

2016 ACA Update



Presented to the Vermont Tax Professionals Association by

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October 20, 2015



Today's Presentation



- New issues and developments
 - 2016 Vermont Health Connect (VHC) open enrollment
 - Vermont Medicaid reviews
 - Form 1095 procedures for the 2016 tax filing season
- Small Business Health Care Tax Credit for Vermont employers
- IRS assessment and collection procedural updates
- Taxpayer examples: Premium Tax Credit



2016 VHC Open Enrollment



- November 1, 2015 – January 31, 2016
- Consumers must select a plan by December 15 for coverage beginning January 1
- All enrollees should call VHC or go online to update financial information and select a 2016 health insurance plan
 - 1-855-899-9600
 - vermonthhealthconnect.gov



2016 APTC Renewal



- If a current enrollee gave VHC permission to access federal data for reenrollment purposes, VHC will estimate the enrollee's 2016 APTC eligibility and may reenroll the household for 2016, even if the enrollee does not respond to notices
 - Eligibility will be projected using updated 2016 PTC calculation rules (FPL, applicable percentage, benchmark plan).
 - VHC will use the most recent household-reported income. VHC is not applying an inflation factor.
- The “auto-reenrollment” process has already started



2016 APTC Renewal (2)



- APTC is not available for 2016 if a taxpayer received APTC for 2014 and did not reconcile on Form 8962.
 - 45 CFR 155.305(f)(4)
- Reconciliation means that a federal income tax return with Form 8962 was filed
 - A pending or ongoing IRS examination does not preclude 2016 APTC
 - An unpaid tax bill that includes excess APTC does not preclude 2016 APTC



2016 APTC Renewal (3)



- During open enrollment, taxpayers will be able to attest that they filed a 2014 tax return with Form 8962.
 - Some taxpayers received IRS notification that they had failed to reconcile APTC, despite having done so.
 - The data available to VHC is at least a month behind. Federal data available to VHC could indicate that a taxpayer has not reconciled when in fact the return was properly filed with Form 8962.
 - A 2014 tax return with form 8962 must be posted in the IRS computer system in order for IRS to take a taxpayer off the “did not reconcile” list.
 - IRS is sending data to the Centers for Medicare and Medicaid Services (CMS) at the end of each month for the federal data hub



Individual QHP Direct Enrollment



- Individuals and families may enroll in a QHP directly through an insurance carrier beginning for 2016
 - 33 V.S.A. § 1811(b), as amended by Act 54 (June 2015)
 - Subsidies are not available to direct enrollees
- Direct QHP enrollees may switch to VHC during the year, if they qualify for a Special Enrollment Period
 - SEP grounds are listed on the [VHC website](#)
 - 45 CFR § 155.420; VT [HBEE](#) § 71.03
 - SEP grounds include a change in income making the taxpayer newly eligible for APTC



Individual QHP Direct Enrollment (2)



- Direct enrollees will find many things the same as through VHC
 - Insurance plans available are the same
 - 33 VSA § 1811(b)
 - Plan premiums are the same (unsubsidized)
 - 45 CFR § 147.104(a)
 - Open enrollment and special enrollment period rules are the same.
 - 33 VSA § 1811(b)



Individual QHP Direct Enrollment (3)

Direct Enrollment

- No APTC, CSR, or Vermont Premium Assistance
- Cannot claim a PTC on tax return for this coverage
- Premium is paid to carrier
- Tax form 1095-B

VHC Enrollment

- May receive APTC, CSR, and Vermont Premium Assistance
- May claim a PTC on tax return if other eligibility criteria are met
- Premium is paid to VHC
- Tax form 1095-A



Vermont Medicaid Reviews



- In 2014, Vermont received federal permission to postpone Medicaid reviews in order to focus on VHC
 - There is no beneficiary reconciliation or repayment obligation for Medicaid, absent fraud
- **But:**
 - Medicaid beneficiaries are required to report changes in income (and other eligibility criteria) within 10 days. HBEE § 4.03(b)(2).
 - VHC should redetermine eligibility if it receives information that may affect an individual's eligibility. HBEE § 73.01.
 - VHC should periodically check available data sources to verify enrollees' continued eligibility. HBEE § 73.04.



