

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2015-29
July 20, 2015

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

EMPLOYEE PLANS

Notice 2015-43, page 73.

On December 16, 2014, Congress enacted the Expatriate Health Coverage Clarification Act (EHCCA) to provide special rules under the Affordable Care Act (ACA) for expatriate health plans (EHPs), employers with respect to EHPs, and health insurance issuers with respect to coverage offered under EHPs. Notice 2015-43 provides interim guidance based in part on the definition of expatriate health plans set forth in the temporary relief under ACA Implementation Frequently Ask Questions (FAQs) Part XIII (issued March 8, 2013) and Part XVIII (issued January 9, 2014). Additionally, Notice 2015-43 provides guidance on the requirements for certain individuals to be considered qualified expatriates under the EHCCA. Notice 2015-43 does not apply to the health insurance providers fee imposed by § 9010 of the ACA.

EXCISE TAX

Notice 2015-43, page 73.

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The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part III. Administrative, Procedural, and Miscellaneous

Expatriate Health Coverage Clarification Act of 2014, Interim Guidance

Notice 2015–43

I. PURPOSE

This notice provides interim guidance on the application of certain provisions of the Affordable Care Act¹ to expatriate health insurance issuers, expatriate health plans, and employers in their capacity as plan sponsors of expatriate health plans, as defined in the Expatriate Health Coverage Clarification Act of 2014 (EHCCA).² This notice does not apply to the health insurance providers fee imposed by § 9010 of the Affordable Care Act (§ 9010 fee). For purposes of the § 9010 fee, Notice 2015–29, 2015–15 IRB 873, applies to the 2014 and 2015 fee years, and future guidance will address the 2016 and later fee years.

The Department of the Treasury (Treasury), Department of Labor (DOL), and Department of Health and Human Services (HHS) (collectively, the Departments) intend to publish proposed regulations implementing and providing guidance on the requirements for expatriate health insurance issuers, expatriate health plans, and employers in their capacity as plan sponsors of expatriate health plans. The DOL and HHS have reviewed this notice and have advised Treasury and the Internal Revenue Service (IRS) that they agree with the guidance in this notice.

To assist with the development of the proposed regulations, this notice also invites comments on the application of the

EHCCA to expatriate health insurance issuers, expatriate health plans, and employers in their capacity as plan sponsors of expatriate health plans.

II. BACKGROUND

Insurance market reforms, taxes, and other requirements enacted by Affordable Care Act. Title I of the Affordable Care Act made various changes to the law with respect to health insurance coverage in the individual and group markets and the law with respect to group health plans. These changes include new requirements for group health plans and group and individual health insurance coverage. These requirements, referred to in this notice as the Affordable Care Act market reform requirements, provide a range of protections for consumers, including the requirements that a plan provide coverage until age 26 if the plan covers dependents, that a plan provide coverage of certain preventive health services with no cost sharing, and that a plan not apply any lifetime or annual dollar limits on essential health benefits as well as the prohibitions on preexisting condition exclusions and waiting periods in excess of 90 days.³

The Affordable Care Act also imposes several taxes and fees relating to health coverage, including the § 9010 fee on certain health insurance providers and the fee relating to specified health insurance policies and applicable self-insured health plans under §§ 4375 and 4376 of the Internal Revenue Code (Code) for funding the Patient-Centered Outcomes Research Institute (PCORI fee). The Affordable Care Act also requires that providers of

health coverage that constitutes minimum essential coverage report on the coverage under § 6055 and that certain employers report under § 6056 with respect to the health coverage offered to their full-time employees.

Temporary relief from Affordable Care Act market reforms for expatriate plans. On March 8, 2013, the Departments issued Affordable Care Act Implementation Frequently Asked Questions (FAQs) Part XIII, Q&A–1, providing relief from the Affordable Care Act market reform requirements for certain expatriate group health insurance coverage.⁴ For plan years ending on or before December 31, 2015, the FAQ provides that, with respect to expatriate health plans, the Departments will consider the requirements of subtitles A and C of Title I of the Affordable Care Act⁵ satisfied if the plan and issuer comply with the pre-Affordable Care Act version of Title XXVII of the PHS Act. For purposes of the relief, an expatriate health plan is an insured group health plan with respect to which enrollment is limited to primary insureds who reside outside of their home country for at least six months of the plan year and any covered dependents, and its associated group health insurance coverage.⁶ The FAQ also states that coverage provided under an expatriate group health plan is a form of minimum essential coverage under § 5000A. On January 9, 2014, the Departments issued Affordable Care Act Implementation FAQs Part XVIII, Q&A–6 and Q&A–7, which extended the relief of Affordable Care Act Implementation FAQs Part XIII, Q&A–1 for insured expatriate health plans to subtitle D of

¹The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, Public Law 111–152, was enacted on March 30, 2010 (They are collectively referred to as the “Affordable Care Act”).

