

Center for Agricultural Law and Taxation 06/28/2017h

Comparison Between the House and Senate Repeal and Replace the Affordable Care Act

| Affordable Care Act Repeal/Replace Proposals | Current Law | House Bill H.R. 1628 American Health Care Act of 2017 | Senate Discussion Draft Better Care Reconciliation Act of 2017 (BCRA) |
|--|--|---|--|
| Individual Mandate | <p>§1501 of the PPA requires that all individuals either have health insurance, qualify for an exemption, or pay an individual shared responsibility payment. The shared responsibility payment for 2016 is the higher of these two amounts: \$695 per adult and \$347.50 per child (under 18), up to a maximum of \$2,085 OR 2.5% of family income above the filing threshold</p> | <p>§204 of the House Bill would eliminate the individual shared responsibility payment, beginning with tax years beginning after December 31, 2015.</p> | <p>§104 of BCRA would set the individual responsibility penalty to \$0 beginning with the 2016 tax year.</p> <p>Therefore, those that have paid or do pay the ISRP for the 2016 tax year could get the payment refunded if the BCRA is enacted.</p> <p>Unchanged in Updated Version</p> |
| Employer Mandate | <p>Beginning with the 2015 tax year, IRS began assessing shared responsibility payments against employers with 100 or more full-time equivalent employees. Penalty payments applied to those employers who either (1) did not offer insurance to their employees or (2) did not offer coverage that was affordable or provided minimum value. These penalties were triggered when an employee received a premium tax credit on the Marketplace. Beginning in 2016, employers with 50 or more full-time equivalent employees were subject to the shared responsibility payment.</p> | <p>§205 of the House Bill would eliminate the employer mandate, beginning with tax years after December 31, 2015.</p> | <p>§105 of BCRA would reduce the employer shared responsibility payment to \$0, beginning after December 31, 2015.</p> <p>Therefore, no employers with 50 to 99 employees would ever be subject to the penalty.</p> <p>Applicable large employers were required to pay the penalty for 2015, but beginning after December 31, 2015 the penalty will not apply to Applicable Large Employers as well.</p> <p>Unchanged in Updated Version</p> |

| Affordable Care Act Repeal/Replace Proposals | Current Law | House Bill H.R. 1628 American Health Care Act of 2017 | Senate Discussion Draft Better Care Reconciliation Act of 2017 (BCRA) |
|--|--|---|--|
| Net Investment Income Tax | <p>Implemented by the ACA, the NIIT went into effect for tax years beginning January 1, 2013.</p> <p>It imposes a 3.8% tax on net investment income (i.e., interest, dividends, capital gains, rental and royalty income, and non-qualified annuities) for taxpayers with modified adjusted gross income above certain thresholds (\$125,000 for single filers and \$250,000 for married filing jointly).</p> | §251 of the House Bill would eliminate the NIIT, beginning with tax years after December 31, 2016. | <p>§119 of BCRA would retroactively eliminate the NIIT, beginning with the 2018 tax year.</p> <p>Start date moved from 2017 to 2018.</p> |
| Recapture Excess Payments of Advance Premium Tax Credits | <p>Taxpayers with incomes at or below 400% of the federal poverty limit may receive an Advance Premium Tax Credit to apply toward the cost of premiums for insurance they purchase on the Marketplace. The amount of this APTC is based upon household income estimates for the upcoming tax year.</p> <p>If household income turns out to be higher than estimated, too much APTC is paid on behalf of the taxpayer during the tax year, and the taxpayer must reconcile and repay this overpayment when filing his or her tax return.</p> <p>Current law caps this repayment amount based upon income level.</p> | §201 of the House Bill would eliminate the repayment limitations for the 2018 and 2019 tax years and eliminate advanced premium tax credits entirely by 2020. | <p>§101 of BCRA would eliminate these repayment limitations, beginning with the 2018 tax year.</p> <p>Unchanged in Updated Version</p> |