Vermont Medicaid Reviews (2)



- VHC plans to send Medicaid for Children and Adults (MCA) renewal notices starting in January 2016
 - The plan has been submitted to CMS and is awaiting approval
- During QHP renewals, Medicaid members of mixed households will have their eligibility redetermined based on customer-reported changes, but their renewal date will not be updated



Vermont Medicaid Reviews (3)



- For updates, see the Vermont Health Connect monthly reports to the legislature, posted on the Vermont Legislature website [here](#).
 - submitted by the Department of Vermont Health Access
- VHC also provides reports to the Medicaid and Exchange Advisory Board, which posts materials online [here](#).



ACA Information Returns for TY 2015



- Form 1095-A – Individual Marketplaces
- Form 1095-B – MEC Providers
 - Includes health insurance companies, SHOP Marketplaces, government sponsors of insurance, and self-insured small employers
- Form 1095-C – Applicable Large Employers
 - Includes government and non-profit employers
- What if the taxpayer doesn't have documents? See IRS recommended due diligence practices for ACA provisions, on irs.gov's ACA Information Center for Tax Professionals.



ACA Information Returns



- Forms must be mailed to taxpayers by Jan. 31 (Feb 1 for 2016)
 - Can deliver in any manner allowed with W-2 forms
 - Can deliver electronically with taxpayer consent
- Forms must be transmitted to the IRS by
 - Feb. 28th, if paper filing
 - Mar. 31st, if filing electronically



Marketplace Coverage: Form 1095-A



Form 1095-A	Health Insurance Marketplace Statement	<input type="checkbox"/> VOID	OMB No. 1545-2232
Department of the Treasury Internal Revenue Service	▶ Information about Form 1095-A and its separate instructions is at www.irs.gov/form1095a .	<input type="checkbox"/> CORRECTED	2015



VHC Plans for 2016: Form 1095-A



- How provided to taxpayers
 - As in 2015, will be sent via mail at the end of January
 - Copies or related information can be provided to those authorized to receive account information
- Correction process
- Dispute process
- Note: taxpayers may receive multiple Forms 1095-A



IRS Disclosure Policy: Form 1095-A



- IRS disclosure policy now has additional detail but is substantively unchanged from 10/1/14
- IRM [21.6.3.4.2.16.4.1](#) (10-01-2015)
- “Form 1095-A data belonging to one individual may be disclosed to another taxpayer if the use of that data is directly related to resolving the other taxpayer's filing / reporting requirements. However, disclosure of another individual's Form 1095-A data can only be made **after** the filing of Form 1040 / 1040X where the reconciliation of APTC and/or the eligibility or amount of PTC is at issue.”



IRS Disclosure Policy: Form 1095-A (2)



- If a taxpayer meets disclosure criteria, only data from the Form 1095-A can be provided. Other third-party data available to the IRS will not be disclosed.
- Taxpayers seeking information about their own Form 1095-A will be referred to the Marketplace
 - Exception: if the taxpayer has made multiple attempts to obtain the information from the Marketplace without success



Providers of MEC: Form 1095-B



- IRC § 6055
- Insurance companies, government-sponsored insurance plans, and small employers that self-insure will file Form 1095-B to verify that individuals had Minimum Essential Coverage
- Form 1095-B bars an individual from receiving a Premium Tax Credit for the months of coverage shown on the 1095-B
 - Exception: government health coverage granted retroactively, e.g. Medicaid. Treas. Reg. § 1.36B-2(c)(2)(iv)



Providers of MEC: Form 1095-B (2)



- The State of Vermont will send Forms 1095-B for Medicaid and Dr. Dynasaur beneficiaries
- Forms 1095-B for Medicare, veterans' healthcare, and other federal healthcare programs will be sent by federal agencies; not by the State
- Forms 1095-B are not required from Medicare Supplemental plans
- More information is at [irs.gov](https://www.irs.gov)



VT Plans for 2016: Form 1095-B



- How provided to taxpayers
 - Will be sent via mail at the end of January
 - Copies or related information can be provided to those authorized to receive account information
- Correction process
 - VHC will resource similarly to 1095A
- Reporting preparatory work underway now



Large Employers: Form 1095-C



- IRC § 6056 requires every applicable large employer member to file an information return reporting any health care coverage offered to full-time employees for the calendar year.
 - Or reporting that no health care coverage was offered
- Form 1095-C, *Employer Provided Health Insurance Offer and Coverage*
 - Form 1095-C must be filed regardless of whether the ALE offers coverage, or whether the employee enrolls in any coverage offered.



