Affordable Care Act
Emerging Premium Tax Credit Issues
Friday, May 6, 2016

Agenda

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

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

http://www.americanbar.org/groups/taxation
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

- **1095-A**
- **8962**
- **8962 1040**

Source: http://www.americanbar.org/groups/taxation
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)

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)

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

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:
    - 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)

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.

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

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
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

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 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)

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

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)

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)
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

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...

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
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.

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