

114TH CONGRESS  
2D SESSION

# S. 2762

To amend the Internal Revenue Code of 1986 to provide for full recapture of the refundable credit for coverage under a qualified health plan in the case of individuals who are not lawfully present in the United States or who are incarcerated.

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IN THE SENATE OF THE UNITED STATES

APRIL 7, 2016

Mr. COATS (for himself and Mr. BARRASSO) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for full recapture of the refundable credit for coverage under a qualified health plan in the case of individuals who are not lawfully present in the United States or who are incarcerated.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Recovering Erroneous  
5 Credits from Outlaws and Unlawful Persons Act of 2016”  
6 or the “RECOUP Act of 2016”.

1 **SEC. 2. RECAPTURE OF REFUNDABLE CREDIT FOR COV-**  
 2 **ERAGE UNDER A QUALIFIED HEALTH PLAN.**

3 (a) **IN GENERAL.**—Subsection (e) of section 36B of  
 4 the Internal Revenue Code of 1986 is amended by adding  
 5 at the end the following new paragraph:

6 “(4) **RECAPTURE OF IMPROPERLY PAID AD-**  
 7 **VANCE PAYMENTS.**—Notwithstanding subsection  
 8 (f)(2)(B), if any advance payment is made under  
 9 section 1412 of the Patient Protection and Afford-  
 10 able Care Act for a coverage month in a taxable year  
 11 with respect to 1 or more individuals—

12 “(A) who are not lawfully present, or

13 “(B) who are incarcerated, other than in-  
 14 carceration pending the disposition of charges,  
 15 the tax imposed by this chapter for the taxable year  
 16 shall be increased by the total amount of such pay-  
 17 ment which is attributable to such individuals. The  
 18 preceding sentence shall apply to a coverage month  
 19 only if the individual is described in subparagraph  
 20 (A) or (B) for the entire month. Subparagraph (B)  
 21 shall apply without regard to whether the individual  
 22 was incarcerated at the time of enrollment in the  
 23 plan.”.

24 (b) **CLARIFICATION OF TREATMENT OF INCARCER-**  
 25 **ATED INDIVIDUALS.**—Subsection (e) of section 36B of the

1 Internal Revenue Code of 1986, as amended by subsection  
2 (a), is amended—

3 (1) by striking “INDIVIDUALS NOT LAWFULLY  
4 PRESENT” in the heading and inserting “CERTAIN  
5 INELIGIBLE INDIVIDUALS”,

6 (2) by striking “IN GENERAL” in the heading of  
7 paragraph (1) and inserting “INDIVIDUALS NOT  
8 LAWFULLY PRESENT”,

9 (3) by redesignating paragraphs (3) and (4) as  
10 paragraphs (4) and (5), respectively, and

11 (4) by inserting after paragraph (2) the fol-  
12 lowing new paragraph:

13 “(3) INCARCERATED INDIVIDUALS.—

14 “(A) IN GENERAL.—If 1 or more individ-  
15 uals for whom a taxpayer is allowed a deduction  
16 under section 151 for the taxable year (includ-  
17 ing the taxpayer or the taxpayer’s spouse) are  
18 incarcerated (other than incarceration pending  
19 the disposition of charges) during any coverage  
20 month in such year, the aggregate amount of  
21 premiums otherwise taken into account under  
22 clauses (i) and (ii) of subsection (b)(2)(A) shall  
23 be reduced by the portion (if any) of such pre-  
24 miums which is attributable to such individuals  
25 for such month.

1           “(B) REPORTING WITH RESPECT TO PRIS-  
2           ONER INFORMATION.—The determination of  
3           whether an individual is incarcerated for a cov-  
4           erage month shall be based on the information  
5           provided to the Secretary under section 6116.”.

6           (c) CONFORMING AMENDMENT.—Subparagraph (B)  
7 of section 36B(f)(2) of the Internal Revenue Code of 1986  
8 is amended by adding at the end the following new clause:

9                   “(iii) EXCEPTION.—For taxpayers to  
10                   whom this subparagraph does not apply,  
11                   see subsection (f)(5).”.

12           (d) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to taxable years beginning after  
14 December 31, 2016.

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