| Affordable Care Act Repeal/Replace Proposals | Current Law | House Bill H.R. 1628 American Health Care Act of 2017 | Senate Discussion Draft Better Care Reconciliation Act of 2017 (BCRA) |
|--|---|---|---|
| Implementation of the Cadillac Tax | <p>The Affordable Care Act imposed a 40% excise tax on high-cost employer-sponsored health plans.</p> <p>Although the tax was originally scheduled to be imposed beginning in 2018, Congress delayed the imposition of that tax until 2020.</p> | <p>§206 of the House Bill would eliminate the Implementation of the Cadillac Tax with respect to any taxable period beginning after December 31, 2019, and before January 1, 2026.</p> | <p>§108 of BCRA would delay this implementation pushing its initiation forward to 2026.</p> <p>Budget reconciliation restrictions prevent any further elimination of this excise tax.</p> <p>Employees would continue to be eligible to exclude the full amount of coverage from income.</p> <p>Unchanged in Updated Version</p> |
| Premium Tax Credits | <p>Currently, the ACA allows a premium tax credit to offset the cost of premiums paid to purchase individual health insurance on the ACA Exchange for those in households with incomes less than 400% of the federal poverty level.</p> <p>The amount of the premium tax credit is generally equal to the difference between the cost of the premium for the “second lowest cost silver plan” on the Exchange and the subscriber’s “required contribution.”</p> <p>The required contribution is calculated by multiplying the household income by a corresponding percentage found in IRC § 36B(3)(a)(1) and adjusted annually by IRS revenue procedures per a statutory formula.</p> | <p>§ 214 of the House Bill would implement a tax credit based primarily upon the age of the taxpayer.</p> <p>These credits would range from \$2,000 per year for those under 30 to \$4,000 per year for those over 60.</p> <p>The credits would be phased out beginning with an adjusted gross income of \$75,000 for those who are single and \$150,000 for those who are married filing jointly.</p> <p>This new system would be fully implemented by 2020, with modifications to the current premium tax credits occurring in 2018 and 2019.</p> | <p>§ 102, although it retains the ACA’s premium assistance tax credit process, the BCRA would significantly change the way the credit is calculated.</p> <p>The BCRA would restrict those who are entitled to a premium tax credit to those with household incomes at less than 350% of the federal poverty level.</p> <p>The BRCA would then calculate the required contribution based upon a wholly renovated table including age-adjusted percentages. (Table Comparisons Detailed on Next Page)</p> <p>The required contribution would be significantly higher for older Americans with higher income ranges.</p> <p>It is important to note that the changes made to the premium tax credit would not go into effect until tax year 2020.</p> <p>Unchanged in Updated Version</p> |

| “In the case of household income (expressed as a percent of the poverty line) within the following income tier: | Up to Age 29 | | Age 30-39 | | Age 40-49 | | Age 50-59 | | Over Age 59 | |
|---|--------------|---------|-----------|---------|-----------|---------|-----------|---------|-------------|---------|
| | Initial % | Final % | Initial % | Final % | Initial % | Final % | Initial % | Final % | Initial % | Final % |
| Up to 100% | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 |
| 100%-133% | 2 | 2.5 | 2 | 2.5 | 2 | 2.5 | 2 | 2.5 | 2 | 2.5 |
| 133%-150% | 2.5 | 4 | 2.5 | 4 | 2.5 | 4 | 2.5 | 4 | 2.5 | 4 |
| 150%-200% | 4 | 4.3 | 4 | 5.3 | 4 | 6.3 | 4 | 7.3 | 4 | 8.3 |
| 200%-250% | 4.3 | 4.3 | 5.3 | 5.9 | 6.3 | 8.05 | 7.3 | 9 | 8.3 | 10 |
| 250%-300% | 4.3 | 4.3 | 5.9 | 5.9 | 8.05 | 8.35 | 9 | 10.5 | 10 | 11.5 |
| 300%-350% | 4.3 | 6.4 | 5.9 | 8.9 | 8.35 | 12.5 | 10.5 | 15.8 | 11.5 | 16.2” |

Current Table under the Affordable Care Act – Household Income Percentage

| Household income percentage of Federal poverty line: | Initial percentage | Final percentage |
|--|--------------------|------------------|
| Less than 133% | 2.04% | 2.04% |
| At least 133% but less than 150% | 3.06% | 4.08% |
| At least 150% but less than 200% | 4.08% | 6.43% |
| At least 200% but less than 250% | 6.43% | 8.21% |
| At least 250% but less than 300% | 8.21% | 9.69% |
| At least 300% but not more than 400% | 9.69% | 9.69% |

| Affordable Care Act Repeal/Replace Proposals | Current Law | House Bill H.R. 1628 American Health Care Act of 2017 | Senate Discussion Draft Better Care Reconciliation Act of 2017 (BCRA) |
|---|--|---|---|
| Definition of An Alien | §36B (e)(2) for purposes of this section, an individual shall be treated as lawfully present only if the individual is, and is reasonably expected to be for the entire period of enrollment for which the credit under this section is being claimed, a citizen or national of the United States or an alien lawfully present in the United States. | Not addressed in the House Bill | <p>§ 102 amends §36B redefining an “alien lawfully present in the United States” by changing the definition to a “qualified alien (within the meaning of § 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996)”. § 431 defines a Qualified Alien as:</p> <p>An alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is—</p> <ol style="list-style-type: none"> (1) An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act, (2) An alien who is granted asylum under § 208 of such Act, (3) A refugee who is admitted to the United States under § 207 of such Act, (4) An alien who is paroled into the United States under § 212(d)(5) of such Act for a period of at least 1 year, (5) An alien whose deportation is being withheld under § 243(h) of such Act, or (6) An alien who is granted conditional entry pursuant to § 203(a)(7) of such Act as in effect prior to April 1, 1980. <p>Unchanged in Updated Version</p> |

