The Premium Tax Credit: Marriage, Separation, and Divorce

Low Income Taxpayers Representation Workshop

American Bar Association Section Of Taxation

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Warning

All forms and instructions discussed are drafts. Some regulations have not yet been finalized. New guidance may be issued. Information may change.

Today's Presentation

- Basics of the Health Insurance Premium Tax Credit
- Exceptions to the joint filing requirement
- PTC Wrinkles
  - Spouses who marry during the tax year
  - Spouses who divorce during the tax year
  - Spouses who file separate tax returns
  - Separated parents
- Questions and Discussion

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Health Insurance Premium Tax Credit Basics

To receive a premium tax credit, a person must:

1. **Enroll in a Marketplace plan**
2. **Have income between 100 and 400 percent of the federal poverty line (FPL)**
   - Individual: $11,690 - $46,760 Family of four: $23,850 - $95,400
   - <u>Exception 1</u>: Income falls below 100% FPL *26 C.F.R. § 1.36B-2(b)(6)*
     - People who are estimated to have income between 100 and 400% FPL at the time of application, enroll in a plan, and receive advanced payments of PTC, but who have income below 100% FPL at the end of the year.
   - <u>Exception 2</u>: Lawfully present immigrants *26 C.F.R. § 1.36B-2(b)(5)*
     - Lawfully present immigrants with income under the poverty line are eligible for PTCs if they are ineligible for Medicaid because of their immigration status.

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Health Insurance Premium Tax Credit Basics

To receive a premium tax credit, a person must:

3. **Have an eligible filing and dependent status**
   - Cannot be Married Filing Separately (*exceptions for abused or abandoned spouses)
   - Cannot be a dependent (whoever claims the child's exemption can claim their PTC)
4. **Be ineligible for other minimum essential coverage (MEC)**
   - Not *eligible for* Medicare or most Medicaid/CHIP or most employer-sponsored coverage (regardless of whether the person is actually enrolled)

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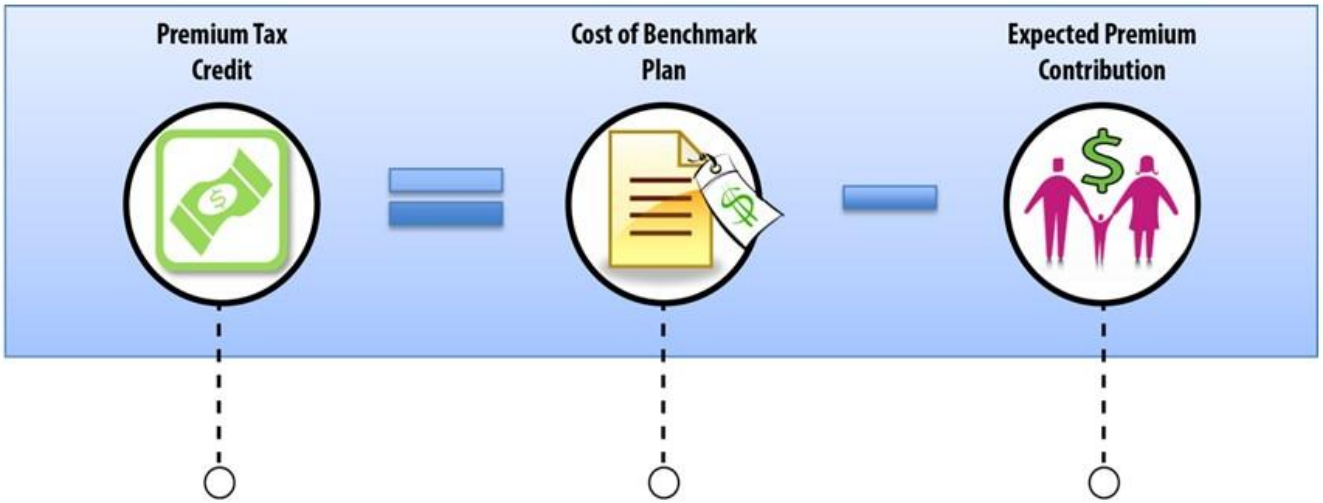
Health Insurance Premium Tax Credit Basics



The **Premium Tax Credit** is the difference between the cost of the benchmark plan and what an individual is expected to contribute towards the cost of premiums.
It is calculated monthly.

