

Subsec. (a)(4). Pub. L. 95-599 substituted “6427(h)” for “6427(g)”.

Subsec. (b). Pub. L. 95-599 substituted “6427(h)” for “6427(g)”.

1976—Subsec. (a)(1). Pub. L. 94-455, §1906(b)(8), substituted “6420(g)” for “6420(h)”.

Subsec. (a)(3). Pub. L. 94-455, §1906(b)(9), substituted “6424(f)” for “6424(g)”.

Subsec. (a)(4). Pub. L. 94-530 substituted “6427(g)” for “6427(f)”.

Subsec. (b). Pub. L. 94-530, which directed the amendment of subsec. (c) by substituting “6427(g)” for “6427(f)”, was executed to subsec. (b) to reflect the probable intent of Congress and the redesignation of subsec. (c) as (b) by Pub. L. 94-455.

Pub. L. 94-455, §1901(a)(3), redesignated subsec. (c) as (b) and substituted “section 6421(i), 6424(f), or 6427(f), is payable” for “section 6421(i), 6424(g) or 6427(f) is payable”. Former subsec. (b), relating to determination of taxpayers first taxable year with respect to tax credit for certain uses of gasoline and lubricating oil, was struck out.

Subsec. (c). Pub. L. 94-455, §1901(a)(3), redesignated subsec. (c) as (b).

1970—Pub. L. 91-258, §207(c)(1), inserted reference to special fuels in section catchline.

Subsec. (a)(4). Pub. L. 91-258, §207(c)(2), added par. (4).

Subsec. (c). Pub. L. 91-258, §207(c)(3), (4), inserted references to sections 6427 and 6427(f), respectively.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title VI, §6023(32), July 22, 1998, 112 Stat. 826, provided that: “The amendments made by this section [amending this section and sections 45A, 59, 72, 142, 501, 512, 543, 871, 1017, 1250, 3121, 3401, 4092, 4221, 4222, 4973, 4975, 6039, 6050R, 6103, 6416, 6421, 6427, 6501, 7434, 7702B, 7872, and 9502 of this title] shall take effect on the date of the enactment of this Act [July 22, 1998].”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1606(c), Aug. 20, 1996, 110 Stat. 1839, provided that: “The amendments made by this section [amending this section and section 6427 of this title] shall apply to vehicles purchased after the date of the enactment of this Act [Aug. 20, 1996].”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1703(e)(2)(F) of Pub. L. 99-514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99-514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99-514 set out as a note under section 4081 of this title.

Amendment by section 1877(a) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 911(d)(2)(A) of Pub. L. 98-369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98-369, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-424, title V, §515(c), Jan. 6, 1983, 96 Stat. 2182, provided that: “The amendments made by this section [amending sections 39 [now 34], 874, 882, 4101, 4102, 4221, 4222, 6201, 6206, 6416, 6421, 6504, 6675, 7210, 7603 to 7605, 7609, and 7610 of this title and repealing sections

4091 to 4094 and 6424 of this title] shall apply with respect to articles sold after the date of the enactment of this Act [Jan. 6, 1983].”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-223 effective on Jan. 1, 1979, see section 232(h)(2) of Pub. L. 96-223, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-618, title II, §233(d), Nov. 9, 1978, 92 Stat. 3192, provided that: “The amendments made by this section [amending sections 39 [now 34], 4041, 4221, 4483, 6416, 6421, 6424, 6427, 6504, and 6675 of this title and amending a provision set out as a note under section 120 of Title 23, Highways] shall take effect on the first day of the first calendar month which begins more than 10 days after the date of the enactment of this Act [Nov. 9, 1978].”

Amendment by Pub. L. 95-599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95-599, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94-530 effective on Oct. 1, 1976, see section 1(d) of Pub. L. 94-530, set out as a note under section 4041 of this title.

Amendment by section 1901(a)(3) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(8), (9) of Pub. L. 94-455, to take effect on Feb. 1, 1977, see section 1906(d) of Pub. L. 94-455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 applicable with respect to taxable years ending after June 30, 1970, see section 211(b) of Pub. L. 91-258, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89-44, set out as an Effective Date of 1965 Amendment note under section 6420 of this title.

