

**List of Subjects in 14 CFR Part 135**

Air transportation, Aircraft, and Aviation safety.

**The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

**PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT**

■ 1. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730).

■ 2. Revise § 135.611(a)(3) to read as follows:

**§ 135.611 IFR operations at locations without weather reporting.**

(a) \* \* \*

(3) In Class G airspace, IFR departures with visual transitions are authorized only after the pilot in command determines that the weather conditions at the departure point are at or above takeoff minimums depicted in the published Obstacle Departure Procedure or VFR minimum ceilings and visibilities in accordance with § 135.609.

\* \* \* \* \*

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44730 in Washington, DC, on July 17, 2014.

**Michael P. Huerta,**  
*Administrator.*

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**BILLING CODE 4910–13–P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 9683]

RIN 1545–BM23

**Rules Regarding the Health Insurance Premium Tax Credit**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary 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, as amended by the Medicare and Medicaid Extenders Act of 2010, the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, and the Department of Defense and Full-Year Continuing Appropriations Act of 2011 and the 3% Withholding Repeal and Job Creation Act. These regulations affect individuals who enroll in qualified health plans through Affordable Insurance Exchanges (Exchanges) and claim the premium tax credit, and Exchanges that make qualified health plans available to individuals. The text of the temporary regulations in this document also serves as the text of proposed regulations set forth in a notice of proposed rulemaking (REG–104579–13) on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective on July 28, 2014.

*Applicability Date:* For applicability dates, see §§ 1.36B–2T(d), 1.36B–3T(m), 1.36B–4T(c), and 1.162(l)–1T(c).

**FOR FURTHER INFORMATION CONTACT:** Arvind Ravichandran or Shareen Pflanz, (202) 317–4718 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

This document contains final and temporary regulations that amend the Income Tax Regulations (26 CFR part 1) under section 36B relating to the premium tax credit and under section 162(l) relating to the deduction for health insurance costs for self-employed individuals. Section 36B was enacted by the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act). Section 36B provides a refundable premium tax credit to help individuals and families afford health insurance purchased through an Exchange.

To be eligible for a premium tax credit under section 36B, an individual must be an applicable taxpayer. Section 36B(c)(1) provides that an applicable taxpayer is a taxpayer (1) with household income for the taxable year between 100 percent and 400 percent of the federal poverty line for the taxpayer's family size, (2) who may not be claimed as a dependent by another taxpayer, and (3) who files a joint return if married (within the meaning of section 7703).

Section 7703(b) allows certain married individuals to be considered not married for purposes of the Internal Revenue Code. Under section 7703(b), a married taxpayer who lives apart from the taxpayer's spouse for the last six months of the taxable year is considered unmarried if he or she files a separate return, maintains as the taxpayer's home a household that is also the principal place of abode of a dependent child for more than half the year, and furnishes over half the cost of the household during the taxable year.

Section 36B(b)(2) provides that a taxpayer's premium tax credit is the lesser of the premiums for the plan or plans in which the taxpayer and the taxpayer's family enroll or the excess of the premiums for the second lowest cost silver plan covering the taxpayer's family (the benchmark plan) over the taxpayer's contribution amount. A taxpayer's contribution amount is the product of the taxpayer's household income and an applicable percentage that increases as the taxpayer's household income increases.

Under section 1412 of the Affordable Care Act, eligible taxpayers may receive advance payments of the premium tax credit (advance credit payments). Section 36B(f) provides that taxpayers must reconcile any differences between the taxpayer's advance credit payments for a taxable year and the taxpayer's premium tax credit for the year. If the taxpayer's advance credit payments exceed the allowed premium tax credit, the taxpayer owes the excess as a tax liability, subject to a repayment limitation in section 36B(f)(2)(B).

Under section 162(l), a taxpayer who is an employee within the meaning of section 401(c)(1)—generally, a self-employed individual—is allowed a deduction for all or a portion of the taxpayer's premiums paid during the taxable year for health insurance for the taxpayer, the taxpayer's spouse, the taxpayer's dependents, and any child of the taxpayer under the age of 27. The deduction allowed under section 162(l) is limited to the taxpayer's earned income from the trade or business with respect to which the health insurance plan is established. In addition, section 280C(g) provides that no deduction is allowed under section 162(l) for the portion of premiums for a qualified health plan equal to the amount of the premium tax credit determined under section 36B(a) with respect to those premiums.

## Explanation of Provisions

### 1. *Circumstances in Which a Married Taxpayer May Claim a Premium Tax Credit on a Separate Return*

Final regulations under section 36B (TD 9590) were published on May 23, 2012 (77 FR 30377). The final regulations provide that married taxpayers must file a joint return to claim the premium tax credit. However, the preamble to those regulations provided that Treasury and the IRS would propose additional regulations addressing domestic abuse, abandonment, or similar circumstances that create obstacles to filing a joint return. The preamble also requested comments on how to structure a rule to address these situations.

Several comments were received urging that such a rule be provided. Commenters suggested that the rule draw on the existing regime for innocent spouse relief. Commenters also suggested that relief should be allowed for up to three years.

Notice 2014–23, 2014–16 IRB. 942 (March 26, 2014), allows married victims of domestic abuse to claim a premium tax credit without filing a joint return in 2014. Under Notice 2014–23, for calendar year 2014, a married taxpayer will satisfy the joint filing requirement of section 36B(c)(1)(C) if the taxpayer files a 2014 tax return using a filing status of married filing separately and the taxpayer (i) is living apart from the individual's spouse at the time the taxpayer files his or her tax return, (ii) is unable to file a joint return because the taxpayer is a victim of domestic abuse, and (iii) indicates on his or her 2014 income tax return in accordance with the relevant instructions that the taxpayer meets the criteria under (i) and (ii). Notice 2014–23 also provides that the IRS and Treasury intend to propose regulations incorporating this rule.

Accordingly, the temporary regulations incorporate the rule in Notice 2014–23 for 2014 and subsequent taxable years to provide relief from the joint filing requirement for victims of domestic abuse. The temporary regulations also provide relief to victims of spousal abandonment. Consistent with the comments received, taxpayers may not qualify for relief from the joint filing requirement for a period that exceeds three consecutive years.

The temporary regulations define domestic abuse using a definition that is closely based on the definition of spousal abuse in Rev. Proc. 2013–34, 2013–2 CB 397, for innocent spouse relief. In particular, domestic abuse includes physical, psychological,

sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate, or to undermine the victim's ability to reason independently and that all facts and circumstances are considered in determining whether an individual is abused. A taxpayer qualifies as a victim of spousal abandonment for a taxable year if the taxpayer is abandoned by his or her spouse and, taking into account all facts and circumstances, the taxpayer is unable to locate his or her spouse after reasonable diligence. It is expected that the instructions for the tax form taxpayers will use to compute the premium tax credit will provide further guidance on claiming this relief, including that a taxpayer must certify that the taxpayer meets the criteria for the relief.

On March 31, 2014, the Department of Health and Human Services (HHS) issued guidance on the application of Notice 2014–23 to advance credit payments and cost-sharing reductions. In accordance with the temporary regulations included here, it is anticipated HHS will extend its guidance beyond 2014 and to include victims of spousal abandonment.

Comments are requested on the appropriateness of the relief provided in the temporary regulations, and the appropriateness of the scope of relief, including the circumstances that would make a taxpayer eligible for relief.

