Chapter 7: New Developments

Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 .... A327
- Modification of Mortgage Reporting Requirements A327
- Limitations on Basis of Inherited Assets and New Reporting Requirement................ A328
- Clarification of 6-Year Statute of Limitations in Case of Overstatement of Basis............... A328
- Tax Return Due Dates A328

Tax Increase Prevention Act of 2014 .... A330
- Extenders A330
- ABLE Act A332

Affordable Care Act Update A340
- 2015 Individual Shared Responsibility Payment............................... A341
- Hardship Exemption Claims without Prior Certification A341
- Calculating Affordable Coverage................ A342
- Employer Information Reporting Requirements for 2015 .... A344
- Premium Tax Credit issues.......................... A347
- Supreme Court Cases on Affordable Care Act Issues.......................... A353

7

Please note. Corrections were made to this workbook through January of 2016. No subsequent modifications were made. For clarification about acronyms used throughout this chapter, see the Acronym Glossary at the end of the Index.

For your convenience, in-text website links are also provided as shortURLs. Anywhere you see **uofi.tax/xxx**, the link points to the address immediately following in brackets.

SURFACE TRANSPORTATION AND VETERANS HEALTH CARE CHOICE IMPROVEMENT ACT OF 2015[1]

On July 31, 2015, President Obama signed the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, also known as the Temporary Highway Funding Law.

This new law contains several tax provisions that will significantly impact tax practitioners. Even though the highway funding section is short-term, the tax law provisions are not. Following is a summary of these new provisions.

MODIFICATION OF MORTGAGE REPORTING REQUIREMENTS

After December 31, 2016, Forms 1098, *Mortgage Interest Statement,* will be required to contain the following information in addition to current requirements.[2]

- The amount of outstanding principal on the mortgage as of the beginning of the calendar year
- The date of the origination of the mortgage
- The address of the property that secures the mortgage

1. *Temporary Highway Funding Law Contains Multiple Provisions Impacting Tax Filings.* Tidgren, Kristine. Jul. 31, 2015. Center for Agircultural Law and Taxation. [www.calt.iastate.edu/article/temporary-highway-funding-law-contains-multiple-provisions-impacting-tax-filings] Accessed on Aug. 7, 2015.

2. IRC §6050H.

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

LIMITATIONS ON BASIS OF INHERITED ASSETS AND NEW REPORTING REQUIREMENT

The new law requires that the tax basis of property inherited from a decedent is not greater than the fair market value (FMV) of such property as reported for federal estate tax purposes.[3] In addition, there is a new requirement that any estate executor required to file an estate tax return must furnish a statement identifying the value of the recipient's interest in the property to the IRS and to any person acquiring an interest in the property.[4] This statement will be due 30 days after the date of the filing of the estate tax return. The Treasury Secretary is also directed to issue regulations relating to the applicability of this new requirement to property for which no estate tax return is required. These new reporting provisions apply to property for which an estate tax return is filed after July 31, 2015.

CLARIFICATION OF 6-YEAR STATUTE OF LIMITATIONS IN CASE OF OVERSTATEMENT OF BASIS

In general, the IRS may go back and assess tax on any of the last three tax years. The new law clarifies that a new 6-year statute of limitations[5] applies to omissions of income exceeding 25% of gross income as a result of overstated basis. The U.S. Supreme Court in *Home Concrete & Supply, LLC v. U.S.,*[6] had found that the 3-year statute of limitations applied in such cases. The bill amends IRC §6501(e)(1)(B) to state, "An overstatement of unrecovered cost or other basis is an omission from gross income."

This clarification applies to returns filed after July 31, 2015, and also to returns filed on or before that date if the tax years are still open under IRC §6501.

TAX RETURN DUE DATES

The Act also modifies due dates for various types of tax returns. Those changes include the following.

Partnerships

For tax years beginning after December 31, 2015, returns for calendar-year partnerships will be due on March 15 (instead of April 15). Returns for fiscal year partnerships will be due on the 15th day of the third month following the close of the fiscal year.

The IRS is directed under the bill that the maximum extension allowed is six months for Form 1065, *U.S. Return of Partnership Income.*

> **Note.** The due dates for S corporation tax returns have not changed and remain the 15th day of the third month following the end of the tax year.

C Corporations

The new law establishes that the due date for most C corporation returns is the 15th day of the **fourth** month (instead of the third month) following the end of the corporation's tax year. This change is applicable to tax years beginning after December 31, 2015, unless the corporate year ends on June 30. In such cases, the new deadlines apply to returns for tax years beginning after December 31, **2025.**

Under the new law, C corporations may also be granted a 6-month extension (in contrast to current 3-month extensions). However, calendar-year C corporations may receive a 5-month extension and C corporations with a yearend of June 30 may receive a 7-month extension for the next 10 years.

---

3. IRC §1014.
4. IRC §6501(e)(1)(A).
5. Ibid.
6. *Home Concrete & Supply, LLC v. U.S.,* 132 S. Ct. 1836 (2012).

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

The new due dates for C corporations are outlined in the following table.

Tax Year Ending	Tax Return Due Date 15th Day of…	Extension Period
Dec. 31	4th month	5 months
Jun. 30	3rd month	7 months
All others	4th month	6 months

Trusts Filing Form 1041

Trusts are generally required to file Form 1041, *U.S. Income Tax Return for Estates and Trusts,* on a calendar-year basis. Form 1041 is generally due by April 15 following the end of the tax year. The maximum extension allowed for returns of trusts filing Form 1041 will be **five and one-half months** (ending on September 30) for calendar-year taxpayers with taxable years beginning after December 31, 2015. There are no changes to due dates and extensions for **estate** income tax returns.

FinCEN Report 114 (Relating to FBAR) and Form 3520

The new due date for filing FinCEN Form 114, *Report of Foreign Bank and Financial Accounts,* under the new law is changed from June 30 to April 15. However, taxpayers are now allowed a 6-month extension for this filing. The same due date and extension apply to Form 3520, *Annual Return to Report Transactions with Foreign Trusts and Receipt of Foreign Gifts.*

These changes apply to forms required for tax years beginning after December 31, 2015.

Other Extension Due Dates

The due dates for extensions filed for the returns shown in the following table have also changed. These revised extension due dates apply to returns for tax years beginning after December 31, 2015.

Organization Filing Return	Type of Return	Extension Due Date
Employee benefit plans	Form 5500	3.5 months ending on November 15 for calendar-year plans
Organizations exempt from income tax	Form 990 series	6 months ending on November 15 for calendar-year plans
Organizations exempt from income tax	Form 4720	6 months after the due date for the return
Trusts	Form 5227	6 months after the due date for the return
Tax-exempt black lung benefit trusts	Form 6069	6 months after the due date for the return
Certain charitable organizations described in IRC §170(c) or charitable remainder trusts described in IRC §664(d)	Form 8870	6 months after the due date for the return
Foreign trusts with a U.S. owner	Form 3520-A	6 months after the end of the tax year

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

TAX INCREASE PREVENTION ACT OF 2014

On December 19, 2014, President Obama signed into law the Tax Increase Prevention Act of 2014 (TIPA). TIPA addresses several tax provisions that expired at the end of 2013 by extending their applicability through December 31, 2014.

TIPA also includes the Achieving a Better Life Experience (ABLE) Act. ABLE allows for the establishment of tax-favored accounts that can be used to save for disability-related expenses. ABLE accounts are similar to §529 plans (qualified tuition programs, or QTPs) for higher education.

EXTENDERS

All the tax provisions listed in this section were extended through December 31, 2014. The Joint Committee on Taxation estimates that extending these provisions will reduce tax revenues by $41.6 billion over the 10-year period from 2015 through 2024.[7]

> **Note.** The House Ways and Means Committee prepared a section-by-section summary of TIPA. It is available at **uofi.tax/15a7x1** [https://rules.house.gov/sites/republicans.rules.house.gov/files/113-2/PDF/113-HR5771-SxS.pdf].

Individual Extenders

IRC Section	Provision
62(a)(2)(D)	Deduction for certain expenses (up to $250 maximum) paid by elementary and secondary school teachers for educational items
108(a)(1)(E)	Exclusion from gross income of discharged qualified principal residence indebtedness (up to $2 million)
132(f)(2)	Parity for employer-provided mass transit and parking benefits ($250 per month for each)
163(h)(3)(E)	Mortgage insurance premiums treated as qualified residence interest
164(b)(5)	Election to deduct state and local sales taxes in lieu of state and local income taxes
170(b)(1)(E)	Special rule for contributions of capital gain real property for conservation purposes
222	Above-the-line deduction for qualified tuition and related expenses
408(d)(8)	Tax-free distributions (up to $100,000) from IRAs for charitable purposes by taxpayers age 70½ and older

7. *Estimated Revenue Effects Of H.R. 5771, The "Tax Increase Prevention Act Of 2014," Scheduled For Consideration By The House Of Representatives On December 3, 2014.* Dec. 3, 2014. Joint Committee on Taxation. [www.jct.gov/publications.html?func=startdown&id=4677] Accessed on Dec. 17, 2014.