Large Employers: Form 1095-C (2)



- Who reports?
 - For reporting purposes, large employers are employers who averaged 50 or more FTEs in the prior calendar year
 - Even though employers with 50-100 FTEs are not subject to the Employer Shared Responsibility Payment for 2015
 - Count all employees under common control, including full-time equivalent employees
- More information is at [irs.gov/aca](https://www.irs.gov/aca)



Large Employers: Form 1095-C (3)



- Information reported on Form 1095-C has multiple implications
 - Used in determining whether an IRC 4980H employer shared responsibility payment is owed by the employer
 - Used in determining an employee's eligibility for the Premium Tax Credit
 - Used in determining whether a taxpayer has met the individual shared responsibility requirement



Form **1095-C**

Department of the Treasury
Internal Revenue Service

Employer-Provided Health Insurance Offer and Coverage

Information about Form 1095-C and its separate instructions is at www.irs.gov/form1095c

VOID

CORRECTED

600116

OMB No. 1545-0047

2015

Part I Employee						Applicable Large Employer Member (Employer)					
1 Name of employee		2 Social security number (SSN)		7 Name of employer		8 Employer identification number (EIN)					
3 Street address (including apartment no.)						9 Street address (including room or suite no.)				10 Contact telephone number	
4 City or town		5 State or province		6 Country and ZIP or foreign postal code		11 City or town		12 State or province		13 Country and ZIP or foreign postal code	

Part II Employee Offer and Coverage	Plan Start Month (Enter 2-digit number):												
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)													
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H State Harbor (enter code, if applicable)													

Part III Covered Individuals
If Employer provided self-insured coverage, check the box and enter the information for each covered individual.

(a) Name of covered individual(s)	(b) SSN	(c) DOI (if SSN is not available)	(d) Covered all 12 months	(e) Months of Coverage											
				Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
17			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 60705M

Form **1095-C** (2015)

Employer Reporting

Health Care Coverage	Employer Size	Full-Time Employee	Part-Time Employee
Self-Insured	Large	1095-C, Parts I, II, & III	1095-C if enrolled in coverage
	Small	1095-B	1095-B if enrolled in coverage
Insurance	Large	1095-C, Parts I & II	N/A
	Small	Insurer will send 1095-B	Insurer will send 1095-B
None	Large	1095-C	N/A
	Small	N/A	N/A

Small Business Health Care Tax Credit



- IRC § 45R
- Treas. Reg. §§ 1.45R-0 through 1.45R-5
- Form 8941, Credit for Small Employer Health Insurance Premiums
- The IRS.gov [website](#) has links to a credit estimator, to regulations, guidance, and Q&A



Small Business Health Care Tax Credit (2)



- The IRS.gov [website](#) summarizes eligibility:
 - “For tax years beginning in 2014 or later, the employer generally must contribute toward premiums on behalf of each employee enrolled in a qualified health plan (QHP) offered by the eligible small employer through a Small Business Health Options Program (SHOP Marketplace) established as part of the Affordable Care Act to qualify for the credit.”
 - The employer must have fewer than 25 full-time equivalent employees
 - For additional requirements, see IRS.gov



Small Business Health Care Tax Credit (3)



- Vermont technically has a SHOP marketplace, though employers may not realize it
 - For 2014-2016, VHC received federal permission for small businesses to enroll directly with insurance carriers
 - Small business health insurance plans offered in VT are certified by DVHA as qualified health plans
 - See VHC [Small Business FAQs](#)



Small Business Health Care Tax Credit (4)



