

Affordable Care Act: Implementation Issues Impacting Individuals and Families

ABA Section of Taxation, Individual and Family Taxation Committee

May 8, 2015

Today's Presentation

- Brief overview of the eligibility rules and mechanics of the Premium Tax Credit and Individual Shared Responsibility
- Assessment and collection issues
- Communications and partner resources
- Looking ahead: ACA controversy issues for practitioners representing individuals and families
- The Taxpayer Advocate Service's focus and leading concerns

IRC § 36B: Premium Tax Credit

- PTC offsets the cost of a QHP purchased through the Health Insurance Marketplace (aka Marketplace or Exchange)
- Credit can be received in advance (paid directly to insurance company)
- APTC eligibility (QHP, HHI between 100% FPL and 400% FPL) is based on projected annual income determined by the Marketplace
- Marketplace sends Form(s) [1095-A](#), Health Insurance Marketplace Statement to taxpayer and IRS
- Tax Return: PTC is claimed and any advance PTC is reconciled on IRS Form 8962, based on actual income for the tax year

IRC § 5000A: Individual Shared Responsibility

The individual shared responsibility provision requires **the taxpayer and each dependent** to either:

- Have minimum essential coverage (for at least one day per month)
Treas. Reg. § 1.5000A-1(b)(1);
- Have an exemption from the responsibility to have minimum essential coverage; or
- Make a shared responsibility payment with the taxpayer's federal income tax return.

Individual Shared Responsibility: Review

Exemption

Exemptions that MUST be applied for through a Marketplace:

- Hardship, including:
 - Life circumstances
 - Coverage is unaffordable (based on projected income)
 - State failure to expand Medicaid
 - Exception for 2014, Notice 2014-76; CMS [guidance](#) 11/21/14
 - Plan cancellation (available through 10/1/16 per CMS [guidance](#) 3/5/14)
 - Notice [2014-76](#) lists the hardship exemptions that may be claimed on a tax return
- Member of certain religious sects

Individual Shared Responsibility: Review

Exemption

Exemptions that MUST be done through tax filing:

- Affordability (based on actual income)
- Short coverage gap
- Below filing threshold
- Exempt noncitizen
- For 2014, the transition relief provided in IRS Notice [2014-10](#)

Individual Shared Responsibility: Review

Exemption

Exemptions that may be granted by the Marketplace or claimed at tax filing:

- Indian tribe membership
- Incarceration
- Health care sharing ministry
- Eligible for Indian Health Service

Comprehensive exemption chart available at:

<http://www.irs.gov/Affordable-Care-Act/Individuals-and-Families/ACA-Individual-Shared-Responsibility-Provision-Exemptions>

Individual Shared Responsibility: Mechanics

How will you know if you have minimum essential coverage?

Individuals should receive:

- Beginning in TY 2014: Form 1095-A if individual had a QHP through a Marketplace (received for TY 2014)
- Beginning in TY 2015: Form 1095-B if individual had non-Marketplace coverage, except for self-insured applicable large employer coverage
 - Health insurer, governmental entity, sponsors of multiemployer plans, etc.
- Beginning in TY 2015: Form 1095-C if individual was employed by an applicable large employer

Individual Shared Responsibility: Mechanics

- The payment is reported on Form [1040](#), [1040A](#), or [1040EZ](#)
 - Checkbox for full-year coverage

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Health care: individual responsibility (see instructions)

Full-year coverage

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- The worksheet to calculate the payment is in the Form [8965 instructions](#)
- Exemptions are claimed on Form [8965](#), Health Coverage Exemptions
 - Form 8965 can be attached to Form 1040, 1040A or 1040EZ
 - For Marketplace exemptions, must list exemption certificate number (ECN) or “pending”

Assessment and Collection Issues

- Premium Tax Credit – the easy one
- Individual Shared Responsibility – new and different

PTC Assessment and Collection

- The PTC is treated for assessment and collection purposes like existing 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. IRC 36B(f)(2); Treas. Reg. § 1.36B-4(a)(1)(i).

