

LR
#4**PREMIUM TAX CREDIT: Adjust the Affordability Threshold Based on Type of Coverage****PROBLEM**

Under a Treasury Regulation implementing the Affordable Care Act (ACA),¹ an employee's family may be ineligible for the premium tax credit if the cost of health insurance to cover just the employee (self-only) is affordable, even though the employee must pay more to cover him- or herself and family members (family coverage).

EXAMPLE

An employer offers health insurance for an annual employee contribution of \$999 to cover only the employee, or \$4,565 to cover the employee's whole family. Even if the household's income is as little as \$10,500, the rules deem this offer of employer coverage affordable. Family coverage could cost almost half of the household income, but a 9.5-percent affordability threshold refers to the cost of self-only coverage — regardless of which type of insurance the employee actually needs.² Assuming the employer health plan is affordable, the employee (and family) are ineligible for the premium tax credit, which otherwise subsidizes those who may be unable to afford health care.

RECOMMENDATION

Clarify that the 9.5-percent affordability threshold pertains to the type of insurance needed to cover the employee and, if applicable, the employee's spouse and dependents, whether self-only or family coverage.

PRESENT LAW

Generally, the ACA allows a refundable tax credit to low and moderate-income individuals to subsidize premiums at a legislatively-created health insurance marketplace "Exchange."³ This premium tax credit creates affordable coverage for those who may otherwise go without insurance. If an employer offers health insurance coverage to its employees and the employees' family members, and the insurance meets certain minimum value standards, then employees and their family members are eligible for a premium tax credit only if the health plan offered by the employer is unaffordable.

In turn, the relevant statute states that an employer-sponsored plan is unaffordable "if the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) with respect to the plan exceeds 9.5 percent of the applicable taxpayer's household income."⁴ A Notice of Proposed Rule-making (NPRM) explained:

1 See Patient Protection & Affordable Care Act of 2009, Pub. L. No. 111-148, 124 Stat. 119 (Mar. 23, 2010), as amended by the Health Care & Educ'n Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (Mar. 30, 2010).

2 See Treas. Reg. § 1.36B-2(c)(3)(v)(C).

3 See Internal Revenue Code (IRC) § 36B.

4 IRC § 36B(c)(2)(C)(i)(II).

The cross-referenced section 5000A(e)(1)(B) defines the term “required contribution” for this purpose as “the portion of the annual premium which would be paid by the individual * * * for self-only coverage.” Thus, the statutory language specifies that for both employees and others (such as spouses or dependents) who are eligible to enroll in employer-sponsored coverage by reason of their relationship to an employee (related individuals), the coverage is unaffordable if the required contribution for “self-only” coverage (as opposed to family coverage or other coverage applicable to multiple individuals) exceeds 9.5 percent of household income. * * *

Consistent with these statutory provisions, the proposed regulations provide that an employer-sponsored plan also is affordable for a related individual for purposes of section 36B if the employee’s required contribution for self-only coverage under the plan does not exceed 9.5 percent of the applicable taxpayer’s household income for the taxable year, even if the employee’s required contribution for the family coverage does exceed 9.5 percent of the applicable taxpayer’s household income for the year.⁵

To support this interpretation, the NPRM quoted a statement of the Joint Committee on Taxation (JCT): “Unaffordable is defined as coverage with a premium required to be paid by the employee that is more than 9.5 percent of the employee’s household income, based on the self-only coverage.”⁶ The relevant substance of the NPRM was finalized by a Treasury Decision (TD).⁷ As a result, an employee and his or her spouse and dependents may be ineligible for the premium tax credit because self-only coverage is affordable, even if the employee must pay more than 9.5 percent of household income to cover the him- or herself and family.

REASONS FOR CHANGE

As a logical matter, the affordability threshold creates a disjunct between a stipulated amount and the actual cost of family coverage. Illogical provisions, which run contrary to intuitive behavior, make tax administration difficult. As a practical matter, disqualification from the premium tax credit makes it harder for families to obtain health insurance.

According to health-care industry analysts, average annual premiums for employer-sponsored plans in 2013 were \$5,884 for self-only and \$16,351 for family coverage.⁸ The employee’s share was on average \$999 and \$4,565, respectively.⁹ Under the Treasury Regulation, \$4,565 is affordable since \$999 is less than 9.5 percent of household income. Researchers also stated that:

there are about 3.9 million non-working dependents in families ... in which the worker has access to affordable employer-sponsored coverage but the family does not. Under the draft regulation [now finalized], these family members would be excluded from getting federal tax

⁵ NPRM, 76 Fed. Reg. 50931, 50935 (Aug. 17, 2011).

⁶ JCT, *General Explanation of Tax Legislation Enacted in the 111th Cong.*, JCS–2–11 (Mar. 2011) at 265.

⁷ See TD 9590, 77 Fed. Reg. 30377 (May 23, 2012).

⁸ Kaiser Family Foundation, *Employer Health Benefits*, 2013 Ann'l Survey 12, available at <http://kff.org/private-insurance/report/2013-employer-health-benefits/> (last visited Sept. 9, 2013).

⁹ *Employer Health Benefits*, 2013 Ann'l Survey 67; see also Rob't Pear, *Federal Rule Limits Aid to Families Who Can't Afford Employers' Health Coverage*, N.Y. Times (Jan. 30, 2013).

credits to help them buy coverage in health insurance exchanges. On average they'd have to pay 14% of their income to opt into the employer coverage, substantially more than what they would pay in an exchange.¹⁰

Similarly, the Government Accountability Office (GAO) reported:

The proposed affordability standard [now finalized] could potentially affect significantly more children than the approximately 460,000 uninsured children we estimated above under certain scenarios ... we estimate that an additional 1.9 million children who would otherwise be eligible for C[hildren's] H[ealth] I[nsurance] P[rogram] would be considered to have access to affordable insurance under this [now finalized] proposed standard and would be ineligible for the premium tax credit.¹¹

In sum, the threshold as written deems insurance affordable even if that is not the economic reality.

EXPLANATION OF RECOMMENDATION

In view of the illogical and impractical affordability threshold, editorial writers have opined: “The ideal solution would be for Congress to clarify that the 9.5 percent calculation is based on a family plan, and that dependents can get subsidies on the exchanges if there is no affordable coverage at work.”¹² Under the recommendation, the affordability threshold would refer to the level of coverage the employee needs.¹³ If the employee purchases self-only coverage because he or she has no spouse or dependents, or they are eligible for coverage elsewhere, the affordability threshold would be based on the self-only premium. Otherwise, the threshold would be based on the cost of family coverage.

10 Larry Levitt & Gary Claxton, *Measuring the Affordability of Employer Health Coverage*, Kaiser Family Foundation (Aug. 24, 2011), available at <http://kff.org/health-costs/perspective/measuring-the-affordability-of-employer-health-coverage/> (last visited Sept. 9, 2013).

11 GAO, *Children's Health Insurance: Opportunities Exist for Improved Access to Affordable Insurance*, GAO-12-648 (June 2012) 14.

12 *A Cruel Blow to American Families*, N.Y. Times (Feb. 2, 2013).

13 This would be consistent with an earlier explanation of the legislation. See JCT, *Technical Explanation of the Revenue Provisions of the "Reconciliation Act of 2010," as Amended, in Combination with the "Patient Protection And Affordable Care Act,"* JCX-18-10 (Mar. 21, 2010) 14 (“Unaffordable is defined as coverage with a premium required to be paid by the employee that is 9.5 percent or more of the employee’s household income, based on the type of coverage applicable (e.g., individual or family coverage).”).