- To claim a Small Business Health Care Tax Credit, the employer should obtain a SHOP eligibly determination from VHC
 - This can be done retroactively
 - Application form and instructions are on the VHC [website](#)
- IRS recommended due diligence for this credit is quite [detailed](#)



IRS Assessment and Collection Updates



- Premium Tax Credit
- Individual Shared Responsibility
- Employer Shared Responsibility

PTC Assessment and Collection



- The PTC is treated for assessment and collection purposes like other refundable credits
 - Anyone who receives advance payments of the PTC (APTC) must file a tax return to reconcile the advance payments with the PTC actually due to the taxpayer. Treas. Reg. § 1.36B-4.
 - Excess advance payments are treated as additional income tax liability. I.R.C. § 36B(f)(2); Treas. Reg. § 1.36B-4(a)(1)(i).
- Deficiency procedures apply under IRC § 6211(b)(4)



PTC Assessment and Collection (2)



- When a tax return is filed with Form 8962, IRS Submission Processing checks for mismatches between the return and 3rd party data for premium(s), SLCSP(s) and APTC amounts.
- In addition, all tax returns are checked against APTC data to verify if the taxpayer received APTC and reconciled the advance payment.
- IRM [21.6.3.4.2.16.3](#) (10-01-2015)



PTC Assessment and Collection (3)



- IRM [21.6.3.4.2.16.3](#) (10-01-2015)
 - When 3rd party data discrepancies exist, in most instances Submission Processing will send Letter 12C to try to resolve the discrepancy.
 - If the discrepancy is resolved or below tolerance, the return continues through processing.
 - If the discrepancy cannot be resolved and is above tolerance, the return is processed as filed, the refund is frozen or partially frozen, and the return is referred to Compliance.



PTC Assessment and Collection (4)



- Math error authority is limited.
 - See [IRM 21.6.3.4.2.16.3.1](#) (6/3/15)
- The limited scope of math error authority can pose a problem for taxpayers, because of delays in referring a return to Compliance.
 - A post on the *Health Affairs* blog recently [called](#) for expanded math error authority:

“Consumers should not be disqualified from receiving APTC, and thus be left uninsured, simply because they failed to file form 8962 when in most instances the IRS already has all of the information that it needs to carry out the reconciliation calculation without that form.”



PTC Assessment and Collection (5)



- Taxpayers who did not receive APTC but are claiming a PTC should prepare for a thorough examination
 - Examiners are asking for documentation of premium payments even if taxpayer provides a Form 1095-A
- Taxpayers properly allocated zero APTC may still receive Letter 12C or have their return examined



PTC Assessment and Collection (6)



- Penalties and interest may be assessed as with any other overpaid refundable credit
- For collection purposes, PTC is treated like any other refundable income tax credit
 - The same collection options are available to IRS and to the taxpayer

Penalty relief related to 2014 APTC



- IRS Notice 2015-09, *Penalty Relief Related to Advance Payments of the Premium Tax Credit for 2014*
 - Failure to Pay
 - Penalty for Underpayment of Estimated Taxes
 - Not as broad as it could have been. There are substantive and procedural hurdles to relief.
 - See [analysis](#) on Procedurally Taxing blog, 4/21/15
- Instructions are also in IRS Publication 974



Penalty relief related to 2014 APTC (2)



IRS Notice 2015-09

- **Failure to Pay:**

IRS will assess the penalty automatically and send notice and demand. Taxpayer should submit a letter in response, containing the statement: “I am eligible for the relief granted under Notice 2015-09 because I received excess advance payment of the premium tax credit.”

- A form letter and instructions for clients are available for download at vtlawhelp.org/aca-assisters



Penalty relief related to 2014 APTC (3)



IRS Notice 2015-09

- **Penalty for Underpayment of Estimated Taxes:**

Taxpayers should check box A in Part II of Form 2210, Underpayment of Estimated Tax by Individuals, Estates and Trusts, complete page 1 of the form, and include the form with their tax return, along with the statement: “Received excess advance payment of the premium tax credit.”