PTC Assessment and Collection

- Deficiency procedures apply under § 6211(b)(4)
 - But math error authority will (may) also be used, [IRM 21.6.3.4.2.16.3.1](#) (10/1/14).
- Penalties and interest may be assessed as with any other overpaid refundable credit (TY 2014 penalty relief for balance due upon PTC reconciliation. Notice 2015-9).
- The ACA does not impose any limits on the Service's collection powers for excess PTC. Therefore, collection may take the form of liens, levies and refund offsets.
- The same collection options should apply as for other income tax liabilities.
 - Including CDP rights

Individual Shared Responsibility: Assessment

How is the Individual Shared Responsibility Payment (ISRP) assessed?

- The ISRP is reported and paid with a federal income tax return (Form 1040, 1040A, or 1040EZ)
- If taxpayer does not pay the ISRP with the return, IRS will assess and send notice and demand
- 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: 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

What if the ISRP goes unpaid?

- IRS sends a letter. If the taxpayer does nothing, IRS may:
 - Offset federal tax refunds
 - Consider the SRP in evaluating the taxpayer's proposed collection alternative for another IRS debt
 - Send more 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
 - IRC § 5000A(g)(2)
 - IRS seizes state refunds and Social Security benefits by levy – off the table here

Individual Shared Responsibility: Collection

What if the ISRP goes unpaid?

- The CSED statute (IRC 6502) refers to levies and actions in court... does that mean there is no CSED for the ISRP?
 - Maybe. As of 10/1/14, [IRM 21.3.12.3.11](#) says federal refunds “may be offset to the SRP amount until it is paid in full”
 - 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: Collection

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: Post-Assessment Review

Post-assessment review mechanisms

- 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)

Communications and Partner Resources

- **Redesigned IRS.gov/aca web pages for Individuals and Families**
 - Reporting Coverage
 - Claiming Coverage Exemptions
 - Making an Individual Shared Responsibility Payment
 - Claiming and Reconciling Premium Tax Credit
- **New *What's Trending* page on IRS.gov/aca**
- **Partner Resources**
 - ACA Information Center for Tax Professionals
 - Affordable Care Act Return Preparer Best Practices
 - Disclosure or use of tax information under Section 7216 relate to ACA

HealthCare.gov Web Resources



- Purchase health coverage
- Get financial assistance
- Report changes in circumstances

Additional HealthCare.gov resources:

- How health coverage affects your federal income tax return
- Lowest cost Bronze plan tool for the affordability exemption
- Second lowest cost Silver plan tool and the premium tax credit

IRS.gov/aca Resources: What to Expect at Tax Time



Health Care Law:
What's New for
Individuals & Families

PUBLICATION
5187

TAX YEAR 2014

Affordable Care Act (ACA)



The image shows a family of three—a man, a woman, and a baby—gathered around a laptop. The man is holding the baby, and all three are smiling and looking at the screen. The setting appears to be a home office or a desk with some papers and a pink basket visible.

- Publication 5201, Info Graphic, *The Health Care Law and Your Taxes*
- Affordable Care Act *At-a-Glance* charts
 - How it affects you
 - How it affects your tax return
- Publication 5187, *Health Care Law: What's New for Individuals & Families*
- Health Care Tax Tips

Individual Shared Responsibility Key Messages



**Report
Health
Care Coverage**

**Claim
Exemption
from Coverage**

**Make
Shared
Responsibility
Payment**

IRS.gov/aca resources for ISRP

ISRP web resources include:

- Questions & Answers section
- Minimum essential coverage chart
- Exemption chart
- Gathering Your Health Coverage Documentation

Interactive Tax Assistant - *Am I required to make an Individual Shared Responsibility Payment?*

Electronic Flyers

- Publication 5156 – Facts About the Individual Shared Responsibility Provision
- Publication 5172 – Facts About Health Coverage Exemptions
- Publication 5209 – Preparing Your 2014 Tax Return - the shared responsibility payment
- Publication 5185 – Facts about making a shared responsibility payment

Premium Tax Credit Key Messages



- Must buy Marketplace coverage and get Form 1095-A
- Must file Form 8962 to claim PTC and reconcile any advance credit payments
- Report changes in circumstances

