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Internal Revenue Code Section 35

Health insurance costs of eligible individuals

(a) In general.

In the case of an individual, there shall be allowed as a credit against the tax imposed by subtitle A an amount equal to 72.5 percent of the amount paid by the taxpayer for coverage of the taxpayer and qualifying family members under qualified health insurance for eligible coverage months beginning in the taxable year.

(b) Eligible coverage month.

For purposes of this section-

(1) In general.

The term "eligible coverage month" means any month if-

(A) as of the first day of such month, the taxpayer-

(i) is an eligible individual,

(ii) is covered by qualified health insurance, the premium for which is paid by the taxpayer,

(iii) does not have other specified coverage, and

(iv) is not imprisoned under Federal, State, or local authority, and

(B) such month begins more than 90 days after the date of the enactment of the Trade Act of 2002 [90 days after 8/6/2002], and before January 1, 2022.

(2) Joint returns.

In the case of a joint return, the requirements of paragraph (1)(A) shall be treated as met with respect to any month if at least 1 spouse satisfies such requirements.

(c) Eligible individual.

For purposes of this section-

(1) In general.

The term "eligible individual" means-

(A) an eligible TAA recipient,

(B) an eligible alternative TAA recipient, and

(C) an eligible PBGC pension recipient.

(2) Eligible TAA recipient.

(A) In general. Except as provided in subparagraph (B), the term "eligible TAA recipient" means, with respect to any month, any individual who is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974 or who would be eligible to receive such allowance if section 231 of such Act were applied without regard to subsection (a)(3)(B) of such section. An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.

(B) Special rule. In the case of any eligible coverage month beginning after the date of the enactment of this paragraph, the term "eligible TAA recipient" means, with respect to any month, any individual who-

(i) is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974,

(ii) would be eligible to receive such allowance except that such individual is in a break in training provided under a training program approved under section 236 of such Act that exceeds the period specified in section 233(e) of such Act, but is within the period for receiving such allowances provided under section 233(a) of such Act, or

(iii) is receiving unemployment compensation (as defined in section 85(b)) for any day of such month and who would be eligible to receive such allowance for such month if section 231 of such Act were applied without regard to subsections (a)(3)(B) and (a)(5) thereof.

An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.

(3) Eligible alternative TAA recipient.

The term "eligible alternative TAA recipient" means, with respect to any month, any individual who-

(A) is a worker described in section 246(a)(3)(B) of the Trade Act of 1974 who is participating in the program established under section 246(a)(1) of such Act, and

(B) is receiving a benefit for such month under section 246(a)(2) of such Act.

An individual shall continue to be treated as an eligible alternative TAA recipient during the first month that such individual would otherwise cease to be an eligible alternative TAA recipient by reason of the preceding sentence.

(4) Eligible PBGC pension recipient.

The term "eligible PBGC pension recipient" means, with respect to any month, any individual who-

(A) has attained age 55 as of the first day of such month, and

(B) is receiving a benefit for such month any portion of which is paid by the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act of 1974.

(d) Qualifying family member.

For purposes of this section-

(1) In general.

The term "qualifying family member" means-

(A) the taxpayer's spouse, and

(B) any dependent of the taxpayer with respect to whom the taxpayer is entitled to a deduction under section 151(c).

Such term does not include any individual who has other specified coverage.

(2) Special dependency test in case of divorced parents, etc.

If section 152(e) applies to any child with respect to any calendar year, in the case of any taxable year beginning in such calendar year, such child shall be treated as described in paragraph (1)(B) with respect to the custodial parent (as defined in section 152(e)(4)(A)) and not with respect to the noncustodial parent.

(e) Qualified health insurance.

For purposes of this section-

(1) In general.

The term "qualified health insurance" means any of the following:

(A) Coverage under a COBRA continuation provision (as defined in section 9832(d)(1)).

(B) State-based continuation coverage provided by the State under a State law that requires such coverage.

(C) Coverage offered through a qualified State high risk pool (as defined in section 2744(c)(2) of the Public Health Service Act [42 USC §300gg-44(c)(2)]).

(D) Coverage under a health insurance program offered for State employees.

(E) Coverage under a State-based health insurance program that is comparable to the health insurance program offered for State employees.

(F) Coverage through an arrangement entered into by a State and-

(i) a group health plan (including such a plan which is a multiemployer plan as defined in section 3(37) of the Employee Retirement Income Security Act of 1974),

(ii) an issuer of health insurance coverage,

(iii) an administrator, or

(iv) an employer.

(G) Coverage offered through a State arrangement with a private sector health care coverage purchasing pool.

(H) Coverage under a State-operated health plan that does not receive any Federal financial participation.

