Office of Chief Counsel
Internal Revenue Service
memorandum
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to: Carolyn A. Tavenner
Director
ACA Office, Services and Enforcement

from: Stephen J. Toomey
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subject: Premium Tax Credit for Fiscal Year Filers

This Program Manager Technical Advice responds to your request for assistance. The advice may not be used or cited as precedent.

ISSUE

What is the applicable percentage and required contribution percentage to be used by a fiscal year taxpayer in determining his or her eligibility for and amount of the premium tax credit under § 36B of the Internal Revenue Code, and what is the limitation on excess advance payments of the premium tax credit a fiscal year filer should use?

FACTS

Situation 1:

Taxpayer A is an individual who is a fiscal year filer, using a taxable year of July 1 through June 30. A's employer offers health insurance coverage to A. The employer's health insurance plan year is the calendar year. A has never enrolled in the employer coverage. Instead, A enrolled in a qualified health plan through his Health Insurance Marketplace (Marketplace) for 2015 and 2016. A did not request advance payments of the premium tax credit (advance credit payments) for his Marketplace coverage.

Situation 2:

Taxpayer B is an individual who is a fiscal year filer, using a taxable year of July 1 through June 30. B is unmarried and uses the filing status of single. B's employer does not offer health insurance coverage to B. B enrolled in a qualified health plan through his Marketplace for 2015 and 2016 and requested advance credit payments for his Marketplace coverage. For his taxable year ending June 30, 2016, B's household income is at 310 percent of the Federal poverty line for a family size of 1 and his advance credit payments exceed the premium tax credit B allowed by $1,400.

LAW AND ANALYSIS

Section 36B provides a premium tax credit to eligible taxpayers who enroll in a qualified health plan, or have a spouse or dependent enrolled in a qualified health plan, through a Marketplace. A taxpayer is generally only allowed a premium tax credit if his or her household income, as defined in § 36B(d)(2) and § 1.36B-1(e) of the Income Tax Regulations, is at least 100 percent and not more than 400 percent of the Federal poverty line (FPL) for the taxpayer's family size.

The amount of a taxpayer's premium tax credit is based, in part, on the amount of the taxpayer's monthly contribution amount, which is equal to 1/12 of the product of the taxpayer's applicable percentage and his or her household income for the taxable year. A taxpayer's applicable percentage is determined under § 36B(b)(3)(A). For taxable years beginning in 2014, a taxpayer's applicable percentage ranges from 2.0 percent (the initial percentage) to 9.5 percent (the final percentage). For taxable years beginning after 2014, the initial and final percentages are adjusted to reflect the rate of premium growth for the preceding calendar year over the rate of income growth for the preceding calendar year. For taxable years beginning in 2015, the initial and final percentages are 2.01 percent and 9.56 percent, respectively, and for taxable years beginning in 2016 the initial and final percentages are 2.03 percent and 9.66 percent, respectively. *See* Section 5.01 of Notice 2014-37, 2014-2 C.B. 363 and Section 2.01 of Notice 2014-62, 2014-2 C.B. 948.

Under § 36B(c), a taxpayer is not allowed a premium tax credit for his or her coverage under a qualified health plan if the taxpayer is eligible for minimum essential coverage (other than coverage in the individual market), including coverage under an employer-sponsored plan that is affordable and provides minimum value. Employer-sponsored coverage is affordable if the amount the employee must contribute for the coverage does not exceed a percentage of household income. The percentage (the required contribution percentage) is 9.5 percent for taxable years beginning in 2014. Under § 36B(c)(2)(C)(iv), the required contribution percentage is adjusted in the same manner as the applicable percentage for plan years beginning after 2014. For plan years beginning in 2015, the required contribution percentage is 9.56 and for plan years beginning in 2016 the required contribution percentage is 9.66 percent. *See* Section 5.02 of Notice 2014-37 and Section 2.02 of Notice 2014-62.

Section 36B(f)(2) provides that if a taxpayer's advance credit payments are more than the premium tax credit the taxpayer is allowed (excess advance payments), the taxpayer must increase his or her tax liability by the excess advance payments, subject to a limitation for taxpayers with household income under 400 percent of the FPL for their family size. Under § 36B(f)(2), for taxable years beginning in 2014 and 2015, the repayment limitation ranges from $300 to $2,500. The repayment limitation ranges from $300 to $2,550 for taxable years beginning in 2016.

