

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 9912]

RIN 1545-BP76

**Guidance Clarifying Premium Tax Credit Unaffected by Suspension of Personal Exemption Deduction****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

**SUMMARY:** This document includes final 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 final regulations affect individuals who claim the premium tax credit.

**DATES:** *Effective date:* These final regulations are effective on December 1, 2020.

*Applicability date:* These final regulations apply to taxable years ending on or after December 31, 2020.

**FOR FURTHER INFORMATION CONTACT:** Suzanne R. Sinno at (202) 317-4718 or Lisa Mojiri-Azad at (202) 317-4649 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** Background and Explanation of Provisions

*I. Overview*

This document contains final 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, "[t]he 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 to the TCJA 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, PPACA), eligible individuals who purchase coverage under a qualified health plan through a Health Insurance Exchange (Exchange) established under section 1311 of the PPACA may claim a premium tax credit under section 36B of the Code. 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.

*II. 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 the rules for determining the individuals in a taxpayer's family. Section 1.36B-1(d), as currently in effect, provides that 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, and further provides that family size means the number of individuals in the family. Additionally, § 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).

*III. Reconciliation of Advance Credit Payments With the Premium Tax Credit*

Under section 1412 of the PPACA, advance payments of the premium tax credit (advance credit payments) may be paid directly to issuers of 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) provides allocation rules to reconcile advance credit payments when a taxpayer's family members are enrolled with one or more individuals who are not members of the taxpayer's family. If a taxpayer enrolls an individual and another taxpayer claims a personal exemption deduction for the individual, the allocation rules in § 1.36B(a)(1)(ii)(B) apply for purposes of computing each taxpayer's premium tax credit and reconciling any advance credit payments. 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.

#### *IV. 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 in a taxable year 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 income tax return.

#### *V. Notice 2018–84*

On November 5, 2018, the Department of the Treasury (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).

#### *VI. Proposed Regulations*

On May 27, 2020, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–124810–19) in the **Federal Register** (85 FR 31710) under section 36B. The notice of proposed rulemaking announced that the regulations currently in effect would be amended to reflect the guidance in Notice 2018–84. Specifically, § 1.36B–1(d), as proposed, would define the term family to mean 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. Consistent with Notice 2018–84, the proposed regulations would provide that 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. To conform to § 1.36–1(d) as proposed, §§ 1.36B–2, 1.36B–4, and 1.6011–8 would be amended. These amendments as proposed would apply for taxable years ending after the date of publication of the final regulations in the **Federal Register**.

#### *VII. Final Regulations*

No comments responsive to the subject of the notice of proposed rulemaking were received. There were no requests for a public hearing on the proposed regulations, so no public hearing was held. Accordingly, the Treasury Department and the IRS are finalizing the proposed regulations with no changes. The final regulations are applicable for taxable years ending on or after December 31, 2020. However, taxpayers may apply the final regulations for taxable years to which section 151(d)(5) applies ending before December 31, 2020. See section 7805(b)(7).

#### **Special Analyses**

These final 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.

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

Pursuant to section 7805(f), these final regulations have been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business (85 FR 31710). No comments on the notice were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

#### *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 final 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 generally 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).

**Drafting Information**

The principal author of these final regulations is Suzanne R. Sinno of the Office of Associate Chief Counsel (Income Tax and Accounting). 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.

**Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

**PART 1—INCOME TAXES**

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

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

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

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

- 1. Redesignating paragraph (d) as paragraph (d)(1).

- 2. Revising the paragraph heading to newly designated paragraph (d)(1).
- 3. Adding paragraph (d)(2).
- 4. Revising paragraph (o).

The additions and 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.* 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 of this chapter.

\* \* \* \* \*

(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 on or after December 31, 2020.

(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:

- 1. Revising paragraph (c)(4)(i).
- 2. Revising the heading for paragraph (e).

■ 3. Adding paragraph (e)(4).

The revisions and addition 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 on or after December 31, 2020.

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

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

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 on or after December 31, 2020.

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

Approved: September 4, 2020.

