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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9611]

RIN 1545-BL49

Health Insurance Premium Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010. These final regulations provide guidance to individuals related to employees who may enroll in eligible employer-sponsored coverage and who wish to enroll in qualified health plans through Affordable Insurance Exchanges (Exchanges) and claim the premium tax credit.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability date: For date of applicability, see §1.36B-1(o).

FOR FURTHER INFORMATION CONTACT: Andrew S. Braden, (202) 622-4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) under section 36B of the Internal Revenue Code (Code) regarding whether health coverage under an employer-sponsored plan is affordable for individuals who are eligible to enroll in the plan by reason of their relationship to an employee (related individuals).

On August 17, 2011, a notice of proposed rulemaking (REG-131491-10) was published in the **Federal Register** (76 FR 50931). On May 23, 2012, final regulations (TD 9590) were published in the **Federal Register** (77 FR 30377). The final regulations reserved a rule (§1.36B-2(c)(3)(v)(A)(2)) for determining affordability of employer-sponsored coverage for related individuals. Written comments responding to the proposed and final regulations were received. The comments are available for public inspection at www.regulations.gov or on request. A public hearing was held on November 17, 2011. After consideration of all the comments, the proposed rule is adopted without change by this Treasury decision.

Explanation of Provisions and Summary of Comments

The proposed regulations provided that, for taxable years beginning before January 1, 2015, an eligible employer-sponsored plan is affordable for related individuals if the portion of the annual premium the employee must pay for self-only coverage (the required contribution percentage) does not exceed 9.5% of the taxpayer's household income. While several comments supported this rule, other comments asserted that the affordability of coverage for related individuals should be based on the portion of the annual premium the employee must pay for family coverage.

These final regulations adopt the proposed rule without change. The language of

section 36B, through a cross-reference to section 5000A(e)(1)(B), specifies that the affordability test for related individuals is based on the cost of self-only coverage. By contrast, section 5000A, which establishes the shared responsibility payment applicable to individuals for failure to maintain minimum essential coverage, addresses affordability for employees in section 5000A(e)(1)(B) and, separately, for related individuals in section 5000A(e)(1)(C). Thus, proposed regulations under section 5000A, which the Treasury Department is releasing concurrently with these final regulations, provide that, for purposes of applying the affordability exemption from the shared responsibility payment in the case of related individuals, the required contribution is based on the premium the employee would pay for employer-sponsored family coverage.

Effective/Applicability Date

These final regulations apply to taxable years ending after December 31, 2013.

Special Analyses

This Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. Section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these final regulations are Frank W. Dunham III and Stephen J. Toomey of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes. Reporting and recordkeeping requirements

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.36B-2 is amended by revising paragraphs (c)(3)(v)(A)(2) and (c)(3)(v)(D), Example 2, to read as follows:

§1.36B-2 Eligibility for premium tax credit.

* * * * *

(c) * * *

(3) * * *

(v) * * *

(A) * * *

(2) Affordability for related individual. Except as provided in paragraph (c)(3)(v)(A)(3) of this section, an eligible employer-sponsored plan is affordable for a related individual if the portion of the annual premium the employee must pay for self-only coverage does not exceed the required contribution percentage, as described in

paragraph (c)(3)(v)(A)(1) of this section.

* * * * *

(D) * * *

Example 2. Basic determination of affordability for a related individual. The facts are the same as in Example 1, except that C is married to J and X's plan requires C to contribute \$5,300 for coverage for C and J for 2014 (11.3 percent of C's household income). Because C's required contribution for self-only coverage (\$3,450) does not exceed 9.5 percent of household income, under paragraph (c)(3)(v)(A)(2) of this section, X's plan is affordable for C and J, and C and J are eligible for minimum essential coverage for all months in 2014.

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Steven T. Miller
Deputy Commissioner for Services and Enforcement.

Approved: January 25, 2013

Mark J. Mazur
Assistant Secretary of the Treasury (Tax Policy).