²Division M of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235.

³Section 1001 of the Affordable Care Act added new Public Health Service Act (PHS Act) §§ 2711–2719. Section 1563 of the ACA (as amended by ACA § 10107(b)) added Code § 9815(a) and Employee Retirement Income Security Act of 1974, as amended (ERISA) § 715(a) to incorporate the provisions of part A of title XXVII of the PHS Act into the Code and ERISA, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by these references are sections 2701 through 2728. Accordingly, these referenced PHS Act sections (i.e., the market reforms) are subject to shared interpretive jurisdiction by the Departments.

⁴Frequently Asked Questions about Affordable Care Act Implementation (Part XIII), available at <http://www.dol.gov/ebsa/pdf/faq-aca13.pdf> and http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/ACA_implementation_faqs13.html.

⁵Subtitles A and C of Title I of the Affordable Care Act generally relate to the market reforms for health plans in the group and individual markets, with the requirements of subtitle A generally becoming effective for plan years beginning six months after enactment and the requirements of subtitle C generally becoming effective for plan years beginning on or after January 1, 2014.

⁶This definition is based on the MLR definition of expatriate health coverage under 45 CFR 153.400(a)(1)(iii).

Title I of the Affordable Care Act⁷ and also provided that the relief under Affordable Care Act Implementation FAQs Part XIII, Q&A-1 (as extended to address the requirements of subtitles A, C, and D of Title I of the Affordable Care Act) would apply for plan years ending on or before December 31, 2016.⁸

PCORI fee. Sections 4375 and 4376 impose the PCORI fee only with respect to individuals residing in the United States. In addition, final regulations under the PCORI fee exempt any specified health insurance policy or applicable self-insured health plan designed and issued specifically to cover employees who are working and residing outside the United States. See §§ 46.4375-1(b)(1)(ii)(B), 46.4376-1(b)(1)(ii)(C).

Expatriate Health Coverage Clarification Act of 2014. The EHCCA was enacted on December 16, 2014 as part of the Consolidated and Further Continuing Appropriations Act. Section 3(a) of the EHCCA generally provides that the Affordable Care Act does not apply to expatriate health plans, employers with respect to expatriate health plans (but solely in the employer's capacity as a plan sponsor of the expatriate health plan), and expatriate health insurance issuers with respect to coverage offered by such issuers under expatriate health plans. The EHCCA generally applies to expatriate health plans issued or renewed on or after July 1, 2015.

Section 3(b)(1) of the EHCCA generally provides that health coverage provided by an expatriate health plan to qualified expatriates is minimum essential coverage for purposes of § 5000A and any other section of the Code that incorporates the definition of minimum essential coverage in § 5000A(f) by reference. Section 3(b)(2) of the EHCCA provides that EHCCA's exemption from the Affordable Care Act provisions generally does not apply to §§ 6055, 6056, and 4980H, and applies only under certain circumstances to § 4980I. Section 3(c)(1) of the EHCCA excludes an expatriate health plan from the § 9010 fee and is effective for calendar years after 2015. Section 3(c)(2) of the

EHCCA provides a special rule for the § 9010 fee for the 2014 and 2015 calendar years.

Section 3(d) of the EHCCA includes definitions and special rules for expatriate health plans and expatriate health insurance issuers. The definition of an expatriate health plan under § 3(d)(2) of the EHCCA includes a number of specific requirements. Section 3(d)(3) of the EHCCA defines three types of qualified expatriates.

III. INTERIM GUIDANCE

General rule. In light of the guidance issued and in effect prior to the enactment of the EHCCA, the Departments have determined that issuers, employers, and plan sponsors need additional time and guidance to modify their current arrangements to comply with the EHCCA's requirements. Until the issuance of further guidance and except as otherwise provided in this notice, taxpayers are generally permitted to apply the requirements of the EHCCA using a reasonable good faith interpretation of the EHCCA. In particular, until the issuance of further guidance, treatment of an expatriate health plan, as defined in Affordable Care Act Implementation FAQs Part XIII, Q&A-1, and FAQs XVIII, Q&A-6 and Q&A-7, as an expatriate health plan for purposes of the EHCCA is generally a reasonable good faith interpretation. However, these good faith rules do not apply with respect to the PCORI fee and the § 9010 fee. See *Special rule for the PCORI fee* below, and see discussion below under *Effective/Applicability Dates* providing that this notice does not apply to the § 9010 fee.

As indicated earlier, the EHCCA's exemption from the Affordable Care Act provisions generally does not apply to the requirements of §§ 6055 and 6056. Providers of minimum essential coverage must comply with the requirements of § 6055 and applicable large employers (as defined in § 4980H) must comply with the requirements of § 6056, regardless of whether the coverage is offered and/or

provided through an expatriate health plan. However, for expatriate health plans, statements to individuals reporting minimum essential coverage under § 6055 or offers of employer coverage under § 6056 may be furnished in electronic format unless the recipient refuses consent. See EHCCA § 3(b)(2).