### 2. *Indexing*

To compute the premium tax credit, a taxpayer determines his or her contribution amount by multiplying an applicable percentage by the taxpayer's household income. The taxpayer uses the percentage table in section 36B(b)(3)(A)(i) to compute his or her applicable percentage. Section 36B(b)(3)(A)(ii) provides that, beginning in 2015, the percentages in the table are adjusted to reflect the excess of the rate of premium growth over the rate of income growth for the preceding calendar year. Similarly, section 36B(c)(2)(C)(iv) provides that the affordability percentage provided in section 36B(c)(2)(C)(i)(II) is updated in the same manner for plan years beginning in calendar years after 2014. The affordability percentage is used to determine whether an employer's offer of coverage to an employee is affordable to the employee. Under section 36B(c)(2)(C)(i), a taxpayer who is not offered affordable employer coverage may be eligible for a premium tax credit.

Section 36B(b)(3)(A)(ii) does not specify what measures should be used for premium growth and income growth. The temporary regulations

provide that premium growth and income growth will be determined in accordance with further published guidance, see § 601.601(d)(2) of this chapter. Rev. Proc. 2014–37, which is being released simultaneously with these temporary regulations, provides further details on the measures to be used for premium growth and income growth. In particular, consistent with the factors used by HHS to define premium growth in indexing the required contribution percentage in section 5000A, Rev. Proc. 2014–37 provides that premium growth for the preceding calendar year is the projected per enrollee spending for employer-sponsored private health insurance for the preceding calendar year, divided by the projected per enrollee spending for employer-sponsored private health insurance for the calendar year two years prior. Income growth for the preceding calendar year will be the projected GDP per capita for the preceding calendar year divided by the projected GDP per capita for the calendar year two years prior. Projected per enrollee spending for employer-sponsored private health insurance and projected GDP per capita are published by the Office of the Actuary at the Centers for Medicare and Medicaid Services.

Section 36B(b)(3)(A)(ii) also does not make clear what it means to adjust the applicable percentages to “reflect the excess” of one rate “over” the other. Rates of growth are commonly compared by taking their ratio. In addition, the applicable percentages in section 36B(b)(3)(A)(i) and the affordability percentage in section 36B(c)(2)(C)(i)(II) represent shares of income that a taxpayer is expected to spend on health care premiums. The indexing of these measures in section 36B(b)(3)(A)(ii) appears designed to adjust these fractions to reflect changes in the observed share of overall income that is spent on health care premiums. Preserving this relationship requires that the applicable percentages be adjusted based on the ratio of the rate of premium growth to the rate of income growth. Accordingly, the temporary regulations provide that, for taxable years beginning after December 31, 2014, the applicable percentages in the table will be adjusted by the ratio of premium growth to income growth for the preceding calendar year.

In addition, the temporary regulations provide that adjustments may be made to reflect updates to the data used to compute this ratio for the 2014 calendar year or to reflect updates to data sources used to compute the ratio of premium growth to income growth. Such an

adjustment may be necessary to avoid error propagation when making updates. In particular, in computing this ratio for a given calendar year, the computations rely on projected data for the prior year and the 2013 calendar year. To the extent that the final data for the prior calendar year prove different from the projected data, the projected data used in later years will automatically adjust for those differences. However, if the final data for the 2013 calendar year proves different from the projected data, projected data in later years will not adjust for these differences, so an additional adjustment will be needed. Similarly, if alternative data sources are used to compute the ratio in later years, an additional adjustment may be needed to avoid error that could result from transitioning from the prior data sources to the new ones. These adjustments will be made as part of the procedure by which the applicable percentages and affordability percentage are updated by the ratio of premium growth to income growth and will apply prospectively only. For example, if data for the 2013 calendar year data is finalized in early 2016, the additional adjustment will be made in determining the applicable percentages and affordability percentage in effect for the 2017 calendar year.

With respect to the affordability percentage, the final regulations under section 36B inadvertently refer to taxable years rather than plan years beginning after 2014. Consistent with the language in section 36B(c)(2)(C)(iv), the temporary regulations provide that, for plan years beginning in a calendar year after 2014, the affordability percentage will be adjusted by the same method used to adjust the applicable percentages.

The indexing methodology provided for in the temporary regulations is based on the same data sources as the methodology adopted by HHS for adjusting the required contribution percentage in section 5000A, which is used to determine eligibility for an exemption from the shared responsibility payment, and it will result in adjustments to the applicable percentages and affordability percentage that are consistent with the adjustments made by HHS to the required contribution percentage in section 5000A. *See* 79 FR 30240 (May 27, 2014).

Comments are requested on the methodology for indexing. In particular, comments are requested on whether this approach properly captures the rate of premium growth relative to the rate of income growth and whether alternative indices or data sources should be used.

### *3. Allocations for Reconciliation of Advance Credit Payments and the Premium Tax Credit*

The final regulations under section 36B provide that a taxpayer must reconcile all advance credit payments for coverage of any member of the taxpayer's family. A taxpayer's family includes the taxpayer, the taxpayer's spouse and the taxpayer's dependents. The final regulations, however, do not address how a taxpayer computes the premium tax credit and reconciles advance credit payments for coverage of a family member if the family member was enrolled in a qualified health plan by another taxpayer, especially in situations in which the family member is enrolled with others who are not in the taxpayer's family. For example, suppose Adult 1 enrolls herself and her three children in a qualified health plan and, based on a good faith assertion that she will claim the children as dependents, is approved for advance credit payments for coverage of the family. One of the children (Child), however, is not claimed by Adult 1 and instead is properly claimed by Adult 2 as a dependent for the taxable year. In this circumstance, the final regulations neither address how much of the premium for the plan purchased by Adult 1 each taxpayer should take into account in determining his or her premium tax credit, nor the amount of advance credit payments for Adult 1's plan that Adult 2 must reconcile for Child's coverage. In addition, the final regulations under section 36B require Adult 1 and Adult 2 to determine their adjusted monthly premium for the applicable benchmark plan (benchmark plan premium) in this circumstance using the rules that apply to taxpayers who do not have family members enrolled by another taxpayer.

The temporary regulations provide rules to address how taxpayers determine their premium tax credit and reconcile advance credit payments in cases in which an individual is enrolled by one taxpayer but another taxpayer claims a personal exemption deduction for the individual. In particular, the temporary regulations provide that if a taxpayer (the enrolling taxpayer) enrolls an individual in a qualified health plan, but another taxpayer (the claiming taxpayer) claims a personal exemption deduction for the enrollee (the shifting enrollee), then for purposes of computing each taxpayer's premium tax credit and reconciling any advance credit payments, the premiums and any advance credit payments for the plan in which the shifting enrollee was enrolled are allocated between the enrolling

taxpayer and the claiming taxpayer using an allocation percentage. In addition, the temporary regulations provide an alternate calculation that is used to determine each taxpayer's benchmark plan premium when advance credit payments are allocated, using the same allocation percentage.

The enrolling taxpayer and claiming taxpayer may generally agree on any allocation percentage between zero and one hundred percent. For instance, Adult 1 and Adult 2 may determine that the premium attributable to Child is 20 percent of the total premium for Adult 1's family plan, and agree on an allocation percentage of 20 percent. If the claiming taxpayer and enrolling taxpayer do not agree on a percentage, the allocation percentage is equal to the number of shifting enrollees divided by the total number of individuals enrolled by the enrolling taxpayer in the same qualified health plan as the shifting enrollees. In the example above, if Adult 1 and Adult 2 did not agree on an allocation percentage, the allocation percentage would be 25 percent (one, the number of shifting enrollees, divided by four, the total number of individuals enrolled by Adult 1 in the same plan as the shifting enrollee).

In computing the premium tax credit, the claiming taxpayer is allocated a portion of the premiums for the plan in which the enrollee was enrolled equal to the premiums times the allocation percentage. The enrolling taxpayer is allocated the remainder of the premiums. Similarly, in reconciling advance credit payments, the claiming taxpayer is allocated a portion of the advance credit payments for the plan in which the shifting enrollee was enrolled equal to the advance credit payments times the allocation percentage. The enrolling taxpayer is allocated the remainder of these amounts. Advance credit payments are allocated to the claiming taxpayer only if advance credit payments are made for coverage of the shifting enrollee.