(I) Coverage under a group health plan that is available through the employment of the eligible individual's spouse.

(J) In the case of any eligible individual and such individual's qualifying family members, coverage under individual health insurance (other than coverage enrolled in through an Exchange established under the Patient Protection and Affordable Care Act). For purposes of this subparagraph, the term "individual health insurance" means any insurance which constitutes medical care offered to individuals other than in connection with a group health plan and does not include Federal or State-based health insurance coverage.

(K) Coverage under an employee benefit plan funded by a voluntary employees' beneficiary association (as defined in section 501(c)(9)) established pursuant to an order of a bankruptcy court, or by agreement with an authorized representative, as provided in section 1114 of title 11, United States Code.

(2) Requirements for State-based coverage.

(A) In general. The term "qualified health insurance" does not include any coverage described in subparagraphs (B) through (H) of paragraph (1) unless the State involved has elected to have such coverage treated as qualified health insurance under this section and such coverage meets the following requirements:

(i) Guaranteed issue. Each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs credit eligibility certificate described in section 7527 and pays the remainder of such premium.

(ii) No imposition of pre-existing condition exclusion. No pre-existing condition limitations are imposed with respect to any qualifying individual.

(iii) Nondiscriminatory premium. The total premium (as determined without regard to any subsidies) with respect to a qualifying individual may not be greater than the total premium (as so determined) for a similarly situated individual who is not a qualifying individual.

(iv) Same benefits. Benefits under the coverage are the same as (or substantially similar to) the benefits provided to similarly situated individuals who are not qualifying individuals.

(B) Qualifying individual. For purposes of this paragraph, the term "qualifying individual" means-

(i) an eligible individual for whom, as of the date on which the individual seeks to enroll in the coverage described in subparagraphs (B) through (H) of paragraph (1), the aggregate of the periods of creditable coverage (as defined in section 9801(c)) is 3 months or longer and who, with respect to any month, meets the requirements of clauses (iii) and (iv) of subsection (b)(1)(A); and

(ii) the qualifying family members of such eligible individual.

(3) Exception.

The term "qualified health insurance" shall not include-

(A) a flexible spending or similar arrangement, and

(B) any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c).

(f) Other specified coverage.

For purposes of this section, an individual has other specified coverage for any month if, as of the first day of such month-

(1) Subsidized coverage.

(A) In general. Such individual is covered under any insurance which constitutes medical care (except insurance substantially all of the coverage of which is of excepted benefits described in section 9832(c)) under any health plan maintained by any employer (or former employer) of the taxpayer or the taxpayer's spouse and at least 50 percent of the cost of such coverage (determined under section 4980B) is paid or incurred by the employer.

(B) Eligible alternative TAA recipients. In the case of an eligible alternative TAA recipient, such individual is either-

(i) eligible for coverage under any qualified health insurance (other than insurance described in subparagraph (A), (B), or (F) of subsection (e)(1)) under which at least 50 percent of the cost of coverage (determined under section 4980B(f)(4)) is paid or incurred by an employer (or former employer) of the taxpayer or the taxpayer's spouse, or

(ii) covered under any such qualified health insurance under which any portion of the cost of coverage (as so determined) is paid or incurred by an employer (or former employer) of the taxpayer or the taxpayer's spouse.

(C) Treatment of cafeteria plans. For purposes of subparagraphs (A) and (B), the cost of coverage shall be treated as paid or incurred by an employer to the extent the coverage is in lieu of a right to receive cash or other qualified benefits under a cafeteria plan (as defined in section 125(d)).

(2) Coverage under medicare, medicaid, or SCHIP.

Such individual-

(A) is entitled to benefits under part A of title XVIII of the Social Security Act or is enrolled under part B of such title, or

(B) is enrolled in the program under title XIX or XXI of such Act (other than under section 1928 of such Act).

(3) Certain other coverage.

Such individual-

(A) is enrolled in a health benefits plan under chapter 89 of title 5, United States Code, or

(B) is entitled to receive benefits under chapter 55 of title 10, United States Code.

(g) Special rules.

(1) Coordination with advance payments of credit.

With respect to any taxable year, the amount which would (but for this subsection) be allowed as a credit to the taxpayer under subsection (a) shall be reduced (but not below zero) by the aggregate amount paid on behalf of such taxpayer under section 7527 for months beginning in such taxable year.

(2) Coordination with other deductions.

Amounts taken into account under subsection (a) shall not be taken into account in determining any deduction allowed under section 162(l) or 213.

(3) Medical and health savings accounts.

Amounts distributed from an Archer MSA (as defined in section 220(d)) or from a health savings account (as defined in section 223(d)) shall not be taken into account under subsection (a).

