



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-124810-19]

RIN 1545-BP76

Guidance Clarifying Premium Tax Credit Unaffected by Suspension of Personal Exemption Deduction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document includes proposed regulations under sections 36B and 6011 of the Internal Revenue Code (Code) that clarify that the reduction of the personal exemption deduction to zero for taxable years beginning after December 31, 2017, and before January 1, 2026, does not affect an individual taxpayer's ability to claim the premium tax credit. These proposed regulations affect individuals who claim the premium tax credit.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Requests for a public hearing must be submitted as prescribed in the "**Comments and Requests for a Public Hearing**" section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-124810-19) by following the online

instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

Send paper submissions to: CC:PA:LPD:PR (REG-124810-19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, call Suzanne Sinno at (202) 317-4718 (not a toll-free number); concerning submissions of comments and/or requests for a public hearing, call Regina Johnson at (202) 317-5177 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### **Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 36B and 6011 of the Code.

Section 151 of the Code generally allows a taxpayer to claim a personal exemption deduction, based on the exemption amount defined in section 151(d), for the taxpayer, the taxpayer's spouse, and any dependents, as defined in section 152 of the Code. On December 22, 2017, section 151(d)(5) was added to the Code by section 11041 of Public Law 115-97, 131 Stat. 2054, 2082, commonly referred to as the Tax Cuts and Jobs Act (TCJA). Section 151(d)(5)(A) provides that, for taxable years

beginning after December 31, 2017, and before January 1, 2026, the term “exemption amount” means zero. However, section 151(d)(5)(B) provides that the reduction of the exemption amount to zero is not taken into account in determining whether a deduction under section 151 is allowed or allowable to a taxpayer, or whether a taxpayer is entitled to a deduction under section 151, for purposes of any other provision of the Code. The Conference Report states that this provision clarifies that the reduction of the personal exemption to zero “should not alter the operation of those provisions of the Code which refer to a taxpayer allowed a deduction . . . under section 151.” See H.R. Rep. No. 115-466 at 203 n.16 (Conf. Rep.) (2017).

Beginning in 2014, under the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively, Affordable Care Act), eligible individuals who purchase coverage under a qualified health plan through a Health Insurance Exchange (Exchange) established under section 1311 of the Affordable Care Act may claim a premium tax credit under section 36B. Several rules relating to the premium tax credit apply based on whether a taxpayer properly claims or claimed a personal exemption deduction under section 151 for the taxpayer, the taxpayer’s spouse, and any dependents. These rules affect eligibility for the premium tax credit, computation of the premium tax credit, reconciliation of advance credit payments with the premium tax credit a taxpayer is allowed for the taxable year, and income tax return filing requirements related to the premium tax credit.

#### Eligibility for, and Computation of, the Premium Tax Credit

To be eligible for the premium tax credit, an individual must be an applicable

taxpayer. Under section 36B(c)(1), an applicable taxpayer generally is a taxpayer whose household income for the taxable year is at least 100 percent but not more than 400 percent of the Federal poverty line for the taxpayer's family size for the taxable year. A taxpayer's family size is equal to the number of individuals in the taxpayer's family. Section 1.36B-1(d) of the Income Tax Regulations provides that, for purposes of §§1.36B-1 through 1.36B-5, a taxpayer's family means the individuals for whom a taxpayer properly claims a deduction for a personal exemption under section 151 for the taxable year. Section 1.36B-2(b)(3) provides that an individual is not an applicable taxpayer if another taxpayer may claim a deduction under section 151 for the individual for a taxable year beginning in the calendar year in which the individual's taxable year begins.

Section 36B(c)(2) provides that the premium tax credit generally is not allowed for a month with respect to an individual if for that month the individual is eligible for minimum essential coverage other than coverage in the individual market. However, under a special eligibility rule in §1.36B-2(c)(4)(i), an individual who may enroll in minimum essential coverage because of a relationship to another person eligible for the coverage but for whom the other eligible person does not claim a personal exemption deduction under section 151, is treated as eligible for minimum essential coverage under such coverage only for months that the related individual is enrolled in the coverage.

Under section 36B(a), a taxpayer's premium tax credit is equal to the premium assistance credit amount for the taxable year. Section 36B(b)(1) and §1.36B-3(d) generally provide that the premium assistance credit amount is the sum of the premium

assistance amounts for all coverage months in the taxable year for individuals in the taxpayer's family, as defined in §1.36B-1(d).