Penalty Relief related to 2014 Forms 1095-A



- IRS Notice 2015-30, Penalty Relief Related To Incorrect or Delayed Forms 1095-A
- IRS Notice 2015-22, Transitional relief from estimated tax additions to tax for farmers and fishermen who receive erroneous Forms 1095-A
- [Treasury announcement](#) and [Treasury FAQs](#), 3/20/15
 - Any individual who enrolled in Marketplace coverage, received an incorrect Form 1095-A, and filed a 2014 tax return based on that form does not need to file an amended tax return. The IRS will not pursue the collection of any additional taxes from these individuals based on updated information in the corrected forms.



Individual Shared Responsibility: Assessment



- The Individual Shared Responsibility Payment (ISRP) is reported and paid with a federal income tax return
- Taxpayers have no right to Tax Court deficiency procedures prior to assessment.
 - See IRC 6211(a), definition of a deficiency.
- If the ISRP is not paid by the due date after notice and demand, interest under section 6601 accrues from the date of the notice and demand



Individual Shared Responsibility: Assessment (2)



- If taxpayer does not pay the SRP with the return or claim an exemption, IRS will assess and send notice and demand
- Taxpayers should specifically request abatement of an SRP; simply filing Form 8965 to claim an exemption subsequent to an SRP assessment may not be sufficient for IRS to adjust the SRP
 - IRM 21.6.3.4.2.16.8.2 (10-01-2014) - see #9



Individual Shared Responsibility: Assessment (3)



- What happens if a taxpayer calls IRS to disagree with the assessment?
 - IRM [21.6.3.4.2.16.8.1](#), *Shared Responsibility Payment Adjustments*, (10/1/15) is heavily redacted.
 - The IRM does say that oral statement authority does not apply to the SRP.
- This is an area to watch for future developments.



Individual Shared Responsibility: ASED



- Even though assessed and collected like an assessable penalty, the ISRP could be treated like an excise tax because Section 5000A is located in chapter 48, subtitle D of the Internal Revenue Code. Subtitle D is titled Miscellaneous Excise Taxes.
- Assuming it's an excise tax...
 - Assessment Statute Expiration Date is generally 3 years, § 6501(a)
 - If underreported by more than 25 percent, 6 years, § 6501(e)(3)
 - Unlimited for fraud, willful attempt to defeat or evade the IRSP, or failure to file a return, § 6501(c)(1)(2) & (3), but remember there are no criminal prosecutions for failure to pay the ISRP, § 5000A(g)(2)(A)



Individual Shared Responsibility: Collection



- If the ISRP goes unpaid, IRS may:
 - Offset federal tax refunds
 - Consider the ISRP in evaluating the taxpayer's proposed collection alternative for another IRS debt
 - Send letters requesting voluntary payment
- IRS may not use levy powers, criminal sanctions, or file a notice of federal tax lien to collect the individual shared responsibility payment. I.R.C. § 5000A(g)(2).
 - IRS seizes state refunds and Social Security benefits by levy – off the table here



Individual Shared Responsibility: Collection (2)



- A new Shared Responsibility Payment balance due will not default an existing Installment Agreement or OIC.
 - IRM [5.14.1.1](#) (1/1/15); [21.3.12.5.10](#) (10/1/15); [5.8.9.4](#) (4/23/15)
- However, the SRP is considered part of the tax due when a taxpayer is applying for an Installment Agreement
 - SRP owed could disqualify a taxpayer from streamlined consideration
 - See [IRM 21.3.12.4.4](#), #9 (10/1/15)
- Reinstated installment agreements must include any outstanding SRP balance
 - [IRM 5.14.11.5](#) (1/1/15)



Individual Shared Responsibility: Collection (3)



How are payments applied?

- The advent of the SRP has not changed the order in which IRS applies taxpayer payments
 - Payments are applied to tax, then interest, then penalties, and the oldest liability is paid first. IRS has not announced any intention of changing this policy.
 - Voluntary payments may be designated by the taxpayer.
 - Note “SRP Payment” on the check. See [IRM 21.3.12.4.9](#), #5 (10/01/2015)



Individual Shared Responsibility: Collection (4)



What about penalties?