| Affordable Care Act Repeal/Replace Proposals | Current Law | House Bill H.R. 1628 American Health Care Act of 2017 | Senate Discussion Draft Better Care Reconciliation Act of 2017 (BCRA) |
|---|--|---|--|
| Increased Penalty on Erroneous Claims of Credit | § 6676 provides for a penalty of 20% if a claim for refund or credit is made in an excessive amount, unless a reasonable basis can be shown by the person making the claim. This does not apply to Earned Income Tax Credit under §32. | Not addressed in the House Bill | § 102(d) increases this penalty to 25% in the case of a claim for refund relating to the health insurance coverage credit under § 36B. Effective for tax year beginning after December 31, 2019. Unchanged in Updated Version |
| Parents Continuation of Health Coverage until age 26. | §2714 of the Public Health Service Act (as added by the §1004 of the Affordable Care Act and amended by the Reconciliation Act) provides that a plan that makes available a dependent coverage of children must make such coverage available until attainment of 26 years of age. | Not addressed in the House Bill | Not Addressed in the Senate Bill |
| Additional Medicare Tax | §9015 of the PPA created an additional Medicare Tax of 0.9% on earned income applies based on the filing status: Single, head of household, or qualifying widow(er) -- \$200,00 Married filing jointly -- \$250,000 Married filing separately -- \$125,000 The 0.9% additional Medicare tax only applies to earned income that's more than the threshold amount. | § 213 repeals the additional Medicare tax. | §117 of BCRA repeals the additional 0.9% Medicare tax beginning in 2023. Updated Version would not repeal this tax. |
| Flexible Spending Accounts | §9005 of the PPA set contribution limits on FSA cafeteria plans. § 125 provides for employees to be able to put \$2600 into their health care flexible spending accounts in 2017. Revue Procedure 2016-55 provides the 2017 dollar limitations. | § 209 provides for the repeal of limitations on contributions to flexible spending accounts. Effective for tax years beginning after December 31, 2016. | §111 of BCRA repeals the \$2,500 limitation on contributions to FSAs after December 31, 2017. Unchanged date in Updated Version |

| Affordable Care Act Repeal/Replace Proposals | Current Law | House Bill H.R. 1628 American Health Care Act of 2017 | Senate Discussion Draft Better Care Reconciliation Act of 2017 (BCRA) |
|---|--|--|--|
| Tax on Over the Counter Drugs | §9003 Of the PPA defined that distributions for medicines qualify only as a medical expense if prescribed by a physician or are insulin. | § 207 repeals of tax on over-the-counter medications and allows reimbursement from various medical savings plans, as of 12/31/16. | §109 of BCRA repeals of tax on over-the-counter medications and allows reimbursement from various medical savings plans. Unchanged in Updated Version |
| Threshold for Medical Expenses Itemized Deduction | § 9013 of the PPA and 213(f) In the case of any taxable year beginning after December 31, 2012, and ending before January 1, 2017, 7.5% will apply to all taxpayers except 10 % if the taxpayer or taxpayer's spouse has attained age 65 before the close of such taxable year. 2016 was the last year for this provision. | § 212 required a 5.8% reduction of income threshold for determining medical care deduction. Effective for taxable years beginning after December 31, 2016. | §116 of BCRA restores the income threshold above which the medical expense deduction can be claimed to 7.5 percent for all taxpayers beginning with tax year 2017. Unchanged in Updated Version |
| Health Saving Investments Penalty for Unqualified Disbursements | §9004 of the PPA increased and additional tax on distributions from HSAs and Archer MSA's not used for qualified expenses from 10% to 20% for HSA's and from 15% to 20% for Archer MSA's. | § 208 repeals the increased penalty on health savings accounts for improper withdrawal of funds from an HSA from 20% to 10% and MSA's from 20% to 15% effective for tax years beginning after December 31, 2016. | §110 of BCRA reduces the penalty for improper withdrawal of funds from HSAs from 20 percent to 10 percent and from MSAs from 20 percent to 15 percent, beginning after December 31, 2016. Unchanged in Updated Version |
| Tanning Tax | §9017 of the PPA imposed a 10% tanning tax | § 231 repeals the tanning tax effective for services performed after June 30, 2017. | §118 of BCRA repeals the tanning tax for services occurring after September 30, 2017. Becomes §117 in the revised Act |
| Catch Up Contributions to One Health Savings Account | Not currently available when making contributions. | § 216 allows both spouses to make catch-up contributions to the same health savings account. Effective for taxable years beginning after December 31, 2017. | §122 allows both spouses to make catch-up contributions to the same health savings account. Effective for taxable years beginning after December 31, 2017. Now §120 of Act |