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

Business Extenders

IRC Section	Provision
41	Research credit
42(b)(2)	Temporary minimum low-income housing tax credit rate for non-federally subsidized buildings
142(d)(2)	Military housing allowance exclusion for determining whether a tenant in certain counties is low income
45A	Indian employment tax credit
45D(f)(1)(G)	New markets tax credit
45G	Railroad track maintenance credit
45N	Mine rescue team training credit
45P	Employer wage credit for employees who are active duty members of uniformed services
51(c)	Work opportunity tax credit
54E(c)	Qualified zone academy bonds
168(e)(3)(A)	Classification of certain race horses as 3-year property
168(e)(3)(E)	15-year straight-line cost recovery period for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements
168(i)(15)	7-year recovery period for motorsports entertainment complexes
168(j)	Accelerated depreciation for business property on an Indian reservation
168(k)	50% bonus depreciation
170(e)(3)(C)	Enhanced charitable deduction for contributions of food inventory
179(b)(1)	Increased IRC §179 expensing limitations ($500,000) and phase-out amounts ($2 million)
179E	Election to expense mine safety equipment
181	Special expensing rules for certain film and television productions
199(d)(8)	Deduction allowable for income attributable to domestic production activities in Puerto Rico
512(b)(13)(E)	Modification of tax treatment of certain payments to controlling exempt organizations
871(k)	Treatment of certain dividends of regulated investment companies (RIC)
897(h)(4)(A)	RIC-qualified investment entity treatment under the Foreign Investment in Real Property Tax Act (FIRPTA) of 1980
953(e)	Subpart F exception for active financing income
954(c)(6)	Look-through treatment of payments between related controlled foreign corporations under foreign personal holding company rules
1202(a)	Temporary exclusion of 100% of gain on certain small business stock
1367(a)	Basis adjustment to stock of S corporations making charitable contributions of property
1374(d)(7)	Reduction in S corporation recognition period to five years for built-in gains tax
1391(d)(1)(A)	Empowerment zone tax incentives
7652(f)	Temporary increase in limit on cover-over amount of rum excise taxes paid to Puerto Rico and the Virgin Islands
30A	American Samoa economic development credit

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

Energy Extenders

IRC Section	Provision
25C	Credit for nonbusiness energy property
40(b)(6)	Second-generation biofuel producer credit
40A	Incentives for biodiesel and renewable diesel
45(e)(10)	Production credit for Indian coal facilities placed in service before 2009
45(d)	Credits for facilities producing energy from certain renewable resources
45L	Credit for energy-efficient new homes
168(l)(2)	50% bonus depreciation for second-generation biofuel plant property
179D	Energy-efficient commercial buildings deduction
451(i)	Special rule for sales or dispositions to implement federal energy regulatory commission or state electric restructuring policy for qualified electrical utilities
6426(c)	Excise tax credits relating to certain fuels
30C	Credit for alternative fuel vehicle refueling property

ABLE ACT

Beginning on January 1, 2015, the ABLE Act creates IRC §529A, which allows each state to establish and maintain its own tax-advantaged savings program, called an **ABLE program.** The new ABLE accounts established under an ABLE program allow for individual choice and control over spending on qualified disability expenses. Additionally, the accounts protect eligibility for Medicaid, Supplemental Security Income (SSI), and other important federal benefits for people with disabilities.

Contributions can be made to an ABLE account that is established for the purpose of meeting the qualified disability expenses of a designated eligible beneficiary who is a resident of that state.[8] A state that does not establish its own qualified ABLE program may enter into a contract with another state to provide its residents with access to the program. To check the status of an ABLE program for a specific state, go to **uofi.tax/15a7x2** [www.thearc.org/what-we-do/public-policy/policy-issues/able-legislation-by-state].

> **Note.** Federal law regarding ABLE accounts applies uniformly to all states. However, each state may administer ABLE accounts differently.

Other key elements of this program include the following.[9]

- Any individual can make **after-tax contributions** to an ABLE account.
- Income earned in an ABLE account will not be taxed if used to pay qualified disability expenses of the account's designated beneficiary.
- Contributions must be made in cash, and **aggregate annual contributions are limited to the annual gift tax exclusion amount ($14,000 for 2015).**

8. IRS Notice 2015-18, 2015-12 IRB 765.

9. *Legislative Notice: H.R. 5771 — Tax Increase Prevention Act/ABLE Act.* Dec. 8, 2014. Senate Republican Policy Committee. [www.rpc.senate.gov/legislative-notices/legislative-notice-hr-5771_tax-increase-prevention-act/able-act] Accessed on Dec. 18, 2014.

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

- Total contributions must not exceed any state-based limits for §529 plans.[10]
- The first $100,000 in an ABLE account will be excluded from the eligible person's resources when determining eligibility for SSI payments or Medicaid.

Note. If the balance in an ABLE account exceeds $100,000, SSI benefits will be suspended but not terminated. SSI payments will resume when the account balance is below $100,000.[11]

Eligibility

An **eligible beneficiary** is an individual who is:[12]

- Entitled to benefits under SSI or social security disability, retirement, and survivors program or submits certification meeting the criteria for a disability certification; and
- Blind or disabled before age 26.

A **disability certificate** asserts the following.[13]

- The individual has a medically determinable physical or mental impairment that causes marked and severe functional limitations. The impairment can be expected to result in death or has lasted or is expected to last for a continuous period of not less than 12 months.
- The blindness or disability occurred before age 26.

A disability certificate must also include a copy of the diagnosis relating to the individual's relevant impairment(s) and must be signed by a licensed physician.

Loss of Eligibility. The designated beneficiary must be an eligible individual at the time the ABLE account is established but may subsequently lose eligibility (for example, if the disease that caused the impairment goes into temporary remission).

If a designated beneficiary loses eligibility, the ABLE account provisions continue to apply. (That is, the account remains a tax-advantaged savings account.) In addition, no taxable distribution of the account balance is deemed to have occurred.[14] However, beginning on the first day of the tax year following the year in which the designated beneficiary stopped being eligible, no additional contributions to the ABLE account may be accepted by the ABLE program. If the beneficiary regains their eligibility, additional contributions may be accepted.[15]

---

10. Treas. Reg. §1.529A-2(g)(3)(i).
11. *Social Security Legislative Bulletin: House Passes H.R. 647, Achieving a Better Life Experience Act of 2014 (ABLE Act).* Dec. 5, 2014. Social Security Administration. [www.ssa.gov/legislation/legis_bulletin_120514.html] Accessed on Jul. 1, 2015.
12. Prop. Treas. Reg. §1.529A-1(b)(9).
13. *Federal Register: Guidance Under Section 529A: Qualified ABLE Programs.* Jun. 22, 2015. National Archives and Records Administration. [www.federalregister.gov/articles/2015/06/22/2015-15280/guidance-under-section-529a-qualified-able-programs] Accessed on Jul. 6, 2015.
14. Prop. Treas. Reg. §1.529A-2(d)(3).
15. Ibid.

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

Tax Treatment

Generally, the tax-favored characteristics of §529 QTP accounts apply to ABLE accounts. As mentioned earlier, the ABLE Act adds §529A to the Code, which contains the provisions for ABLE accounts. Earnings on an ABLE account and distributions from the account for qualified expenses are not taxable income to either the contributor or the eligible beneficiary.[16] Contributions to an ABLE account must be made in cash from the contributor's after-tax income.

> **Note.** For more information about QTPs, see the 2014 *University of Illinois Federal Tax Workbook,* Volume B, Chapter 2: Individual Taxpayer Issues.

