

Congress of the United States
Washington, DC 20515

December 13, 2012

The Honorable Timothy Geithner
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Geithner:

The Patient Protection and Affordable Care Act (PPACA)¹ created premium-assistance tax credits for individuals purchasing insurance through “an Exchange established by [a] State.”² The Internal Revenue Service’s (IRS) final rule, issued on May 18, 2012, extends these credits not only to Exchanges established by a state but also those established by the federal government.³ In the months since the IRS issued the final rule, the Committee on Ways and Means and the Committee on Oversight and Government Reform have sought documents and information in an effort to better understand why the IRS extended these credits beyond the letter of the law.

On September 11, 2012, the Ways and Means Subcommittee on Oversight held a hearing during which Acting Commissioner Miller, then Deputy Commissioner for Services and Enforcement, agreed to provide the Subcommittee with all documents “relating to the determination that the insurance premium subsidies apply to ... federally created exchanges.” On October 18, 2012, the Committee on Oversight and Government Reform wrote you reiterating an earlier request that the IRS provide all legal analysis on the question of whether the health care law authorized premium-assistance tax credits in federal Exchanges.

After meetings between Ways and Means, Oversight and Government Reform, and Department of the Treasury (Treasury) staff, Treasury agreed to make internal memos available for *in camera* review. Although Congressional requests are not limited by common law privileges, our staff agreed to this arrangement in the interest of comity. Unfortunately, key portions of these memos were redacted and withheld from Committee review. The following documents contained redactions of key portions of the Government’s determination on the applicability of the premium-assistance tax credit:

¹ PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010, PUB. LAW 111-148; HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010; PUB. LAW 111-152.

² PPACA, Sec. 1401, 124 Stat. 119, 213.

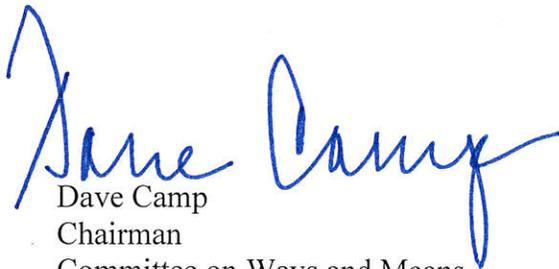
³ Health Insurance Premium Tax Credit, 77 Fed. Reg. 30378 (May 23, 2012).

- An August 5, 2011, Treasury memo from the Proposed Regulation Clearance Package (Page 3, Section III, titled “Significant Issues and Considerations.”)
- Two May 16, 2012 memos from the Final Regulation Clearance Package titled “Final Regulations on the Premium Tax Credit Enacted under ACA.”
- The memoranda or documents that contain the background information from the Final Regulation Clearance Package on the final regulations, which state, “The final regs do not adopt certain rules that were the subject of extensive comment. These provisions in the final regs may be controversial...” followed by significant redactions.

Treasury staff provided no explanation why the material was withheld. So that the Committees may complete their oversight of this issue, we request that you produce unredacted versions of these documents by no later than January 4, 2012. When producing documents, please deliver production sets to the Committee on Ways and Means in Room 1102 of the Longworth House Office Building and to the Committee on Oversight and Government Reform Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committees prefer to receive documents in electronic format.

Please contact Chris Armstrong of Ways and Means staff at (202) 225-5522 or Brian Blase of Oversight and Government Reform staff at (202) 225-5074 if you have any questions about this request.

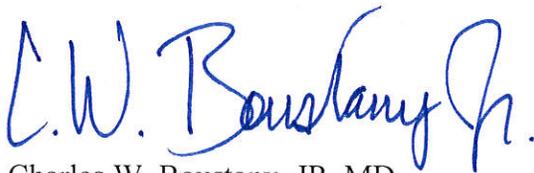
Sincerely,



Dave Camp
Chairman
Committee on Ways and Means



Darrell Issa
Chairman
Committee on Oversight
and Government Reform



Charles W. Boustany, JR. MD
Chairman
Committee on Ways and Means
Subcommittee on Oversight