#### Reconciliation of Advance Credit Payments with the Premium Tax Credit

Under section 1412 of the Affordable Care Act, advance payments of the premium tax credit (advance credit payments) may be paid directly to qualified health plans on behalf of eligible individuals. The amount of advance credit payments made on behalf of a taxpayer in a taxable year is determined by a number of factors, including projections of the taxpayer's household income and family size for the taxable year. Under §1.36B-4, a taxpayer generally must reconcile all advance credit payments for coverage of any member of the taxpayer's family with the amount of the premium tax credit allowed under section 36B.

Section 1.36B-4(a)(1)(ii)(B)(1) and (2) provide specific allocation rules to reconcile advance credit payments when an individual is enrolled by one taxpayer but another taxpayer claims a personal exemption deduction for the individual. If advance credit payments are made for coverage of an individual for whom no taxpayer claims a personal exemption deduction, §1.36B-4(a)(1)(ii)(C) provides that the taxpayer who attested to the Exchange to the intention to claim a personal exemption deduction for the individual as part of the advance credit payment eligibility determination for coverage of the individual must reconcile the advance credit payments.

#### Income Tax Return Filing Requirements Related to the Premium Tax Credit

Section 6011 provides the general rules for filing a return. Section 1.6011-8 requires a taxpayer who receives the benefit of advance credit payments to file an income tax return for that taxable year to reconcile advance credit payments with the

taxpayer's premium tax credit. The regulation further provides that if advance credit payments are made for coverage of an individual for whom no taxpayer claims a personal exemption deduction, the taxpayer who attested to the Exchange to the intention to claim a personal exemption deduction for the individual as part of the advance credit payment eligibility determination for coverage of the individual must file a tax return and reconcile the advance credit payments. Taxpayers who are required to reconcile advance credit payments or who claim the premium tax credit must complete Form 8962, *Premium Tax Credit (PTC)*, and file it with their tax return.

#### Notice 2018-84

On November 5, 2018, the Treasury Department and the IRS issued Notice 2018-84, 2018-45 I.R.B. 768, which provided interim guidance clarifying that the reduction of the personal exemption deduction to zero under section 151(d)(5) does not affect the ability of individual taxpayers to claim the premium tax credit. Specifically, the notice provides that (1) a taxpayer is considered to have claimed a personal exemption deduction for himself or herself for a taxable year if the taxpayer files an income tax return for the year and does not qualify as a dependent of another taxpayer under section 152 for the year; and (2) a taxpayer is considered to have claimed a personal exemption deduction for an individual other than the taxpayer if the taxpayer is allowed a personal exemption deduction for the individual, taking into account section 151(d)(5)(B), and lists the individual's name and taxpayer identification number (TIN) on the Form 1040, *U.S. Individual Income Tax Return*, or Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, the taxpayer files for the year. The notice states that until further guidance is issued, the interim guidance described in the notice applies. The

notice also states that the Treasury Department and the IRS intend to amend the regulations under sections 36B and 6011 to clarify the application of section 151(d)(5).

### **Explanation of Provisions**

The current regulations under section 36B provide that a taxpayer's family means the individuals for whom the taxpayer claims a personal exemption deduction under section 151. For tax years prior to 2018, a taxpayer determined the personal exemption deduction by putting the name and TIN of each individual in the taxpayer's family on the taxpayer's income tax return, multiplying the number of allowed exemptions by the exemption amount, and entering that amount on his or her income tax return. Under newly enacted section 151(d)(5), the personal exemption deduction is zero for taxable years beginning after December 31, 2017, and before January 1, 2026. Although the amount of the deduction for personal exemptions is reduced to zero for those years, taxpayers must include on their tax returns the names and TINs of individuals for whom they are allowed a personal exemption deduction (taking into account section 151(d)(5)(B)) in order to claim various tax benefits with respect to those individuals.

These proposed regulations adopt the substance of the guidance in Notice 2018-84 by amending the regulations under sections 36B and 6011 to clarify that the reduction of the personal exemption deduction to zero under section 151(d)(5) does not affect the ability of individual taxpayers to claim the premium tax credit. Specifically, these proposed regulations amend the definition of family in §1.36B-1(d) to provide that a taxpayer's family means the taxpayer, including both spouses in the case of a joint return (except for individuals who qualify as a dependent of another taxpayer under section 152), and any other individual for whom the taxpayer is allowed a personal

exemption deduction (taking into account section 152(d)(5)(B)) and whom the taxpayer properly reports on the taxpayer's income tax return for the taxable year. The proposed regulations provide that an individual is reported on the taxpayer's income tax return if the individual's name and TIN are listed on the taxpayer's Form 1040 series return.