The ISRP is assessed and collected in the same manner as an assessable penalty. Therefore:

- The failure to pay penalty under IRC § 6651 does not apply
- The accuracy-related penalty under IRC § 6662 does not apply
- The fraud penalty under IRC § 6663 does not apply
- The estimated tax penalty under § 6654 does not apply
- The bad check penalty under § 6657 does apply



Individual Shared Responsibility: CSED



- IRC § 6502 refers to levies and actions in court... does that mean there is no Collection Statute Expiration Date (CSED) for the SRP?
 - [IRM 21.3.12.3.11](#) (10/1/15): federal refunds “may be offset to the SRP amount until it is paid in full”.
 - However, in the income tax context, the IRS does not offset after the CSED. The Service’s longstanding position is that an enforceable tax liability is a prerequisite for making an offset, [Program Management Technical Advice 2011-035](#)



Individual Shared Responsibility: Post-Assessment Review



Mechanisms include:

- Audit Reconsideration / Amended Return
- OIC Doubt as to Liability
- Federal District Court refund suit
- No right to a Collection Due Process hearing
 - The Service is not legally obligated to provide the rights conferred by sections 6330 and 6331 when employing its offset authority, *Boyd v. Comm’r*, 451 F.3d 8 (1st Cir. 2006)



Employer Shared Responsibility Assessment



- Employers will not be required to include the Employer Shared Responsibility payment on any tax return that they file.
- Assessment and collection procedures are still being developed by IRS.

Employer Shared Responsibility Assessment (2)



- [FAQ](#) on irs.gov:
- The IRS will notify employers of their potential liability and provide them an opportunity to respond before any liability is assessed or notice and demand for payment is made.
- The contact for a given calendar year will not occur until after the due date for individual tax returns and after the due date for filing forms 1095-C



PTC Complications and Case Examples



- Income under 100% FPL
- Year of marriage alternate calculations
- APTC allocation rules

Remember:

- PTC = benchmark premium minus expected contribution
 - capped by the taxpayer's actual gross premiums
 - IRC § 36, Form 8962, Publication 974



PTC: Taxpayer's income under 100% FPL



- Treas. Reg. § 1.36B-2(b)(6)
- Taxpayer 1 estimated his income to be around 390% FPL during open enrollment. He chose not to receive APTC. At tax time, he discovers that an unexpected business loss brings his MAGI under 100% FPL.
- Taxpayer 2 estimated his income to be around 390% FPL during open enrollment. He chose to receive a small amount of APTC. At tax time, he discovers that an unexpected business loss brings his MAGI under 100% FPL.



PTC: Taxpayer's income under 100% FPL



- Shouldn't Taxpayer 2 have been on Medicaid?
- Treas. Reg. § 1.36B-2(c)(2)(v)
- Taxpayer 3 enrolled with VHC, estimating income at 150% FPL, and received APTC. At the end of the year, he discovers that his actual MAGI was under 100% FPL.
 - VHC found taxpayer 3 ineligible for Medicaid as part of its APTC eligibility decision. Therefore, under the regulation, Taxpayer 3 is treated for PTC purposes as if he were ineligible for Medicaid.



Changes in Marital Status – General Rule



- Treas. Reg. § 1.36B-4(b)(1)
- Use the benchmark for your marital status on the first day of each month
- The expected contribution is determined using your household income and family size at the end of the year



Spouses marry during the tax year



- Optional alternative reconciliation calculation
 - Unmarried at beginning of year, married at year end, and at least one spouse received APTC
 - Treas. Reg. § 1.36B-4(b)(2)
- Cannot be used to increase the PTC calculated under the general rule. Can be used to lower excess APTC.
- Compute PTC separately for married and unmarried months
 - For unmarried months
 - Each spouse is allocated 50% of household income
 - Family size is the pre-marriage family size, except that dependents may be allocated as agreed



Spouses divorce during the tax year



- Treas. Reg. § 1.36B-4T(b)(3)
- Taxpayers who are married during the year, legally divorce or separate by the end of the year, and who were enrolled in the same QHP at any time during the year
- Or, taxpayer has a dependent enrolled in the same plan as their former spouse
- Or, taxpayer has a dependent enrolled in the same plan as a dependent of their former spouse

Spouses divorce during the tax year (2)



- Taxpayers must allocate premiums paid, APTC, and benchmark premiums
- One percentage is applied to all 3 allocated items
- Can agree on a percentage, or it's 50% by default
- If the plan covers a time period during which only one taxpayer or his or her dependents was enrolled in the plan, then 100% is allocated to that taxpayer.