IRS.gov/aca resources for Premium Tax Credit

PTC web resources include:

- Questions & Answers section
- Publication 974, Premium Tax Credit
- Health Insurance Marketplace Statements and Contact Information
- Changes in Circumstances

Interactive Tax Assistant: *Am I eligible to claim the Premium Tax Credit?*

Electronic Flyers

- Publication 5120 – Your Credit, Your Choice – Get it Now or Get it Later
- Publication 5121 – Need Help Paying for Health Insurance?
- Publication 5152 – Report changes to the Marketplace as they happen
- Publication 5195– The Premium Tax Credit and Your Tax Return

IRS.gov/aca added information for responding to IRS letters

- Find out what to do if you got a letter from the IRS asking for more information about your premium tax credit and a copy of Form 1095-A
- Respond to the correspondence to clarify or verify information related to the premium tax credit, Marketplace coverage or Form 8962
- Common examples of issues or questions why IRS sends the letter

Penalty relief related to advance payments of the premium tax credit for 2014

- Issued IRS Notice 2015-09, *Penalty Relief Related to Advance Payments of the Premium Tax Credit for 2014*
- Posted actions for taxpayers take to qualify for penalty relief related to repayment of excess advance payments of the premium tax credit:
 - Failure to Pay
 - Penalty for Underpayment of Estimated Taxes
- Issued reminder that taxpayers granted an extension must file their return by Oct 15 and their tax payment was due by April 15, 2015

Relief for individuals receiving corrected Health Insurance Marketplace Statements (Form 1095-A)

- Linked to Treasury announcement and Treasury FAQs expanding the relief
- Issued IRS Notice 2015-30, Penalty Relief Related To Incorrect or Delayed Forms 1095-A
- Issued IRS Notice 2015-22, Transitional relief from estimated tax additions to tax for farmers and fishermen who receive erroneous Forms 1095-A
- Posted Questions and Answers about incorrect Forms 1095-A and PTC for:
 - Taxpayers who have not yet filed their 2014 income tax return
 - Taxpayers who have filed their 2014 return
- Issued Health Care Tax Tips
 - Determine if You Should File an Amended Tax Return After Receiving a Corrected Form 1095-A, April 22, 2015
 - Health Care Law and Taxes – Last Minute Tip, April 14, 2015
 - Find Answers to Your Questions about Incorrect Forms 1095-A and the Premium Tax Credit, April 9, 2015

Filing Season Coordination with Partners

- Coordinated with Centers for Medicare & Medicaid
 - Incorrect Forms 1095-A
 - Exemption Certificate Numbers
 - Special Enrollment Period
- Established National Partner ACA calls with C&L National Public Liaison
- Provided ACA-related updates during established filing season partner meetings
- Issued messages to partners by email and IRS List Serv subscriptions

Looking ahead: ACA issues for Practitioners

Many 2014 returns may be incorrect as filed

- Incorrect, late, or unavailable 1095-A forms
 - Taxpayers do not need to amend their return if they filed based on incorrect Form 1095-A from federal or state marketplaces. However, they may wish to amend to claim a refund.
 - The IRS will not pursue collection of any unpaid taxes caused by incorrect forms.
 - Penalty relief is available for 2014 (Notice 2015-30).
 - IRS.gov includes an [FAQ page](#) on 1095-A issues.

Looking ahead: ACA issues for Practitioners

Many 2014 returns may be incorrect as filed

- Complicated rules not fully understood
 - PTC allocation
 - Dependents and their income
 - ISRP calculation and the exemptions available
- Double-check ISRP calculations
 - Return preparation software was not programmed to catch errors
 - E.g. taxpayer with income below the filing threshold
 - IRS.gov includes information on [calculating the payment](#)
 - TAS provides an [ISRP estimator](#)
 - Tax Policy Center has an online [ACA calculator](#) for 2014, 2015, and 2016

Looking ahead: ACA issues for Practitioners

APTC reconciliation

- Differences between advance credit payments and the actual allowable credit are common
- There are no exceptions to reconciliation
 - “Exemptions” only apply to the ISRP
- Reconciliation may bring to light errors made in calculating household income for APTC purposes
 - Taxpayers should contact the Marketplace to ensure accurate APTC for 2015
- If a taxpayer received too much APTC, the reason why is irrelevant under § 36B; it does not affect the repayment amount

