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AFFORDABLE CARE ACT (ACA): Streamline the Religious Exemption Process for the Individual Shared Responsibility Payment (ISRP)

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to a Fair and Just Tax System*

PROBLEM

Taxpayers in the Amish and Mennonite communities have voiced concerns regarding unnecessary compliance burdens when applying for an Individual Shared Responsibility Payment (ISRP) exemption based on religion.² Taxpayers in these communities file their exemption applications with the Marketplace and experience significant delays in processing such applications.³ Many taxpayers in these communities already apply for a similar exemption from Social Security and Medicare taxes by submitting to the Social Security Administration (SSA) Form 4029, *Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits*. Once the SSA approves the exemption request on Form 4029, SSA submits it to the IRS. Therefore, the IRS already has a record of a federal determination on a similar exemption request. Requiring an additional certification is unnecessary and burdensome for the taxpayer and wasteful for the government.

EXAMPLE

Taxpayer, who is a member of the Amish community, had previously applied for an exemption from Social Security and Medicare taxes on Form 4029. The SSA approved the exemption and forwarded the approved Form 4029 to the IRS which posted it to the taxpayer's account. Taxpayer also submitted to the Centers for Medicare and Medicaid Services (CMS) the Application for Exemption from the Shared Responsibility Payment for Members of Recognized Religious Sects or Divisions. However, CMS did not process the exemption in time to file the tax year (TY) 2015 tax return. Because the Taxpayer did not yet have an Exemption Certificate Number (ECN) to claim the exemption, the Taxpayer wrote "pending" on Form 8965, per the form instructions.

RECOMMENDATION

To reduce unnecessary burden on both taxpayers and the government, the National Taxpayer Advocate recommends that Congress amend Internal Revenue Code (IRC) § 5000A(d)(2) to provide that the Secretary of the Treasury has the authority to grant the religious exemption for purposes of the ISRP

- 1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).
- 2 While we have specifically received information from the Amish and Mennonite communities in Ohio, this issue may also burden other Anabaptist communities, such as Hutterites, as well as other recognized religious sects described in IRC §1402(g)(1).
- 3 See Written Statement of Ohio State Director, Amish Steering Committee, National Taxpayer Advocate Public Forum 2 (Aug. 16, 2016); Meeting with representatives of the Ohio Amish and Mennonite Community and TAS Representatives (Nov. 17, 2016).

to the taxpayer and to each person for whom the taxpayer would be liable under IRC § 5000A(a) if the taxpayer has already received approval by the SSA and the IRS for the exemption set forth in IRC § 1402(g)(1), and the regulations thereunder, and such exemption is still valid.

PRESENT LAW

IRC § 5000A requires nonexempt individuals to have minimum essential health coverage or make an ISRP when they file a tax return. Under IRC § 5000A, a taxpayer is liable for the health coverage of himself or herself, the taxpayer's spouse (if married filing jointly), and any other individual whom the taxpayer could claim as a dependent for federal income tax purposes.⁴ IRC § 5000A(d)(2) provides for an exemption from the ISRP for individuals who are members of a “recognized religious sect or division thereof” as defined by IRC § 1402(g)(1).

IRC § 1402(g)(1) provides for an exemption from Social Security and Medicare taxes for members of certain religious faiths. To claim the exemption, the individual needs to file an application for an exemption in the form and manner as set forth in the regulations thereunder. To qualify for the exemption, the individual must be “a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act).” This exemption is granted by the SSA if the application includes evidence of membership in and adherence to the tenets or teachings of the religion and a waiver of benefits under the Social Security Act.

Section 155.605 (c) of Title 45 of the Code of Federal Regulations (Health and Human Services regulations) provides that the Marketplace makes the eligibility determination for the exemption provided in IRC § 5000A(d)(2).⁵ An individual may file an exemption application on behalf of himself or herself and other eligible family members, and, if granted, the exemption generally is valid in perpetuity. However, an exemption granted to a child under age 21 is valid until the end of the month following the date the individual obtains the age of 21, at which point the individual must submit a new application for exemption.

