on high-cost coverage. For that purpose, an employee's permitted benefit is treated as the cost of coverage under the QSEHRA.

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[72] These groups are based on the groups that can be excluded in applying the nondiscrimination requirements under section 105(h) to a self-insured plan with 90 days of service substituted for three years of service.

[73] The provision does not change the treatment of such payments or reimbursements for employment tax purposes. Thus, they continue to be excluded from wages for employment tax purposes.

[74] For years after 2014, this percentage is increased as needed to reflect cost-of-living increases. The percentage for 2016 is 9.66.

Notice and reporting requirements

The provision includes several requirements relating to notices and reporting.

Not later than 90 days before the beginning of a year in which an employer will fund a QSEHRA (or, if later, the date on which an employee becomes eligible for the QSEHRA), the employer must provide eligible employees with a written notice containing the amount of the employee's permitted benefit and certain other information. An employer that fails to provide the notice may be subject to a tax penalty of $50 per employee, subject to a maximum of $2,500 for the year.

In addition, the employer must report an employee's permitted benefit for a year on the employee's Form W-2 for the year. An eligible employee who applies for advance premium assistance with respect to Exchange coverage for a year must provide the Exchange with the amount of his or her permitted benefit for the year.

Effective Date

The provision generally applies to years beginning after December 31, 2016 (plan years beginning after December 31, 2016, in the case of the ERISA and PHSA changes).[75] The aspects of the provision relating to the premium assistance credit apply to taxable years beginning after December 31, 2016. The requirement that an employer report an employee's permitted benefit on the employee's Form W-2 applies to calendar years beginning after December 31, 2016. With respect to the requirement that an employer provide written notice to eligible employees at least 90 days before the beginning of the year, an employer will not be treated as failing to provide the notice if it is provided no later than 90 days after date of enactment (December 13, 2016). The requirement that an eligible employee applying for advance premium assistance provide the Exchange with the amount of his or her permitted benefit applies to applications for enrollment made after December 31, 2016. In the case of an application filed before April 1, 2017, the requirement is treated as met if the information is provided not later than 30 days after the date on which the employee receives the notice provided by the employer.[76]

[75] The provision extends the excise tax relief under Notice 2015-17 to plan years beginning on or before December 31, 2016.

[76] Verification of this information in the Exchange process applies with respect to months beginning after October 2016.

PART SIX: COMBAT-INJURED VETERANS TAX FAIRNESS ACT OF 2016 (PUBLIC LAW 114-292)[77]

A. Recovery of Certain Improperly Withheld Severance Payments (sec. 2 of the Act)

Present Law

Under present law, certain payments made as compensation for injuries or sickness are excluded from a taxpayer's gross income.[78] A disability severance payment received by an individual who is separating from the armed forces is excluded from gross income in two cases. First, if the individual received the disability severance payment as a result of a combat-related injury, such payment is excluded from taxable income.[79] Second, even if not related to a combat-related injury, if the disability severance payment recipient would, on application thereof, be entitled to receive disability compensation from the Department of Veterans Affairs, such payment is excluded from the recipient's taxable income.[80]

In general, every employer making payment of wages is required to deduct and withhold tax upon such wages in accordance with tables or computational procedures prescribed by the Secretary.[81] As a general matter, severance pay is considered to be wages for these purposes.[82] However, amounts received that are excluded from income as described above (*i.e.*, the severance payment was either on account of a combat-related injury or the recipient would be entitled to receive disability compensation from the Department of Veterans Affairs) are not subject to income tax withholding.[83]

In general, in the case of an overpayment of tax, the Secretary may credit or refund the amount of the overpayment to the taxpayer.[84] The balance of the overpayment is generally refunded, unless a claim has been made for payment of certain non-tax debts of that person. As a general matter, any claim for credit or refund of an overpayment of any tax must be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax

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[77] H.R. 5015. The House passed H.R. 5015 on December 5, 2016. The Senate passed the bill without amendment on December 10, 2016. The President signed the bill on December 16, 2016.

[78] Sec. 104.

[79] Secs. 104(a)(4) and 104(b)(2)(C).

[80] Secs. 104(a)(4) and 104(b)(2)(D).

[81] Sec. 3042(a)(1).

[82] Treas. Reg. sec. 31.3401(a)-1(b)(4).

[83] Treas. Reg. sec. 31.3401(a)-1(b)(1)(ii).

