

## Extension of the Due Date for a Section 35 Health Coverage Tax Credit Election

Notice 2017-16

### SECTION 1. PURPOSE

This notice provides guidance regarding the health coverage tax credit (HCTC) under § 35 of the Internal Revenue Code, as modified by the Trade Preferences Extension Act of 2015, Pub. L. 114-27 (June 29, 2015) (Act). Specifically, this notice extends the due date for the election to claim the HCTC for eligible coverage months in taxable years beginning on or after June 29, 2015, and before January 1, 2017.

### SECTION 2. BACKGROUND

Section 35 provides for the HCTC, which is a tax credit equal to 72.5 percent of the amount paid by an eligible individual for qualified health coverage of the individual and qualifying family members for eligible coverage months. Section 35 was originally enacted by the Trade Act of 2002, Pub. L. 107-210 (Aug. 6, 2002), but expired at the end of 2013. The Trade Act of 2002 also enacted § 7527, which provides for the establishment of a program for making advance payment of the HCTC. In 2015, § 35 was reinstated retroactively to 2014, modified, and extended through 2019 by the Act, and § 7527 was revised by the Act.<sup>1</sup>

As part of the reinstatement of § 35, the Act added a new § 35(g)(11).

Section 35(g)(11)(A) provides that, for eligible coverage months in taxable years

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<sup>1</sup> For more information about the reinstated HCTC, see Notice 2016-2, 2016-2 I.R.B. 265. Notice 2016-2 provides guidance on various issues relating to the HCTC, including information about eligibility for the HCTC, the types of coverage eligible for the HCTC, and guidance for those who claim the HCTC for a qualified health plan purchased through a Health Insurance Marketplace (also known as an Exchange) in 2014 and 2015.

beginning after December 31, 2013, a taxpayer must make an election to claim the HCTC. Under § 35(g)(11)(B), “except as the Secretary may provide,” an HCTC election for any eligible coverage month in a taxable year must be made not later than the due date (including extensions) of the individual’s Federal income tax return for the taxable year. However, the Act provided a transition rule under which, for eligible coverage months in taxable years beginning after December 31, 2013, and before the date of enactment of the Act (June 29, 2015), the HCTC election may be made at any time on or after June 29, 2015, and before the expiration of the 3-year period of limitation prescribed in § 6511(a) for the taxable year, and may be made on an amended return. See Act § 407(f)(3). Eligible taxpayers elect to claim the HCTC by completing line 1 of Form 8885, Health Coverage Tax Credit, and filing the form with their Federal income tax return. See Notice 2016-2 and Instructions for Form 8885.

Prior to its reinstatement, § 35 did not specifically require that taxpayers claim the HCTC by making an election on their Federal income tax return. Taxpayers claimed the HCTC on their Federal income tax return (using Form 8885) only if they were eligible to claim the HCTC in excess of the advance payments made on the taxpayer’s behalf under § 7527. Most eligible individuals received the benefit of the HCTC through the advance payment process described in § 7527 and, therefore, did not claim the HCTC on their Federal income tax returns.

### SECTION 3. GUIDANCE

The Treasury Department and the Internal Revenue Service have determined that, pursuant to the authority granted by § 35(g)(11)(B), it is appropriate to extend the transition rule provided in the Act with respect to the deadline for electing to claim the

HCTC through 2016. Accordingly, an election to claim the HCTC for an eligible coverage month in a taxable year beginning on or after June 29, 2015, and before January 1, 2017, may be made before the end of the 3-year period of limitation prescribed in § 6511(a), and may be made on an amended return. This period of limitation is generally three years from the due date of the return (including extensions). Thus, for example, a calendar year taxpayer who files his or her 2016 Federal income tax return by April 18, 2017, without electing the HCTC must file a return with a Form 8885 by April 15, 2020, to elect the HCTC for coverage provided in 2016.

#### SECTION 4. DRAFTING INFORMATION

The principal author of this notice is James Beatty of the Office of the Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Mr. Beatty at (202) 317-4613 (not a toll-free call). For further information about the HCTC, go to <https://www.irs.gov/hctc>.