



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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OFFICE OF THE CHIEF COUNSEL

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The Honorable John Barrasso M.D.  
United States Senate  
Washington, DC 20510

Attention:

Dear Senator Barrasso:

I am responding to your letter dated October 8, 2014, on behalf of your constituent, . She wrote that the Health Insurance Marketplace (Marketplace) through which she enrolled herself and her son in health insurance mistakenly determined that they were not eligible for affordable employer-provided health insurance and qualified for advance payments of the premium tax credit. is concerned that she will have to repay those advance credit payments. She also wrote about the employer insurance affordability rule and why, if the family of the employee is able to enroll in the insurance, the affordability of the insurance for the family is based on the cost of the insurance to just the employee.

The premium tax credit is a refundable tax credit for certain individuals who enroll, or who have a family member who enrolls, in a health insurance plan offered through a Marketplace. The law allows qualifying taxpayers who enroll in health insurance through a Marketplace to receive the benefit of advance payments of the premium tax credit.

The Marketplace makes the determination of eligibility for advance credit payments when the taxpayer enrolls or enrolls a family member in Marketplace health insurance. Advance credit payments, are made directly to the health insurance company and reduce the out-of-pocket cost of the taxpayer's premiums.

Taxpayers who get the benefit of advance credit payments must, when they file their tax return for the year, compare the actual premium tax credit they are allowed to their advance credit payments. If the advance credit payments are more than their premium tax credit, they must repay the excess advance credit payments on their tax return for the year. The amount of the repayment, however, may be limited for taxpayers with

household income of less than 400 percent of the federal poverty line for their family size.

For example, a taxpayer filing jointly with a spouse who has household income from 300 through 399 percent of the federal poverty line for the taxpayer's family size has to repay just \$2,500 of the excess advance payments for 2014.

An individual who enrolls in a Marketplace health plan is not allowed a premium tax credit for the coverage if the individual can enroll in certain other coverage such as affordable health insurance offered by the individual's employer or an employer of the individual's family member. A Marketplace should not authorize advance credit payments for coverage of an individual who can enroll in qualifying affordable employer health insurance.

Under the law, employer health insurance is affordable for the employee and the employee's family members if the employee's share of the premium for self-only coverage does not exceed 9.5 percent of household income (sections 36B(c)(2)(C)(i) and 5000A(e)(1)(B) of the Internal Revenue Code (Code)).

There is an exception to this affordability rule. Employer health insurance is not affordable for an individual if, when the individual enrolls in a Marketplace health plan, the Marketplace makes a determination that the employer health insurance offered to the individual is not affordable for the individual.

This rule allows taxpayers to rely on the Marketplace's determination that employer health insurance is unaffordable and the taxpayer is eligible for advance payments of the premium tax credit. Please also note, however, that this affordability exception does not apply for an individual who, with reckless disregard for the facts, provides incorrect information to the Marketplace.

If \_\_\_\_\_ received a Marketplace determination that her husband's employer health insurance was unaffordable for her and her son, they have unaffordable employer coverage for the year if they did not enroll in the employer coverage and, did not, with reckless disregard for the facts, provide incorrect information to the Marketplace.

\_\_\_\_\_ also asked about the employer insurance affordability rule and why affordability for an employee's family is based on the cost of the insurance to just the employee. We understand her concern that this rule may prevent some family members from receiving a premium tax credit to assist with the purchase of Marketplace coverage. However, the language in sections 36B and 5000A of the Code specifies that the affordability of employer health insurance for family members of an employee who may enroll in the employer health insurance is based on the cost to provide insurance to just the employee.

I am sorry for the frustration your constituent experienced with this process, but I hope this information is helpful. If you need further assistance, please contact me,

, or at .

Sincerely,

Michael J. Montemurro  
Chief, Branch 4  
Office of Associate Chief Counsel  
(Income Tax and Accounting)