Finally, if advance credit payments are allocated under the rules above, the taxpayers, in computing their premium tax credit, must use an alternative calculation to determine their benchmark plan premium. The benchmark plan premium is generally the premium an issuer would charge for the applicable benchmark plan to cover all members of the taxpayer's coverage family, adjusted only for the age of each member of the coverage family. Under the alternative calculation, each taxpayer will first determine the allocable portion of the enrolling taxpayer's benchmark plan premium (allocable portion). The allocable

portion is equal to the product of (1) the allocation percentage and (2) the benchmark plan premium for the enrolling taxpayer's coverage family had the enrolling taxpayer claimed a personal exemption deduction for the shifting enrollee or enrollees for the taxable year. If the enrolling taxpayer's coverage family is enrolled in more than one qualified health plan, the allocable portion is determined as if the enrolling taxpayer's coverage family includes only the family members who enrolled in the same plan as the shifting enrollee or enrollees. The benchmark plan premium for the claiming taxpayer is equal to this allocable portion plus the benchmark plan premium for the claiming taxpayer's coverage family excluding the shifting enrollee or enrollees. The enrolling taxpayer's benchmark plan premium is equal to the benchmark plan premium for the enrolling taxpayer's coverage family had the enrolling taxpayer claimed a personal exemption deduction for the shifting enrollee or enrollees, minus the allocable portion.

#### 4. Reconciliation for Divorced and Separated Taxpayers

The temporary regulations clarify how taxpayers who legally separate or divorce allocate the benchmark plan premium, the premium for the plan in which the taxpayers or their dependents enroll, and the advance credit payments to compute their respective premium tax credit and excess advance credit payments. The final section 36B regulations provide that if just one of the taxpayers is enrolled in the qualified health plan for the married months, all of the items are allocated to that taxpayer, even if the taxpayer's former spouse had one or more dependents also enrolled in the same plan. The temporary regulations expand the circumstances in which the items are allocated between the former spouses to include dependent situations and limit the instances in which all of the items are allocated to just one of the spouses.

Under the temporary regulations, taxpayers who are married (within the meaning of section 7703) to each other during a taxable year but are not married to each other on the last day of the taxable year, and who are enrolled in the same qualified health plan, must allocate the benchmark plan premium, the premium for the plan in which the taxpayers and their dependents enroll, and the advance credit payments for the period the taxpayers are married during the taxable year. In addition, these items must be allocated for periods in which just one of the former spouses is enrolled if one or more dependents of

the other former spouse is also enrolled in the plan. The taxpayers may allocate these items to each former spouse in any proportion but must allocate all items in the same proportion. If the taxpayers do not agree on an allocation that is reported to the IRS in accordance with the relevant forms and instructions, 50 percent of each item is allocated to each taxpayer. If a plan covers for a time period only one of the taxpayers and no dependents, only one of the taxpayers and one or more dependents of that same taxpayer, or only one or more dependents of just one of the taxpayers, then the benchmark plan premium, the premium for the plan in which the taxpayers or their dependents enroll, and the advance credit payments for that period are allocated entirely to that taxpayer.

#### 5. Reconciliation for Married Taxpayers Who File Separately

The temporary regulations also amend the reconciliation rules for taxpayers who are married and file separate returns. The final regulations under section 36B provide that a married taxpayer who receives advance credit payments and files an income tax return as married filing separately has received excess advance payments. Under the temporary regulations, a taxpayer who uses a filing status of married filing separately may be allowed a premium tax credit if the taxpayer is a victim of spousal abuse or abandonment. Consequently, in these limited circumstances, a married taxpayer who receives advance credit payments and uses a married filing separately filing status will not have excess advance payments by reason of his or her filing status. The temporary regulations also clarify the manner in which taxpayers reconcile advance credit payments in situations in which the taxpayers indicate that they are married when applying for advance credit payments, but one or both file their tax return using the head of household filing status. Taxpayers who qualify to use the head of household filing status may be eligible for a premium tax credit. In particular, the temporary regulations provide that, in such cases, 50 percent of the advance credit payments for a period of coverage in a qualified health plan are allocated to each taxpayer. However, all of the advance credit payments are allocated to only one of the taxpayers for a period in which a qualified health plan covers only that taxpayer, only that taxpayer and one or more dependents of that taxpayer, or only one or more dependents of that taxpayer. Premiums for the plan in which the taxpayers or their dependents

are enrolled are allocated in the same manner whether or not the taxpayers receive advance credit payments. These rules result in the advance credit payments and premiums being allocated in the same proportion to the two taxpayers.

#### 6. Deduction for Health Insurance Costs of Self-Employed Individuals

Under section 162(l), a taxpayer who is an employee within the meaning of section 401(c)(1) (generally, a self-employed individual) is allowed a deduction for all or a portion of the taxpayer's premiums paid during the taxable year for health insurance for the taxpayer, the taxpayer's spouse, the taxpayer's dependents, and any child of the taxpayer under the age of 27. The section 162(l) deduction is allowed in computing adjusted gross income. The deduction allowed under section 162(l) may not exceed the taxpayer's earned income from the trade or business with respect to which the health insurance plan is established. In addition, section 280C(g) provides that no deduction is allowed under section 162(l) for the portion of premiums for a qualified health plan equal to the amount of the premium tax credit determined under section 36B(a) with respect to those premiums.

The temporary regulations provide rules for the interaction between the section 162(l) deduction and both the premium tax credit and the limitation on additional tax under section 36B(f)(2)(B). The temporary regulations provide that a taxpayer is allowed a deduction under section 162(l) for specified premiums not to exceed the lesser of (1) the specified premiums less the premium tax credit attributable to the specified premiums; and (2) the sum of the specified premiums not paid through advance credit payments and the additional tax imposed (if any) under section 36B(f)(2)(A) with respect to the specified premiums after applying the limitation in section 36B(f)(2)(B). Specified premiums means premiums for a specified qualified health plan or plans for which the taxpayer may otherwise claim a deduction under section 162(l). A specified qualified health plan is a qualified health plan, as defined in § 1.36B-1(c), covering the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer (enrolled family member) for a month that is a coverage month within the meaning of § 1.36B-3(c) for the enrolled family member. If a specified qualified health plan covers one or more individuals other than enrolled family members, the specified premiums include only the portion of the premiums for the

specified qualified health plan that is allocable to the enrolled family members under rules similar to § 1.36B-3(h), which provides rules for determining the amount under § 1.36B-3(d)(1) when two families are enrolled in the same qualified health plan.

Although a taxpayer's section 162(l) deduction is limited under section 280C(g) only to the extent of the taxpayer's premium tax credit, some taxpayers with advance payments in excess of their premium tax credit will not have to repay the entire excess because of the limitation on additional tax in section 36B(f)(2)(B). Because the taxpayer does not bear the cost of any portion of the premium that is paid through advance credit payments and that is not subject to repayment due to the limitations, any such amount is treated as an amount of premium tax credit for purposes of section 280C(g).

As a computational matter, the premium tax credit and the limitation on additional tax bear a circular relationship to the section 162(l) deduction that may create challenges for taxpayers. Specifically, the amount of the section 162(l) deduction affects a taxpayer's adjusted gross income, which affects both the premium tax credit and the limitation on additional tax. Conversely, both the premium tax credit and the limitation on additional tax affect the amount a taxpayer spends on health insurance premiums, which in turn affects the taxpayer's section 162(l) deduction.

