

Eligibility for Premium Tax Credit for Victims of Domestic Abuse

Notice 2014-23

PURPOSE

This notice provides guidance on circumstances in which a victim of domestic abuse who is married within the meaning of § 7703 of the Internal Revenue Code and is unable to file a joint tax return may claim a premium tax credit under § 36B.

BACKGROUND

Beginning in 2014, eligible individuals who purchase coverage under a qualified health plan through an Affordable Insurance Exchange are allowed a premium tax credit under § 36B. To be eligible for a premium tax credit, an individual must be an applicable taxpayer. Section 36B(c)(1) provides that an applicable taxpayer is a taxpayer (1) with household income for the taxable year between 100 percent and 400 percent of the federal poverty line for the taxpayer's family size, (2) who may not be claimed as a dependent by another taxpayer, and (3) who files a joint tax return if married (within the meaning of § 7703).

For victims of domestic abuse, contacting a spouse for purposes of filing a joint return may pose a risk of injury or trauma or, if the spouse is subject to a restraining order, may be legally prohibited. Section 7703(b) allows certain married individuals to be considered not married for purposes of the Internal Revenue Code. Under § 7703(b), a married taxpayer who lives apart from the taxpayer's spouse for the last six months of the taxable year is considered unmarried if he or she files a separate return,

maintains as the taxpayer's home a household that is also the principal place of abode of a dependent child for more than half the year, and furnishes over half the cost of the household during the taxable year. However, § 7703(b) does not apply to many individuals who are victims of domestic abuse. For example, the abuse may have occurred in the last six months of the taxable year, the victim may not have the financial means to furnish over half the cost of a household, or the victim may not have a dependent child. Consequently, the preamble to final regulations under § 36B, issued in June of 2012, provided that Treasury and the IRS would propose regulations addressing domestic abuse and similar circumstances that create obstacles to filing a joint return. The regulations also requested comments on how to structure a rule to address such situations, including the types of documentation a taxpayer might provide to establish eligibility for the rule and the need for appropriate safeguards. The Treasury Department and IRS have received numerous comments on this subject and intend to release proposed regulations addressing this issue.

RULE FOR 2014

For calendar year 2014, a married taxpayer will satisfy the joint filing requirement of § 36B(c)(1)(C) if the taxpayer files a 2014 tax return using a filing status of married filing separately and the taxpayer (i) is living apart from the individual's spouse at the time the taxpayer files his or her tax return, (ii) is unable to file a joint return because the taxpayer is a victim of domestic abuse, and (iii) indicates on his or her 2014 income tax return in accordance with the relevant instructions that the taxpayer meets the criteria under (i) and (ii). The proposed regulations will incorporate this rule for 2014.

CONTACT INFORMATION

For further information regarding this notice, please contact Steve Toomey, Shareen Pflanz or Arvind Ravichandran at (202) 317-4718 (not a toll-free call).