Looking ahead: ACA issues for Practitioners

APTC reconciliation, 1095-As, and penalty relief

- Notice 2015-9: Penalty relief for balance due resulting from reconciliation of APTC
- Notice 2015-30: Penalty relief for issues caused by late or incorrect forms 1095-A
- IRS.gov includes an [FAQ page](#) on 1095-A issues including penalty relief
- Practitioners will need to request penalty relief where appropriate as it is not automatic
 - Penalty relief does not apply to the ISRP

Looking ahead: ACA issues for Practitioners

Change in circumstances

- Taxpayers may be surprised with unexpected tax balances due because of changes in household income, dependent exemptions, or filing status
- Changes in circumstances can affect the taxpayer's eligibility for the PTC
- Taxpayers should be encouraged to report changes to their Marketplace promptly
- A tax planning consultation following a life change could save thousands in PTC or APTC repayment liability
- TAS's [PTC change estimator](#) may help

Looking ahead: ACA issues for Practitioners

Taxpayer questions that may turn into controversies

- Jane is 22 years old. She is on her father's employer plan right now (which does not have good coverage). She wants to apply for APTC. She is not her father's tax dependent. Her father is having financial problems and Jane fears he will claim her as a dependent anyway so he can get a big refund.

Looking ahead: ACA issues for Practitioners

Taxpayer questions that may turn into controversies

- Phil is unmarried and has two children. His son has CHIP. Daughter Christina is 21 and a college student. During open enrollment, Phil and his daughter got a QHP with APTC. Phil was planning to claim both children.
- In July, Christina broke off all contact with her dad and moved out of state. Phil has no way to get in touch with her and doesn't know where she is living.
- What will happen regarding the PTC Phil received for his daughter for several months when he thought he would be claiming her? How should he file his tax return?

Looking ahead: ACA issues for Practitioners

Taxpayer questions that may turn into controversies

- Martha is married to a non-resident alien who lives in Europe. Martha always uses the Married Filing Separate filing status. Her children are grown up and no longer dependents.
- Martha enrolled in a 2014 QHP with help from a health care navigator. Unfortunately, the navigator thought that Martha's husband could be disregarded because he lives outside the U.S.
- Martha's 2014 tax return shows a large APTC repayment balance. She is very upset and she is still getting APTC for 2015.

Looking ahead: ACA issues for Practitioners

Taxpayer questions that may turn into controversies

- Irwin is in the process of getting divorced. In January 2015, the family court issued an order allowing Irwin to claim one of his children's dependency exemptions each year, starting with 2014. Irwin and his wife do not get along and won't file jointly.
- Irwin e-filed his 2014 tax return but he hasn't gotten his refund. Instead, he got a Letter (12C) from the IRS asking him to file Form 8962. He doesn't know what that means. Irwin had insurance through his job in 2014. His wife was in charge of the kids' health care.

TAS ACA Initiatives

- Representation on IRS ACA Joint Implementation Teams
- Tracking ACA cases to identify trends and systemic issues
- Created ACA Rapid Response Team to quickly address elevated issues
- Developed ACA pages for the Tax Toolkit, complete with fact sheets
- Review of IRM provisions, forms, instructions, and other guidance

TAS ACA Initiatives Cont'd

- Developed and updated the Small Business Health Care Tax Credit Estimator
- Developed the [Premium Tax Credit Estimator](#)
- Continue to conduct LTA grassroots outreach with a main focus on the premium tax credit, the need to update information with the Marketplace, and where to go for assistance
- Provided face-to-face in depth training to all TAS employees

TAS Focus and Concerns

- Taxpayer awareness of need to report change in circumstances for purposes of APTC
- Information reporting issues can inhibit IRS verification efforts and cause significant taxpayer burden
- The impact of delayed processing of PTC change in circumstances
- The IRS may take inappropriate collection actions on SRP liabilities
- The use of “combination letters” for disallowed PTC may confuse taxpayers

Questions?

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