A taxpayer may resolve the circularity between the section 162(l) deduction and the premium tax credit by taking any position that satisfies the requirements of section 36B, section 162(l) and other applicable tax law and the regulations issued under those sections, including the temporary regulations in this rulemaking.

To address the circularity between the section 162(l) deduction and the limitation on additional tax under section 36B(f)(2)(B) (limitation amount), the temporary regulations provide rules for determining which limitation amount, if any, a taxpayer may use. Taxpayers make this determination before calculating their section 162(l) deduction and premium tax credit. To determine the limitation amount, a taxpayer tests his or her eligibility for each of the limitation amounts that may apply, starting with the lowest, until the taxpayer either determines that he or she qualifies for one of the limitation amounts or exhausts them without qualifying for one. For each limitation amount, the taxpayer qualifies to use that limitation amount if the taxpayer's household income as a percentage of the

Federal poverty line, determined by using a section 162(l) deduction equal to the sum of (1) specified premiums, as defined above, not paid through advance credit payments, (2) the limitation amount, and (3) premiums other than specified premiums for which the taxpayer may claim a section 162(l) deduction, is equal to or less than the maximum household income as a percentage of the Federal poverty line for which that limitation amount is available. For example, if a taxpayer's 2014 household income, using a section 162(l) deduction equal to the sum of the specified premiums not paid through advance credit payments and the \$600 limitation amount, is less than 200 percent of the Federal poverty line, the taxpayer uses the \$600 limitation amount in determining additional tax under section 36B(f)(2)(B). If a taxpayer is unable to qualify for any limitation amount under this rule, the limitation on additional tax under section 36B(f)(2)(B) does not apply to the taxpayer.

A taxpayer who deducts specified premiums under section 162(l) must use the limitation amount determined under this rule notwithstanding that household income as a percentage of the Federal poverty line would, but for this rule, result in a different limitation amount. After a taxpayer determines his or her limitation amount, if any, under this rule, the taxpayer then determines the section 162(l) deduction and premium tax credit under the other rules described above, except using the limitation amount determined under these rules when necessary. These rules apply only for purposes of determining the limitation amount; they do not affect eligibility for the premium tax credit. Thus, it is possible that a taxpayer with household income under 400 percent of the Federal poverty line for the taxpayer's family size may properly claim a premium tax credit but not qualify for a limitation on additional tax.

The temporary regulations further provide that Treasury and IRS may issue additional published guidance to address potential complexities arising from the interaction of the section 36B premium tax credit and the section 162(l) deduction. To provide additional assistance to taxpayers with addressing the circularity between the section 162(l) deduction and the premium tax credit, Rev. Proc. 2014-41 provides calculation methods that a taxpayer may use to determine amounts of the section 162(l) deduction and the premium tax credit. The IRS and Treasury request comments on other methods for simplifying these calculations.

### Effective/Applicability Date

For applicability dates, see §§ 1.36B-2T(d), 1.36B-3T(m), 1.36B-4T(c), and 1.162(l)-1T(c). The applicability of these regulations expires on or before July 24, 2017.

### Special Analyses

It has been determined that 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. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Drafting Information

The principal authors of these regulations are Arvind Ravichandran, Shareen Pflanz and Steve Toomey of the Office of the Associate Chief Counsel (Income Tax & 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.

### 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:

■ 1. Revising paragraphs (b)(2) and (c)(3)(v)(C).

■ 2. Adding paragraph (d).

The revisions and additions read as follows:

#### § 1.36B-2 Eligibility for premium tax credit.

\* \* \* \* \*

(b) \* \* \*

(2) [Reserved]. For further guidance, see § 1.36B-2T(b)(2).

\* \* \* \* \*

(c) \* \* \*  
 (3) \* \* \*  
 (v) \* \* \*

(C) [Reserved]. For further guidance, see § 1.36B-2T(c)(3)(v)(C).

\* \* \* \* \*

(d) [Reserved]. For further guidance, see § 1.36B-2T(d).

■ **Par. 3.** Section 1.36B-2T is added to read as follows:

**§ 1.36B-2T Eligibility for premium tax credit (temporary).**

(a) through (b)(1) [Reserved]. For further guidance, see § 1.36B-2(a) through (b)(1).

(2) *Married taxpayers must file joint return*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, a taxpayer who is married (within the meaning of section 7703) at the close of the taxable year is an applicable taxpayer only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(ii) *Victims of domestic abuse and abandonment.* Except as provided in paragraph (b)(2)(v) of this section, a married taxpayer satisfies the joint filing requirement of paragraph (b)(2)(i) of this section if the taxpayer files a tax return using a filing status of married filing separately and the taxpayer—

(A) Is living apart from the taxpayer's spouse at the time the taxpayer files the tax return;

(B) Is unable to file a joint return because the taxpayer is a victim of domestic abuse, as described in paragraph (b)(2)(iii) of this section, or spousal abandonment, as described in paragraph (b)(2)(iv) of this section; and

(C) Certifies on the return, in accordance with the relevant instructions, that the taxpayer meets the criteria of this paragraph (b)(2)(ii).  
 (iii) *Domestic abuse.* For purposes of paragraph (b)(2)(ii) of this section, domestic abuse includes physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate, or to undermine the victim's ability to reason independently. All the facts and circumstances are considered in determining whether an individual is abused, including the effects of alcohol or drug abuse by the victim's spouse. Depending on the facts and circumstances, abuse of the victim's child or another family member living in the household may constitute abuse of the victim.

(iv) *Abandonment.* For purposes of paragraph (b)(2)(ii) of this section, a taxpayer is a victim of spousal abandonment for a taxable year if, taking into account all facts and circumstances, the taxpayer is unable to

locate his or her spouse after reasonable diligence.

(v) *Three-year rule.* Paragraph (b)(2)(ii) of this section does not apply if the taxpayer met the requirements of paragraph (b)(2)(ii) of this section for each of the three preceding taxable years.

(b)(3) through (c)(3)(v)(B) [Reserved]. For further guidance, see § 1.36B-2(b)(3) through (c)(3)(v)(B).

(C) *Required contribution percentage.* The required contribution percentage is 9.5 percent. For plan years beginning in a calendar year after 2014, the percentage will be adjusted by the ratio of premium growth to income growth for the preceding calendar year and may be further adjusted to reflect changes to the data used to compute the ratio of premium growth to income growth for the 2014 calendar year or the data sources used to compute the ratio of premium growth to income growth. Premium growth and income growth will be determined under published guidance, see § 601.601(d)(2) of this chapter. In addition, the percentage may be adjusted for plan years beginning in a calendar year after 2018 to reflect rates of premium growth relative to growth in the consumer price index.

(c)(3)(v)(D) through (c)(4) [Reserved]. For further guidance, see § 1.36B-2(c)(3)(v)(D) through (c)(4).

(d) *Effective/applicability date.* Paragraphs (b)(2) and (c)(3)(v)(C) of this section apply to taxable years beginning after December 31, 2013.

(e) *Expiration date.* Paragraphs (b)(2) and (c)(3)(v)(C) of this section expire on July 24, 2017.

■ **Par. 4.** Section 1.36B-3 is amended by:

- 1. Revising paragraph (g)(1).
- 2. Adding paragraph (m).

The revisions and additions read as follows:

**§ 1.36B-3 Computing the premium assistance credit amount.**

\* \* \* \* \*

(g) \* \* \*  
 (1) [Reserved]. For further guidance, see § 1.36B-3T(g)(1).

\* \* \* \* \*

(m) [Reserved]. For further guidance, see § 1.36B-3T(m).