The definition of family and family size in proposed §1.36B-1(d) will apply for purposes of §§1.36B-1 through 1.36B-5. Thus, the definition will apply to determine the computation of the premium tax credit under §1.36B-3(d), which is based on the sum of the premium assistance amounts for all coverage months in the taxable year for individuals in the taxpayer's family. In addition, the proposed regulations make conforming changes to the rules in §1.36B-2 (relating to eligibility for, and computation of, the premium tax credit), §1.36B-4 (relating to reconciliation of advance credit payments with the premium tax credit), and §1.6011-8 (relating to the income tax return filing requirements for taxpayers who receive the benefit of advance credit payments or claim the premium tax credit). These conforming changes delete references such as "claim a personal exemption deduction," "claims a personal exemption deduction," or "claimed as a personal exemption deduction" in the current regulations and replace them with other terms consistent with the definition of family in proposed §1.36B-1(d).

### **Proposed Applicability Date**

These regulations are proposed to apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. In addition, taxpayers may rely on these proposed regulations for taxable years to which section 151(d)(5) applies ending on or before that date. See section 7805(b)(7).

## **Special Analyses**

These proposed regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

In accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the proposed regulations affect individual taxpayers, not entities.

Pursuant to section 7805(f), these proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

### Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes

substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

### **Statement of Availability of IRS Documents**

The regulations, notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at [www.irs.gov](http://www.irs.gov).

### **Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble in the “**ADDRESSES**” section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**. Announcement 2020-4, 2020-17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made

accessible to people with disabilities.

### **Drafting Information**

The principal author of these proposed regulations is Suzanne R. Sinno of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### **PART 1--INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 is amended by adding sectional authorities in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805\*\*\*

\* \* \* \* \*

Sections 1.36B-0, 1.36B-1, 1.36B-2, and 1.36B-4 also issued under 26 U.S.C. 36B(g).

Section 1.6011-8 also issued under 26 U.S.C. 6011.

\* \* \* \* \*

**Par. 2.** Section 1.36B-0 is amended by:

- a. Revising the entries for §1.36B-1(d) and (o);
- b. Revising the entries for §1.36B-2(c)(4)(i) and (e); and
- c. Revising the entries for §1.36B-4(a)(1)(ii)(B) and (C), and (c).

The revisions read as follows:

§1.36B-1 Premium tax credit definitions.

\* \* \* \* \*

(d) Family and family size.

(1) In general.

(2) Special rule for tax years to which section 151(d)(5) applies.

\* \* \* \* \*

(o) Applicability dates.

§1.36B-2 Eligibility for premium tax credit.

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(i) Related individual.

\* \* \* \* \*

(e) Applicability dates.

§1.36B-4 Reconciling the premium tax credit with advance credit payments.

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) Individuals enrolled by a taxpayer and claimed by another taxpayer.

(C) Responsibility for advance credit payments for an individual not reported on any taxpayer's return.

\* \* \* \* \*

(c) Applicability dates.

**Par. 3.** Section 1.36B-1 is amended by

a. Redesignating the text of paragraph (d) as paragraph (d)(1);

b. Adding a paragraph heading to newly designated paragraph (d)(1);

c. Adding paragraph (d)(2); and

d. Revising paragraph (o).

The additions and revision read as follows:

§1.36B-1 Premium tax credit definitions.

\* \* \* \* \*

(d) Family and family size--(1) In general. \* \* \*

(2) Special rule for tax years to which section 151(d)(5) applies. For taxable

years to which section 151(d)(5) applies, a taxpayer's family means the taxpayer, including both spouses in the case of a joint return, except for individuals who qualify as a dependent of another taxpayer under section 152, and any other individual for whom the taxpayer is allowed a personal exemption deduction and whom the taxpayer properly reports on the taxpayer's income tax return for the taxable year. For purposes of this paragraph (d)(2), an individual is reported on the taxpayer's income tax return if the individual's name and taxpayer identification number (TIN) are listed on the taxpayer's Form 1040 series return. See §601.602.