§ 35. Health insurance costs of eligible individuals

(a) In general

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

(b) Eligible coverage month

For purposes of this section—

(1) In general

The term “eligible coverage month” means any month if—

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

(i) is an eligible individual,

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

(iii) does not have other specified coverage, and

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

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

(2) Joint returns

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

(c) Eligible individual

For purposes of this section—

(1) In general

The term “eligible individual” means—

- (A) an eligible TAA recipient,
- (B) an eligible alternative TAA recipient, and
- (C) an eligible PBGC pension recipient.

(2) Eligible TAA recipient

(A) In general

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

(B) Special rule

In the case of any eligible coverage month beginning after the date of the enactment of this paragraph, the term “eligible TAA recipient” means, with respect to any month, any individual who—

- (i) is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974,
- (ii) would be eligible to receive such allowance except that such individual is in a break in training provided under a training program approved under section 236 of such Act that exceeds the period specified in section 233(e) of such Act, but is within the period for receiving such allowances provided under section 233(a) of such Act, or
- (iii) is receiving unemployment compensation (as defined in section 85(b)) for any day of such month and who would be eligible to receive such allowance for such month if section 231 of such Act were applied without regard to subsections (a)(3)(B) and (a)(5) thereof.

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

(3) Eligible alternative TAA recipient

The term “eligible alternative TAA recipient” means, with respect to any month, any individual who—

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

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

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

(4) Eligible PBGC pension recipient

The term “eligible PBGC pension recipient” means, with respect to any month, any individual who—

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

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

(d) Qualifying family member

For purposes of this section—

(1) In general

The term “qualifying family member” means—

- (A) the taxpayer’s spouse, and
- (B) any dependent of the taxpayer with respect to whom the taxpayer is entitled to a deduction under section 151(c).

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

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

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

(e) Qualified health insurance

For purposes of this section—

(1) In general

The term “qualified health insurance” means any of the following:

- (A) Coverage under a COBRA continuation provision (as defined in section 9832(d)(1)).
- (B) State-based continuation coverage provided by the State under a State law that requires such coverage.
- (C) Coverage offered through a qualified State high risk pool (as defined in section 2744(c)(2) of the Public Health Service Act).
- (D) Coverage under a health insurance program offered for State employees.
- (E) Coverage under a State-based health insurance program that is comparable to the health insurance program offered for State employees.
- (F) Coverage through an arrangement entered into by a State and—
 - (i) a group health plan (including such a plan which is a multiemployer plan as de-

defined in section 3(37) of the Employee Retirement Income Security Act of 1974),

(ii) an issuer of health insurance coverage,

(iii) an administrator, or

(iv) an employer.

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

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

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

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

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

(2) Requirements for state-based coverage

(A) In general

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

(i) Guaranteed issue

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

(ii) No imposition of preexisting condition exclusion

No pre-existing condition limitations are imposed with respect to any qualifying individual.

(iii) Nondiscriminatory premium

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

(iv) Same benefits

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

(B) Qualifying individual

For purposes of this paragraph, the term "qualifying individual" means—

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

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

(3) Exception

The term "qualified health insurance" shall not include—

(A) a flexible spending or similar arrangement, and

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

(f) Other specified coverage

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

(1) Subsidized coverage

(A) In general

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

(B) Eligible alternative TAA recipients

In the case of an eligible alternative TAA recipient, such individual is either—

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

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

(C) Treatment of cafeteria plans

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

(2) Coverage under Medicare, Medicaid, or SCHIP

Such individual—

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

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

(3) Certain other coverage

Such individual—

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

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

(g) Special rules

(1) Coordination with advance payments of credit

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

(2) Coordination with other deductions

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

(3) Medical and health savings accounts

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

(4) Denial of credit to dependents

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

(5) Both spouses eligible individuals

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

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

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

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

(6) Marital status; certain married individuals living apart

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

(7) Insurance which covers other individuals

For purposes of this section, rules similar to the rules of section 213(d)(6) shall apply with respect to any contract for qualified health insurance under which amounts are payable for coverage of an individual other than the taxpayer and qualifying family members.