The **cost of the benchmark plan** is the second lowest cost silver plan available to each eligible household member
(Note: When no one plan covers every member, may be based on one or more policies)

The **expected premium contribution** is based on an individual's income and is set on a sliding scale. It varies from 2% of income at 100% FPL to 9.5% of income beginning at 300% FPL.

- The taxpayer can sign up for any QHP in the Marketplace
- The PTC is capped by the taxpayer's actual premiums

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Premium Tax Credit Mechanics

- Exchange sends Form 1095-A by January 31, 2014
  - Everyone who had an individual market plan through an exchange should receive one
- Taxpayer completes Form 8962 and attaches to Form 1040 or 1040A
  - In some situations (described below) amounts will need to be allocated between taxpayers

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Exceptions to the joint filing requirement

- Can the taxpayer be considered unmarried under IRC 7703?
  - Final decree of legal separation
  - Head of household
- Domestic Abuse *Treas. Reg.§ 1.36B-2T(b)(2)(ii)-(iv)*
- Spousal Abandonment

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Exceptions to the joint filing requirement

1. **Domestic Abuse:** To qualify for the abuse exception, the taxpayer must:
   - Live apart from his or her spouse, and
   - Be unable to file a joint return because the taxpayer is a victim of domestic abuse
   - *Domestic abuse:* physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate and intimidate, or to undermine the victim's ability to reason independently (similar to Rev. Proc. 2013-34 for innocent spouse relief)

2. **Spousal abandonment:** To qualify for the abandonment exception, the taxpayer must:
   - Live apart from his spouse
   - Be unable to locate spouse after reasonable diligence

- If the taxpayer meets either qualification to take PTC despite being Married Filing Separately, check the box for "Relief" at the top of Form 8962.

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Selected PTC Complications

- Spouses marry during the tax year
- Spouses divorce during the tax year
- Spouses told the Marketplace they would file jointly, but end up filing separate returns
- Separated parents
  - One parent enrolled the child in coverage, but the other parent ends up claiming the child
  - What about Form 8332?

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Changes in Marital Status – General Rule

- 26 C.F.R. § 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

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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
  - 26 C.F.R. § 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

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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

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Spouses divorce during the tax year

- 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.

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Spouses divorce during the tax year

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

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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 explain.

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Spouses file separate tax returns

- 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

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Spouses file separate tax returns

Example: Ashlyn and Brian

- Ashlyn and Brian are married. Brian is abusive.
- Brian enrolled himself and Ashlyn in a QHP for 2014. Their total premiums were $10,000. They received APTC of $6500.
- In January 2015, Ashlyn leaves Brian. She does not want to file a joint tax return with Brian, because she is afraid to have any contact with him.
  - Treas. Reg. 1.36B-4T(b)(5), Example 10

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Spouses file separate tax returns

Example: Ashlyn and Brian

- How does Ashlyn file her 2014 tax return?
  - Her filing status is Married Filing Separately, with no dependents
- Ashlyn qualifies for the PTC because she meets the domestic violence exception
  - She will check the box at the top of Form 8962
  - No documentation is required
    - Unless her return is audited

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Spouses file separate tax returns

Example: Ashlyn and Brian

- How does Ashlyn complete Form 8962?
  - Because Brian enrolled the household in coverage, he will receive their Form 1095-A
    - Ashlyn can call the IRS or the Marketplace for the information
  - Ashlyn's family size is one
  - Ashlyn's household income includes only her MAGI

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Spouses file separate tax returns

Example: Ashlyn and Brian

- How does Ashlyn complete Form 8962?
  - Ashlyn is allocated 50% of the monthly premium amounts from Form 1095-A
  - Ashlyn is allocated 50% of the APTC from Form 1095-A
    - The allocation percentage is 50%, and cannot be changed
  - Ashlyn must figure out her benchmark premiums
    - The SLCSP premiums on Form 1095-A are disregarded
    - Ashlyn's Marketplace may have all the 2014 plans listed online, or Ashlyn can call and ask what her second-lowest cost silver plan would have been.

