

Affordable Care Act

Emerging Premium Tax Credit Issues

Friday, May 6, 2016

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Agenda

- Background to the Premium Tax Credit
- Tax Court litigation issues
- Issues affecting low-income immigrants
- Q&A

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Premium Tax Credit Background

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I.R.C. § 36B Premium Tax Credit

- The Premium Tax Credit (PTC) offsets the cost of individual-market health insurance purchased through an exchange (aka Marketplace)
- Advance payments of the PTC are available
 - based on projected eligibility determined by the Marketplace
 - paid to health insurance company

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How much is the Premium Tax Credit?



Premium Tax Credit



Difference between the cost of the benchmark plan and the expected premium contribution an individual is expected to pay



Cost of Benchmark Plan



The premium cost of the second lowest cost silver plan available to each eligible household member



Expected Premium Contribution



What an individual is expected to contribute towards the cost of premiums (based on an individual's income and is set on a sliding scale)

Source: Center on Budget and Policy Priorities, healthreformbeyondthebasics.org

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Premium Tax Credit Forms



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Steps to Claim a PTC

- First: enroll in a Marketplace plan
- Three criteria for enrollment in a Marketplace plan
 - Citizenship or lawful presence in the U.S.
 - Residence in the exchange's service area
 - Not incarcerated after disposition of charges

45 CFR § 155.305(a)

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Steps to Claim a PTC (2)

- Second: claim PTC on a federal income tax return
 - Marketplace premiums paid by unextended return due date
 - Income criteria
 - Filing and dependent status criteria
 - No access to insurance through an employer or government plan

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PTC Financial Eligibility

- Household income between 100% FPL and 400% FPL. § 36B(c)(1)(A)
- HHI = MAGI of taxpayer and all HH members with a Section 1 filing requirement. Defs: I.R.C. § 36B(d)(2)

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PTC Financial Eligibility

- Income < 100% FPL is permitted in two situations
 - Non-citizens ineligible for Medicaid due to immigration status. § 36B(c)(1)(B)
 - Exchange estimated the taxpayer's income would be over 100% FPL and APTC was paid during the year. Reg. § 1.36B-2(b)(6)

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PTC Eligibility: Dependents

- Dependents cannot claim a PTC. Reg. § 1.36B-2(b)(3)
 - The taxpayer entitled to claim the exemption may claim PTC for the dependent
- Conversely: the taxpayer entitled to claim the exemption must reconcile any APTC allocated/allocable to the dependent
 - If no taxpayer claims the exemption, the taxpayer who enrolled the dependent in coverage must reconcile

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PTC Eligibility: Filing Status

- Taxpayers considered married under section 7703 must file a joint return. Sec. 36B(c)(1)(C); Reg. § 1.36B-2(b)(2)
- Two exceptions to the joint filing requirement: DV and spousal abandonment. Temp. Reg. §§1.36B-2T,2(a)-(b)1.
 - Available for a maximum of 3 consecutive years

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PTC Eligibility: Access to MEC

- Generally cannot be eligible for MEC except through the individual insurance market
- Eligibility for employer-sponsored insurance (ESI) is disregarded if
 - The plan does not provide minimum value, or
 - Premiums for self-only coverage > 9.5%* of household income, and
 - Taxpayer did not enroll in the ESI
 - Reg. §1.36B-2(c)(3)

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PTC Eligibility: Access to MEC (2)

Affordability safe harbor for ESI

- Reg. § 1.36B-2(c)(3)(v)(A)(3)
- Taxpayer disclosed the offer of ESI to the exchange and provided affordability information, and the exchange found the ESI unaffordable
- Criteria must be met each year; passive renewal will not confer ESI safe harbor

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PTC Eligibility: Access to MEC (3)

- Eligibility for certain types of insurance does not preclude PTC, as long as the individual is not actually enrolled in the insurance. Notice 2013-41.

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APTC Reconciliation

- Any taxpayer who received APTC, or who claims a dependent on whose behalf APTC was paid, must file a tax return to reconcile the advance payments with the PTC actually due. Reg. § 1.36B-4.
 - Excess advance payments are treated as additional income tax liability. I.R.C. § 36B(f)(2); Reg. § 1.36B-4(a)(1)(i).

