

Legislative Recommendation #61**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” that may prevent affected persons from obtaining health insurance, thereby undermining the purpose of the PTC.
- *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

IRC § 36B authorizes the PTC, a refundable credit that subsidizes the cost of eligible individuals’ and families’ premiums for qualified health insurance purchased through the Marketplace for one or more months. Eligibility for the PTC depends on several factors, including household income based on family size; eligibility for affordable coverage through an 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.

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.³ 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. 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.” Taxpayers whose income levels qualify them for the PTC but cannot receive it are far less likely to be covered by health insurance, reducing their access to medical care.

1 For a list of the immigration statuses that are considered “lawfully present,” see *Immigration Status and the Marketplace*, HEALTHCARE.GOV, <https://www.healthcare.gov/immigrants/immigration-status/> (last visited Nov. 1, 2023). See also 45 C.F.R. §§ 152.2, 152.20.

2 42 U.S.C. § 18032(f).

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

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.