Rollover. Assets in an ABLE account may be rolled over without penalty into another ABLE account for either the designated beneficiary or any of the beneficiary's qualifying family members.[17] A qualifying family member is a sibling (through blood or adoption) who is eligible for an ABLE account, including a brother, sister, stepbrother, stepsister, half-brother, or half-sister.[18] If funds are received from an ABLE account, they must be rolled into another account within 60 days.[19]

Change in Residency. The statutes are silent on whether a beneficiary must move their ABLE account when they change their state of residency. However, the proposed regulations provide that a qualified ABLE program may permit a beneficiary to continue to maintain an ABLE account created in a state even after they are no longer a resident of that state.[20]

A beneficiary is allowed to have only one ABLE account. This means that if they establish an ABLE account in a new state, the funds from the previous state's account must be rolled into the ABLE account in the current state of residence. Otherwise, the old account ceases to have the ABLE characteristics, including tax-exempt status.[21]

Gift-Tax Considerations. Contributions to an ABLE account are treated as completed gifts of a present interest and qualify for the annual gift-tax exclusion ($14,000 for 2015).[22] Gift tax may apply to a change of beneficiary during any year unless, as of the beginning of the year, the new beneficiary is both an eligible disabled individual for the tax year and a brother, sister, stepbrother, or stepsister of the former beneficiary.[23]

Excise Tax. Contributions to an ABLE account that exceed the annual exclusion amount are subject to a 6% excise tax.[24] To avoid the excise tax, contributions in excess of the exclusion amount must be returned to the contributor on a last-in, first-out basis, along with all net income attributable to the contribution, by the due date of the beneficiary's return (including extensions) for the year in which the contributions were made.[25]

> **Caution.** Any gifts to the beneficiary that are not directed into the ABLE account count toward the annual limitation.[26] Thus, a donor who contributes $14,000 into a qualified ABLE account and also gifts $1,000 to the same beneficiary in cash exceeds the limitation for 2015 and may be subject to the gift tax.
>
> An indirect gift made through a trust, estate, association, company, corporation, or partnership is treated as being made by the owner(s) of the entity.[27] Making such a gift could result in an owner unknowingly gifting in excess of the annual limit.

16. Prop. Treas. Reg. §1.529A-3.
17. IRC §529A(c)(1)(C).
18. Prop. Treas. Reg. §1.529A-1(b)(13).
19. Prop. Treas. Reg. §1.529A-1(b)(17).
20. Preamble to REG-102837-15, 2015-27 IRB 43.
21. Ibid.
22. IRC §529A(c)(2).
23. IRC §529A(e)(4); Prop. Treas. Reg. §1.529A-4(a)(3)(c).
24. IRC §§4973(a)(6), (h)(1).
25. Prop. Treas. Reg. §1.529A-2(g)(4).
26. Prop. Treas. Reg. §1.529A-4(a).
27. Preamble to REG-102837-15, 2015-27 IRB 43.

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

Contributions. A designated beneficiary may contribute to their own ABLE account. This contribution **is not treated as a gift.** If the designated beneficiary changes, then the portion of the FMV of the account attributable to that contribution **is treated as a gift** by the designated beneficiary to the successor designated beneficiary. Any earnings attributable to the contribution are included in the gift amount. The usual gift-tax and generation-skipping transfer tax rules apply.[28]

Example 1. Anderson contributed $10,000 to **his qualified ABLE account** in 2015. The balance in the account on December 31, 2015 (including earnings) was $11,500.

In 2016, Anderson's 20-year-old half-sister Laney was diagnosed with multiple sclerosis. Anderson made Laney the beneficiary on his ABLE account.

For tax purposes, the $11,500 in the account is considered a gift from Anderson to Laney. The amount is less than the annual exclusion, so Anderson is not required to file a gift tax return.

Distributions

Withdrawals from an ABLE account can only be used to pay the **qualified disability expenses** of the account's designated beneficiary. These expenses include the following.[29]

- Education expenses
- Housing
- Transportation
- Employment training and support
- Assistive technology and personal support services
- Health, prevention, and wellness
- Financial management and administrative services
- Legal fees
- Oversight and monitoring expenses
- Funeral and burial expenses

Qualified disability expenses also include basic living expenses and are not limited to items for which there is a medical necessity or which solely benefit a disabled individual.[30] An item such as a smartphone can be considered a qualified disability expense if it helps the disabled person navigate and communicate more safely and effectively.[31]

If distributions exceed qualified disability expenses, the amount otherwise includable in gross income is reduced by the ratio of the qualified expenses to the distributed amount.[32] Only the earnings portion of distributions are includable in income, as provided under IRC §72.[33] This amount is reported on line 21 of Form 1040, *U.S. Individual Income Tax Return.*

28. Prop. Treas. Reg. §1.529A-4(a)(3).
29. *H.R. 647—ABLE Act of 2014.* Dec. 3, 2014. U.S. Congress. [www.congress.gov/bill/113th-congress/house-bill/647] Accessed on Dec. 18, 2014.
30. Prop. Treas. Reg. §1.529A-2(h).
31. Prop. Treas. Reg. §1.529A-2(h)(2).
32. IRC §529A(c)(1)(B).
33. Prop. Treas. Reg. §1.529A-3(a).

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

The portion of any distribution that is includable in gross income is subject to an additional 10% tax unless it is made after the death of the beneficiary.[34] This additional tax is reported on Form 5329, *Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.*

Example 2. Megan has a qualified ABLE account with a $15,500 balance. The $15,500 consists of contributions of $14,000 and earnings of $1,500.

Megan receives a distribution of $10,000 from the ABLE account in 2015. She incurred expenses in 2015 of $3,000 for housing, $2,000 for transportation to doctor's appointments, and $1,000 for financial management services. Her total of qualified disability expenses is $6,000.

The account earnings of $1,500 are potentially includable in Megan's gross income. The $1,500 is reduced by $900 — a prorated amount of Megan's qualified expenses ($6,000 qualified expenses ÷ $10,000 distribution × $1,500 earnings portion of distribution). Thus, the amount includable in Megan's income is $600 ($1,500 – $900).

This amount is reported on line 21 of Megan's 2015 Form 1040. The additional tax is $60 ($600 × 10%), which is reported on the following Form 5329.

Form **5329**

Department of the Treasury
Internal Revenue Service (99)

Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts

▶ Attach to Form 1040 or Form 1040NR.

▶ Information about Form 5329 and its separate instructions is at *www.irs.gov/form5329.*

OMB No. 1545-0074

2015

Attachment Sequence No. 29

DRAFT AS OF June 19, 2015 DO NOT FILE

Name of individual subject to additional tax. If married filing jointly, see instructions.	Your social security number
Megan McDaniel	777-66-9999

Fill in Your Address Only If You Are Filing This Form by Itself and Not With Your Tax Return

Home address (number and street), or P.O. box if mail is not delivered to your home		Apt. no.
1922 W. Egg Street		
City, town or post office, state, and ZIP code. If you have a foreign address, also complete the spaces below (see instructions).		If this is an amended return, check here ▶ ☐
Long Island, New York 11932		
Foreign country name	Foreign province/state/county	Foreign postal code

If you **only** owe the additional 10% tax on early distributions, you may be able to report this tax directly on Form 1040, line 59, or Form 1040NR, line 57, without filing Form 5329. See the instructions for Form 1040, line 59, or for Form 1040NR, line 57.

Part I **Additional Tax on Early Distributions.** Complete this part if you took a taxable distribution before you reached age 59½ from a qualified retirement plan (including an IRA) or modified endowment contract (unless you are reporting this tax directly on Form 1040 or Form 1040NR—see above). You may also have to complete this part to indicate that you qualify for an exception to the additional tax on early distributions or for certain Roth IRA distributions (see instructions).

1	Early distributions included in income. For Roth IRA distributions, see instructions	1	
2	Early distributions included on line 1 that are not subject to the additional tax (see instructions). Enter the appropriate exception number from the instructions: ________	2	
3	Amount subject to additional tax. Subtract line 2 from line 1	3	
4	**Additional tax.** Enter 10% (.10) of line 3. Include this amount on Form 1040, line 59, or Form 1040NR, line 57	4	
	Caution: *If any part of the amount on line 3 was a distribution from a SIMPLE IRA, you may have to include 25% of that amount on line 4 instead of 10% (see instructions).*		

Part II **Additional Tax on Certain Distributions From Education Accounts and ABLE Accounts.** Complete this part if you included an amount in income, on Form 1040 or Form 1040NR, line 21, from a Coverdell education savings account (ESA), a qualified tuition program (QTP), or an ABLE account.

5	Distributions included in income from a Coverdell ESA, a QTP, or an ABLE account	5	600
6	Distributions included on line 5 that are not subject to the additional tax (see instructions)	6	
7	Amount subject to additional tax. Subtract line 6 from line 5	7	600
8	**Additional tax.** Enter 10% (.10) of line 7. Include this amount on Form 1040, line 59, or Form 1040NR, line 57	8	60

Additional Tax on Excess Contributions to Traditional IRAs. Complete this part if you contributed more to your...

Note. Expenses are not qualified disability expenses if they are incurred at a time the beneficiary is not eligible (i.e., during periods of remission).

