

One Hundred Eleventh Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the fifth day of January, two thousand and ten*

An Act

To provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Health Care and Education Reconciliation Act of 2010”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—COVERAGE, MEDICARE, MEDICAID, AND REVENUES

Subtitle A—Coverage

Sec. 1001. Tax credits.
Sec. 1002. Individual responsibility.
Sec. 1003. Employer responsibility.
Sec. 1004. Income definitions.
Sec. 1005. Implementation funding.

Subtitle B—Medicare

Sec. 1101. Closing the medicare prescription drug “donut hole”.
Sec. 1102. Medicare Advantage payments.
Sec. 1103. Savings from limits on MA plan administrative costs.
Sec. 1104. Disproportionate share hospital (DSH) payments.
Sec. 1105. Market basket updates.
Sec. 1106. Physician ownership-referral.
Sec. 1107. Payment for imaging services.
Sec. 1108. PE GPCI adjustment for 2010.
Sec. 1109. Payment for qualifying hospitals.

Subtitle C—Medicaid

Sec. 1201. Federal funding for States.
Sec. 1202. Payments to primary care physicians.
Sec. 1203. Disproportionate share hospital payments.
Sec. 1204. Funding for the territories.
Sec. 1205. Delay in Community First Choice option.
Sec. 1206. Drug rebates for new formulations of existing drugs.

Subtitle D—Reducing Fraud, Waste, and Abuse

Sec. 1301. Community mental health centers.
Sec. 1302. Medicare prepayment medical review limitations.
Sec. 1303. Funding to fight fraud, waste, and abuse.
Sec. 1304. 90-day period of enhanced oversight for initial claims of DME suppliers.

Subtitle E—Provisions Relating to Revenue

Sec. 1401. High-cost plan excise tax.
Sec. 1402. Unearned income Medicare contribution.
Sec. 1403. Delay of limitation on health flexible spending arrangements under cafeteria plans.

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- Sec. 1404. Brand name pharmaceuticals.
- Sec. 1405. Excise tax on medical device manufacturers.
- Sec. 1406. Health insurance providers.
- Sec. 1407. Delay of elimination of deduction for expenses allocable to medicare part D subsidy.
- Sec. 1408. Elimination of unintended application of cellulosic biofuel producer credit.
- Sec. 1409. Codification of economic substance doctrine and penalties.
- Sec. 1410. Time for payment of corporate estimated taxes.

Subtitle F—Other Provisions

- Sec. 1501. Community college and career training grant program.

TITLE II—EDUCATION AND HEALTH

Subtitle A—Education

- Sec. 2001. Short title; references.

PART I—INVESTING IN STUDENTS AND FAMILIES

- Sec. 2101. Federal Pell Grants.
- Sec. 2102. College access challenge grant program.
- Sec. 2103. Investment in historically black colleges and universities and minority-serving institutions.

PART II—STUDENT LOAN REFORM

- Sec. 2201. Termination of Federal Family Education Loan appropriations.
- Sec. 2202. Termination of Federal loan insurance program.
- Sec. 2203. Termination of applicable interest rates.
- Sec. 2204. Termination of Federal payments to reduce student interest costs.
- Sec. 2205. Termination of FFEL PLUS Loans.
- Sec. 2206. Federal Consolidation Loans.
- Sec. 2207. Termination of Unsubsidized Stafford Loans for middle-income borrowers.
- Sec. 2208. Termination of special allowances.
- Sec. 2209. Origination of Direct Loans at institutions outside the United States.
- Sec. 2210. Conforming amendments.
- Sec. 2211. Terms and conditions of loans.
- Sec. 2212. Contracts; mandatory funds.
- Sec. 2213. Income-based repayment.

Subtitle B—Health

- Sec. 2301. Insurance reforms.
- Sec. 2302. Drugs purchased by covered entities.
- Sec. 2303. Community health centers.

**TITLE I—COVERAGE, MEDICARE,
MEDICAID, AND REVENUES**

Subtitle A—Coverage

SEC. 1001. TAX CREDITS.