REASONS FOR CHANGE

IRC § 5000A sets forth various exemptions from the ISRP, one of which is the exemption for religious conscience. Specifically, an individual can obtain an exemption for any month in which he or she is a member of a recognized sect or division that is recognized by the SSA as conscientiously opposed to accepting any insurance benefits, including Medicare and Social Security.⁶ Many members of these religious groups, including the Amish and Mennonites, already request an exemption from Social Security and Medicare taxes, and waive the associated benefits, on IRS Form 4029. The taxpayer files the form directly with the SSA, which makes the exemption determination and then forwards the form to the IRS to record on its database. The exemption is valid until the taxpayer sends a letter to the IRS requesting revocation.⁷

Despite the fact that the Affordable Care Act defines the ISRP exemption through reference to the Social Security and Medicare tax provisions, to receive an ISRP exemption, eligible taxpayers must apply to the

4 IRC § 5000A(a).

5 45 C.F.R. § 155.605.

6 IRC § 5000A.

7 Instructions to IRS Form 4029, *Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits*.

relevant health insurance Marketplace for an ECN. The taxpayer must then enter the ECN on Form 8965, *Health Coverage Exemptions*, to claim the exemption.

Through the National Taxpayer Advocate's Public Forums on Taxpayer Needs and Preferences, it has come to our attention that thousands of Amish constituents have applied for and never received ECNs despite repeated attempts to contact the insurance Marketplace and responding to requests for missing information.⁸ We have heard complaints that Marketplace employees are unable to locate and provide correct information for the ECN application process in a timely manner. The procedure is time-consuming, confusing, and redundant given the well-established IRS procedure to process Form 4029.⁹ For example, the CMS ECN application is five pages long and must be completed when an individual reaches the age of 21, upon marriage, and each time an eligible individual is born into the tax household.¹⁰

A less burdensome solution would be to discard the ECN application process and allow taxpayers to enter "4029 exempt" instead of an ECN on the applicable line in Part 1 of Form 8965. The IRS would be able to verify the information internally, because it already receives Form 4029 after it is approved by the SSA and such approval is easily accessible on IRS information systems.¹¹ By streamlining the procedures to claim an ISRP exemption for these taxpayers, the IRS would save both the taxpayers and the Marketplace time and paperwork, and reduce confusion.

EXPLANATION OF RECOMMENDATION

Congress should amend IRC § 5000A(d)(2) to add language enabling the Secretary of the Treasury to accept, as *prima facie* proof of the taxpayer's qualification for the religious exemption from the ISRP, evidence that the taxpayer received approval for exemption from Social Security and Medicare taxes pursuant to IRC § 1402(g)(1). Such approval for the exemption under IRC § 1402(g)(1) is granted by the Secretary of the Treasury and the Commissioner of the SSA. The IRS already has a record of such exemption under IRC § 1402(g)(1) in its information system once it approves the taxpayer's Form 4029.

Not all taxpayers who qualify for the ISRP exemption file Form 4029 with the SSA and IRS. Therefore, these taxpayers will continue to have the option to file for the ECN with the Marketplace.

In addition, Form 4029, due to its abbreviated length, does not include information regarding members of the tax household. To reduce complexity, the statutory revision needs to apply the religious exemption for purposes of the ISRP to the taxpayer named on Form 4029 and to all individuals for whom the taxpayer is liable under IRC § 5000A(a).

8 For more information on the National Taxpayer Advocate Public Forums, including written statements and transcripts, see [https://taxpayeradvocate.irs.gov/news/national-taxpayer-advocate-public-forum-transcripts?category=Tax News](https://taxpayeradvocate.irs.gov/news/national-taxpayer-advocate-public-forum-transcripts?category=Tax%20News) (last visited Nov. 22, 2016).

9 See Written Statement of Ohio State Director, Amish Steering Committee, National Taxpayer Advocate Public Forum 2 (Aug. 16, 2016).

10 Health Insurance Marketplace, *Application for Exemption from the Shared Responsibility Payment for Members of Recognized Religious Sects or Divisions* (rev. Oct. 2014).

11 Such IRS information systems include Integrated Data Retrieval System (IDRS) and Individual Master File On-Line Entity (IMFOLE). Applicants file Form 4029 with the Religious Exemption Unit of SSA. SSA makes the determination whether the applicant belongs to a qualifying religious group and forwards the approved exemption application to the IRS. The IRS then makes the determination whether the applicant qualifies for exemption from social security and Medicare taxes and returns the completed form to the applicant marked "Approved." The taxpayer then writes "Form 4029" on the "self-employment tax" line in the Other Taxes section of Form 1040. IRS Form 4029, *Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits*.