

## Individual Shared Responsibility Payment Hardship Exemptions that May Be Claimed on a Federal Income Tax Return Without Obtaining a Hardship Exemption Certification from the Marketplace for the 2018 Tax Year

Notice 2019-05

### PURPOSE

This notice supplements Notice 2014-76, 2014-50 I.R.B. 946, as supplemented by Notice 2017-14, 2017-6 I.R.B. 783, by identifying additional hardship exemptions from the individual shared responsibility payment under § 5000A of the Internal Revenue Code (Code) that a taxpayer may claim on a Federal income tax return for the 2018 tax year without obtaining a hardship exemption certification from the Health Insurance Marketplace (Marketplace).

### BACKGROUND

For each month beginning after December 31, 2013, § 5000A of the Code requires taxpayers to have minimum essential coverage for themselves and any nonexempt family member whom the taxpayer may claim as a dependent, to qualify for an exemption, or to include an individual shared responsibility payment with their

Federal income tax return. Section 11081 of the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054, 2082, amended § 5000A(c) to reduce the amount of the individual shared responsibility payment to zero for taxable years beginning after December 31, 2018.

Section 5000A(e)(5) of the Code and § 1.5000A-3(h) of the Income Tax Regulations provide that, in general, an individual is exempt from the requirement to have minimum essential coverage for a month if he or she has in effect a hardship exemption certification issued by the Marketplace certifying that the individual has suffered a hardship (as that term is defined in 45 CFR 155.605(d)) affecting the individual's capability to obtain minimum essential coverage in that month. Section 1.5000A-3(h)(3) provides that a taxpayer may claim a hardship exemption for the taxpayer and any dependent of the taxpayer on a Federal income tax return without obtaining a hardship exemption certification from the Marketplace if (i) the taxpayer or his or her dependent is eligible for a hardship exemption described in guidance released by the Department of Health and Human Services (HHS) and (ii) the exemption is allowed to be claimed on the taxpayer's Federal income tax return without obtaining a hardship exemption certification from the Marketplace pursuant to guidance published by the Treasury Department and the Internal Revenue Service.

Notice 2014-76 provides a list of hardship exemptions that may be claimed on a Federal income tax return without obtaining a hardship exemption certification. See also 45 CFR 155.605(e) (providing a partial list of hardship exemptions that may be claimed on a tax return without obtaining an exemption certification). Notice 2017-14 supplements that list by providing an additional hardship exemption that may be claimed

on a Federal income tax return for the 2016 tax year without obtaining a hardship exemption certification.<sup>1</sup>

## GUIDANCE

To provide additional flexibility for the 2018 tax year, HHS announced in guidance released on September 12, 2018, that all hardship exemptions available under 45 CFR 155.605(d)(1) may be claimed by a qualifying individual (or the taxpayer who may claim a qualifying individual as a dependent) on a Federal income tax return for the 2018 tax year without obtaining a hardship exemption certification from the Marketplace.<sup>2</sup> Under 45 CFR 155.605(d)(1), a person is eligible for a hardship exemption for at least the month before, the month(s) during, and the month after the specific event or circumstance that creates the hardship, if the Marketplace determines that:

- (i) He or she experienced financial or domestic circumstances, including an unexpected natural or human-caused event, such that he or she had a significant, unexpected increase in essential expenses that prevented him or her from obtaining coverage under a qualified health plan;
- (ii) The expense of purchasing a qualified health plan would have caused him or her to experience serious deprivation of food, shelter, clothing, or other necessities; or
- (iii) He or she has experienced other circumstances that prevented him or her from obtaining coverage under a qualified health plan.

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<sup>1</sup> See also HHS Centers for Medicare & Medicaid Services, Guidance on Health Coverage Tax Credit Hardship Exemption (Aug. 12, 2016) (available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-Guidance-for-5000A-HCTC.pdf>).

<sup>2</sup> See HHS Centers for Medicare & Medicaid Services, Guidance on Claiming a Hardship Exemption through the Internal Revenue Service (IRS) (Sept. 12, 2018) (available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Authority-to-Grant-HS-Exemptions-2018-Final-91218.pdf>).

The option to claim an exemption on a Federal income tax return for the 2018 tax year applies in addition to the existing procedures for applying for hardship exemptions using the Marketplace exemption determination process.

#### EFFECT ON OTHER DOCUMENTS

Notice 2014-76, 2014-50 I.R.B. 946, as supplemented by Notice 2017-14, 2017-6 I.R.B. 783, is supplemented.

#### EFFECTIVE DATE

This notice applies to taxable years beginning after December 31, 2017 and before January 1, 2019.

#### DRAFTING INFORMATION

The principal author of this notice is Lisa Mojiri-Azad of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Ms. Mojiri-Azad (202) 317-4649 (not a toll-free call).