Spouses divorce during the tax year (3)



- It doesn't matter who actually made the premium payments.
- Form 1095-A will be sent to the person identified in VHC records as the tax filer
- The benchmark premiums are allocated whether or not APTC was paid.



Spouses file separate tax returns



- Spouses told the Marketplace they would file jointly, but end up filing separate returns
 - Married filing separately or head of household
 - Treas. Reg. § 1.36B-4T(b)(4)
- Must allocate any APTC received as married
- If claiming PTC, must allocate premiums
- Benchmark plan premiums are not allocated
 - If claiming PTC, a new benchmark is used
 - Why is this different than for spouses who divorce? The regulations don't give any rationale.



Spouses file separate tax returns (2)



- Allocation percentage is 50%
 - Taxpayers cannot choose a different figure
 - If the plan covers a time period during which only one taxpayer or his or her dependents was enrolled in the plan, then 100% is allocated to that taxpayer.
- Form 1095-A will be sent to the person identified in exchange records as the tax filer
- Both taxpayers will complete Form 8962 to reconcile APTC
 - Complete Part 4, shared policy allocation, except that the benchmark is not allocated



Case Example: Separating Spouses



Amelia and Frank

- Example: Amelia, her husband Frank, and their daughter were enrolled in their benchmark family plan from January through April 2015. The premium was \$1225.72 per month, reduced by \$628 per month of APTC.
- The family's income will be \$75,000 in 2015, of which \$48,000 is Amelia's income and \$27,000 is Frank's income.
- In March, Frank moved out and filed for divorce.
- As of May 1, Amelia and Frank each switched to a benchmark single plan, without APTC, and their daughter moved to CHIP.



Case Example: Separating Spouses (2)



Amelia and Frank

- Amelia and Frank only need to worry about the allocation rules for January through April, when they had the same health insurance plan.
- In this situation, reconciliation occurs on a monthly basis.
 - See, IRS [Form 8962](#) and [Instructions](#).
- Amelia and Frank's marital status on 12/31/15 determines the allocation rules that apply, and it also affects the taxpayers' PTC eligibility for May–December.



Case Example: Separating Spouses (3)



Amelia and Frank

- If Amelia and Frank are still married on 12/31/15, and do not file a joint 2015 return, the allocation rules in Treas. Reg. § 1.36B-4T(b)(4) will apply.
- The allocation percentage is 50% to each spouse; the spouses cannot choose a different percentage. This percentage applies to the APTC received and the premiums paid for the family plan. The benchmark is not allocated.



Case Example: Separating Spouses (4)



Taxpayers' Options, if Still Married on 12/31/15 Excess APTC or Additional PTC shown on Form 1040

		Amelia	Frank
MFJ	Jan-Apr	No add'l PTC or excess APTC	No add'l PTC or excess APTC
	May-Dec	\$2199.20 (joint) PTC	\$2199.20 (joint) PTC
HOH / MFS	Jan-Apr	\$581.88 add'l PTC	\$1,256 excess APTC
	May-Dec	\$243.44 PTC	0; ineligible



Case Example: Separating Spouses (5)



Amelia and Frank

- If Amelia and Frank are divorced on 12/31/15, the allocation rules in Treas. Reg. § 1.36B-4T(b)(3) will apply.
- Amelia and Frank can agree on any allocation percentage between 0 and 100. If they cannot agree, the allocation will be 50%. One allocation percentage must be applied to the premiums paid, the APTC, and the benchmark premium used by the exchange to calculate the family's APTC for January through April.