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Spouses file separate tax returns

Example: Ashlyn and Brian

- How does Brian file his 2014 tax return?
  - His filing status is Married Filing Separately, with no dependents
- Brian does not qualify for the PTC
  - He must use Form 8962 to report 50% of the APTC from Form 8962 as an Excess Advance Payment
  - If Brian's MAGI is under 400% FPL, his liability is capped
    - The higher caps apply, because Brian's filing status is not Single
      - See chart on slide 32

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Separated Parents

- "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

- One parent enrolled the child in coverage, but the other parent ends up claiming the child

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Separated Parents

Shifting enrollees

- Premiums paid must be allocated between the parents
- 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 ÷ # of individuals enrolled in the QHP with the shifting enrollees

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Separated Parents

- Shifting enrollee example: Jane enrolls in a QHP with her 3 children and receives APTC. But 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

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Separated Parents

- 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.
  - This is getting confusing!

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Separated Parents

- The 1095-A will come to Jane
  - The instructions encourage Jane to give a copy to John
  - Can Jane redact her address or other information?
  - Jane could tell John to call the IRS for the information he needs

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Separated Parents

- 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 2014, he would add his 1095-A amounts to the allocated amounts for his child. See Form 8962, line 34.

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Premium Tax Credit Allocation Rules

Situation	What is allocated?	Can taxpayers choose an allocation percentage?	Default allocation if taxpayers cannot agree	Regulation
Divorce	• Premiums paid • APTC • Benchmark premiums	Yes. Taxpayers may agree on any percentage.	50% (or 100%)	Treas. Reg. § 1.36B-4T(b)(3)
Separate returns	• Premiums paid • APTC	No.	50% (or 100%)	Treas. Reg. § 1.36B-4T(b)(4)
Shifting enrollee	• Premiums paid If APTC was paid, also allocate: • 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)

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Separated Parents

- The PTC and § 5000A add complexity to dependent exemption disputes and decisions
  - People need to plan ahead if they are going to claim APTC
    - The number of dependents claimed affects a parent's eligibility for PTC, even if the child has CHIP
    - Non-custodial parents should get Form 8332 before enrolling in health insurance – otherwise it's a gamble

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Separated Parents

- The child's individual shared responsibility payment could be an unpleasant surprise
  - Remember, the percent of income amount does not vary depending on how many tax household members owe a penalty
  - A hardship exemption may be available from the Marketplace if a court order requires the other parent to enroll the child in health insurance
    - 45 CFR § 155.605(g)(1); CMS, *Guidance on Hardship Exemption Criteria and Special Enrollment Periods* (June 26, 2013), http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/exemptions-guidance-6-26-2013.pdf
    - Guidance also requires the child to have been denied Medicaid/CHIP…
    - 3 years to claim, 45 CFR § 155.610(h)(2)

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Separated Parents

- Form 8332 is more important than ever
- There is no exception to reconciliation for good faith mistakes, or even for errors made by an exchange

REPAYMENT LIMITS ON APTC		
Household Income (as % of FPL)	SINGLE taxpayers will pay back no more than ...	OTHER taxpayers will pay back no more than....
Under 200%	$300	$600
At least 200% but less than 300%	$750	$1,500
At least 300% but less than 400%	$1,250	$2,500
400% and above	Full repayment	Full repayment

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Separated Parents

- Access to information needed to file taxes could be a problem
  - 1095-A will be sent to the tax filer or enrolling individual
  - 1095-B will be sent to the policy holder
  - 1095-C will be sent to the employee
- Marketplaces may send duplicate forms upon request or provide information by phone
- The IRM is helpful. IRM 21.6.3.4.2.16.4.1, Disclosure of Taxpayer Data (10/1/14) says:

  > 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.

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Practical Concerns

- Some Forms 1095-A could be incorrect, due to technical challenges facing some exchanges
  - For the Premium Tax Credit, taxpayer could file what they believe to be correct, and appeal all the way to Tax Court if the return is challenged.
  - For the ACA penalty, it is not clear what a taxpayer should do. We don't know if any pre-assessment procedures will be available.

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Questions?

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