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HIRE MORE HEROES ACT OF 2015

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Mr. HATCH, from the Committee on Finance, submitted the following

R E P O R T

[To accompany H.R. 22]

The Committee on Finance, to which was referred the bill (H.R. 22) to amend the Internal Revenue Code of 1986 to exempt employees with health coverage under TRICARE or the Veterans Administration from being taken into account for purposes of determining the employers to which the employer mandate applies under the Patient Protection and Affordable Care Act, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. LEGISLATIVE BACKGROUND

The Committee on Finance, having considered H.R. 22, the "Hire More Heroes Act of 2015," to amend the Internal Revenue Code of 1986 to exempt employees with health coverage under TRICARE or the Veterans Administration from being taken into account for purposes of determining the employers to which the employer mandate

applies under the Patient Protection and Affordable Care Act, reports favorably thereon and recommends that the bill do pass.

Background and need for legislative action

Members of the military (and their families) serve the Nation with dedication and honor. After this service, veterans deserve the best job opportunities the country can offer.

Small businesses are a primary source of job creation. Incentives for businesses to hire veterans, especially small businesses, play a valuable role in expanding job opportunities for veterans.

The Affordable Care Act requires employers with 50 or more full-time employees to offer medical coverage to their full-time employees (and dependents) or possibly face a tax penalty. Under the bill, an individual who already has medical coverage under the TRICARE program or a program of the Veterans Health Administration is disregarded in determining whether an employer has 50 full-time employees. The bill thus allows a small business to hire a veteran without crossing the 50 full-time employee threshold, recognizing that an employer would not need to incur the additional cost of offering health insurance to a veteran already covered by the Veterans Health Administration or TRICARE.

II. EXPLANATION OF THE BILL

A. Employees With Health Coverage Under TRICARE or the Veterans Administration Not Taken Into Account in Determining Employers To Which the Employer Mandate Applies Under Patient Protection and Affordable Care Act (Sec. 2 of the Bill and Sec. 4980H of the Code)

PRESENT LAW

Employer shared responsibility for health coverage

In general

Under the Patient Protection and Affordable Care Act ("PPACA"),[1] as amended by the Health Care and Education Reconciliation Act of 2010[2] (referred to collectively as the "Affordable Care Act" or "ACA"), an applicable large employer may be subject to a tax, called an "assessable payment," for a month if one or more of its full-time employees is certified to the employer as receiving for the month a premium assistance credit for health insurance purchased on an American Health Benefit Exchange or reduced cost-sharing for the employee's share of expenses covered by such health insurance.[3] As discussed below, the amount of the assessable payment depends on whether the employer offers its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under a group health plan sponsored by

[1] Pub. L. No. 111–148.

[2] Pub. L. No. 111–152.

[3] Sec. 4980H. This is sometimes referred to as the employer shared responsibility requirement. An applicable large employer is also subject to annual reporting requirements under section 6056. Premium assistance credits for health insurance purchased on an American Health Benefit Exchange are provided under section 36B. Reduced cost-sharing for an individual's share of expenses covered by such health insurance is provided under section 1402 of PPACA. For further information on these provisions, see Part III.B–D of Joint Committee on Taxation, *Present Law and Background Relating to the Tax-Related Provisions in the Affordable Care Act* (JCX–6–13), March 4, 2013, available at www.jct.gov.

the employer and, if it does, whether the coverage offered is affordable and provides minimum value.

Under the ACA, these rules are effective for months beginning after December 31, 2013. However, in 2013, the Internal Revenue Service ("IRS") announced that no assessable payments will be assessed for 2014.[4] In addition, in 2014, the IRS announced that no assessable payments for 2015 will apply to applicable large employers that have fewer than 100 full-time employees and full-time equivalent employees and meet certain other requirements.[5]

Definitions of full-time employee and applicable large employer

For purposes of applying these rules, full-time employee means, with respect to any month, an employee who is employed on average at least 30 hours of service per week. Hours of service are to be determined under regulations, rules, and guidance prescribed by the Secretary of the Treasury ("Secretary"), in consultation with the Secretary of Labor, including rules for employees who are not compensated on an hourly basis.