\* \* \* \* \*

(o) Applicability dates. (1) Except for paragraphs (d)(2), (l), and (m) of this section, this section applies to taxable years ending after December 31, 2013.

(2) Paragraph (d)(2) of this section applies to taxable years ending after [the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**].

(3) Paragraphs (l) and (m) of this section apply to taxable years beginning after December 31, 2018. Paragraphs (l) and (m) of §1.36B-1 as contained in 26 CFR part 1 edition revised as of April 1, 2016, apply to taxable years ending after December 31, 2013, and beginning before January 1, 2019.

**Par. 4.** Section 1.36B-2 is amended by:

- a. Revising paragraph (c)(4)(i);
- b. Revising the heading for paragraph (e); and
- c. Adding paragraph (e)(4).

The addition and revisions read as follows:

§1.36B-2 Eligibility for premium tax credit.

\* \* \* \* \*

(c) \* \* \*

(4) Special eligibility rules--(i) Related individual. An individual who may enroll in minimum essential coverage because of a relationship to another person eligible for the coverage, but is not included in the family, as defined in §1.36B-1(d), of the other eligible person, is treated as eligible for such minimum essential coverage only for months that the related individual is enrolled in the coverage.

\* \* \* \* \*

(e) Applicability dates. \* \* \*

(4) Paragraph (c)(4)(i) of this section applies to taxable years ending after [the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**].

**Par. 5.** Section 1.36B-4 is amended by:

- a. Adding a sentence to the end of paragraph (a)(1)(ii)(B)(1);
- b. Revising paragraphs (a)(1)(ii)(B)(2) and (a)(1)(ii)(C); and
- c. Revising the heading to paragraph (c) and adding a sentence at the end of the paragraph.

The additions and revisions read as follows:

§1.36B-4 Reconciling the premium tax credit with advance credit payments.

(a) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) Individual enrolled by a taxpayer and claimed by another taxpayer--(1) In general. \* \* \* For taxable years to which section 151(d)(5) applies, the claiming taxpayer is the taxpayer who properly includes the shifting enrollee in his or her family for the taxable year.

(2) Allocation percentage. The enrolling taxpayer and claiming taxpayer may agree on any allocation percentage between zero and one hundred percent. If the enrolling taxpayer and claiming taxpayer do not agree on an allocation percentage, the percentage is equal to the number of shifting enrollees properly included in the enrolling taxpayer's family divided by the number of individuals enrolled by the enrolling taxpayer in the same qualified health plan as the shifting enrollee.

\* \* \* \* \*

(C) Responsibility for advance credit payments for an individual not reported on any taxpayer's return. If advance credit payments are made for coverage of an individual who is not included in any taxpayer's family, as defined in §1.36B-1(d), the taxpayer who attested to the Exchange to the intention to include such individual in the taxpayer's family as part of the advance credit payment eligibility determination for coverage of the individual must reconcile the advance credit payments.

\* \* \* \* \*

(c) Applicability dates. \* \* \* The last sentence of paragraph (a)(1)(ii)(B)(1), paragraph (a)(1)(ii)(B)(2), and paragraph (a)(1)(ii)(C) of this section apply to taxable years ending after [the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**].

**Par. 6.** Section 1.6011-8 is amended by revising paragraphs (a) and (b) to read

as follows:

§1.6011-8 Requirement of income tax return for taxpayers who claim the premium tax credit under section 36B.

(a) Requirement of return. Except as otherwise provided in this paragraph (a), a taxpayer who receives the benefit of advance payments of the premium tax credit (advance credit payments) under section 36B must file an income tax return for that taxable year on or before the due date for the return (including extensions of time for filing) and reconcile the advance credit payments. However, if advance credit payments are made for coverage of an individual who is not included in any taxpayer's family, as defined in §1.36B-1(d), the taxpayer who attested to the Exchange to the intention to include such individual in the taxpayer's family as part of the advance credit payment eligibility determination for coverage of the individual must file a tax return and reconcile the advance credit payments.

(b) Applicability dates--(1) In general. Except as provided in paragraph (b)(2) of this section, paragraph (a) of this section applies for taxable years ending on or after December 31, 2020.

(2) Prior periods. Paragraph (a) of this section as contained in 26 CFR part 1 edition revised as of April 1, 2016, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2017. Paragraph (a) of this section as contained

in 26 CFR part 1 edition revised as of April 1, 2020, applies to taxable years beginning after December 31, 2016, and ending before December 31, 2020.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

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