(4) Denial of credit to dependents.

No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(5) Both spouses eligible individuals.

The spouse of the taxpayer shall not be treated as a qualifying family member for purposes of subsection (a), if-

(A) the taxpayer is married at the close of the taxable year,

(B) the taxpayer and the taxpayer's spouse are both eligible individuals during the taxable year, and

(C) the taxpayer files a separate return for the taxable year.

(6) Marital status; certain married individuals living apart.

Rules similar to the rules of paragraphs (3) and (4) of section 21(e) shall apply for purposes of this section.

(7) Insurance which covers other individuals.

For purposes of this section, rules similar to the rules of section 213(d)(6) shall apply with respect to any contract for qualified health insurance under which amounts are

payable for coverage of an individual other than the taxpayer and qualifying family members.

(8) Treatment of payments.

For purposes of this section-

(A) Payments by Secretary. Payments made by the Secretary on behalf of any individual under section 7527 (relating to advance payment of credit for health insurance costs of eligible individuals) shall be treated as having been made by the taxpayer on the first day of the month for which such payment was made.

(B) Payments by taxpayer. Payments made by the taxpayer for eligible coverage months shall be treated as having been made by the taxpayer on the first day of the month for which such payment was made.

(9) COBRA premium assistance.

In the case of an assistance eligible individual who receives premium reduction for COBRA continuation coverage under section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009 for any month during the taxable year, such individual shall not be treated as an eligible individual, a certified individual, or a qualifying family member for purposes of this section or section 7527 with respect to such month.

(10) Continued qualification of family members after certain events.

(A) Medicare eligibility. In the case of any month which would be an eligible coverage month with respect to an eligible individual but for subsection (f)(2)(A), such month shall be treated as an eligible coverage month with respect to such eligible individual solely for purposes of determining the amount of the credit under this section with respect to any qualifying family members of such individual (and any advance payment of such credit under section 7527). This subparagraph shall only apply with respect to the first 24 months after such eligible individual is first entitled to the benefits described in subsection (f)(2)(A).

(B) Divorce. In the case of the finalization of a divorce between an eligible individual and such individual's spouse, such spouse shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such finalization, except that the only qualifying family members who may be taken into account with respect to such spouse are those individuals who were qualifying family members immediately before such finalization.

(C) Death. In the case of the death of an eligible individual-

(i) any spouse of such individual (determined at the time of such death) shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such death, except that the only qualifying family members who may be taken into account with respect to such spouse are those individuals who were qualifying family members immediately before such death, and

(ii) any individual who was a qualifying family member of the decedent immediately before such death (or, in the case of an individual to whom paragraph (4) applies, the taxpayer to whom the deduction under section 151 is allowable) shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such death, except that in determining the amount of such credit only such qualifying family member may be taken into account.

(11) Election.

(A) In general. This section shall not apply to any taxpayer for any eligible coverage month unless such taxpayer elects the application of this section for such month.

(B) Timing and applicability of election. Except as the Secretary may provide-

(i) an election to have this section apply for any eligible coverage month in a taxable year shall be made not later than the due date (including extensions) for the return of tax for the taxable year; and

(ii) any election for this section to apply for an eligible coverage month shall apply for all subsequent eligible coverage months in the taxable year and, once made, shall be irrevocable with respect to such months.

(12) Coordination with premium tax credit.

(A) In general. An eligible coverage month to which the election under paragraph (11) applies shall not be treated as a coverage month (as defined in section 36B(c)(2)) for purposes of section 36B with respect to the taxpayer.

(B) Coordination with advance payments of premium tax credit. In the case of a taxpayer who makes the election under paragraph (11) with respect to any eligible coverage month in a taxable year or on behalf of whom any advance payment is made under section 7527 with respect to any month in such taxable year-

(i) the tax imposed by this chapter for the taxable year shall be increased by the excess, if any, of-

(I) the sum of any advance payments made on behalf of the taxpayer under section 1412 of the Patient Protection and Affordable Care Act and section 7527 for months during such taxable year, over

(II) the sum of the credits allowed under this section (determined without regard to paragraph (1)) and section 36B (determined without regard to subsection (f)(1) thereof) for such taxable year; and

(ii) section 36B(f)(2) shall not apply with respect to such taxpayer for such taxable year, except that if such taxpayer received any advance payments under section 7527 for any month in such taxable year and is later allowed a credit under section 36B for such taxable year, then section 36B(f)(2)(B) shall be applied by substituting the amount determined under clause (i) for the amount determined under section 36B(f)(2)(A).

(13) Regulations.

The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section, section 6050T, and section 7527.