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## House OKs measure to expand health savings account rules

The House of Representatives on July 6 voted 243-164 to approve legislation that would relax some current-law restrictions on the use of health savings accounts (HSAs) and offset the resulting revenue loss with a provision to recapture overpayments of health care tax credit subsidies under the Patient Protection and Affordable Care Act (PPACA).

### HSA provisions

HSAs are tax-preferred savings vehicles which individuals can use in conjunction with a high-deductible health insurance plan to pay for qualifying out-of-pocket health care expenses, subject to certain conditions. The House-approved bill – the Restoring Access to Medication and Improving Health Savings Act of 2016 (H.R. 1270) – would liberalize the HSA rules by:

- Eliminating the PPACA requirement that an individual have a prescription to purchase over-the-counter medications using funds from an HSA, a flexible spending arrangement (FSA), or medical savings account (MSA);
- Allowing spouses to make catch-up contributions to the same HSA account;

- Allowing qualified medical expenses incurred after an individual obtains coverage under a high-deductible health plan but before the individual establishes an HSA to be reimbursed from the HSA as long as the account is established within 60 days of the date that coverage begins under the high-deductible health insurance plan;
- Increasing the maximum contribution to an HSA to the maximum combined annual deductible and out-of-pocket expense limits allowed under the high-deductible health insurance plan to which the account is linked.

These provisions are drawn from an earlier version of H.R. 1270 introduced by Ways and Means Republican Lynn Jenkins of Kansas last July, and from legislation (H.R. 5445) introduced by Ways and Means Republican Erik Paulsen of Minnesota on June 10. They were also included as recommendations in the health care reform blueprint put forward by the House GOP health care task force on June 22. (For prior coverage, see *Tax News & Views*, Vol. 17, No. 23, June 24, 2016.)

URL: [http://newsletters.usdbriefs.com/2016/Tax/TNV/160624\\_1suppB.pdf](http://newsletters.usdbriefs.com/2016/Tax/TNV/160624_1suppB.pdf)

URL: [http://newsletters.usdbriefs.com/2016/Tax/TNV/160624\\_1.html](http://newsletters.usdbriefs.com/2016/Tax/TNV/160624_1.html)

On the revenue side, H.R. 1270 would require individuals who receive overpayments of health care exchange subsidies under the PPACA to reimburse the government for the full amount of the overpayment. (Current law limits the reimbursement amount for certain taxpayers with household income below 400 percent of the poverty line.) Rep. Jenkins introduced the provision as a free-standing House bill (H.R. 4723) in March.

### Partisan split, veto threat

H.R. 1270 would be effective for taxable years beginning after December 31, 2016. The Joint Committee on Taxation staff estimates it would result in a net increase in federal receipts of \$2.17 billion between 2017 and 2026.

URL: <https://www.jct.gov/publications.html?func=startdown&id=4931>

The measure cleared the chamber largely along party lines: 10 Democrats broke ranks to support it; no Republicans voted against it. Ways and Means Committee Chairman Kevin Brady, R-Texas, said in a July 6 news release that the measure “will help people and families throughout the nation by improving choice and affordability in health care.” For his part, Ways and Means Committee ranking Democrat Sander Levin of Michigan characterized it in remarks on the House floor as “a tax cut mainly for the most wealthy.”

Across the Capitol, Senate Majority Leader Mitch McConnell, R-Ky., has begun the process of putting H.R. 1270 directly on the Senate calendar, indicating that lawmakers intend to move quickly to bring it up for a vote. The White House indicated in a recent statement of administration policy that President Obama will veto the measure if it reaches his desk.

URL: [https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr1270r\\_20160621.pdf](https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr1270r_20160621.pdf)

### Approps bill would cut IRS budget, block PPACA implementation

Also this week, the House on July 7 approved a fiscal year 2017 financial services appropriations bill (H.R. 5485) that, among other things, would:

- Cut the Internal Revenue Service’s operating budget to \$10.8 billion;
- Limit the IRS’s ability to implement provisions of the PPACA;
- Prohibit funds for finalizing any regulation related to the standards used to determine the tax-exempt status of a 501(c)(4) organization or for targeting groups for regulatory scrutiny based on their ideological beliefs;
- Require IRS employees to be trained in the impartial application of tax law;
- Prohibit funds for bonuses and awards to IRS employees who have engaged in professional misconduct and or have not complied with tax laws; and
- Prohibit funds for hiring former IRS employees without considering their past conduct and tax compliance.

The bill cleared the House by a largely partisan vote of 239-185, with all but 4 Democrats aligned in the “no” column. (Seven Republicans also voted against the measure.)

The White House has cited its objections to “the inclusion of problematic ideological provisions that are beyond the scope of funding legislation” and has indicated that the president’s senior advisors will recommend that he veto the bill if it reaches his desk.

URL: [https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr5485r\\_20160621.pdf](https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr5485r_20160621.pdf)

— Michael DeHoff  
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## Global Transfer Pricing Alert: Treasury releases final country-by-country reporting regulations

The Treasury Department on June 29 released final regulations that require annual country-by-country (CbC) reporting by US entities that are the ultimate parent entity of a multinational enterprise (MNE) group with annual revenue of \$850 million or more.

