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



Premium Tax Credit Background

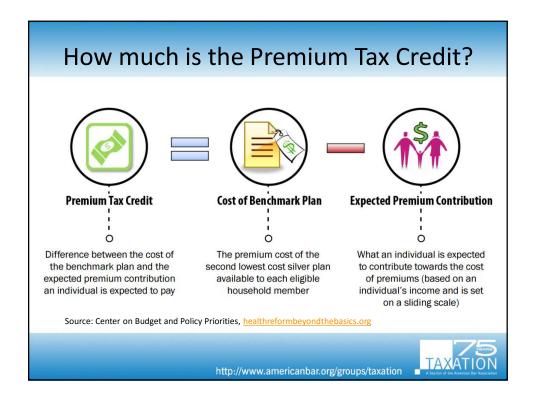


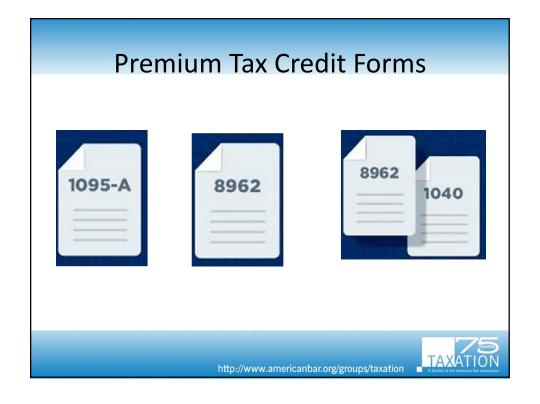
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I.R.C. § 36B Premium Tax Credit

- 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







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 charges45 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



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)



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



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



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).



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



Future Issues



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



ACA Information Return Disputes

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



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



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



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 nonexpansion) - Section 36B(c)(1)(B)
- Immigration/citizenship status <u>cannot</u> be attested to and must be supported – 42 USC § 18081(b)(2)(B); 45 CFR § 155.320(e)



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



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) eligibity
 - See e.g. Diaz v. Comm'r, <u>T.C. Memo. 2004-145</u>.

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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



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