| Affordable Care Act Repeal/Replace Proposals | Current Law | House Bill H.R. 1628 American Health Care Act of 2017 | Senate Discussion Draft Better Care Reconciliation Act of 2017 (BCRA) |
|--|---|--|--|
| Small Business Health Insurance Credit | <p>§1421 of the PPA created a Small Employer Health Insurance Credit that was later modified by the Tax Increase Prevention Act of 2014. An <u>eligible small employer</u> may claim a credit equal to 50% of non-elective contributions for health insurance for its employees. The credit as modified is allowed for 2 consecutive years. The credit amount is reduced to 35% for exempt organizations.</p> | <p>§203 Repeals §45R Small Business Health Insurance Credit after 2019.</p> | <p>§103 repeals §45R Small Business Health Insurance Credit after 2019.</p> <p>Beginning on 2018, the plan cannot cover abortions, except if necessary to save life of mother or abortion in the case of rape or incest.</p> |
| Medical Device Tax | <p>§ 4191 of the PPA imposes an excise tax on the sale of certain medical devices by the manufacturer or importer of the device. The tax is 2.3 percent of the sale price of the taxable medical device.</p> <p>The medical device excise tax does not apply to taxable medical device sales made during the period from Jan. 1, 2016, through Dec. 31, 2017.</p> <p>The medical device excise tax will apply to sales of taxable medical devices made after Dec. 31, 2017, and taxpayers will be required to report sales of taxable medical devices made during the first quarter of 2018 on Form 720 by Apr. 30, 2018.</p> | <p>§210 of the Act repeals the Medical Device Tax for sales after December 31, 2016.</p> | <p>§113 of BCRA repeals the Medical Device Tax beginning after December 31, 2016.</p> <p>Changed effective date beginning for sales after December 31, 2017.</p> |

| Affordable Care Act Repeal/Replace Proposals | Current Law | House Bill H.R. 1628 American Health Care Act of 2017 | Senate Discussion Draft Better Care Reconciliation Act of 2017 (BCRA) |
|---|---|--|--|
| Repeal the Health Insurance Tax | <p>§ 9010 of the PPA imposed an annual fee on those engaged in the business of providing health insurance beginning in 2014.</p> <p>The Consolidated Appropriations Act of 2016, Title II, § 201, suspended the collection of the Health Insurance Provider's Fee for the 2017 calendar year.</p> | § 222 of the House Bill provides for the repeal of health insurance tax beginning after December 31, 2013, and ending before January 1, 2017. | <p>§114 of BCRA would eliminate this tax altogether after December 31, 2017.</p> <p>Unchanged in Updated Version</p> |
| Medical Expenses Incurred Before the Establishment of a Health Saving Account | Not available under current law | <p>§ 217 provides a special rule for certain medical expenses incurred before establishment of health savings account.</p> <p>If a health savings account is established during the 60-day period beginning on the date that coverage of the account beneficiary under a high deductible health plan begins, then, solely for purposes of determining whether an amount paid is used for a qualified medical expense, such account shall be treated as having been established on the date that such coverage begins.”.</p> <p>Effective date. —The amendment made by this section shall apply with respect to coverage beginning after December 31, 2017.</p> | <p>§123 provides a special rule for certain medical expenses incurred before establishment of health savings account. If a health savings account is established during the 60-day period beginning on the date that coverage of the account beneficiary under a high deductible health plan begins, then, solely for purposes of determining whether an amount paid is used for a qualified medical expense, such account shall be treated as having been established on the date that such coverage begins”. Effective date. — The amendment made by this section shall apply with respect to coverage beginning after December 31, 2017. Now §121 of the Act</p> |

| Affordable Care Act Repeal/Replace Proposals | Current Law | House Bill H.R. 1628 American Health Care Act of 2017 | Senate Discussion Draft Better Care Reconciliation Act of 2017 (BCRA) |
|---|---|--|---|
| Maximum Contribution Limit to Health Savings Accounts | §223 of the IRC governs Health Savings Accounts which were original created in 2003. Various laws have been enacted to modify the current HSA rules. Revenue Procedures are issued annual to provide inflation adjustments. | §215 of the House Bill BCRA increases the maximum contribution limit to Health Savings Accounts to the amount of deductible out-of-pocket expenses, effective for taxable years beginning after December 31, 2017. | § 121 of BCRA increases the maximum contribution limit to Health Savings Accounts to the amount of deductible out-of-pocket expenses, effective for taxable years beginning after December 31, 2017. Now §119 of the Act |