■ **Par. 5.** Section 1.36B-3T is added to read as follows:

**§ 1.36B-3T Computing the premium assistance credit amount (temporary).**

(a) through (f) [Reserved]. For further guidance, see § 1.36B-3(a) through (f).

(g) *Applicable percentage*—(1) *In general.* The applicable percentage multiplied by a taxpayer's household income determines the taxpayer's

annual required share of premiums for the benchmark plan. The required share is divided by 12 and this monthly amount is subtracted from the adjusted monthly premium for the applicable benchmark plan when computing the premium assistance amount. The applicable percentage is computed by first determining the percentage that the taxpayer's household income bears to the Federal poverty line for the taxpayer's family size. The resulting Federal poverty line percentage is then compared to the income categories described in the table in paragraph (g)(2) of this section (or successor tables). An applicable percentage within an income category increases on a sliding scale in a linear manner and is rounded to the nearest one-hundredth of one percent. For taxable years beginning after December 31, 2014, the applicable percentages in the table will be adjusted by the ratio of premium growth to income growth for the preceding calendar year and may be further adjusted to reflect changes to the data used to compute the ratio of premium growth to income growth for the 2014 calendar year or the data sources used to compute the ratio of premium growth to income growth. Premium growth and income growth will be determined in accordance with published guidance, see § 601.601(d)(2) of this chapter. In addition, the applicable percentages in the table may be adjusted for taxable years beginning after December 31, 2018, to reflect rates of premium growth relative to growth in the consumer price index.

(g)(2) through (l) [Reserved]. For further guidance, see § 1.36B-3(g)(2) through (l).

(m) *Effective/applicability date.* Paragraph (g)(1) of this section applies to taxable years beginning after December 31, 2013.

(n) *Expiration date.* Paragraph (g)(1) of this section expires on July 24, 2017.

■ **Par. 6.** Section 1.36B-4 is amended by:

- 1. Revising paragraph (a)(1)(ii).
- 2. Adding paragraph (a)(3)(iii).
- 3. In paragraph (a)(4), revising *Example 4* and adding *Examples 10, 11, 12, 13, and 14.*
- 4. Revising paragraphs (b)(3) and (b)(4).
- 5. Removing paragraph (b)(5).
- 6. Redesignating paragraph (b)(6) as paragraph (b)(5), and revising *Example 9*, and adding *Example 10* to newly redesignated paragraph (b)(5).
- 7. Adding paragraph (c).

The revisions and additions read as follows:

**§ 1.36B-4 Reconciling the premium tax credit with advance credit payments.**

(a) \* \* \* (1) \* \* \*

(ii) [Reserved]. For further guidance, see § 1.36B-4T(a)(1)(ii).

\* \* \* \* \*

(3) \* \* \*

(iii) [Reserved]. For further guidance, see § 1.36B-4T(a)(3)(iii).

(4) \* \* \*

*Example 4.* [Reserved]. For further guidance, see § 1.36B-4T(a)(4), *Example 4.*

\* \* \* \* \*

*Example 10.* [Reserved]. For further guidance, see § 1.36B-4T(a)(4), *Example 10.**Example 11.* [Reserved]. For further guidance, see § 1.36B-4T(a)(4), *Example 11.**Example 12.* [Reserved]. For further guidance, see § 1.36B-4T(a)(4), *Example 12.**Example 13.* [Reserved]. For further guidance, see § 1.36B-4T(a)(4), *Example 13.**Example 14.* [Reserved]. For further guidance, see § 1.36B-4T(a)(4), *Example 14.*

(b) \* \* \*

(3) [Reserved]. For further guidance, see § 1.36B-4T(b)(3).

(4) [Reserved]. For further guidance, see § 1.36B-4T(b)(4).

(5) \* \* \*

*Example 9.* [Reserved]. For further guidance, see § 1.36B-4T(b)(5), *Example 9.**Example 10.* [Reserved]. For further guidance, see § 1.36B-4T(b)(5), *Example 10.*

\* \* \* \* \*

(c) [Reserved]. For further guidance, see § 1.36B-4T(c).

**■ Par. 7.** Section 1.36B-4T is added to read as follows:**§ 1.36B-4T Reconciling the premium tax credit with advance credit payments (temporary).**

(a)(1)(i) [Reserved]. For further guidance, see § 1.36B-4(a)(1)(i).

(ii) *Allocation rules and responsibility for advance credit payments—(A) In general.* A taxpayer must reconcile all advance credit payments for coverage of any member of the taxpayer's family.(B) *Individuals enrolled by a taxpayer and claimed as a personal exemption deduction by another taxpayer—(1) In general.* If a taxpayer (the enrolling taxpayer) enrolls an individual in a qualified health plan and another taxpayer (the claiming taxpayer) claims a personal exemption deduction for the individual (the shifting enrollee), then for purposes of computing each taxpayer's premium tax credit and

reconciling any advance credit payments, the premiums and advance credit payments for the plan in which the shifting enrollee was enrolled are allocated under this paragraph (a)(1)(ii)(B) according to the allocation percentage described in paragraph (a)(1)(ii)(B)(2) of this section. If advance credit payments are allocated under paragraph (a)(1)(ii)(B)(4) of this section, the claiming taxpayer and enrolling taxpayer must use this same allocation percentage to calculate their § 1.36B-3(d)(2) adjusted monthly premiums for the applicable benchmark plan (benchmark plan premiums). This paragraph (a)(1)(ii)(B) does not apply to amounts allocated under § 1.36B-3(h) (qualified health plan covering more than one family) or if the shifting enrollee or enrollees are the only individuals enrolled in the qualified health plan. For purposes of this paragraph (a)(1)(ii)(B)(1), a taxpayer who is expected at enrollment in a qualified health plan to be the taxpayer filing an income tax return for the year of coverage with respect to an individual enrolling in the plan has enrolled that individual.

(2) *Allocation percentage.* The enrolling taxpayer and claiming taxpayer may agree on any allocation percentage between zero and one hundred percent. If the enrolling taxpayer and claiming taxpayer do not agree on an allocation percentage, the percentage is equal to the number of shifting enrollees claimed as a personal exemption deduction by the claiming taxpayer divided by the number of individuals enrolled by the enrolling taxpayer in the same qualified health plan as the shifting enrollee.

(3) *Allocating premiums.* In computing the premium tax credit, the claiming taxpayer is allocated a portion of the premiums for the plan in which the shifting enrollee was enrolled equal to the premiums for the plan times the allocation percentage. The enrolling taxpayer is allocated the remainder of the premiums not allocated to one or more claiming taxpayers.

(4) *Allocating advance credit payments.* In reconciling any advance credit payments, the claiming taxpayer is allocated a portion of the advance credit payments for the plan in which the shifting enrollee was enrolled equal to the enrolling taxpayer's advance credit payments for the plan times the allocation percentage. The enrolling taxpayer is allocated the remainder of the advance credit payments not allocated to one or more claiming taxpayers. This paragraph (a)(1)(ii)(B)(4) only applies in situations in which

advance credit payments are made for coverage of a shifting enrollee.

(5) *Premiums for the applicable benchmark plan.* If paragraph (a)(1)(ii)(B)(4) of this section applies, the claiming taxpayer's benchmark plan premium is the sum of the benchmark plan premium for the claiming taxpayer's coverage family, excluding the shifting enrollee or enrollees, and the allocable portion. The allocable portion for purposes of this paragraph (a)(1)(ii)(B)(5) is the product of the benchmark plan premium for the enrolling taxpayer's coverage family if the shifting enrollee was a member of the enrolling taxpayer's coverage family and the allocation percentage. If the enrolling taxpayer's coverage family is enrolled in more than one qualified health plan, the allocable portion is determined as if the enrolling taxpayer's coverage family includes only the coverage family members who enrolled in the same plan as the shifting enrollee or enrollees. The enrolling taxpayer's benchmark plan premium is the benchmark plan premium for the enrolling taxpayer's coverage family had the shifting enrollee or enrollees remained a part of the enrolling taxpayer's coverage family, minus the allocable portion.