(a) PREMIUM TAX CREDITS.—Section 36B of the Internal Revenue Code of 1986, as added by section 1401 of the Patient Protection and Affordable Care Act and amended by section 10105 of such Act, is amended—

(1) in subsection (b)(3)(A)—

(A) in clause (i), by striking “with respect to any taxpayer” and all that follows up to the end period and inserting: “for any taxable year shall be the percentage such that the applicable percentage for any taxpayer whose household income is within an income tier specified in the following table shall increase, on a sliding scale in a linear manner, from the initial premium percentage to

“(i) the amount of the covered entity’s fee under this section for the calendar year the Secretary determines should have been paid in the absence of any such understatement, over

“(ii) the amount of such fee the Secretary determined based on such understatement.

“(B) UNDERSTATEMENT.—For purposes of this paragraph, an understatement of a covered entity’s net premiums written with respect to health insurance for any United States health risk for any calendar year is the difference between the amount of such net premiums written as reported on the return filed by the covered entity under paragraph (1) and the amount of such net premiums written that should have been reported on such return.

“(C) TREATMENT OF PENALTY.—The penalty imposed under subparagraph (A) shall be subject to the provisions of subtitle F of the Internal Revenue Code of 1986 that apply to assessable penalties imposed under chapter 68 of such Code.

“(4) TREATMENT OF INFORMATION.—Section 6103 of the Internal Revenue Code of 1986 shall not apply to any information reported under this subsection.”; and

(6) by striking subsection (j) and inserting the following new subsection:

“(j) EFFECTIVE DATE.—This section shall apply to calendar years beginning after December 31, 2013.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 9010 of the Patient Protection and Affordable Care Act.

SEC. 1407. DELAY OF ELIMINATION OF DEDUCTION FOR EXPENSES ALLOCABLE TO MEDICARE PART D SUBSIDY.

Section 9012(b) of the Patient Protection and Affordable Care Act is amended by striking “2010” and inserting “2012”.

SEC. 1408. ELIMINATION OF UNINTENDED APPLICATION OF CELLULOSIC BIOFUEL PRODUCER CREDIT.

(a) IN GENERAL.—Section 40(b)(6)(E) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

“(iii) EXCLUSION OF UNPROCESSED FUELS.—The term ‘cellulosic biofuel’ shall not include any fuel if—

“(I) more than 4 percent of such fuel (determined by weight) is any combination of water and sediment, or

“(II) the ash content of such fuel is more than 1 percent (determined by weight).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to fuels sold or used on or after January 1, 2010.

SEC. 1409. CODIFICATION OF ECONOMIC SUBSTANCE DOCTRINE AND PENALTIES.

(a) IN GENERAL.—Section 7701 of the Internal Revenue Code of 1986 is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

“(o) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.—

“(1) APPLICATION OF DOCTRINE.—In the case of any transaction to which the economic substance doctrine is relevant, such transaction shall be treated as having economic substance only if—

“(A) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer’s economic position, and

“(B) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction.

“(2) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—

“(A) IN GENERAL.—The potential for profit of a transaction shall be taken into account in determining whether the requirements of subparagraphs (A) and (B) of paragraph (1) are met with respect to the transaction only if the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected.

“(B) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses shall be taken into account as expenses in determining pre-tax profit under subparagraph (A). The Secretary shall issue regulations requiring foreign taxes to be treated as expenses in determining pre-tax profit in appropriate cases.

“(3) STATE AND LOCAL TAX BENEFITS.—For purposes of paragraph (1), any State or local income tax effect which is related to a Federal income tax effect shall be treated in the same manner as a Federal income tax effect.

“(4) FINANCIAL ACCOUNTING BENEFITS.—For purposes of paragraph (1)(B), achieving a financial accounting benefit shall not be taken into account as a purpose for entering into a transaction if the origin of such financial accounting benefit is a reduction of Federal income tax.

“(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) ECONOMIC SUBSTANCE DOCTRINE.—The term ‘economic substance doctrine’ means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

“(B) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, paragraph (1) shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

“(C) DETERMINATION OF APPLICATION OF DOCTRINE NOT AFFECTED.—The determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same manner as if this subsection had never been enacted.

“(D) TRANSACTION.—The term ‘transaction’ includes a series of transactions.”.

(b) PENALTY FOR UNDERPAYMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE.—

(1) IN GENERAL.—Subsection (b) of section 6662 is amended by inserting after paragraph (5) the following new paragraph:

“(6) Any disallowance of claimed tax benefits by reason of a transaction lacking economic substance (within the meaning of section 7701(o)) or failing to meet the requirements of any similar rule of law.”.