**David J. Kautter,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2020–26200 Filed 11–27–20; 11:15 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF JUSTICE****Office of the Attorney General****28 CFR Part 26**

[Docket Number OAG 171; AG Order No. 4911–2020 ]

**RIN 1105–AB63**

**Manner of Federal Executions***Correction*

In rule document 2020–25867 beginning on page 75846 in the issue of Friday, November 27, 2020, make the following correction:

On page 75846, in the third column, in the last line, “December 24, 2020” should read “December 28, 2020.”

[FR Doc. C1–2020–25867 Filed 11–30–20; 8:45 am]

**BILLING CODE 1301–00–D**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare & Medicaid Services****45 CFR Part 153**

[CMS–9913–F]

**RIN 0938–AU23**

**Amendments to the HHS-Operated Risk Adjustment Data Validation (HHS–RADV) Under the Patient Protection and Affordable Care Act’s HHS-Operated Risk Adjustment Program**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts certain changes to the risk adjustment data validation error estimation methodology beginning with the 2019 benefit year for states where the Department of Health and Human Services (HHS) operates the risk adjustment program. This rule is finalizing changes to the HHS–RADV error estimation methodology, which is used to calculate adjusted risk scores and risk adjustment transfers, beginning with the 2019 benefit year of HHS–RADV. This rule also finalizes a change to the benefit year to which HHS–RADV adjustments to risk scores and risk adjustment transfers would be applied beginning with the 2020 benefit year of HHS–RADV. These policies seek to further the integrity of HHS–RADV, address stakeholder feedback, promote fairness, and improve the predictability of HHS–RADV adjustments.

**DATES:** These regulations are effective on December 31, 2020.

**FOR FURTHER INFORMATION CONTACT:**

Allison Yadsko, (410) 786–1740; Joshua Paul, (301) 492–4347; Adrienne Patterson, (410) 786–0686; and Jaya Ghildiyal, (301) 492–5149.

**SUPPLEMENTARY INFORMATION:****I. Background***A. Legislative and Regulatory Overview*

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010; the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) was enacted on March 30, 2010. These statutes are collectively

referred to as “PPACA” in this final rule. Section 1343 of the PPACA<sup>1</sup> established a permanent risk adjustment program to provide payments to health insurance issuers that attract higher-than-average risk populations, such as those with chronic conditions, funded by payments from those that attract lower-than-average risk populations, thereby reducing incentives for issuers to avoid higher-risk enrollees. The PPACA directs the Secretary of the Department of Health and Human Services (Secretary), in consultation with the states, to establish criteria and methods to be used in carrying out risk adjustment activities, such as determining the actuarial risk of enrollees in risk adjustment covered plans within a state market risk pool.<sup>2</sup> The statute also provides that the Secretary may utilize criteria and methods similar to the ones utilized under Medicare Parts C or D.<sup>3</sup> Consistent with section 1321(c)(1) of the PPACA, the Secretary is responsible for operating the risk adjustment program on behalf of any state that elected not to do so. For the 2014 through 2016 benefit years, all states and the District of Columbia, except Massachusetts, participated in the HHS-operated risk adjustment program. Since the 2017 benefit year, all states and the District of Columbia have participated in the HHS-operated risk adjustment program.

Data submission requirements for the HHS-operated risk adjustment program are set forth at 45 CFR 153.700 through 153.740. Each issuer is required to establish and maintain an External Data Gathering Environment (EDGE) server on which the issuer submits masked enrollee demographics, claims, and encounter diagnosis-level data in a format specified by the Department of Health and Human Services (HHS). Issuers must also execute software provided by HHS on their respective EDGE servers to generate summary reports, which HHS uses to calculate the enrollee-level risk scores to determine the average plan liability risk scores for each state market risk pool, the individual issuers' plan liability risk scores, and the transfer amounts by state market risk pool for the applicable benefit year.<sup>4</sup>

Pursuant to 45 CFR 153.350, HHS performs HHS–RADV to validate the accuracy of data submitted by issuers

<sup>1</sup> 42 U.S.C. 18063.

<sup>2</sup> 42 U.S.C. 18063(a) and (b).

<sup>3</sup> 42 U.S.C. 18063(b).

<sup>4</sup> HHS also uses the data issuers submit to their EDGE servers for the calculation of the high-cost risk pool payments and charges added to the HHS risk adjustment methodology beginning with the 2018 benefit year.