(8) Treatment of payments

For purposes of this section—

(A) Payments by Secretary

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

(B) Payments by taxpayer

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

(9) COBRA premium assistance

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

(10) Continued qualification of family members after certain events

(A) Medicare eligibility

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

(B) Divorce

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

(C) Death

In the case of the death of an eligible individual—

(i) any spouse of such individual (determined at the time of such death) shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such death, except that the only qualifying family members who may be

taken into account with respect to such spouse are those individuals who were qualifying family members immediately before such death, and

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

(11) Election

(A) In general

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

(B) Timing and applicability of election

Except as the Secretary may provide—

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

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

(12) Coordination with premium tax credit

(A) In general

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

(B) Coordination with advance payments of premium tax credit

In the case of a taxpayer who makes the election under paragraph (11) with respect to any eligible coverage month in a taxable year or on behalf of whom any advance payment is made under section 7527 with respect to any month in such taxable year—

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

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

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

(ii) section 36B(f)(2) shall not apply with respect to such taxpayer for such taxable

year, except that if such taxpayer received any advance payments under section 7527 for any month in such taxable year and is later allowed a credit under section 36B for such taxable year, then section 36B(f)(2)(B) shall be applied by substituting the amount determined under clause (i) for the amount determined under section 36B(f)(2)(A).

(13) Regulations

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

(Added Pub. L. 107-210, div. A, title II, §201(a), Aug. 6, 2002, 116 Stat. 954; amended Pub. L. 108-311, title IV, §401(a)(2), Oct. 4, 2004, 118 Stat. 1183; Pub. L. 110-172, §11(a)(5), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 111-5, div. B, title I, §§1899A(a)(1), 1899C(a), 1899E(a), 1899G(a), title III, §3001(a)(14)(A), Feb. 17, 2009, 123 Stat. 423, 424, 426, 430, 465; Pub. L. 111-144, §3(b)(5)(A), Mar. 2, 2010, 124 Stat. 44; Pub. L. 111-344, title I, §§111(a), 113(a), 115(a), 117(a), Dec. 29, 2010, 124 Stat. 3614-3616; Pub. L. 112-40, title II, §241(a), (b)(1), (3)(A)-(C), Oct. 21, 2011, 125 Stat. 418, 419; Pub. L. 113-295, div. A, title II, §209(j)(3), Dec. 19, 2014, 128 Stat. 4031; Pub. L. 114-27, title IV, §407(a), (b), (d), June 29, 2015, 129 Stat. 381, 382; Pub. L. 116-94, div. Q, title I, §146(a), Dec. 20, 2019, 133 Stat. 3236; Pub. L. 116-260, div. EE, title I, §134(a), Dec. 27, 2020, 134 Stat. 3053.)

REFERENCES IN TEXT

The date of the enactment of the Trade Act of 2002, referred to in subsec. (b)(1)(B), is the date of enactment of Pub. L. 107-210, which was approved Aug. 6, 2002.

The Trade Act of 1974, referred to in subsec. (c)(2), (3), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978. Chapter 2 of title II of the Act is classified generally to part 2 (§2271 et seq.) of subchapter II of chapter 12 of Title 19, Customs Duties. Sections 231, 233, 236, and 246 of the Act are classified to sections 2291, 2293, 2296, and 2318 of Title 19, respectively. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (c)(2)(B), probably means the date of enactment of Pub. L. 111-5, which amended par. (2) generally and which was approved Feb. 17, 2009.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (c)(4)(B) and (e)(1)(F)(i), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29, Labor. Section 3(37) of the Act is classified to section 1002(37) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Section 2744(c)(2) of the Public Health Service Act, referred to in subsec. (e)(1)(C), is classified to section 300gg-44(c)(2) of Title 42, The Public Health and Welfare.

The Patient Protection and Affordable Care Act, referred to in subsecs. (e)(1)(J) and (g)(12)(B)(i)(I), is Pub. L. 111-148, Mar. 23, 2010, 124 Stat. 119. Section 1412 of the Act is classified to section 18082 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of Title 42 and Tables.