[84] Sec. 6402(a).

was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax was paid.[85]

Explanation of Provision

The provision requires that, not later than one year after the date of enactment (December 16, 2016) the Secretary of Defense identify certain disability severance payments made to veterans after January 17, 1991, from which income taxes were improperly withheld. Each individual so identified shall receive a notice of the amount of severance payments which were improperly withheld upon, and other information determined to be necessary by the Secretary of Treasury to carry out the purposes of the proposal. Each individual will receive instructions for filing an amended return to recover the improperly withheld amounts.

The provision extends the statute of limitations on claims for credit or refund, such that individuals who receive a notice of improper withholding have one year from the date of notice in which to file a claim for credit or refund (without regard to the date of payment).

The provision requires the Secretary of Defense to take such actions as may be necessary to ensure that amounts are not withheld for tax purposes from severance payments made by the Secretary of Defense to individuals when such payments are not considered gross income pursuant to section 104(a)(4). The provision requires the Secretary of Defense to submit a report to Congress, specifying the number of individuals identified as having been improperly withheld upon, the aggregate amount improperly withheld, and a description of the actions to be taken to ensure that future payments are not improperly withheld.

Effective Date

The provision is effective on the date of enactment (December 16, 2016).

[85] Sec. 6511(a).

APPENDIX: ESTIMATED BUDGET EFFECTS OF TAX LEGISLATION ENACTED IN 2016

APPENDIX:
ESTIMATED BUDGET EFFECTS OF TAX LEGISLATION ENACTED IN 2016

Fiscal Years 2016- 2026

[Millions of Dollars]

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-26
PART ONE: TRADE FACILITATION AND TRADE ENFORCEMENT ACT OF 2015 - (Public Law 114-125, signed into law by the President on February 24, 2016)													
A. Increase in Penalty for Failure to File a Tax Return	rrtbficya 2015	5	19	20	21	21	22	22	23	24	25	---	202
TOTAL OF PART ONE		**5**	**19**	**20**	**21**	**21**	**22**	**22**	**23**	**24**	**25**	**---**	**202**
PART TWO: AIRPORT AND AIRWAY EXTENSIONS (Public Law 114-141, signed into law by the President on March 30, 2016, and Public Law 114-190, signed into law by the President on July 15, 2016)													
A. Extensions of Spending Authority and Taxes Funding Airport and Airway Trust Fund	DOE	*No Revenue Effect*											
TOTAL OF PART TWO		***No Revenue Effect***											
PART THREE: RECOVERING MISSING CHILDREN ACT (Public Law 114-184, signed into law by the President on June 30, 2016)													
A. Disclosure of Certain Return Information Relating to Missing or Exploited Children Investigations	DOE	*No Revenue Effect*											
TOTAL OF PART THREE		***No Revenue Effect***											
PART FOUR: UNITED STATES APPRECIATION FOR OLYMPIANS AND PARALYMPIANS ACT OF 2016 (Public Law 114-239, signed into law by the President on October 7, 2016)	**pawra 12/31/15**	**---**	**-1**	**[1]**	**[1]**	**[1]**	**-1**	**[1]**	**[1]**	**[1]**	**-1**	**[1]**	**-3**
PART FIVE: 21st CENTURY CURES ACT (Public Law 114-255, signed into law by the President on December 13, 2016)													
A. Mental Health Parity	DOE	*No Revenue Effect*											

Provision	Effective	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-26
B. Exception from Group Health Plan Requirements for Qualified Small Employer Health Reimbursement Arrangements.....	generally yba 12/31/16	---	-208	-101	-108	-4	27	47	72	124	160	225	234
TOTAL OF PART FIVE ……		**---**	**-208**	**-101**	**-108**	**-4**	**27**	**47**	**72**	**124**	**160**	**225**	**234**
PART SIX: COMBAT-INJURED VETERANS TAX FAIRNESS ACT OF 2016 (Public Law 114-292, signed into law by the President on December 16, 2016)													
A. Recovery of Certain Improperly Withheld Severance Payments..	DOE	---	---	[1]	[1]	---	---	---	---	---	---	---	[1]
TOTAL OF PART SIX ……		**---**	**---**	**[1]**	**[1]**	**---**	**---**	**---**	**---**	**---**	**---**	**---**	**[1]**

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

Legend and Footnotes for the Appendix:

DOE = date of enactment
pawra = prizes and awards received after
rrtbficya = returns required to be filed in calendar years after
yba = years beginning after

[1] Loss of less than $500,000.