Applicable large employer generally means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year.[6] Solely for purposes of 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 whether an employer is an applicable large employer, members of the same controlled group, group under common control, and affiliated service group are treated as a single employer.[7]

Assessable payments

If an applicable large employer does not offer its full-time employees and their dependents minimum essential coverage under an employer-sponsored plan and at least one full-time employee is certified as receiving for the month a premium assistance credit or reduced cost-sharing, the employer may be subject to an assessable payment of $2,000[8] (divided by 12 and applied on a monthly basis) multiplied by the number of its full-time employees minus 30, re-

[4] Notice 2013–45, 2013–31 I.R.B. 116, Part III, Q&A–2.

[5] Section XV.D.6 of the preamble to the final regulations, T.D. 9655, 79 Fed. Reg. 8544, 8574–8575, February 12, 2014.

[6] Additional rules apply, for example, in the case of an employer that was not in existence for the entire preceding calendar year.

[7] The rules for determining controlled group, group under common control, and affiliated service group under section 414(b), (c), (m) and (o) apply for this purpose. If the group is an applicable large employer under this test, each member of the group is an applicable large employer even if any member by itself would not be an applicable large employer. In addition, in determining assessable payments (as discussed herein), only one 30–employee reduction in full-time employees applies to the group and is allocated among the members ratably based on the number of full-time employees employed by each member.

[8] For calendar years after 2014, the $2,000 dollar amount, and the $3,000 dollar amount referenced herein, are increased by the percentage (if any) by which the average per capita premium for health insurance coverage in the United States for the preceding calendar year (as estimated by the Secretary of Health and Human Services ("HHS") no later than October 1 of the preceding calendar year) exceeds the average per capita premium for 2013 (as determined by the Secretary of HHS), rounded down to the nearest $10.

gardless of the number of full-time employees so certified. For example, in 2016, Employer A fails to offer minimum essential coverage and has 100 full-time employees, 10 of whom receive premium assistance credits for the entire year. The employer's assessable payment is $2,000 for each employee over the 30-employee threshold, for a total of $140,000 ($2,000 multiplied by 70 (100–30)).

Generally, an employee who is offered minimum essential coverage under an employer-sponsored plan is not eligible for a premium assistance credit or reduced cost-sharing unless the coverage is unaffordable or fails to provide minimum value.[9] However, if an employer offers its full-time employees and their dependents minimum essential coverage under an employer-sponsored plan and at least one full-time employee is certified as receiving a premium assistance credit or reduced cost-sharing (because the coverage is unaffordable or fails to provide minimum value), the employer may be subject to an assessable payment of $3,000 (divided by 12 and applied on a monthly basis) multiplied by the number of such full-time employees. However, the assessable payment in this case is capped at the amount that would apply if the employer failed to offer its full-time employees and their dependents minimum essential coverage. For example, in 2016, Employer A offers minimum essential coverage and has 100 full-time employees, 20 of whom receive premium assistance credits for the entire year. The employer's assessable payment before consideration of the cap is $3,000 for each full-time employee receiving a credit, for a total of $60,000 ($3,000 multiplied by 20). The cap on the assessable payment is the amount that would have applied if the employer failed to offer coverage, or $140,000 ($2,000 multiplied by 70 (100–30)). In this example, the cap therefore does not affect the amount of the assessable payment, which remains at $60,000.

TRICARE and veterans health programs

The Military Health System provides active and retired members of the armed forces and their families (including certain survivors and former spouses) with medical coverage, primarily through the TRICARE program.[10] The TRICARE program offers various health plans, including a managed care option and fee-for-service options.[11]

The Veterans Health Administration ("VHA"), within the Department of Veterans Affairs, provides certain veterans and family members (including certain survivors) with medical coverage through its health care programs.[12] Enrolled veterans are provided a medical benefits package that covers a range of medical care, including inpatient, outpatient, and preventive services. Medical cov-

[9] Under section 36B(c)(2)(C), coverage under an employer-sponsored plan is unaffordable if the employee's share of the premium for self-only coverage exceeds 9.5 percent of household income, and the coverage fails to provide minimum value if the plan's share of total allowed cost of provided benefits is less than 60 percent of such costs.