(C) *Responsibility for advance credit payments for an individual for whom no personal exemption deduction is claimed.* If advance credit payments are made for coverage of an individual for whom no taxpayer claims a personal exemption deduction, the taxpayer who attested to the Exchange to the intention to claim a personal exemption deduction for the individual as part of the advance credit payment eligibility determination for coverage of the individual must reconcile the advance credit payments.

(a)(1)(iii) through (a)(3)(ii) [Reserved]. For further guidance, see § 1.36B-4(a)(1)(iii) through (a)(3)(ii).

(iii) *Limitation on additional tax for taxpayers who claim a section 162(l) deduction for a qualified health plan—(A) In general.* A taxpayer who receives advance credit payments and deducts premiums for a qualified health plan under section 162(l) must use paragraphs (a)(3)(iii)(B) and (C) of this section to determine the limitation on additional tax in this paragraph (a)(3) (limitation amount). Taxpayers must make this determination before calculating their section 162(l) deduction and premium tax credit. For additional rules for taxpayers who may claim a deduction under section 162(l) for a qualified health plan for which advance credit payments are made, see § 1.162(l)-1T.

(B) *Determining the limitation amount.* A taxpayer described in paragraph (a)(3)(iii)(A) of this section must use the limitation amount for which the taxpayer qualifies under the requirements of paragraph (a)(3)(iii)(C) of this section. The limitation amount determined under this paragraph (a)(3)(iii) replaces the limitation amount that would otherwise be determined under the additional tax limitation table in paragraph (a)(3)(ii) of this section. In applying paragraph (a)(3)(iii)(C) of this section, a taxpayer must first determine whether he or she qualifies for the limitation amount applicable to taxpayers with household income of less than 200 percent of the Federal poverty line for the taxpayer's family size. If the taxpayer is unable to meet the requirements of paragraph (a)(3)(iii)(C) of this section for that limitation amount, the taxpayer must next determine whether he or she qualifies for the limitation applicable to taxpayers with household income of less than 300 percent of the Federal poverty line for the taxpayer's family size. If the taxpayer is unable to meet the requirements of paragraph (a)(3)(iii)(C) of this section for taxpayers with household income of less than 300 percent of the Federal poverty line for the taxpayer's family size, the taxpayer must next determine whether he or she qualifies for the limitation applicable to taxpayers with household income of less than 400 percent of the Federal poverty line for the taxpayer's family size. If the taxpayer is unable to meet the requirements of paragraph (a)(3)(iii)(C) of this section for any limitation amount, the limitation on additional tax under section 36B(f)(2)(B) does not apply to the taxpayer.

(C) *Requirements.* A taxpayer meets the requirements of this paragraph (a)(3)(iii)(C) for a limitation amount if the taxpayer's household income as a percentage of the Federal poverty line is less than or equal to the maximum household income as a percentage of the Federal poverty line for which that limitation is available. Household income for this purpose is determined by using a section 162(l) deduction equal to the sum of the specified premiums for the plan not paid through advance credit payments and the limitation amount in addition to any deduction allowable under section 162(l) for premiums other than specified premiums. For purposes of this paragraph (a)(3)(iii)(C), specified premiums not paid through advance credit payments means specified premiums, as defined in § 1.162(l)-1T(a)(2), minus advance credit

payments made with respect to the specified premiums.

(D) *Examples.* For examples illustrating the rules of this paragraph (a)(3)(iii), see *Examples 13 and 14* of paragraph (a)(4) of this section.

(a)(4), *Example 1*, through *Example 3* [Reserved]. For further guidance, see § 1.36B-4(a)(4), *Example 1* through *Example 3*.

*Example 4. Family size decreases.* (i) Taxpayers B and C are married and have two children, K and L (ages 17 and 20), whom they claim as dependents in 2013. The Exchange for their rating area projects their 2014 household income to be \$63,388 (275 percent of the Federal poverty line for a family of four, applicable percentage 8.78). B and C enroll in a qualified health plan for 2014 that covers the four family members. The annual premium for the applicable benchmark plan is \$14,100. B's and C's advance credit payments for 2014 are \$8,535, computed as follows: benchmark plan premium of \$14,100 less contribution amount of \$5,565 (projected household income of \$63,388  $\times$  .0878) = \$8,535.

(ii) In 2014, B and C do not claim L as their dependent (and no taxpayer claims a personal exemption deduction for L). Consequently, B's and C's family size for 2014 is three, their household income of \$63,388 is 332 percent of the Federal poverty line for a family of three (applicable percentage 9.5), and the annual premium for their applicable benchmark plan is \$12,000. Their premium tax credit for 2014 is \$5,978 (\$12,000 benchmark plan premium less \$6,022 contribution amount (household income of \$63,388  $\times$  .095)). Because B's and C's advance credit payments for 2014 are \$8,535 and their 2014 credit is \$5,978, B and C have excess advance payments of \$2,557. B's and C's additional tax liability for 2014 under paragraph (a)(1) of this section, however, is limited to \$2,500 under paragraph (a)(3) of this section.

*Example 5 through Example 9* [Reserved]. For further guidance, see 1.36B-4(a)(4), *Example 5* through *Example 9*.

*Example 10. Allocation percentage, agreement on allocation.* (i) Taxpayers G and H are divorced and have two children, J and K. G enrolls herself and J and K in a qualified health plan for 2014. The premium for the plan in which G enrolls is \$13,000. The Exchange in G's rating area approves advance credit payments for G based on a family size of three, an annual benchmark plan premium of \$12,000 and projected 2014 household income of \$58,590 (300 percent of the Federal poverty line for a family of three, applicable percentage 9.5). G's advance credit payments for 2014 are \$6,434 (\$12,000 benchmark plan premium less \$5,566 contribution amount (household income of \$58,590  $\times$  .095)). G's actual household income for 2014 is \$58,900.

(ii) K lives with H for more than half of 2014 and H claims K as a dependent for 2014. G and H agree to an allocation percentage, as described in paragraph

(a)(1)(ii)(B)(2) of this section, of 20 percent. Under the agreement, H is allocated 20 percent of the items to be allocated and G is allocated the remainder of those items.

(iii) If H is eligible for a premium tax credit, H takes into account \$2,600 of the premiums for the plan in which K was enrolled (\$13,000  $\times$  .20) and \$2,400 of G's benchmark plan premium (\$12,000  $\times$  .20). In addition, H is responsible for reconciling \$1,287 (\$6,434  $\times$  .20) of the advance credit payments for K's coverage.

(iv) G's family size for 2014 includes only G and J and G's household income of \$58,900 is 380 percent of the Federal poverty line for a family of two (applicable percentage 9.5). G's benchmark plan premium for 2014 is \$9,600 (the benchmark premium for the plan covering G, J and K (\$12,000), minus the amount allocated to H (\$2,400)). Consequently, G's premium tax credit is \$4,004 (G's benchmark plan premium of \$9,600 minus G's contribution amount of \$5,596 (\$58,900  $\times$  .095)). G has an excess advance payment of \$1,143 (the excess of the advance credit payments of \$5,147 (\$6,434 - \$1,287 allocated to H) over the premium tax credit of \$4,004).

*Example 11. Allocation percentage, no agreement on allocation.* (i) The facts are the same as in *Example 10*, except that G and H do not agree on an allocation percentage. Under paragraph (a)(1)(ii)(B)(2) of this section, the allocation percentage is 33 percent, computed as follows: The number of shifting enrollees, 1 (K), divided by the number of individuals enrolled by the enrolling taxpayer on the same qualified health plan as the shifting enrollee, 3 (G, J, and K). Thus, H is allocated 33 percent of the items to be allocated and G is allocated the remainder of those items.