(2) INCREASED PENALTY FOR NONDISCLOSED TRANSACTIONS.—Section 6662 is amended by adding at the end the following new subsection:

“(i) INCREASE IN PENALTY IN CASE OF NONDISCLOSED NONECONOMIC SUBSTANCE TRANSACTIONS.—

“(1) IN GENERAL.—In the case of any portion of an underpayment which is attributable to one or more nondisclosed noneconomic substance transactions, subsection (a) shall be applied with respect to such portion by substituting ‘40 percent’ for ‘20 percent’.

“(2) NONDISCLOSED NONECONOMIC SUBSTANCE TRANSACTIONS.—For purposes of this subsection, the term ‘nondisclosed noneconomic substance transaction’ means any portion of a transaction described in subsection (b)(6) with respect to which the relevant facts affecting the tax treatment are not adequately disclosed in the return nor in a statement attached to the return.

“(3) SPECIAL RULE FOR AMENDED RETURNS.—In no event shall any amendment or supplement to a return of tax be taken into account for purposes of this subsection if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.”.

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 6662A(e)(2) is amended—

(A) by striking “section 6662(h)” and inserting “subsections (h) or (i) of section 6662”; and

(B) by striking “GROSS VALUATION MISSTATEMENT PENALTY” in the heading and inserting “CERTAIN INCREASED UNDERPAYMENT PENALTIES”.

(c) REASONABLE CAUSE EXCEPTION NOT APPLICABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.—

(1) REASONABLE CAUSE EXCEPTION FOR UNDERPAYMENTS.—

Subsection (c) of section 6664 is amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(B) by striking “paragraph (2)” in paragraph (4)(A), as so redesignated, and inserting “paragraph (3)”; and

(C) by inserting after paragraph (1) the following new paragraph:

“(2) EXCEPTION.—Paragraph (1) shall not apply to any portion of an underpayment which is attributable to one or more transactions described in section 6662(b)(6).”.

(2) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—Subsection (d) of section 6664 is amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(B) by striking “paragraph (2)(C)” in paragraph (4), as so redesignated, and inserting “paragraph (3)(C)”; and

(C) by inserting after paragraph (1) the following new paragraph:

“(2) EXCEPTION.—Paragraph (1) shall not apply to any portion of a reportable transaction understatement which is attributable to one or more transactions described in section 6662(b)(6).”.

(d) APPLICATION OF PENALTY FOR ERRONEOUS CLAIM FOR REFUND OR CREDIT TO NONECONOMIC SUBSTANCE TRANSACTIONS.—Section 6676 is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

“(c) NONECONOMIC SUBSTANCE TRANSACTIONS TREATED AS LACKING REASONABLE BASIS.—For purposes of this section, any excessive amount which is attributable to any transaction described in section 6662(b)(6) shall not be treated as having a reasonable basis.”.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

(2) UNDERPAYMENTS.—The amendments made by subsections (b) and (c)(1) shall apply to underpayments attributable to transactions entered into after the date of the enactment of this Act.

(3) UNDERSTATEMENTS.—The amendments made by subsection (c)(2) shall apply to understatements attributable to transactions entered into after the date of the enactment of this Act.

(4) REFUNDS AND CREDITS.—The amendment made by subsection (d) shall apply to refunds and credits attributable to transactions entered into after the date of the enactment of this Act.

SEC. 1410. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

The percentage under paragraph (1) of section 202(b) of the Corporate Estimated Tax Shift Act of 2009 in effect on the date of the enactment of this Act is increased by 15.75 percentage points.

Subtitle F—Other Provisions

SEC. 1501. COMMUNITY COLLEGE AND CAREER TRAINING GRANT PROGRAM.

Section 279(b) of the Trade Act of 1974 (19 U.S.C. 2372a(b)) is amended by striking “SUPPLEMENT” and all that follows through “Funds” and inserting “There are” and by striking “pursuant” and all that follows and inserting “\$500,000,000 for each of fiscal years 2011, 2012, 2013, and 2014 to carry out this subchapter, except that the limitations contained in section 278(a)(2) shall not apply to such funds and each State shall receive not less than 0.5 percent of the amount appropriated pursuant to this subsection for each such fiscal year.”.