

CC:PA:LPD:PR (REG-131491-10)
Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

IRS -2011-0024

October 31, 2011

Dear Secretary Geithner,

On behalf of groups representing women and victims of domestic violence, we urge the IRS to amend § 1.36B-4(b)(3) of the proposed rule (IRS-2011-0024) to create an exception for married survivors of domestic violence who may be denied a health insurance premium tax credit unless they agree to file jointly with their abuser/spouse.

Survivors of domestic violence who have left their abuser/spouse but have not yet obtained legal separation or divorce face challenges in filing taxes. A survivor with a dependent child who has been living apart from her abuser/spouse for more than six months can file as head of household. However, under section 36B of the Code and the proposed regulations, a separated spouse that does not meet that requirement and does not want to risk disclosing her location to the abusive spouse must either risk her personal safety to file jointly with the abuser/spouse or file separately and lose eligibility for the premium tax credit.

Joint filing often is not an option for victims fleeing from an abusive marriage. Filing a tax return jointly requires communication between a victim and her abusive spouse that may reveal a victim's new physical address, phone number, employer, and bank account with dangerous results. Women who are separated from their spouses have the highest rate of victimization; it is four times higher than that of divorced women and eight times higher than for single women.¹ In addition, there's no guarantee that an abused spouse would have access to any refund.

If the proposed rule is not amended, married taxpayers who file separately will be denied the premium tax credit altogether and will need to repay some or all of the credit received in advance, according to income. This could amount to thousands of dollars in additional tax liability at the end of the year – a heavy burden to bear, considering the survivor may be in the process of criminal prosecution, custody fights, and divorce proceedings. If the denial of the credit prevents the survivor from obtaining minimum essential coverage, the survivor may also owe a tax penalty for being uninsured.

During consideration of the Affordable Care Act (ACA), there was substantial debate about the plight of domestic abuse survivors in the several states that allowed insurance

¹ Bureau of Justice Statistics, Intimate Partner Violence in the U.S., 2006. Accessed on October 23, 2011, at <http://bjs.ojp.usdoj.gov/content/intimate/victims.cfm>.

companies to discriminate against domestic violence as a pre-existing condition. The ACA took an important step forward by prohibiting insurance companies from using “conditions arising out of acts of domestic violence” as a rating factor or reason to deny insurance to an individual.² On the day the President signed the legislation into law, a post on the White House Blog called the new protections a “lifeline” for domestic violence survivors and declared that these women will no longer “face the struggle of paying too much for health care while trying to rebuild their lives after suffering domestic violence.”³ But without an appropriate exception to this proposed rule, survivors will continue to face challenges in paying for insurance.

The IRS has a special responsibility to ensure the premium tax credit work as intended. The unique nature of the credit merits exceptions for complicated family situations such as this. First, the premium tax credit is unique in that it helps taxpayers fulfill their new duty to have health insurance or to pay a tax penalty. Rather than being “fungible,” the advance credit goes directly to the selected insurance plan. Also, the credit may be calculated more than a year before tax filing, making credit eligibility and the calculated advance credit vulnerable to changes in family status; while such changes should be reported to the Exchange, people attempting to remove themselves from violent situations may understandably forget or delay reporting such changes to the Exchange.

Survivors of domestic abuse should be permitted to file separately and still receive a premium tax credit. People for whom this exception applies can be identified at the beginning of the year when the credit is calculated, mid-year when the Exchange becomes aware of a change in household, income or insurance status, or at the end of the year when the credit is reconciled.

The IRS could capture the reason for an exception with a “check-off” box signed under penalty of perjury similar to Form 8857 (Request for Innocent Spouse Relief). Limiting relief to three consecutive years would be reasonable to accommodate the challenge of filing jointly in the case of domestic violence and would allow relief for the same number of years allowed in the case of Innocent Spouse Relief.

In cases where the spouses jointly received an advance credit, the credit should be allocated on the separate tax returns according to household income. For the survivor, the repayment limit for single individuals should apply, according to income. For the abuser filing separately, full repayment of their allocated credit would be expected since they do not qualify for an exception.

Finalizing a divorce can be particularly challenging for survivors of spousal abuse because it may involve criminal proceedings or contentious battles on the division of assets and child custody. Someone in this situation may need to file separately in multiple years while these issues are resolved and should be allowed to collect an advance credit on the basis of this exception. In this case, the Exchange should permit the taxpayer to claim the advance

² Patient Protection and Affordable Care Act, Pub L. No. 111-148, § 1201(2)(A) (to be codified at 42 U.S.C. 300gg).

³ Lynn Rosenthal, “For Victims of Domestic Violence, Health Care is a Lifeline,” White House Blog, posted March 23, 2010. Accessed on October 23, 2011 at <http://www.whitehouse.gov/blog/2010/03/23/victims-domestic-violence-health-care-a-lifeline>.

credit and should provide in writing a clear explanation of the exception the taxpayer has qualified for and how they will report this on their taxes, including any requirement to submit supplementary evidence. Providing this information in advance will ensure people are prepared to produce the necessary evidence at year-end and will discourage misuse of this exception.

We agree that the ACA can be a “lifeline” for survivors of domestic violence. We urge that the rule be modified to ensure that women are not denied access to affordable health insurance when separated from a spouse due to domestic violence.

Sincerely,

American Association of University Women (AAUW)
American College of Nurse-Midwives
American Congress of Obstetricians and Gynecologists
Break the Cycle
Family Violence Prevention Forum of the American Public Health Association (APHA)
Futures Without Violence
Jewish Women International
Maryland Women's Coalition for Health Care Reform
National Center for Victims of Crime
National Center on Domestic and Sexual Violence
National Coalition Against Domestic Violence
National Coalition for LGBT Health
National Congress of American Indians Task Force on Violence Against Women
National Council of Jewish Women
National Council of Women’s Organizations
National Network to End Domestic Violence
National Resource Center on Domestic Violence
National Women's Conference Committee
Washington Office of Public Policy, United Methodist Women
Women of Color Network
YWCA USA