(ii) If H is eligible for a premium tax credit, H takes into account \$4,290 of the premiums for the plan in which K was enrolled (\$13,000  $\times$  .33). H, in computing H's benchmark plan premium must include \$3,960 of G's benchmark plan premium (\$12,000  $\times$  .33). In addition, H is responsible for reconciling \$2,123 (\$6,434  $\times$  .33) of the advance credit payments for K's coverage.

(iii) G's benchmark plan premium for 2014 is \$8,040 (the benchmark premium for the plan covering G, J, and K (\$12,000), minus the amount allocated to H (\$3,960)). Consequently, G's premium tax credit is \$2,444 (G's benchmark plan premium of \$8,040 minus G's contribution amount of \$5,596 (\$58,900  $\times$  .095)). G has an excess advance credit payment of \$1,867 (the excess of the advance credit payments of \$4,311 (\$6,434 - \$2,123 allocated to H) over the premium tax credit of \$2,444).

*Example 12. Allocations for an emancipated child.* Spouses L and M enroll in a qualified health plan with their child, N. L and M attest that they will claim N as a dependent and advance credit payments are made for the coverage of all three family members. However, N files his own return and claims a personal exemption deduction for himself for the taxable year. Under paragraph (a)(1)(ii)(B)(1) of this section, L and M are enrolling taxpayers, N is a claiming taxpayer and all are subject to the allocation rules in paragraph (a)(1)(ii)(B) of this section.

*Example 13. Taxpayer with advance credit payments allowed a section 162(l) deduction but not a limitation on additional tax.* (i) In 2014, B, B's spouse, and their two dependents enroll in the applicable second lowest cost silver plan with an annual premium of \$14,000. B's advance credit payments attributable to the premiums are \$8,000. B is self-employed for all of 2014 and derives \$75,000 of earnings from B's trade or business. B's household income without including a deduction under section 162(l) for specified premiums is \$103,700. The Federal poverty line for a family the size of B's family is \$23,550.

(ii) Because B received advance credit payments and deducts premiums for a qualified health plan under section 162(l), B must determine whether B is allowed a limitation on additional tax under paragraph (a)(3)(iii) of this section. B begins by testing eligibility for the \$600 limitation amount for taxpayers with household income at less than 200 percent of the Federal poverty line for the taxpayer's family size. B determines household income as a percentage of the Federal poverty line by taking a section 162(l) deduction equal to the sum of the amount of premiums not paid through advance credit payments, \$6,000 (\$14,000 – \$8,000), and the limitation amount, \$600. The result is \$97,100 (\$103,700 – \$6,600) or 412 percent of the Federal poverty line for B's family size. Since 412 percent is not less than 200 percent, B may not use a \$600 limitation amount.

(iii) B performs the same calculation for the \$1,500 (\$103,700 – \$7,500 = \$96,200 or 408 percent of the Federal poverty line) and \$2,500 limitation amounts (\$103,700 – \$8,500 = \$95,200 or 404 percent of the Federal poverty line), the amounts for taxpayers with household income of less than 300 percent or 400 percent, respectively, of the Federal poverty line for the taxpayer's family size, and determines that B may not use either of those limitation amounts. Because B does not meet the requirements of paragraph (a)(3)(iii) of this section for any of the limitation amounts in section 36B(f)(2)(B), B is not eligible for the limitation on additional tax for excess advance credit payments.

(iv) Although B may not claim a limitation on additional tax for excess advance credit payments, B may still be eligible for a premium tax credit. B would determine eligibility for the premium tax credit and the amounts of the premium tax credit and the section 162(l) deduction using other rules, including the regulations under section 36B and section 162(l), applying no limitation on additional tax.

*Example 14. Taxpayer with advance credit payments allowed a section 162(l) deduction and a limitation on additional tax.* (i) Same facts as Example 13, except that B's household income without including a deduction under section 162(l) for specified premiums is \$78,802.

(ii) Because B received advance credit payments and deducts premiums for a qualified health plan under section 162(l), B must determine whether B is allowed a limitation on additional tax under paragraph (a)(3)(iii) of this section. B first determines that B does not meet the requirements of

paragraph (a)(3)(iii)(C) of this section for using the \$600 or \$1,500 limitation amounts, the amounts for taxpayers with household income of less than 200 percent or 300 percent, respectively, of the Federal poverty line for the taxpayer's family size. That is because B's household income as a percentage of the Federal poverty line, determined by using a section 162(l) deduction for premiums for the qualified health plan equal to the sum of the premiums for the plan not paid through advance credit payments and the limitation amount, is more than the maximum household income as a percentage of the Federal poverty line for which that limitation is available (using the \$600 limitation, B's household income would be \$72,202 (\$78,802 – (\$6,000 + \$600)), which is 307 percent of the Federal poverty line for B's family size; and using the \$1,500 limitation, B's household income would be \$71,302 (\$78,802 – (\$6,000 + \$1,500)), which is 303 percent of the Federal poverty line for B's family size).

(iii) However, B meets the requirements of paragraph (a)(3)(iii)(C) of this section using the \$2,500 limitation amount for taxpayers with household income of less than 400 percent of the Federal poverty line for the taxpayer's family size. This is because B's household income as a percentage of the Federal poverty line by taking a section 162(l) deduction equal to the sum of the amount of premiums not paid through advance credit payments, \$6,000, and the limitation amount, \$2,500, is \$70,302 (299 percent of the Federal poverty line), which is below 400 percent of the Federal poverty line for B's family size, and is less than the maximum amount for which that limitation is available. Thus, B uses a limitation amount of \$2,500 in computing B's additional tax on excess advance credit payments.

(iv) B may then determine the amount of the premium tax credit and section 162(l) deduction using the rules under section 36B and section 162(l), applying the \$2,500 limitation amount determined above.

(b)(1) through (b)(2) [Reserved]. For further guidance, see § 1.36B-4(b)(1) through (b)(2).

(3) *Taxpayers not married to each other at the end of the taxable year.* Taxpayers who are married (within the meaning of section 7703) to each other during a taxable year but legally separate under a decree of divorce or of separate maintenance during the taxable year, and who are enrolled in the same qualified health plan at any time during the taxable year must allocate the benchmark plan premium, the premium for the plan in which the taxpayers enroll, and the advance credit payments for the period the taxpayers are married during the taxable year. Taxpayers must also allocate these items if one of the taxpayers has a dependent enrolled in the same plan as the taxpayer's former spouse or enrolled in the same plan as a dependent of the taxpayer's former spouse. The taxpayers may allocate these items to each former spouse in any

proportion but must allocate all items in the same proportion. If the taxpayers do not agree on an allocation that is reported to the IRS in accordance with the relevant forms and instructions, 50 percent of the premium for the applicable benchmark plan, the premium for the plan in which the taxpayers enroll, and the advance credit payments for the married period are allocated to each taxpayer. If for a period a plan covers only one of the taxpayers and no dependents, only one of the taxpayers and one or more dependents of that same taxpayer, or only one or more dependents of one of the taxpayers, then the benchmark plan premium, the premium for the plan in which the taxpayers enroll, and the advance credit payments for that period are allocated entirely to that taxpayer.