URL: [http://newsletters.usdbriefs.com/2016/Tax/TNV/160708\\_2suppA.pdf](http://newsletters.usdbriefs.com/2016/Tax/TNV/160708_2suppA.pdf)

Treasury based the final regulations on the model template for CbC reporting developed by the OECD as part of its base erosion and profit shifting (BEPS) project and released in October 2015 as part of the final BEPS reports. (For prior coverage, see *Tax News & Views*, Vol. 16, No. 34, Oct. 6, 2015.)

URL: [http://newsletters.usdbriefs.com/2015/Tax/TNV/151006\\_1.html](http://newsletters.usdbriefs.com/2015/Tax/TNV/151006_1.html)

The CbC report will be due with the timely filed tax return (with extensions) for the parent entity of a US MNE group. The preamble to the final regulations indicates that if a taxpayer does not file the CbC report, then the penalty rules under section 6038 will “generally apply, including reasonable cause relief for failure to file.”

The final regulations apply to taxable years of parents of US MNE groups that begin on or after June 30, 2016.

Details on the final regulations are available in this alert from Deloitte Tax LLP’s Global Transfer Pricing Group.

URL: [http://newsletters.usdbriefs.com/2016/Tax/TNV/160708\\_2suppB.pdf](http://newsletters.usdbriefs.com/2016/Tax/TNV/160708_2suppB.pdf)

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## Ways and Means members show bipartisan support for civil asset forfeiture limitations

The House Ways and Means Committee on July 7 approved by unanimous voice vote a bipartisan bill intended to limit the IRS’s ability to seize property from certain taxpayers suspected of engaging in so-called “structuring” transactions.

The Restraining Excessive Seizure of Property through the Exploitation of Civil Asset Forfeiture Tools Act (H.R. 5523) was introduced by Ways and Means Oversight Subcommittee Chairman Peter Roskam, R-Ill., and co-sponsored by subcommittee member Joseph Crowley, D-N.Y.

### Bank Secrecy Act

Not exclusively a tax bill, H.R. 5523 would modify certain provisions of the Bank Secrecy Act (31 USC. section 5311-5332), which requires cash transactions of amounts greater than \$10,000 to be reported to the federal government to target cash-based criminal activity. Individuals and small businesses who seek to get around these rules by breaking their transactions into smaller amounts – a practice known as “structuring” – can be subject to civil and criminal penalties, including forfeiture of the assets to the IRS.

But Roskam noted at the Ways and Means mark-up that some individuals may unwittingly engage in a structuring transaction and be subject to asset forfeiture without ever committing a crime. He cited several examples, including that of a business owner who made a single deposit of less than \$10,000 – a payment from his insurance policy – and subsequently had \$950,000 seized by the IRS.

In his remarks, Crowley called civil asset forfeiture a “vital law enforcement tool” but emphasized that his legislation aims to codify reforms to stop abusive asset seizures. Specifically, the bill would permit the IRS to seize civil assets only in instances in which (1) the property was either derived from an illegal source or (2) the structuring was done to conceal a violation of a criminal law. As Roskam put it, “there has to be an underlying bad act in order for [forfeiture] to happen.”

The provisions largely codify policy changes adopted by the IRS in 2014.

[URL: http://ij.org/wp-content/uploads/2015/07/IJ068495.pdf](http://ij.org/wp-content/uploads/2015/07/IJ068495.pdf)

### **Tax code changes**

While the bill predominantly modifies banking statutes contained in Title 31, it makes changes to the Internal Revenue Code as well. Under current law, interest that accrues on assets while they are in forfeiture is includable in gross income when those assets are returned to the taxpayer. H.R. 5523 would add a new section 139G to the code which explicitly exempts from gross income any interest received in connection with the return of wrongly seized assets.

Additionally, because civil asset forfeiture involves the taking of property, H.R. 5523 also contains rules ensuring due process for taxpayers whose assets are seized. Specifically, the bill sets out post-seizure procedures the IRS must follow, such as a good-faith effort to notify taxpayers of their post-seizure hearing rights within 30 days. However, because the Bank Secrecy Act deals heavily with law enforcement, the measure includes a carve-out allowing the 30 days to be extended if the IRS can show probable cause of an imminent threat to national security or personal safety.

### **Bipartisan support**

Roskam and every Ways and Means Committee member who spoke at the short mark-up emphasized that the legislation enjoys bipartisan support. Oversight Subcommittee ranking member John Lewis, D-Ga., commented that his panel reached such a level of accord in its work on the bill that “peace broke out.”

### **Next steps uncertain**

House leaders have not indicated when the measure will be debated by the whole House, but the strong bipartisan support for it makes it a candidate for swift consideration. There currently is no companion version of the legislation in the Senate.

If approved in both chambers and signed into law in its current form, H.R. 5523 would be effective upon enactment.

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