34. Prop. Treas. Reg. §1.529A-3(d).

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

Tax Reporting

Form 5498-QA, *ABLE Account Contribution Information*, must be filed with the IRS by May 31 for each ABLE account maintained during the previous calendar year. The state or its agency that establishes and maintains the qualified ABLE program must report the establishment of each ABLE account along with the other relevant information contained on Form 5498-QA.[35] Additionally, a qualified ABLE program that is required to file Form 5498-QA must provide a copy of the form or an acceptable substitute to the designated beneficiary by March 15.[36]

Form 5498-QA reports contributions made to an ABLE account during the year, less any excess contributions returned to the contributor. This form is also used to report rollover contributions, the cumulative contributions, the FMV of the account as of the end of the year, and the basis of eligibility. Form 5498-QA requires identification of the disability underlying the ABLE account.

If the beneficiary is eligible for an ABLE account under the social security disability insurance program (SSDI) or is blind, the code "A" is entered in box 6 on Form 5498-QA. If the beneficiary is eligible for an ABLE account under the supplemental security income program (SSI), the code "B" is entered in box 6. If the beneficiary established eligibility by filing a disability certificate, the code "C" is entered in box 6.[37]

> **Note.** Additional information on determining whether an ABLE account is eligible under SSDI or SSI can be found at **uofi.tax/15a7x3** [www.ssa.gov/disability/professionals/bluebook/general-info.htm].

The codes for box 7 of Form 5498-QA indicate the type of disability for which the beneficiary is receiving ABLE account qualifying benefits.[38]

1. Developmental disorder (including autism)
2. Intellectual disability
3. Psychiatric disorder
4. Nervous disorder (including blindness and deafness)
5. Congenital anomaly (including Down syndrome)
6. Respiratory disorder
7. Other

35. REG-102837-15, 2015-27 IRB 43.
36. Instructions for Form 5498-QA.
37. Ibid.
38. Ibid.

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

Example 3. Hope is 12 years old and deaf. During 2015, Hope's parents contributed $5,000 to an ABLE account to cover her expenses. The account earned $500 during the year.

In February 2016, the Minnesota State Treasurer, which maintains the ABLE account for Hope, sends her the following Form 5498-QA.

☐ CORRECTED

ISSUER'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 ABLE contributions	OMB No. 1545-2262	
Office of the Minnesota State Treasurer		$ 5000	2015	**ABLE Account Contribution Information**
		2 Rollover contributions $	Form **5498-QA**	
ISSUER'S federal identification no. **01-0101010**	BENEFICIARY'S social security number **551-55-1111**	3 Cumulative contributions $ 5000	4 Fair market value $ 5500	**Copy B** **For Beneficiary**
BENEFICIARY'S name **Hope Bennet**		5 If checked, account was opened in 2015 ☒	6 Basis of eligibility **B**	This information is being furnished to the Internal Revenue Service.
Street address (including apt. no.) **44 Hare St.**		7 Code **4**		
City or town, state or province, country, and ZIP or foreign postal code **St. Paul, MN 55155**				
Account number (see instructions)				

Form **5498-QA** (keep for your records) www.irs.gov/form5498qa Department of the Treasury - Internal Revenue Service

DRAFT AS OF June 18, 2015

Distributions from an ABLE account are reported on Form 1099-QA, *Distributions from ABLE Accounts*.[39] This form must be filed by an officer or employee of the state or its agency that controls qualified ABLE accounts **and** makes distributions from them.[40]

Additionally, anyone required to file Form 1099-QA must provide a copy of the form or an acceptable substitute to each recipient of a distribution. Copy B of Form 1099-QA must generally be furnished to the recipient by January 31 of the year following the calendar year in which the distribution was made. The form must be filed with the IRS by the last day in February.[41]

Form 1099-QA reports the recipient's name and social security number, the gross distribution from the ABLE account (box 1), earnings on the distribution (box 2), and the basis of the distribution (box 3).[42] All distributions during the year are treated as one distribution. Box 4 is checked if any funds were rolled over from one program to another.

39. Instructions for Form 1099-QA.

40. REG-102837-15, 2015-27 IRB 43.

41. Instructions for Form 1099-QA.

42. Ibid.

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

Example 4. Use the same facts as **Example 3,** except Hope's parents paid $1,700 for hearing aids and medical testing for their daughter in 2015. They paid for these expenses using distributions from Hope's ABLE account. Earnings on the distributions were $170.

In January 2016, Hope receives the following Form 1099-QA.

☐ CORRECTED (if checked)

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Gross distribution	OMB No. 1545-2262	Distributions from ABLE Accounts
Office of the Minnesota State Treasurer		$ **1700**	2015	
		2 Earnings $ **170**	Form **1099-QA**	
PAYER'S federal identification no. **01-0101010**	RECIPIENT'S social security number **551-55-1111**	3 Basis $ **1530**	4 Program-to-program transfer ☐	**Copy B** **For Recipient**
RECIPIENT'S name **Hope Bennet**		5 If checked, ABLE account terminated in 2015 ☐	6 If this box is checked, the recipient is not the designated beneficiary ☐	This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
Street address (including apt. no.) **44 Hare St.**				
City or town, state or province, country, and ZIP or foreign postal code **St. Paul, MN 55155**				
Account number (see instructions)				

Form **1099-QA** (keep for your records) www.irs.gov/form1099qa Department of the Treasury - Internal Revenue Service

DRAFT AS OF June 19, 2015

Medicaid Payback

Any assets that remain in an ABLE account when a qualified beneficiary dies must be used to reimburse the state for any Medicaid payments it made on the beneficiary's behalf.[43] The payback amount is calculated based on amounts paid by Medicaid after the ABLE account is created. It excludes amounts paid by the beneficiary as premiums to a Medicaid buy-in program.[44]

A Medicaid buy-in program is an optional state Medicaid benefit for workers with disabilities who have earnings in excess of what is allowed under the traditional Medicaid rules.[45] Participating in this program allows disabled individuals who would otherwise be ineligible for Medicaid because of earnings to access the services and support they need.

Limited Investment

A program is not considered a qualified ABLE program unless it allows the beneficiary to direct the investment of contributions and earnings no more than two times per calendar year.[46]

Separate Accounting

An ABLE program must provide separate accounting for each designated beneficiary and may not allow any interest earned in the program (or any portion thereof) to be used as security for a loan.[47] Providing separate accounting requires allocating contributions and earnings to the designated beneficiary's account. This information must be provided to the beneficiary upon their request.

43. Prop. Treas. Reg. §1.529A-3(b)(4).
44. Prop. Treas. Reg. §1.529A-2(p)
45. *Medicaid Employment Initiatives.* Medicaid. [www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Delivery-Systems/Grant-Programs/Employment-Initiatives.html] Accessed on Jul. 8, 2015.
46. IRC §529A(b)(4); Prop. Treas. Reg. §1.529A-2(l).
47. Prop. Treas. Reg. §1.529A-2(i) and (m).

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

Bankruptcy

A debtor must declare any ABLE accounts upon filing for bankruptcy. The amount in an ABLE account is excludable from the property of a bankruptcy estate with respect to a debtor if the debtor's contributions were made no later than 365 days before filing the bankruptcy petition.[48] To qualify for the exclusion, the contributions must be for a designated beneficiary who is a child, stepchild, grandchild, or step-grandchild of the debtor.

The bankruptcy exclusion is available only to the extent that the funds are not pledged or promised in connection with any extension of credit and are not excess contributions. Up to $6,225 of the funds contributed to all ABLE accounts for the same beneficiary deposited no earlier than 720 days or no later than 365 days before the bankruptcy filing can be excluded in bankruptcy.[49]

In petitioning the court to grant bankruptcy relief, the debtor's monthly expenses may include contributions to a qualified ABLE account. These contributions are allowed to the extent that they are not excess contributions and that the designated beneficiary of the ABLE account is a child, stepchild, grandchild, or step-grandchild of the debtor.[50]

Death

When a beneficiary dies, their ABLE account is includable in their gross estate for estate-tax purposes under IRC §2031.[51] Payments of outstanding qualified disability expenses and payments of certain Medicaid claims may be deductible for estate-tax purposes if the requirements of IRC §2053 are met.

AFFORDABLE CARE ACT UPDATE

This section includes information on updates to the Affordable Care Act of 2010 (ACA) relevant to the tax practitioner. The following general areas are covered.

- Increase in the shared responsibility fee
- Hardship exemption claims without prior certification
- Calculating affordable coverage
- Employment reporting requirements for 2015
- Premium tax credit issues
- Recent U.S. Supreme Court cases

> **Note.** For a detailed overview and history of ACA updates, regulations, and cases, see **uofi.tax/15a7x4** [www.healthcarereformdashboard.com/tracker/].

48. 11 USC §541(b)(10).
49. Ibid.
50. 11 USC §707(b)(2)(A)(ii)(II).
51. Prop. Treas. Reg. §1.529A-4(d).