(4) *Taxpayers filing returns as married filing separately or head of household—*(i) *Allocation of advance credit payments.* Except as provided in § 1.36B-2(b)(2)(ii), the premium tax credit is allowed to married (within the meaning of section 7703) taxpayers only if they file joint returns. See § 1.36B-2(b)(2)(i). Taxpayers who receive advance credit payments as married taxpayers and do not file a joint return must allocate the advance credit payments for coverage under a qualified health plan equally to each taxpayer for any period the plan covers and advance credit payments are made for both taxpayers, only one of the taxpayers and one or more dependents of the other taxpayer, or one or more dependents of both taxpayers. If for a period a plan covers or advance credit payments are made for only one of the taxpayers and no dependents, only one of the taxpayers and one or more dependents of that same taxpayer, or only one or more dependents of one of the taxpayers, the advance credit payments for that period are allocated entirely to that taxpayer. If one or both of the taxpayers is an applicable taxpayer eligible for a premium tax credit for the taxable year, the premium tax credit is computed by allocating the premiums for the plan in which the taxpayers or their family members enroll under paragraph (b)(4)(ii) of this section. The repayment limitation described in paragraph (a)(3) of this section applies to each taxpayer based on the household income and family size reported on that taxpayer's return. This paragraph (b)(4) also applies to taxpayers who receive advance credit payments as married taxpayers and file a tax return using the head of household filing status.

(ii) *Allocation of premiums.* If taxpayers who are married within the meaning of section 7703, without regard

to section 7703(b), do not file a joint return, 50 percent of the premiums for a period of coverage in a qualified health plan are allocated to each taxpayer. However, all of the premiums are allocated to only one of the taxpayers for a period in which a qualified health plan covers only that taxpayer, only that taxpayer and one or more dependents of that taxpayer, or only one or more dependents of that taxpayer.

(b)(5), *Example 1* through *Example 8* [Reserved]. For further guidance, see § 1.36B-4(b)(5), *Example 1* through *Example 8*.

*Example 9.* (i) The facts are the same as in *Example 8*, except that X and Y live apart for over 6 months of the year and X properly files an income tax return as head of household. Under section 7703(b), X is treated as unmarried and therefore is not required to file a joint return. If X otherwise qualifies as an applicable taxpayer, X may claim the premium tax credit based on the household income and family size X reports on the return. Y is not an applicable taxpayer and is not eligible to claim the premium tax credit.

(ii) X must reconcile the amount of credit with advance credit payments under paragraph (a) of this section. The premium for the applicable benchmark plan covering X and his two dependents is \$9,800. X's premium tax credit is computed as follows: \$9,800 benchmark plan premium minus X's contribution amount of \$5,700 ( $\$60,000 \times .095$ ) equals \$4,100.

(iii) Under paragraph (b)(4) of this section, half of the advance payments ( $\$6,880/2 = \$3,440$ ) is allocated to X and half is allocated to Y. Thus, X is entitled to \$660 additional premium tax credit ( $\$4,100 - \$3,440$ ). Y has \$3,440 excess advance payments, which is limited to \$600 under paragraph (a)(3) of this section.

*Example 10.* (i) A is married to B at the close of 2014 and they have no dependents. A and B are enrolled in a qualified health plan for 2014 with an annual premium of \$10,000 and advance credit payments of \$6,500. A is not eligible for minimum essential coverage (other than coverage described in section 5000A(f)(1)(C)) for any month in 2014. A is a victim of domestic abuse as described in § 1.36B-2(b)(2)(iii). At the time A files her tax return for 2014, A is unable to file a joint return with B for 2014 because of the domestic abuse. A certifies on her 2014 return, in accordance with relevant instructions, that she is living apart from B and is unable to file a joint return because of domestic abuse. Thus, under § 1.36B-2(b)(2)(ii), A satisfies the joint return filing requirement in section 36B(c)(1)(C) for 2014.

(ii) A's family size for 2014 for purposes of computing the premium tax credit is one and A is the only member of her coverage family. Thus, A's benchmark plan for all months of 2014 is the second lowest cost silver plan offered by the Exchange for A's rating area that covers A. A's household income includes only A's modified adjusted gross income. Under paragraph (b)(4)(ii) of this

section, A takes into account \$5,000 ( $\$10,000 \times .50$ ) of the premiums for the plan in which she was enrolled in determining her premium tax credit. Further, A must reconcile \$3,250 ( $\$6,500 \times .50$ ) of the advance credit payments for her coverage under paragraph (b)(4)(i) of this section.

(c) *Effective/applicability date.* Paragraphs (a)(1)(ii), (a)(3)(iii), (a)(4), *Examples 4, 10, 11, 12, 13, and 14*, (b)(3), (b)(4), and (b)(5), *Examples 9* and *10* apply to taxable years beginning after December 31, 2013.

(d) *Expiration date.* Paragraphs (a)(1)(ii), (a)(3)(iii), (a)(4), *Examples 4, 10, 11, 12, 13, and 14*, (b)(3), (b)(4), and (b)(5), *Examples 9* and *10* expire on July 24, 2017.

■ **Par. 8.** Section 1.162(l)-1T is added to read as follows:

**§ 1.162(l)-1T Deduction for health insurance costs of self-employed individuals (temporary).**

(a) *Coordination of section 162(l) deduction for taxpayers subject to section 36B—(1) In general.* A taxpayer is allowed a deduction under section 162(l) for specified premiums, as defined in paragraph (a)(2) of this section, not to exceed an amount equal to the lesser of—

(i) The specified premiums less the premium tax credit attributable to the specified premiums; and

(ii) The sum of the specified premiums not paid through advance credit payments, as described in paragraph (a)(3) of this section, and the additional tax (if any) imposed under section 36B(f)(2)(A) and § 1.36B-4(a)(1) with respect to the specified premiums after application of the limitation on additional tax in section 36B(f)(2)(B) and § 1.36B-4(a)(3).

(2) *Specified premiums.* For purposes of paragraph (a)(1) of this section, specified premiums means premiums for a specified qualified health plan or plans for which the taxpayer may otherwise claim a deduction under section 162(l). For purposes of this paragraph (a)(2), a specified qualified health plan is a qualified health plan, as defined in § 1.36B-1(c), covering the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer (enrolled family member) for a month that is a coverage month within the meaning of § 1.36B-3(c) for the enrolled family member. If a specified qualified health plan covers individuals other than enrolled family members, the specified premiums include only the portion of the premiums for the specified qualified health plan that is allocable to the enrolled family members under rules similar to § 1.36B-3(h), which provides rules for determining the amount under

§ 1.36B-3(d)(1) when two families are enrolled in the same qualified health plan.

(3) *Specified premiums not paid through advance credit payments.* For purposes of paragraph (a)(1)(ii) of this section, specified premiums not paid through advance credit payments equal the amount of the specified premiums minus the advance credit payments attributable to the specified premiums.

(b) *Additional guidance.* The Secretary may provide by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) additional guidance on coordinating the deduction allowed under section 162(l) and the credit provided under section 36B.

(c) *Effective/applicability date.* This section applies for taxable years beginning after December 31, 2013.

(d) *Expiration date.* This section expires on July 24, 2017.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: July 22, 2014.

**Mark J. Mazur,**

*Assistant Secretary of the Treasury (Tax Policy).*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 51 and 602**

**[TD 9684]**

**RIN 1545-BJ39**

**Branded Prescription Drug Fee**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations, temporary regulations, and removal of temporary regulations.

**SUMMARY:** This document contains final regulations that provide guidance on the annual fee imposed on covered entities engaged in the business of manufacturing or importing branded prescription drugs. This fee was enacted by section 9008 of the Patient Protection and Affordable Care Act, as amended by section 1404 of the Health Care and Education Reconciliation Act of 2010. This document also withdraws the Branded Prescription Drug Fee temporary regulations and contains new temporary regulations regarding the definition of controlled group that apply beginning on January 1, 2015. The final regulations and the new temporary