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INTERNAL REVENUE SERVICE
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OFFICE OF THE CHIEF COUNSEL

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The Honorable Lois Capps
U.S. House of Representatives
Washington, DC 20515

Attention:

Dear Representative Capps:

I am responding to your email dated June 21, 2016, about your constituents who must repay all or a portion of the advance payments of the premium tax credit made on their behalf for health care coverage. In your email, you discussed how a taxpayer's repayment of advance credit payments is affected by who qualifies as a taxpayer's dependent and you ask whether a statute imposes the requirements for who qualifies as a dependent.

As explained below, the rules for who qualifies as a dependent are in a statute, section 152 of the Internal Revenue Code. In addition, a statute also requires insurers providing health insurance coverage to dependents to make that coverage available until age 26. However, that statute also provides that it shall **not** be construed to modify the definition of dependent in the Internal Revenue Code (42 U.S.C. section 300gg-14(a) and (b)).

I hope that the following information about the interaction between the income tax statutes concerning dependents and the premium tax credit and the statute concerning providing health insurance to a child under age 26 is helpful.

Premium tax credit

The premium tax credit is available to certain individuals who enroll, or who have a family member who enrolls, in a health insurance plan through a Health Insurance Marketplace, and is intended to subsidize the cost of the insurance. Taxpayers claim the premium tax credit by filing Form 8962, Premium Tax Credit (PTC), with their federal

income tax return. The amount of a taxpayer's premium tax credit for a year depends on the amount of the taxpayer's household income and his or her family size for the year.

For example, a qualifying family of 4 with household income at 150 percent of the federal poverty line for the taxpayer's family size will get a larger premium tax credit than a similarly situated family with household income at 350 percent of the federal poverty line. Taxpayers with household income over 400 percent of the federal poverty line for their family size are not allowed a premium tax credit.

Definition of dependent

A taxpayer's family consists of the taxpayer, the taxpayer's spouse if filing a joint return, and the taxpayer's dependents. Under section 152 of the Internal Revenue Code, a taxpayer's child is his or her dependent if the child is a qualifying child or a qualifying relative of the taxpayer.

In general, a taxpayer's child is a qualifying child of the taxpayer for a taxable year only if the child lives with the taxpayer for more than half of the year and one of the following applies:

- The child is under age 19 on December 31 of the taxable year.
- The child is under age 24 as of December 31 and a full-time student.

In general, a taxpayer's child of any age may be a qualifying relative of the taxpayer for a taxable year if:

- The taxpayer provides over half of the child's support for the year;
- The child has gross income for the year that is less than the personal exemption amount for the year (\$4,050 for 2016); and
- No one else can claim the child as a qualifying child for the year.

Advance payments of the premium tax credit

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. Advance credit payments are made directly to the health insurance company and reduce the out-of-pocket cost of the taxpayer's premiums.

The Marketplace determines eligibility for advance credit payments when the taxpayer enrolls or enrolls a family member in Marketplace health insurance. The Marketplace estimates the amount of premium tax credit a taxpayer will be allowed using the taxpayer's projected household income and family size. The estimated premium tax credit is the maximum amount of advance credit payments for which the taxpayer is eligible. The taxpayer then chooses to have all, some, or none of the advance credit payments for which he or she is eligible paid to the insurance provider.

Reconciliation process

Taxpayers who receive the benefit of advance credit payments must, when they file their tax return for the year, reconcile the actual premium tax credit they are allowed with their advance credit payments. If a taxpayer's advance credit payments are more than his or her premium tax credit, the taxpayer must repay the excess advance credit payments, although the amount of the repayment may be limited for taxpayers with household income of less than 400 percent of the federal poverty line for their family size. If the actual premium tax credit is more than the advance credit payments, the taxpayer reduces his or her tax liability or is allowed a refund for the difference.

A taxpayer must reconcile the advance credit payments made on behalf of all individuals for whom the taxpayer claims a personal exemption deduction on his or tax return (the taxpayer, a spouse if filing jointly, and dependents). However, if advance credit payments are made for coverage of an individual for whom no taxpayer claims a personal exemption deduction, the taxpayer who enrolled the individual in coverage must do the reconciliation.

Although Marketplaces generally permit parents to enroll their children in Marketplace health insurance up to age 26, the parent is allowed a premium tax credit for the coverage only if the child is a dependent of the taxpayer. The rules for who qualifies as a dependent are statutory, and the IRS is not authorized to make those rules consistent with the rules concerning individuals who parents may enroll in Marketplace health insurance.

As you mentioned in your email, the amount of a taxpayer's advance credit payments depends on a number of factors, including the taxpayer's family size. Consequently, taxpayers should immediately notify the Marketplace if they discover that the Marketplace is using a larger family size to compute advance credit payments than the taxpayer will claim when filing his or her tax return.

I hope this information is helpful. If you need further assistance, please call
or me at .

Sincerely,

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