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

2015 INDIVIDUAL SHARED RESPONSIBILITY PAYMENT[52]

The ACA's individual mandate, which became effective January 1, 2014, generally requires individuals to obtain minimum essential coverage (MEC) or pay a penalty.[53] The penalty is often called the **shared responsibility payment.** Unless an individual qualifies for an exception, the monthly penalty is the **greater** of the following.

1. $325 per adult (up from $95 in 2014) plus $162.50 per child under age 18 (up from $47.50 in 2014), with a maximum penalty per family of $975 (up from $285 in 2014)
2. 2% (up from 1% in 2014) of the household's annual income above the tax filing threshold (The maximum penalty is the national average premium for a Bronze-level plan.)

> **Note.** For information about prior-year penalties and how to calculate them, see the 2014 *University of Illinois Federal Tax Workbook,* Volume A, Chapter 3: Affordable Care Act Update. For information about the exemptions applicable in 2015, see **uofi.tax/15a7x5** [www.healthcare.gov/fees-exemptions/exemptions-from-the-fee/].

HARDSHIP EXEMPTION CLAIMS WITHOUT PRIOR CERTIFICATION

Generally, an individual is exempt from the individual mandate for each month for which they qualify for one of several exemptions. One such exemption is the existence of a hardship, which may be based on several grounds.

> **Note.** For further details on the hardship exemption and the various circumstances under which the taxpayer may qualify for it, see the 2014 *University of Illinois Federal Tax Workbook,* Volume A, Chapter 3: Affordable Care Act Update, or Treas. Reg. §1.5000A-3.

Generally, to claim a **hardship,** the taxpayer must obtain a certification letter from the exchange attributable to their state. These exchanges are referred to as the Marketplace.[54] However, the IRS has issued guidance regarding the grounds upon which a hardship exemption may be claimed by a taxpayer **without** a Marketplace certification letter.[55] The hardship grounds that do not require certification apply when the taxpayer:[56]

- Has gross income below the applicable filing threshold,
- Has two or more family members and the combined cost of employer-sponsored coverage is unaffordable,
- Is eligible for coverage through an Indian Health Care provider, or
- Resides in a state that did not expand Medicaid eligibility under the ACA **and** has household income below a certain threshold.

---

52. *The Fee You Pay If You Don't Have Health Coverage.* U.S. Centers for Medicare & Medicaid Services. [www.healthcare.gov/fees-exemptions/fee-for-not-being-covered] Accessed on Jul. 8, 2015.

53. IRC §5000A.

54. Treas. Reg. §1.5000A-3(h).

55. TD 9705, 79 Fed. Reg. 70,464 (Nov. 26, 2014).

56. IRS Notice 2014-76, 2014-50 IRB 946.

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

In **2014,** the monthly penalty did not apply prior to obtaining coverage for individuals who experienced particular hardships in attempting to obtain coverage on a timely basis. The penalty did not apply to individuals who met one of the following conditions.

- Applied for Children's Health Insurance Program (CHIP) coverage during the 2014 open-enrollment period
- Obtained MEC before the open-enrollment period that ended on March 31, 2014
- Did not complete enrollment in MEC before March 31, 2014, because of high traffic on Marketplace websites but their online application was pending on March 31 or their paper application was received by the Marketplace by April 7, 2014 (In addition, they must have paid their first month's premium by the deadline established by their chosen insurance company.)
- Enrolled outside the Marketplace in MEC that was effective on or before May 1, 2014

Note. IRS Notice 2014-76, which identifies hardship exemptions, was released on December 8, 2014. Practitioners may wish to review the returns of clients who included individual responsibility payments on their 2014 returns to see if they met one of these exemptions. For more information on the hardship grounds under which a certification letter is not required, see IRS Notice 2014-76.

CALCULATING AFFORDABLE COVERAGE

Several exceptions and exemptions apply to the individual mandate. One exemption applies if the individual is unable to obtain affordable coverage. Coverage is deemed unaffordable if the individual's cost of coverage (referred to as the **required contribution)** is more than a certain percentage of their household income.[57]

The percentage of income used to determine affordability is indexed[58] by the U.S. Department of Health and Human Services (HHS). The percentages that apply for the 2014 through 2016 tax years are as follows.[59]

Tax Year	Percentage of Household Income
2014	8.00%
2015	8.05%
2016	8.13%

Note. Definitions and details about how affordability is calculated for individuals who do and do not qualify for employer-sponsored coverage are provided in the **2014** *University of Illinois Federal Tax Workbook,* Volume A, Chapter 3: Affordable Care Act Update, and the **2013** *University of Illinois Federal Tax Workbook,* Volume A, Chapter 2: Affordable Care Act Update.

57. IRC §5000A(e)(1).

58. IRC §5000A(e)(1)(D).

59. Rev. Proc. 2014-37, 2014-33 IRB 363; Rev. Proc. 2014-62, 2014-50 IRB 948.

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

Treatment of Certain Employer Contributions[60]

On November 26, 2014, the IRS issued guidance regarding how employer contributions to §125 plans and health reimbursement arrangements (HRAs) affect an employee's cost of coverage for purposes of determining if the coverage is affordable.

Employer §125 Plan Contributions. The amount of an employer's IRC §125 plan contribution reduces the employee's cost of coverage if **all three** of the following requirements are met.[61]

1. The employee cannot elect to receive the contribution amount as a taxable benefit (for example, opting to receive the amount in cash).
2. The §125 contribution amount may be used to pay for MEC.
3. The §125 contribution amount may be used only to pay for medical care (as defined in IRC §213).

Note. IRC §213 defines medical expenses for purposes of deducting such expenses.

During the open comment period of the proposed regulations, a commenter suggested that the employer contribution to a §125 plan be added to the employee's household income. The IRS rejected this suggestion, because in calculating household income for purposes of determining if coverage is affordable, the Code includes only the portion of the employee's required contribution paid through a salary reduction arrangement. A §125 plan is not a salary reduction arrangement.[62]

Employer HRA Contributions. As mentioned earlier, an individual may be exempt from the requirement to obtain coverage if affordable coverage is not available.

The IRS provided guidance on how employer HRA contributions affect an employee's required contribution for purposes of calculating their overall cost of coverage and determining whether affordable coverage is available to them. Employer HRA contributions related to the current plan year reduce the employee's cost of coverage if both the following requirements apply.[63]

- The HRA is **integrated** (as defined in IRS Notice 2013-54) with the primary plan in which the employee is enrolled.
- The HRA and the employer-sponsored plan in which the employee is enrolled are offered by the **same** employer.

In addition, employer contributions to an HRA reduce an employee's cost of coverage only to the extent the amount of the contribution is known within a reasonable period before the employee must decide whether to enroll in the plan.

Note. For further discussion of the integration of an HRA with an employer-sponsored plan and transitional relief from the $100-per-day excise tax penalty for violating this requirement, see the 2015 *University of Illinois Federal Tax Workbook,* Volume B, Chapter 5: Small Business Issues.

60. TD 9705, 79 Fed. Reg. 70,464 (Nov. 26, 2014).

61. Treas. Reg. §1.5000A-3(e)(3)(ii)(E).

62. TD 9705, 79 Fed. Reg. 70,464, 70,465 (Nov. 26, 2014).

63. Treas. Reg. §1.5000A-3(e)(3)(ii)(D).

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

EMPLOYER INFORMATION REPORTING REQUIREMENTS FOR 2015[64]

IRC §4980H(c)(2) defines an applicable large employer (ALE) as an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year. This is the definition of ALE regardless of the tax year or the employer's exposure to penalties. However, for 2015, only ALEs with 100 or more full-time employees (including FTEs) in the preceding calendar year are subject to penalties.[65]

> **Note.** For additional information on various transitional measures implemented by the IRS, see the 2014 *University of Illinois Federal Tax Workbook,* Volume A, Chapter 3: Affordable Care Act Update.

ALEs are subject to certain reporting requirements regarding the healthcare coverage they provide to their employees.[66] The filing requirement for information returns may be met using the following two forms.[67]

- Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*
- Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*

> **Note.** These forms are available at **www.irs.gov.**

Form 1095-C (or its equivalent) must be completed for each employee who was a full-time employee[68] for one or more months during the calendar year.[69] In general, a full-time employee is one who works an average of at least 30 hours per week. There are two methods for determining if an employee was a full-time employee for reporting purposes.[70]

1. The **monthly measurement method,** which involves counting the number of hours for each employee each calendar month
2. The **lookback measurement method,** which involves averaging the employee's hours over a standard measurement period

> **Note.** Calculating hours using either of these methods can be complex if the employer has seasonal employees, salaried employees, employees who take unpaid leave, etc. For more information, see Treas. Reg. §54.4980H-3. Further details are provided in the 2013 *University of Illinois Federal Tax Workbook,* Volume A, Chapter 2: Affordable Care Act Update.

