

Compliance Alert

Guidance Issued on the Qualification for Tax Credits and Individual Mandate Tax Liability

Release Date: January 31, 2013

The IRS has issued an amendment to final regulations originally issued May 23, 2012 regarding qualification for a premium tax credit (premium assistance) when purchasing individual health insurance through a public exchange. In the case of family members who are eligible for an employer sponsored insurance (ESI), affordability for family members will be based on the employee's required contribution for self-only coverage (i.e. employee only coverage), not the required contribution for family coverage.

In a separate set of guidance issued the same day, the IRS clarified exemptions from the "individual mandate" tax beginning in 2014. Taking the opposite approach to the qualification or the tax credit described above, family members eligible for an employer sponsored plan will be exempt from the tax if the required contribution for family coverage is "unaffordable".

Qualification for Premium Tax Credits

Beginning in 2014, individuals with incomes of 100% - 400% of federal poverty level may qualify for premium assistance when purchasing individual health insurance through a public (state or federal) exchange. However, individuals who are eligible for "affordable" ESI are not eligible for the premium assistance. In May of 2012, the IRS released final regulations clarifying the definition of affordable ESI as it relates to an employee. An employee whose required contribution to participate in an employer plan is no more than 9.5% of their household income is not eligible for the premium assistance.

The May final regulations delayed ruling on affordability as it applied to family members. Many expected the IRS to make a family member's qualification for premium assistance contingent on the required contribution for family coverage in the employer's plan. However, this guidance clarifies that the premium assistance will only be available to family members if the employee's required contribution for self-only (i.e. employee only) coverage is more than 9.5% of the family household income.

Liability for Individual Mandate Tax

In separate guidance, the IRS released additional rules regarding the shared responsibility payment for individuals who do not maintain minimum essential coverage (commonly referred to as the individual mandate tax). A family member who is eligible for ESI which is "unaffordable" will not be liable for the individual mandate tax.

The definition of "affordable" for the purpose of the mandate tax is different from what is considered affordable for premium assistance. In the case of individual mandate tax liability, an individual is generally exempt from the tax if the coverage available costs more than 8.0% of their household income.

How will this Rule Impact Employer Plans?

A family member's qualification for premium assistance does not affect an employer liability under the ACA employer shared responsibility rules. Potential employer penalties in this context are based only on an employee qualifying for premium assistance.

However, family member qualification for premium assistance will have an impact on employer plan enrollment rates. Had the IRS ruled that family members could qualify for premium assistance based on the cost of family coverage, employers may have seen a decrease in the number of employees electing family coverage, especially employers with a significant number of lower income employees.

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