Special rule for the PCORI fee. Until the issuance of further guidance, issuers and plan sponsors are permitted to determine the PCORI fee by excluding the lives covered under a specified health insurance policy that is issued or renewed on or after July 1, 2015, or under an applicable self-insured health plan for plan years starting on or after July 1, 2015, if the facts and circumstances demonstrate that the policy or plan (1) was designed and issued specifically to cover primarily employees (a) who are working and residing outside the United States, or (b) who are not citizens or residents of the United States but who are assigned to work in the United States for a specific and temporary purpose or who work in the United States for no more than six months of the policy year or plan year; or (2) was designed to cover individuals who are members of a group of similarly situated individuals for purposes of § 3(d)(3)(C) of the EHCCA under the rule described in *Special rule for groups of similarly situated individuals* below. For purposes of determining whether an insured is residing outside the United States, issuers and plan sponsors may rely on the most recent address on file for the primary insured.⁹

Special rule for groups of similarly situated individuals. Under the EHCCA, enrollment in an expatriate health plan is generally limited to qualified expatriates, as defined in § 3(d)(3) of the EHCCA. The definition of a qualified expatriate includes an individual who is a member of a group of similarly situated individuals described in § 3(d)(3)(C) of the EHCCA.

Until the issuance of further guidance, the Departments will consider an individual to be a member of a group of similarly situated individuals for purposes of § 3(d)(3)(C) if the following conditions

⁷Subtitle D of Title I of the Affordable Care Act sets forth certain requirements relating to Qualified Health Plans and the Marketplace Exchanges.

⁸Frequently Asked Questions about Affordable Care Act Implementation (Part XIII), available at <http://www.dol.gov/ebsa/pdf/faq-aca18.pdf> and http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/ACA_implementation_faqs18.html

⁹See also, Treas. Reg. § 46.4377-1(a)(2).

are met: (1) the group of individuals satisfies the standards under §§ 3(d)(3)(C)(i) and (ii) of the EHCCA; (2) in the case of a group organized to travel outside the United States, each member of the group is expected to travel or reside outside the United States for at least six months of the policy year (or, in the case of a policy year that is less than 12 months, for at least half of the policy year), and in the case of a group organized to travel within the United States, each member of the group is expected to travel or reside in the United States for not more than 12 months; and (3) the group of individuals meets the test for having associational ties under § 2791(d)(3)(B) through (F) of the PHS Act (42 U.S.C. 300gg-91(d)(3)(B) through (F)).¹⁰

IV. REQUEST FOR COMMENTS

The Departments anticipate issuing guidance under the EHCCA. Comments are requested on clarifications needed for the statutory definitions of the terms ex-

patriate health plan and qualified expatriate, as well as the interaction of the EHCCA with existing relief for expatriate health plans. It is expected that the comments responding to this notice and Notice 2015-29 will be used to inform proposed regulations that will be issued in the future for further public notice and comment.

Public comments should be submitted no later than October 19, 2015. Comments should include a reference to Notice 2015-43. Send submissions to CC:PA:LPD:PR (Notice 2015-43), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2015-43), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044, or sent electronically to the following e-mail address: Notice.comments@irs.counsel.treas.gov. Please include "Notice 2015-43" in the subject line of any electronic communi-

cation. All material submitted will be available for public inspection and copying.

V. EFFECTIVE/APPLICABILITY DATES

This notice applies to policies that are issued or renewed on or after July 1, 2015, and plan years that start on or after July 1, 2015. This notice does not apply for purposes of the § 9010 fee. Notice 2015-29 addresses the application of the EHCCA to the § 9010 fee for the 2014 and 2015 fee years. Future guidance will address the 2016 and later fee years.

VI. DRAFTING INFORMATION

The principal author of this notice is Lisa Mojiri-Azad of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice contact Ms. Mojiri-Azad at (202) 317-5500 (not a toll-free number).

¹⁰Pursuant to § 3(d)(3)(C)(iii) of the EHCAA, for purposes of this interim guidance, the Secretary of HHS, in consultation with the Secretaries of Labor and the Treasury, has determined that access to health insurance and other related service and support in multiple countries is required in these circumstances.

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List¹

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Revenue Rulings:

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¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–01 through 2015–26 is in Internal Revenue Bulletin 2015–26, dated June 29, 2015.

Finding List of Current Actions on Previously Published Items¹

Bulletin 2015–27 through 2015–29

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Rev. Proc. 2015-36, 2015-27 I.R.B. 20

¹A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–01 through 2015–26 is in Internal Revenue Bulletin 2015–26, dated June 29, 2015.

Internal Revenue Service

Washington, DC 20224

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INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (*www.irs.gov*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.