64. Treas. Reg. §301.6056-1.
65. TD 9655, 2014-9 IRB 541.
66. IRC §6056.
67. Treas. Reg. §301.6056-1(d)(2).
68. Treas. Reg. §301.6056-1(b)(6).
69. Treas. Reg. §301.6056-1(f)(2).
70. Treas. Reg. §301.6056-1(b)(6), referencing Treas. Reg. §54.4980H-1(a)(21), referencing Treas. Reg. §54.4980H-3.

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

Form 1095-C must be sent to the IRS. A copy must also be sent to each employee at their last-known address.

Note. Employee statements may be furnished electronically. For the applicable rules, including obtaining the required consent from the employee, see Treas. Reg. §301.6056-2.

The applicable due dates for the initial forms due to the IRS and to employees are summarized in the following table. Any ALE that issues 250 or more Forms 1095-C must file them electronically.[71]

Size of Employer	Tax Year for Which Reporting Requirement Starts	Due Date to File Forms 1095-C and 1094-C to IRS[72]	Due Date to Furnish Required Statement to Full-Time Employees
0-49 full-time employees (including FTEs)	Not applicable	Not applicable	Not applicable
ALEs with 100+ full-time employees (including FTEs)	2015[73]	• February 29, 2016 for paper returns • March 31, 2016 if electronic filing is used	February 1, 2016
ALEs with 50+ full-time employees (including FTEs)	2015	• February 29, 2016 for paper returns • March 31, 2016, if electronic filing is used	February 1, 2016

Note. Some employers may qualify to use one of two **alternative methods** for meeting the filing requirements. These methods are referred to as the **qualifying offers method** and the **98% offer method.** Both have been developed to allow qualifying employers to save time by submitting simplified statements. However, under each method, the employer must certify that it offered affordable MEC providing minimum value. For details on these two methods, see Treas. Reg. §301.6056-1(j).

Group Reporting

Under the ACA's employer mandate, some employers must meet specific requirements for providing healthcare coverage to employees or pay a penalty. An ALE may consist of multiple related entities because of aggregation rules used to determine whether a controlled group of entities is subject to the employer mandate.

Note. For further details about the employer mandate, see the 2013 *University of Illinois Federal Tax Workbook,* Volume A, Chapter 2: Affordable Care Act Update. For further details on the aggregation rules that are applied to controlled groups of entities for employer mandate purposes, see the 2013 *University of Illinois Federal Tax Workbook,* Volume A, Chapter 2: Affordable Care Act Update, and Treas. Reg. §54.4980H-2(d).

71. Treas. Reg. §301.6011-2; IRS Pub. 5196, *Affordable Care Act: Reporting Requirements for Applicable Large Employers*.

72. Instructions for Forms 1094-C and 1095-C.

73. *Questions and Answers on Reporting of Offers of Health Insurance Coverage by Employers (Section 6056)*. May 19, 2015. Internal Revenue Service. [www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Reporting-of-Offers-of-Health-Insurance-Coverage-by-Employers-Section-6056#How%20and%20When%20to%20Report%20the%20Required%20Information] Accessed on Jul. 9, 2015.

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

Each entity within an aggregated ALE is referred to as an ALE member.[74] Even though the entire group may be subject to the employer mandate due to the application of aggregation rules, **each individual ALE member** is responsible for meeting its own reporting requirements. Therefore, each ALE member must file its own Forms 1095-C and 1094-C with the IRS and furnish the necessary statements to its own full-time employees.[75]

Penalties[76]

Generally, an ALE is subject to a penalty if it files the required forms late or does not file them at all. With a control group, each ALE member is subject to penalties if it files the required forms late or not at all.

Beginning with returns required to be filed after December 31, 2015, the penalties will increase for **all unfiled** information returns (for example, Forms W-2 and 1099-MISC). Under IRC §6721, failing to file an information return with the IRS (such as Form 1095-C or 1094-C) will be subject to a penalty of $250 for each return not filed. In addition, under IRC §6722, failing to furnish copies of required information returns to full-time employees will be subject to a $250 penalty for each return not filed. Failing to file required forms with the IRS and failing to provide required statements to employees are **separate penalties. Each** is subject to an annual maximum of $3 million.

However, for each type of filing violation, reduced penalties and reduced annual maximum amounts are provided if a correction is made in a timely manner. In addition, reduced penalties apply to small business taxpayers whose gross receipts average less than $5 million over the three prior tax years.

The following table summarizes the penalty provisions that will apply to returns due after December 31, 2015.

Timing of Correction	Applicable Penalty Per Failure	Applicable Annual Maximum Penalty	Reduced Maximum Penalty for Small Business Taxpayers
Within 30 days after the due date for the information return	$ 50	$500,000	$175,000
From 31 days after due date to August 1 of the year in which the return is required	$100	$1 million	$500,000
After August 1 of the year in which the return is required	$250	$3 million	$1 million

Penalties under both IRC §§6721 and 6722 may be triggered if the information on a required return is not sufficiently complete or accurate. Both penalties may be increased if intentional disregard is associated with the failure to file.

However, **each penalty may be waived if the failure to file is shown to result from reasonable cause and not willful neglect.**[77] There are also exceptions to the penalties for a de minimis failure to include all the required information if the error is corrected on or before August 1 of the year in which the return is required to be filed.

Note. For further details on the inaccuracies or omissions that may constitute failure to file, the applicable de minimis rules, and other rules regarding these penalties, see IRC §§6721, 6722, and 6724.

---

74. Treas. Reg. §54.4980H-1(a)(5).

75. Treas. Reg. §301.6056-1(c)(1).

76. IRC §§6721 and 6722.

77. IRC §6724.

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

Penalty Relief. The IRS indicated that the §§6721 and 6722 penalties will not be imposed for Forms 1095-C and 1094-C in 2016 for certain employers that file the required returns with incorrect or incomplete information. An employer must be able to show that it made a good faith effort to comply with the filing requirements.[78]

Observation. No IRS guidance is available on what an employer must do to demonstrate that it made a good faith effort to comply. Likewise, no guidance is available on what degree of completeness or correctness on Forms 1095-C and 1094-C will be acceptable under this penalty relief. However, in addition to this "good faith" relief provision, employers seeking penalty relief may also use the "reasonable cause" waiver under IRC §6724.

Note. The IRS provided extensive guidance on employers' information reporting requirements. It can be found at **uofi.tax/15a7x6** [www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Reporting-of-Offers-of-Health-Insurance-Coverage-by-Employers-Section-6056] and **uofi.tax/15a7x7** [www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-about-Information-Reporting-by-Employers-on-Form-1094-C-and-Form-1095-C].

PREMIUM TAX CREDIT ISSUES

Note. For more information about the premium tax credit, see IRS Pub. 974, *Premium Tax Credit (PTC)*.

A person who obtains health insurance through the Marketplace may qualify for a tax credit that reduces their out-of-pocket costs of obtaining health insurance coverage. A qualifying person may choose to receive the credit in advance to help pay for the coverage each month. However, the actual amount of the premium tax credit (PTC) is determined after the end of the year based on the household's total modified adjusted gross income (MAGI) and family size.

The Marketplace makes the **preliminary** determination of an individual's eligibility and the amount of the PTC. Both are determined in part by the amount of the **projected** household income for the current year or the household's MAGI from the prior year's income tax return.[79]

In essence, the Marketplace PTC determination is an estimate. Thus, it is necessary for the recipient to file a return to **reconcile** the advanced PTC (APTC) amount received with the amount for which they are actually qualified. Accordingly, any person who receives an APTC must file a tax return by the due date for that return (including extensions)[80] for the year in which the advance payments were made.[81]

---

78. *Questions and Answers on Reporting of Offers of Health Insurance Coverage by Employers (Section 6056)*. May 19, 2015. [www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Reporting-of-Offers-of-Health-Insurance-Coverage-by-Employers-Section-6056] Accessed on Jul. 1, 2015.

79. 42 USC §18081(b)(3)(A).

80. Prop. Treas. Reg. §1.6011-8(a).

81. Treas. Reg. §1.6011-8(a).

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

The actual PTC is calculated on Form 8962, *Premium Tax Credit (PTC*). The amount is based on the following factors.[82]

- The number of exemptions claimed on the taxpayer's return
- The household's MAGI for the year, relative to the federal poverty income guidelines
- The cost of the applicable benchmark plan

Note. The applicable benchmark plan is the second lowest cost silver plan (SLCSP) offered through the taxpayer's Marketplace.[83] For further details on the procedure used to determine the taxpayer's PTC eligibility and amount, see the 2012 *University of Illinois Federal Tax Workbook,* Volume A, Chapter 7: Healthcare Reform Act.