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PTC Assessment

- The PTC is treated for assessment and collection purposes like existing refundable credits
- Deficiency procedures apply under § 6211(b)(4)
- Math error authority is being used to a limited extent. See IRM 21.6.3.4.2.16.3.1 (6/30/15).
- The Automated Questionable Credit (AQC) program is being used. ([2015 NTA Annual Report to Congress](#))
- Penalties and interest may be assessed as with any other overpaid refundable credit

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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

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Current Tax Court Litigation Issues

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Future Issues

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Issues Likely to be Contested

- Deficiencies that seem unfair to the taxpayer
 - Mistakes made by exchanges or health insurance issuers
 - Bad advice from health care assisters
 - Unexpected events pushing HHI > 400% FPL
 - Honest mistakes by taxpayers
- Obligation to reconcile APTC for a dependent

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Exchange errors

- Errors in APTC determinations
- Exchange did not honor taxpayer's request to terminate QHP/APTC as required by HHS regulations
- Exchange and issuer did not follow the grace period and termination rules – coverage and APTC continued for months after taxpayer stopped paying

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ACA Information Return Disputes

- Form 1095-A
 - Marketplace enrollment dates
 - APTC months
- Form 1095-B
 - Enrollment in other MEC
- Form 1095-C
 - Offer of ESI
 - Enrollment in ESI (self-insured)

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Challenges for Taxpayers

- Confidentiality of return information (I.R.C. § 6103)
 - Was a dependency exemption unclaimed?
 - APTC allocation
 - taxpayer cannot verify what amount another taxpayer reconciled
 - Dependents' MAGI

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Challenges for Taxpayers (2)

- Availability and reliability (or lack thereof) of exchange records
- Inability to get information returns corrected
- Difficulty of showing the taxpayer's story is realistic
 - Frequency and types of errors made by exchanges
 - Bills and other notices not sent, or contradictory notices sent

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Issues affecting low-income immigrants

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Immigrant Eligibility Basics

- Individuals who are lawfully present are eligible for PTCs – 42 USC § 18081(a), *see* 45 CFR § 152.2 for definition [but also must establish state residency]
- Non-citizens who are not “qualified” immigrants (8 USC § 1641(b)) are ineligible for Medicaid/CHIP – 8 USC § 1611(a)
 - Exception: state option to cover children and/or pregnant women under Medicaid/CHIP - 42 USC § 1396b(v)(4)
- Undocumented people are ineligible for enrollment in a QHP; only eligible for emergency services – 42 USC § 1396b(v)(1)–(3)

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Enrollment Complications

- Immigrants below 100% FPL but ineligible for Medicaid due to immigration status are eligible for PTCs (expansion and non-expansion) - Section 36B(c)(1)(B)
- Immigration/citizenship status cannot be attested to and must be supported – 42 USC § 18081(b)(2)(B); 45 CFR § 155.320(e)

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Issues Arising in Enrollment

- Individuals are often unable to immediately verify immigration and certain citizenship status, so placed in an inconsistency period (FFM term)
 - After 90 days in an inconsistency period, an individual's policy is cancelled
 - APTC is paid while an inconsistency is pending resolution (FFM)
- Individuals may be required to prove ineligibility for Medicaid in order to enroll in a QHP

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Issues Arising in Enrollment

- Receipt of APTC while not lawfully present potentially subjects taxpayer to full repayment
 - This is Publication 974's interpretation of PPACA § 1412(d) (42 U.S.C. § 18082)
 - Is the repayment limitation the same thing as allowing federal payments?
- Temporary workers may leave U.S. before terminating a QHP
 - 14 days' advance notice is required, 45 CFR § 155.430(d)(1)(i)
 - Problems may arise in reconciliation if issuer does not cancel plan

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Tax Filing Complications

- Filing status and tax household rules for immigrants are complicated
- Certain visas trigger different tax residence rules which are even more complicated.
 - This can prevent access to affordable health insurance for the taxpayers and their families
 - Examples: F-1, J-1...

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Filing Status and the PTC

- Individuals filing as a resident alien (green card or substantial presence test) who are married have difficulty filing jointly
 - Can elect to taxation of spouse as a resident, which exposes spouse's income from abroad to U.S. taxation
 - Foreign spouse must obtain an ITIN, which is a complicated process that is growing more difficult
 - Lack of understanding of reconciliation procedures may lead to incorrect enrollment or tax filing
- Individuals filing as a nonresident alien are not able to file a joint return
 - Most of the time, this precludes PTC

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Filing Status and the PTC - HoH

- Eligibility for Head of Household filing status does not automatically confer PTC eligibility upon a married person
- The definition of “considered unmarried” in section 2(b) (Head of Household) is more expansive than in section 7703
- Section 7703 determines marital status for purposes of PTC (and EITC) eligibility
 - See *e.g.* Diaz v. Comm’r, [T.C. Memo. 2004-145](#).

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Filing Status and the PTC-Dependents

- Nonresidents are ineligible to claim family members on their tax return
 - Except persons from Canada, Mexico, South Korea and students from India whose children were born in the U.S.
 - The “family size” used to calculate the PTC expected contribution can never be more than “1” for most nonresidents
 - Particularly burdensome for students and scholars, whose time in the U.S. is exempt from the substantial presence test for the first five years

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Questions?

- Matthew Lopas, National Immigration Law Center
- Linda E. Mosakowski, IRS Office of Chief Counsel
- Christine Speidel, Vermont Legal Aid Low-Income Taxpayer Clinic
- Stephen J. Toomey, IRS Office of Chief Counsel

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