Case Example: Separating Spouses (6)



Taxpayers' Options, if Divorced on 12/31/15 Excess APTC or Additional PTC shown on Form 1040

		Amelia	Frank
Default Allocation	Jan-Apr	\$334.16 excess	\$526.73 additional
	May-Dec	\$243.44	\$1965.20
67-33% Allocation	Jan-Apr	\$72.28 additional	\$140.28 additional
	May-Dec	\$243.44	\$1965.20



Case Example: Separating Spouses (7)



- The timing of the divorce matters most for Frank. Frank is eligible for significant PTC if he can file as single. If he is still married, however, and Amelia will not file jointly, Frank will not be eligible for any PTC, and he will need to repay 50% of the APTC the family received for January through April 2015.
- The 50% default percentage is likely to feel unfair to Amelia. The allocation rules do not take into account the fact that Amelia paid all of the family plan premiums, or that Amelia paid over half of her daughter's support for the year.



Shifting Enrollee Allocation



- “Shifting enrollee” – A dependent enrolled by one taxpayer but properly claimed by another.
 - Treas. Reg. § 1.36B-4T(a)(1)(ii)(B).
 - This rule is not limited to parents and children
- Example: One parent enrolled the child in coverage, but the other parent ends up claiming the child



Shifting Enrollee Allocation (2)



- Premiums paid must be allocated between the taxpayers
- If APTC was paid, APTC and benchmark premiums are also allocated
- One percentage is applied to all 3 allocated items
 - The parents can pick any allocation percentage
 - If the parents don't agree, allocation percentage is $\#$ of shifting enrollees claimed by claiming parent \div $\#$ of individuals enrolled in the QHP with the shifting enrollees



Example: Shifting Enrollee Allocation



- Jane enrolls in a QHP with her 3 children and receives APTC. At tax time, one of the children is properly claimed as a dependent by his father John.
 - Perhaps the family court ordered Jane to sign form 8332
- If Jane and John can't agree on an allocation percentage, it will be 25%.
 - One shifting enrollee divided by 4 people on that enrollee's health plan



Example: Shifting Enrollee Allocation (2)



- It doesn't matter who actually paid the premiums. If John is entitled to claim one child's dependent exemption, John is allocated 25% of the premiums that Jane paid.
- John must reconcile 25% of the advance premium tax credit payments paid towards Jane's plan.
- The benchmark is only allocated if APTC was paid.



Example: Shifting Enrollee Allocation (3)



- The Form 1095-A will come to Jane
- The instructions encourage Jane to give a copy to John
- Can Jane redact her address or other information?

Example: Shifting Enrollee Allocation (4)



- John and Jane could both claim a PTC on their separate returns, if they are unmarried
- Both would fill out Form 8962, Part 4, Shared Policy Allocation
- If John had his own QHP during 2015, he would add his 1095-A amounts to the allocated amounts for his child. See Form 8962, line 34.



APTC Allocation Summary



Situation	What is allocated?	Can taxpayers choose an allocation percentage?	Default allocation if taxpayers cannot agree	Regulation
Divorce	<ul style="list-style-type: none"> Premiums paid APTC Benchmark premiums 	Yes. Taxpayers may agree on any percentage.	50% (or 100%)	Treas. Reg. § 1.36B-4T(b)(3)
Separate returns	<ul style="list-style-type: none"> Premiums paid APTC 	No.	50% (or 100%)	Treas. Reg. § 1.36B-4T(b)(4)
Shifting enrollee	<ul style="list-style-type: none"> Premiums paid If APTC was paid, also allocate: <ul style="list-style-type: none"> APTC Benchmark premiums 	Yes. Taxpayers may agree on any percentage.	# of shifting enrollees claimed by claiming parent ÷ # of individuals enrolled in the QHP with the shifting enrollees	Treas. Reg. § 1.36B-4T(a)(1)(ii)(B)

Resources



- IRS.gov/aca
- taxpayeradvocate.irs.gov
 - includes a good [ISRP Estimator](#)
- Health Benefits Eligibility and Enrollment Rule, [here](#)
- VHC: 1-855-899-9600, www.vermonthhealthconnect.gov
- Office of the Health Care Advocate: 1-800-917-7787, vtlawhelp.org/health
 - Free information and advocacy for individuals with Vermont Health Connect and other healthcare-related problems. No income limits.



Questions?



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