The credit is reduced (but not below zero) by any part of the APTC used to pay the taxpayer's health insurance premiums during the year.[84] If the actual PTC for the year exceeds the APTC, the excess is treated as a refundable credit to the taxpayer.[85]

If the APTC **exceeds the actual PTC** for the year, the taxpayer may need to repay the difference.[86] However, the amount of the repayment is limited under the Code if the taxpayer's income is within certain ranges based on the federal poverty guideline for the size of the family involved.

Note. Practitioners may want to remind their clients who receive subsidies to notify the Marketplace of any unplanned shifts in income. Many taxpayers did not include all of their 2014 income in the estimates they provided to the Marketplace when enrolling in subsidized healthcare plans. Perhaps they were not aware that certain income was includable or they did not know at the time they enrolled that they would receive the additional income in 2014.

A study[87] released in March 2015 by the Kaiser Family Foundation estimated that 50% of the households that received APTCs in 2014 would be required to make repayments and that 45% would receive refunds. Of those required to make repayments, 7% were projected to owe between $2,000 and $5,000 and 2% were projected to owe $5,000 or more.

---

82. Treas. Reg. §1.36B-4 and Instructions for Form 8962.
83. Treas. Reg. §1.36B-3(f).
84. IRC §36B(f)(1).
85. Treas. Reg. §1.36B-4(a)(1).
86. IRC §36B(f)(2)(A).
87. *Repayments and Refunds: Estimating the Effects of 2014 Premium Tax Credit Reconciliation.* Mar. 24, 2015. The Henry J. Kaiser Family Foundation. [kff.org/health-reform/issue-brief/repayments-and-refunds-estimating-the-effects-of-2014-premium-tax-credit-reconciliation/] Accessed on Jul. 11, 2015.

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

Dependents Enrolled and Claimed by Different Taxpayers[88]

The IRS has provided guidance on how to calculate and reconcile the actual PTC if one taxpayer enrolls a dependent in a health plan but another taxpayer claims the personal exemption for that dependent. A dependent who is enrolled by one taxpayer and whose personal exemption is claimed by another taxpayer is referred to as a **shifting enrollee.**[89]

In this situation, the taxpayers may agree on an **allocation percentage** of:

- The premiums paid,
- The cost of the appropriate benchmark plan, and
- The amount of any APTC that was received during the year.

The agreed allocation percentage for these items must be between zero and 100%. The same allocation percentage must be used for all three components.

Example 5. Martin and Diane are divorced. They have two children, Tessa and Katie. Diane enrolls herself and the two children in a qualified plan for 2015. The cost of the coverage for Diane and the children is $16,000.

In late 2014, when Diane enrolls herself and the children in the plan, the Marketplace approves an APTC of $8,238 for her for 2015. The following table summarizes the relevant amounts used to arrive at this APTC.

Benchmark plan cost (Diane, Tessa, and Katie)		$14,000
Projected income for 2015	$60,270	
Applicable percentage	× 9.56%	
Contribution amount	$ 5,762	(5,762)
Marketplace-approved APTC		$ 8,238

Note. The **applicable percentage** used by the taxpayer depends upon the taxpayer's household income in relation to the federal poverty guidelines in effect for the tax year. For further details regarding the taxpayer's applicable percentage, including a detailed example of how that percentage is used in the required calculations, see the 2013 *University of Illinois Federal Tax Workbook,* Volume A, Chapter 2: Affordable Care Act Update.

Katie lives with Martin for more than half of 2015. Martin will claim a personal exemption for Katie on his 2015 return.

Martin and Diane agree to an allocation percentage of 20%/80%. Accordingly, the following amounts are allocated to Martin and Diane.

Item	Martin (20%)	Diane (80%)	Total
Premium cost	$3,200	$12,800	$16,000
Benchmark plan cost	2,800	11,200	14,000
APTC received	1,648	6,590	8,238

Martin is responsible for reconciling $1,648 of APTC. Diane is responsible for reconciling the remaining $6,590.

---

[88] Temp. Treas. Reg. §1.36B-4T(a)(1)(ii).

[89] TD 9683, 79 Fed. Reg. 43622, 43624 (Jul. 28, 2014).

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

Diane files her 2015 tax return in early 2016. Her actual 2015 income is $63,700. For reconciliation purposes, Diane's family size is two persons (Diane and Tessa). The following table summarizes the relevant amounts and calculations.

Diane's benchmark cost for reconciliation		$11,200
Diane's actual household income for 2015	$63,700	
Diane's applicable percentage	× 9.56%	
Contribution amount	$ 6,090	(6,090)
Actual PTC calculated for 2015		$ 5,110

Diane is responsible for the reconciliation of $6,590 of APTC but actually qualifies for a PTC of only $5,110 for 2015. Therefore, she received an excess PTC of $1,480 ($6,590 − $5,110). She may be required to repay this amount. In addition, Martin must take into account his allocated amounts for the reconciliation calculations on his 2015 return.

If the taxpayers cannot agree on allocation percentages, a "default" allocation will be used. The default allocation is calculated using the following formula.

$$\text{Default allocation} = 100 \times \left(\text{Number of shifting enrollees} \div \begin{array}{c}\text{Number of individuals enrolled} \\ \text{by the enrolling taxpayer in} \\ \text{the same qualified plan}\end{array}\right)$$

Example 6. Use the same facts as **Example 5,** except Martin and Diane cannot agree on an allocation percentage. The default allocation will therefore be used. The default allocation that applies to Martin is calculated as follows.

$$\text{Default allocation} = 100 \times (\text{1 shifting enrollee (Katie)} \div \text{3 individuals enrolled (Diane, Tessa, Katie)})$$

Therefore, Martin's allocation percentage is 33%. He uses this percentage on his 2015 return to reconcile the premium cost, benchmark plan cost, and APTC.

Note. The rules about shifting enrollees and allocating amounts between taxpayers are addressed in Temp. Treas. Reg. §1.36B-4T. Tax preparers need to ensure that the appropriate allocated amounts are reflected on each taxpayer's returns and that their respective calculations relating to the PTC and PTC reconciliation are accurate. In addition, tax preparers are well advised to retain documentation regarding any allocation agreement between taxpayers (even though no direct guidance on this subject is provided in the temporary regulation).

Change in Marital Status and APTC Reconciliation[90]

Divorced Taxpayers. The IRS has provided guidance regarding APTC reconciliation for divorced taxpayers. For purposes of APTC reconciliation, divorced taxpayers must allocate:

- The cost of the applicable benchmark plan,
- The cost of the plan in which they are enrolled, and
- Any APTC payments they received for the period during the year they were not married.

90. Temp. Treas. Reg. §1.36B-4T(b)(3); Treas. Reg. §1.36B-4(b)(2)(i).

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

This allocation must be made if **any** of the following apply.

- The divorced taxpayers are enrolled in the same plan.
- One of the taxpayers has a dependent enrolled in the former spouse's plan.
- One of the taxpayers is enrolled as a dependent in the former spouse's plan.

The divorced taxpayers may agree on an allocation percentage. If they cannot agree, the IRS will use an allocation of 50% for all items to be allocated for each divorced taxpayer.

> **Note.** For further details associated with the allocation between divorced taxpayers, including examples, see Temp. Treas. Reg. §1.36B-4T or IRS Pub. 974.

Recently Married Taxpayers. Taxpayers who marry during the tax year may use an optional method for computing and reconciling the APTC with the PTC.[91] This method may be used only to reduce the tax liability associated with an APTC repayment. It cannot be used to create or increase a credit.[92]

The taxpayers must have been **unmarried on the first day** of the tax year to use the optional method. In addition, the taxpayers must file a joint return for the year.

> **Note.** IRS Pub. 974 includes a complete step-by-step explanation of this method and five worksheets to use for making the calculation, as well as examples. For further details about the alternative method for recently married taxpayers, including examples, see Treas. Reg. §1.36B-4(b).

Reconciliation of APTC with No Personal Exemption Claimed

A taxpayer claiming a personal exemption for an individual enrolled in a Marketplace plan must reconcile the amount of any APTC received during the year.[93] If no one claims the exemption for an enrolled individual, the taxpayer who enrolled them in the Marketplace plan is responsible for reconciling the APTC on their return.[94] If the taxpayer is not claimed on any return but received an APTC for the year, they are not eligible for the PTC and must reconcile the APTC amounts received.