Situation 1:

In determining whether A is allowed a premium tax credit for his taxable year ending June 30, 2016, A uses his household income for the taxable year July 1, 2015 through June 30, 2016, to determine whether his household income is between 100 and 400 percent of the FPL for his family size. A uses the applicable percentage table that applies to taxable years beginning in 2015 to determine his contribution amount for the taxable year July 1, 2015 through June 30, 2016. For taxable years beginning in 2015, the initial and final percentages are 2.01 percent and 9.56 percent, respectively.

In determining whether A was eligible for affordable employer-sponsored coverage for the taxable year July 1, 2015 through June 30, 2016, A uses the following rules:

For the months July through December of 2015, A compares his household income for the July 1, 2015 through June 30, 2016 taxable year to the annualized amount that A would have been required to pay for self-only employer coverage for the period July 1 through December 31, 2015. A then uses the required contribution percentage that applies to plan years beginning in 2015, 9.56 percent, to determine if the coverage is affordable for the months July 1, 2015 through December 31, 2015. For example, assume A could have enrolled in self-only employer coverage for a cost of $250/month for the plan year January 1, 2015 – December 31, 2015. A's cost for the period July 1 through December 31, 2015 is $1,500. A's annualized cost for the coverage is $3,000 ($1,500 x 12/6). If A's $3,000 required contribution does not exceed 9.56 percent of A's household income for the July 1, 2015 through June 30, 2016 taxable year, A's coverage is affordable for the months July through December 2015. However, if A's $3,000 required contribution exceeds 9.56 percent of A's household income for the July 1, 2015 through June 30, 2016 taxable year, A's coverage is not affordable for the months July through December 2015.

For the months January 1, 2016 through June 30, 2016, A compares his household income for the July 1, 2015 through June 30, 2016 taxable year to the annualized amount that A would have been required to pay for self-only employer coverage for the period January 1, 2016 through June 30, 2016. A then uses the required contribution percentage that applies to plan years beginning in 2016, 9.66 percent, to determine if the coverage is affordable for the months January 2016 through June 2016. For example, assume A could have enrolled in self-only employer coverage for a cost of

$260/month for the plan year January 1, 2016 – December 31, 2016. A’s cost for the period January through June 2016 is $1,560. A’s annualized cost for the coverage is $3,120 ($1,560 x 12/6). If A’s $3,120 required contribution does not exceed 9.66 percent of A’s household income for the July 1, 2015 through June 30, 2016 taxable year, A’s coverage is affordable for the months January through June 2016. However, if A’s $3,120 required contribution exceeds 9.66 percent of A’s household income for the July 1, 2015 through June 30, 2016 taxable year, A’s coverage is not affordable for the months January through June 2016.

Situation 2:

In determining B’s tax liability for excess advance payments for the taxable year ending June 30, 2016, B uses the repayment limitation in effect for taxable years beginning in 2015, which is $1,250 for a taxpayer who uses the single filing status and has household income at 310 percent of the FPL. Thus, B’s tax liability for excess advance payments is $1,250, the lesser of his excess advance payments, $1,400, and the repayment limitation that applies to B, $1,250.

CONCLUSION

Situation 1:

In determining whether A’s household income is between 100 and 400 percent of the FPL for A’s family size, A uses the applicable percentage table that applies to taxable years beginning in 2015 to determine his contribution amount for his taxable year July 1, 2015 through June 30, 2016. In determining whether A is eligible for affordable employer coverage, A uses the uses the required contribution percentage that applies to plan years beginning in 2015, 9.56 percent, to determine if the coverage is affordable for the months July 1, 2015 through December 31, 2015, and uses the required contribution percentage that applies to plan years beginning in 2016, 9.66 percent, to determine if the coverage is affordable for the months January through June 2016.

Situation 2:

In determining B’s tax liability for excess advance payments for the taxable year ending June 30, 2016, B uses the repayment limitation in effect for taxable years beginning in 2015, which is $1,250 for a taxpayer who uses the single filing status and has household income at 310 percent of the FPL.

Please call Steve Toomey at (202) 317-4718 or Shareen Pflanz at (202) 317-7006 for questions concerning this memorandum.