

Legislative Recommendation #60**Eliminate the Marriage Penalty for Nonresident Aliens Who Otherwise Qualify for the Premium Tax Credit****SUMMARY**

- *Problem:* Nonresident aliens who are lawfully present in the United States are eligible to receive the Premium Tax Credit (PTC) to subsidize the cost of health insurance. Due to a possible glitch in drafting the law, however, a lawfully present nonresident alien who is married to another nonresident alien is barred from receiving the PTC. This creates a “marriage penalty.”
- *Solution:* Revise the PTC eligibility requirements to remove the marriage penalty for nonresident aliens who are lawfully present in the United States.

PRESENT LAW

To be eligible to enroll in health coverage through the Health Insurance Marketplace (Marketplace), an individual must live in the United States; be a U.S. citizen, a U.S. national, or a lawfully present person;¹ and not be incarcerated.² Immigrants and non-immigrants lawfully present in the United States and covered under the Compact of Free Association Approval Act (Pub. L. No. 99-658) can enroll in health insurance through the Health Insurance Marketplace.³

IRC § 36B authorizes the PTC, a refundable credit that subsidizes the cost of eligible individuals’ and families’ premiums for health insurance purchased through the Marketplace. Eligibility for the PTC depends on several factors, including household income level based on family size; eligibility for affordable coverage through an eligible employer-sponsored plan that provides minimum value; eligibility to enroll in government-provided health coverage like Medicare, Medicaid, or TRICARE; and whether the individual can be claimed as a dependent by another person.

Eligible taxpayers may also choose to have advance payments of the PTC (APTC) made on their behalf for the year of coverage. APTC is paid directly to the insurer that the taxpayer selected from the Marketplace to help defray the taxpayer’s insurance premiums during that year. The amount of APTC for which a taxpayer is eligible is based on an estimate of the taxpayer’s PTC for the year of coverage. Taxpayers who choose to have APTC paid on their behalf must reconcile the APTC with the PTC they are allowed for the year of coverage when filing a tax return for the year. If a taxpayer’s APTC for the year is more than the taxpayer’s allowed PTC, the taxpayer must repay all or a portion of the difference by increasing their tax liability for the year of coverage.

IRC § 36B(c)(1)(C) provides that if a taxpayer is married at the close of the taxable year, the taxpayer may not claim the PTC unless the taxpayer and the taxpayer’s spouse file a joint return for the taxable year.⁴

1 IRC § 36B(e)(2). The term “lawfully present” refers to aliens who have: “qualified non-citizen” immigration status without a waiting period; humanitarian statuses or circumstances (including temporary protected status, special juvenile status, asylum applicants, and victims of trafficking); valid non-immigrant visas; and legal status conferred by other laws (e.g., Immigration Reform and Immigrant Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359; Legal Immigration and Family Equity Act, Pub. L. 106-553, 114 Stat. 2762 (2000)). See Treas. Reg. § 1.36B-1(g); 45 C.F.R. § 152.2. 45 C.F.R. § 152.2(8) excludes individuals with deferred action under the Department of Homeland Security’s deferred action for childhood arrivals process from the definition of “lawfully present” as defined in 45 C.F.R. § 152.2(1)-(7).

2 42 USC § 18032(f).

3 Immigrants and nonimmigrants with the following statuses can purchase insurance through the Marketplace: Worker visas (e.g., H1, H-2A, H-2B); Student visas; U-visas; T-visas; and Citizens of Micronesia, the Marshall Islands, and Palau.

4 Exceptions apply for victims of domestic abuse and spousal abandonment. See Treas. Reg. § 1.36B-2(b)(2)(ii); IRC § 7703(b).

IRC § 6013(a)(1) prohibits married taxpayers from filing a joint return “if either the husband or wife at any time during the taxable year is a nonresident alien.” Under IRC § 6013(g), a nonresident alien who is married to a U.S. citizen or resident can choose to be treated as a resident, and IRC § 6015(h) allows the spouses to file a joint return on Form 1040 or Form 1040-SR in this circumstance. If both spouses are nonresident aliens, however, they are barred from filing a joint return and therefore barred from eligibility for the PTC.

REASONS FOR CHANGE

The interaction of the above rules leads to an anomalous result that probably was not intended. Nonresident aliens who are lawfully present in the United States may be eligible for the PTC health insurance subsidy if they are not married, but if they are married to another nonresident alien, they are barred from receiving the PTC – a severe and unwarranted “marriage penalty.”⁵

RECOMMENDATION

- Amend IRC § 36B(c)(1)(C) to eliminate the joint filing requirement for a nonresident alien who is married to another nonresident alien at the end of the taxable year.

⁵ Moreover, if a nonresident alien required to file Form 1040-NR with a status of married filing separately receives the benefit of the APTC, that individual will be required to repay some or all of the APTC.