> **Observation.** A taxpayer who fails to provide their correct number of dependents to the Marketplace may have a beginning-of-year PTC calculation based on a decreased poverty level amount (because this is based on family size) and a decreased benchmark plan cost (also based on family size). The guidance under Temp. Treas. Reg. §1.36B-4T is intended to ensure that any excess APTC payments that result are repaid.[95]

---

91. Treas. Reg. §1.36B-4(b)(2)(i).
92. Ibid.
93. IRS Pub. 974, *Premium Tax Credit (PTC)*.
94. Temp. Treas. Reg. §1.36B-4T(a)(1)(ii)(C).
95. Treas. Reg. §1.36B-4(a)(1)(ii) and Temp. Treas. Reg. §1.36B-4T(a)(4).

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

PTC for Self-Employed Taxpayers[96]

A taxpayer who is self-employed and qualifies for a PTC might obtain a "double benefit" in connection with their health insurance premiums: the above-the-line deduction for health insurance premiums[97] and the refundable PTC. Accordingly, it is necessary to integrate these tax provisions.

Generally, the taxpayer's self-employed health insurance (SEHI) deduction is limited to the **lesser** of:

- The premiums paid less the PTC for the year, or
- The amount of premiums not paid by an APTC plus any repayment of excess APTC (after applying the limitations on repayment under IRC §36B(f)(2)).

In addition, because the SEHI deduction is "above the line," it is taken into account before calculating the taxpayer's AGI. The PTC is based in part on the amount of the taxpayer's AGI. However, as mentioned previously, the amount of the SEHI deduction depends on the amount of the PTC. This creates a circular relationship between the deduction and the credit.

Accordingly, the IRS provided guidance about the required calculations for self-employed taxpayers who qualify for a PTC. Generally, the guidance provides two options for making an iterative calculation to arrive at the correct amount.

> **Note.** For further details on the limitations on the SEHI deduction and the iterative calculation required to arrive at the correct PTC, see Temp. Treas. Reg. §1.36B-4T(a)(3)(iii), Rev. Proc. 2014-41, and IRS Pub. 974.

Victims of Domestic Abuse or Abandonment[98]

Taxpayers who are married at the end of the tax year generally must file jointly to qualify for the PTC.[99] For spouses who are married but file separately (MFS) because they are victims of domestic abuse or abandonment, special rules allow them to qualify for the PTC. Under these circumstances, the taxpayer may qualify for the PTC if they:

- Live apart from their spouse at the time their own return is filed,
- Are unable to file jointly (MFJ) because they are a victim of domestic abuse or abandonment, and
- Certify on their return that they meet these requirements.

A taxpayer may qualify for the PTC under these special rules for only three consecutive years. All the facts and circumstances of the taxpayer's situation are considered in determining whether they meet the requirements. The required certification is made by checking the box labeled "relief" in the top right corner of Form 8962.

The taxpayers are instructed **not to include** with their return any documentation of the abuse or abandonment.[100] However, such documentation should be retained in case the IRS requests it to establish that the taxpayer met the requirements for relief.[101]

> **Note.** For additional information on the special rules for victims of domestic abuse or abandonment, including relevant definitions, see **uofi.tax/15a7x8** [www.irs.gov/Affordable-Care-Act/Individuals-and-Families/Questions-and-Answers-on-the-Premium-Tax-Credit].

---

96. Temp. Treas. Reg. §1.36B-4T(a)(3)(iii); Rev. Proc. 2014-41, 2014-33 IRB 364.

97. IRC §162(l).

98. IRS Pub. 974, *Premium Tax Credit (PTC)*.

99. Temp. Treas. Reg. §1.36B-2T(b)(2).

100. Instructions for Form 8962; IRS Pub. 974; *Questions and Answers on the Premium Tax Credit.* Mar. 27, 2015. [www.irs.gov/Affordable-Care-Act/Individuals-and-Families/Questions-and-Answers-on-the-Premium-Tax-Credit] Accessed on Jul. 11, 2015.

101. *Questions and Answers on the Premium Tax Credit.* Mar. 27, 2015. Internal Revenue Service. [www.irs.gov/Affordable-Care-Act/Individuals-and-Families/Questions-and-Answers-on-the-Premium-Tax-Credit] Accessed on Jul. 2, 2015.

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

SUPREME COURT CASES ON AFFORDABLE CARE ACT ISSUES

Since June 2014, two Supreme Court cases have addressed ACA issues. A summary of each case follows.

Burwell, Secretary of Health and Human Services, et al. v. Hobby Lobby Stores, Inc., et al., 523 U.S. ___ (2014).

Facts. Hobby Lobby Stores, Inc. is a national arts-and-crafts chain owned by the Green family. The chain employs over 13,000 people in over 500 stores. The owners assert that they are required to run their business "in accordance with their religious beliefs and moral principles," including the belief that certain types of contraception are immoral. Terms of the ACA specify that certain employer group health plans must provide various types of preventative care, including contraceptive methods approved by the U.S. Food and Drug Administration (FDA).[102]

Specific exemptions from the employer mandate exist for nonprofit religious institutions. However, no such exemption existed for religious for-profit companies such as Hobby Lobby. Hobby Lobby faced severe tax penalties under the employer mandate because it refused to provide benefits related to certain contraceptives. The Green family challenged the contraception requirement, arguing that it violates the Religious Freedom Restoration Act of 1993[103] (RFRA).

Issue. Does the RFRA allow a for-profit company to deny its employees contraceptives in the employer-sponsored health plan because of the religious objections of its owners?

Holding. The Court ruled in favor of Hobby Lobby. It stated that the contraception requirement forces closely held corporations either to fund an aspect of health coverage that violates stated religious principles or to pay severe fines under the employer mandate. Either result poses a substantial burden on such corporations that may be alleviated by extending the existing exemptions for nonprofit religious organizations to closely held for-profit corporations. The religious exemption therefore is extended to closely held corporations if religious grounds exist for denying contraception benefits through an employer-sponsored health plan.

Regulatory Response. In response to the *Hobby Lobby* decision, the U.S. Departments of the Treasury, Labor, and HHS have all issued final preventative care ACA regulations amending the relevant group plan rules. These regulations are intended to extend the religious exemption regarding the provision of contraceptives to closely held for-profit entities.

For an employer to be eligible as a "closely held for-profit entity," more than 50% of the value of ownership interests generally must be owned directly or indirectly by five or fewer individuals. However, the final regulations indicate that a "substantially similar" structure may also qualify.

> **Note.** For further details about the extension of the exemption to closely held for-profit entities, including relevant definitions and what constitutes a **substantially similar structure,** see TD 9726.[104]

---

[102] 42 USC §300gg-13(a)(4).

[103] 42 USC §2000bb.

[104] TD 9726, 80 Fed. Reg. 41,317 (Jul. 14, 2015).

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.

King, et al. v. Burwell, Secretary of Health and Human Services, et al., 576 US ___ (2015).

Facts. The ACA requires each state to establish a "state exchange" through which people may purchase health insurance coverage. However, if a state does not establish an exchange, the ACA requires HHS to establish a federal exchange for it.

The ACA also provides a PTC and other cost-saving benefits to a taxpayer who obtains coverage through one of the state exchanges described in the ACA. Through a regulation,[105] the IRS treats state exchanges and federal exchanges equally for this purpose.

The State of Virginia declined to establish an exchange. Therefore, residents of Virginia must use a federal exchange. A group of Virginia residents argued that the IRS exceeded its authority by treating state and federal exchanges equally. The group further argued that the PTC and other benefits are only available through a state exchange, because that is what the ACA says. Moreover, they argued that because Virginia uses a federal exchange, no PTC or other cost-saving benefits are available to Virginians.

If the Court were to agree with the group's reasoning, the out-of-pocket costs of the insurance premiums would exceed 8% of the plaintiffs' income. They could therefore claim the "affordable coverage unavailable" exemption to the individual mandate.

Issue. Did the IRS exceed its authority when it issued a regulation treating state and federal exchanges equally?

Holding. The Court ruled against the plaintiffs. The IRS regulation is valid, and state and federal exchanges can be treated equally. Even though the ACA used the term "state exchange," the overall language of the ACA clearly indicates Congress's intent in passing this legislation was to make the PTC and other cost-saving benefits available nationally to all qualifying persons, regardless of whether a state or federal exchange is used to obtain coverage.

Chief Justice Roberts explained the Court's reasoning as follows.

> *The argument that the phrase "established by the State" would be superfluous if Congress meant to extend tax credits to both State and Federal Exchanges is unpersuasive. This Court's "preference for avoiding surplusage constructions is not absolute." Lamie v. United States Trustee, 540 U.S. 526, 536. And rigorous application of that canon does not seem a particularly useful guide to a fair construction of the Affordable Care Act, which contains more than a few examples of inartful drafting. The Court nevertheless must do its best, "bearing in mind the 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'"*

---

105. 45 CFR §155.20.

Copyrighted by the Board of Trustees of the University of Illinois.
This information was correct when originally published. It has not been updated for any subsequent law changes.