

**DESCRIPTION OF THE CHAIRMAN'S MARK
RELATING TO MODIFICATIONS TO ALTERNATIVE TAX
FOR CERTAIN SMALL INSURANCE COMPANIES**

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

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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CONTENTS

	<u>Page</u>
INTRODUCTION	1
A. Modifications to Alternative Tax for Certain Small Insurance Companies	2
B. Estimated Revenue Effects	3
C. Increase Continuous Levy Authority on Payments to Medicare Providers and Suppliers.....	4

INTRODUCTION

The Senate Committee on Finance has scheduled a committee markup on February 11, 2015, of a proposal to modify the alternative tax for certain small insurance companies. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the proposal.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Mark Relating to Modifications to Alternative Tax for Certain Small Insurance Companies* (JCX-21-15), February 9, 2015. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Modifications to Alternative Tax for Certain Small Insurance Companies

Present Law

Under present law, the taxable income of a property and casualty insurance company is the sum of the amount earned from underwriting income and from investment income (as well as gains and other income items), reduced by allowable deductions. For this purpose, underwriting income and investment income are computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Association of Insurance Commissioners. Insurance companies are subject to tax at regular corporate income tax rates.

In lieu of the tax otherwise applicable, certain property and casualty insurance companies may elect to be taxed only on taxable investment income under section 831(b).² The election is available to mutual and stock companies with net written premiums or direct written premiums (whichever is greater) that do not exceed \$1,200,000.

Description of Proposal

The proposal modifies section 831(b) in two ways. First, the proposal increases the \$1,200,000 amount to \$2,200,000 and indexes this amount for inflation. Second, the proposal imposes additional restrictions intended to narrow the application of section 831(b). Specifically, for a property and casualty insurance company to be eligible to make the section 831(b) election, no more than 20 percent of its net written premiums (or if greater, direct written premiums) for a taxable year can be attributable to any one policyholder. For this purpose, all policyholders that are related or are members of the same controlled group are treated as one policyholder. Attribution rules relating to family, partner, and stockholder relationships (which apply for other purposes under the tax law) are applied to determine whether policyholders are related. Compliance is enforced through reporting rules. In addition, the proposal requires that the company assume or otherwise take on no risks through reinsurance.

Effective Date

The proposal is effective for taxable years beginning after the date of enactment.

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

B. Estimated Revenue Effects

Fiscal Years [Millions of Dollars]												
<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2015-20</u>	<u>2015-25</u>
-1	-3	-4	-5	-6	-7	-9	-10	-12	-13	-14	-26	-84

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

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

Present Law

In general

Levy is the administrative authority of the IRS to seize a taxpayer's property, or rights to property, to pay the taxpayer's tax liability.³ Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,⁴ the property is not exempt from levy,⁵ and the IRS has provided both notice of intention to levy⁶ and notice of the right to an administrative hearing (the notice is referred to as a "collections due process notice" or "CDP notice" and the hearing is referred to as the "CDP hearing")⁷ at least 30 days before the levy is made. A levy on salary or wages generally is continuously in effect until released.⁸ A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.⁹

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.¹⁰

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

³ Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.

⁴ *Ibid.*

⁵ Sec. 6334.

⁶ Sec. 6331(d).

⁷ Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.

⁸ Secs. 6331(e) and 6343.

⁹ Sec. 6321.

¹⁰ Secs. 6331(d)(3) and 6861.

however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.¹¹

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997¹² authorized the establishment of the Federal Payment Levy Program (“FPLP”), which allows the IRS to continuously levy up to 15 percent of certain “specified payments” by the Federal government if the payees are delinquent on their tax obligations. With respect to payments to vendors of goods, services, or property sold or leased to the Federal government, the continuous levy may be up to 100 percent of each payment.¹³ For payments to Medicare providers and suppliers, the levy is up to 15 percent for payments made within 180 days after December 19, 2014. For payments made after that date, the levy is up to 30 percent.¹⁴

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

Description of Proposal

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

Effective Date

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

¹¹ Sec. 6330(f).

¹² Pub. L. No. 105-34.

¹³ Sec. 6331(h)(3).

¹⁴ Pub. L. No. 113-295, Division B.