Legislative Recommendation #62

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, an individual must live in the United States; be a U.S. citizen, U.S. national, or 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 health insurance purchased through the Marketplace. 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; and eligibility to enroll in government-provided health coverage like Medicare, Medicaid, or TRICARE.

IRC § 36B(c)(1)(C) provides that if a taxpayer is married at the close of the taxable year, the taxpayer may only claim the PTC if the taxpayer and the taxpayer's spouse file a joint return for that year.[3] IRC § 6013(a)(1) prohibits married taxpayers from filing a joint return if either spouse is a nonresident alien at any time during the taxable year. Under IRC § 6013(g) or (h), a nonresident alien who is married to a U.S. citizen or resident can choose to be treated as a resident for the entire year, which allows the filing of a joint return. If both spouses are nonresident aliens at the end of the year, however, no provision allows them to file a joint return, therefore barring them from receiving 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, except if they are married to another nonresident alien – 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 and placing a greater burden on the U.S. healthcare system.

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.

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1 For a list of the immigration statuses that are considered "lawfully present," see *Immigration Status to Qualify for the Marketplace*, HealthCare.Gov, https://www.healthcare.gov/immigrants/immigration-status/ (last visited Oct. 9, 2024).

2 42 U.S.C. § 18032(f)(1)(B), (3).

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