[10] 10 U.S.C. chapter 55. Health care may be provided through military treatment facilities or private health care providers. Under section 5000A(f)(1)(A)(iv), this coverage satisfies the requirement under ACA that individuals have minimum essential coverage.

[11] Information about the TRICARE program is available at http://www.tricare.mil/.

[12] 38 U.S.C. chapters 17 and 18. Veterans are enrolled in VHA health care programs based on specified priority categories. The highest priority is given to veterans with a service-connected disability. Information about VHA health care programs is available at http://www.va.gov/health/.

erage for eligible family members of veterans is provided through the Civilian Health and Medical Program of the Department of Veterans Affairs ("CHAMPVA").[13]

REASONS FOR CHANGE

The Committee recognizes the importance of rewarding veterans for their service to the Nation by providing them with job opportunities. The Committee also recognizes the importance of encouraging businesses to hire veterans. The bill allows a small business to hire a veteran without crossing the 50 full-time employee threshold.

EXPLANATION OF PROVISION

Under the provision, solely for purposes of determining whether an employer is an applicable large employer for any month (and possibly subject to an assessable payment), an individual is not taken into account as an employee for the month if the individual has medical coverage for the month under (1) a program for members of the armed forces, including coverage under the TRICARE program, or (2) under a VHA health care program, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary.

EFFECTIVE DATE

The provision applies to months beginning after December 31, 2013.

III. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATES

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the estimated budget effects of the revenue provisions of the "Hire More Heroes Act of 2015" as reported.

The bill is estimated to have the following effects on Federal budget receipts for fiscal years 2015–2025:

FISCAL YEARS

[Millions of dollars]

2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015–20	2015–25
– – –	−64	−68	−72	−77	−82	−88	−93	−99	−104	−110	−364	−858

NOTE: Details do not add to totals due to rounding.
Source: Estimate provided by the staff of the Joint Committee on Taxation and the Congressional Budget Office.

[13] Under section 5000A(f)(1)(A)(v), minimum essential coverage includes coverage under a VHA health care program, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary. Under Treas. Reg. sec. 1.5000A–2(b)(1)(v), the medical benefits package that enrolled veterans receive and CHAMPVA coverage are minimum essential coverage, as well as the comprehensive health care program for certain children of Vietnam Veterans and Veterans of covered service in Korea who are suffering from spina bifida.

B. Budget Authority and Tax Expenditures

Budget authority

In compliance with section 308(a)(1) of the Congressional Budget and Impoundment Control Act of 1974 ("Budget Act"),[14] the Committee states that no provisions of the bill as reported involve new or increased budget authority.

Tax expenditures

In compliance with section 308(a)(1) of the Budget Act, the Committee states that the revenue-reducing provisions of the bill involve increased tax expenditures (see revenue table in Part A., above).

C. Consultation With Congressional Budget Office

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office has not submitted a statement on the bill. The letter from the Congressional Budget Office will be provided separately.

IV. VOTES OF THE COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the standing rules of the Senate, the Committee states that, with a majority present, the "Hire More Heroes Act of 2015," was ordered favorably reported on January 28, 2015 as follows:

Final Passage of The Hire More Heroes Act of 2015—approved by a roll call vote of 26 ayes, 0 nays.

Ayes: Hatch, Grassley (proxy), Crapo, Roberts, Enzi (proxy), Cornyn (proxy), Thune (proxy), Burr, Isakson, Portman, Toomey, Coats, Heller, Scott, Wyden, Schumer, Stabenow, Cantwell, Nelson (proxy), Menendez, Carper, Cardin, Brown, Bennet, Casey, Warner (proxy).

V. REGULATORY IMPACT AND OTHER MATTERS

A. Regulatory Impact

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill as amended.

Impact on individuals and businesses, personal privacy and paperwork

The bill is not expected to impose additional administrative requirements or regulatory burdens on individuals. The bill is expected to reduce administrative requirements and regulatory burdens on some businesses.

The provisions of the bill do not impact personal privacy.

B. Unfunded Mandates Statement

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

[14] Pub. L. No. 93–344.

The Committee has determined that the bill does not contain any private sector mandates. The Committee has determined that the bill contains no intergovernmental mandate.

C. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 ("IRS Reform Act") requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have "widespread applicability" to individuals or small businesses, within the meaning of the rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

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