The Social Security Act, referred to in subsec. (f)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Parts A and B of title XVIII of the Act are classified generally to parts A (§1395c et seq.) and B (§1395j et seq.), respec-

tively, of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§1396 et seq.) and XXI (§1397aa et seq.), respectively, of chapter 7 of Title 42. Section 1928 of the Act is classified to section 1396s of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009, referred to in subsec. (g)(9), is section 3001(a) of Pub. L. 111-5, div. B, title III, Feb. 17, 2009, 123 Stat. 455, which enacted sections 139C, 6432, and 6720C of this title, amended this section, and enacted provisions set out as a note under section 6432 of this title.

PRIOR PROVISIONS

A prior section 35 was renumbered section 37 of this title.

Another prior section 35, acts Aug. 16, 1954, ch. 736, 68A Stat. 14; Sept. 2, 1958, Pub. L. 85-866, title I, §41(b), 72 Stat. 1639; Feb. 26, 1964, Pub. L. 88-272, title II, §201(d)(2), 78 Stat. 32, related to partially tax-exempt interest received by individuals, prior to repeal by Pub. L. 94-455, title XIX, §1901(a)(2), Oct. 4, 1976, 90 Stat. 1764, effective with respect to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2020—Subsec. (b)(1)(B). Pub. L. 116-260 substituted “January 1, 2022” for “January 1, 2021”.

2019—Subsec. (b)(1)(B). Pub. L. 116-94 substituted “January 1, 2021” for “January 1, 2020”.

2015—Subsec. (b)(1)(B). Pub. L. 114-27, §407(a), substituted “before January 1, 2020” for “before January 1, 2014”.

Subsec. (e)(1)(J). Pub. L. 114-27, §407(d)(2), inserted “(other than coverage enrolled in through an Exchange established under the Patient Protection and Affordable Care Act)” after “under individual health insurance”.

Pub. L. 114-27, §407(d)(1), substituted “under individual health insurance. For purposes of” for “under individual health insurance if the eligible individual was covered under individual health insurance during the entire 30-day period that ends on the date that such individual became separated from the employment which qualified such individual for—

“(i) in the case of an eligible TAA recipient, the allowance described in subsection (c)(2),

“(ii) in the case of an eligible alternative TAA recipient, the benefit described in subsection (c)(3)(B), or

“(iii) in the case of any eligible PBGC pension recipient, the benefit described in subsection (c)(4)(B). For purposes of”.

Subsec. (g)(11) to (13). Pub. L. 114-27, §407(b), added pars. (11) and (12) and redesignated former par. (11) as (13).

2014—Subsec. (g)(9) to (11). Pub. L. 113-295, §209(j)(3), amended directory language of Pub. L. 111-5, §3001(a)(14)(A). See 2009 Amendment notes below.

2011—Subsec. (a). Pub. L. 112-40, §241(b)(1), substituted “72.5 percent” for “65 percent (80 percent in the case of eligible coverage months beginning before February 13, 2011)”.

Subsec. (b)(1)(B). Pub. L. 112-40, §241(a), inserted “, and before January 1, 2014” after “2002”.

Subsec. (c)(2)(B). Pub. L. 112-40, §241(b)(3)(A), struck out “and before February 13, 2011” after “paragraph” in introductory provisions.

Subsec. (e)(1)(K). Pub. L. 112-40, §241(b)(3)(B), substituted “Coverage” for “In the case of eligible coverage months beginning before February 13, 2012, coverage”.

Subsec. (g)(10). Pub. L. 112-40, §241(b)(3)(C), which directed amendment of par. (9) relating to continued qualification of family members after certain events by striking out “In the case of eligible coverage months

beginning before February 13, 2011—”, was executed by striking out such introductory provisions in par. (10) to reflect the probable intent of Congress and the redesignation of par. (9) as (10) by Pub. L. 111-5, §3001(a)(14)(A), as amended by Pub. L. 113-295, §209(j)(3). See 2009 Amendment and Effective Date of 2014 Amendment notes below.

2010—Subsec. (a). Pub. L. 111-344, §111(a), substituted “February 13, 2011” for “January 1, 2011”.

Subsec. (c)(2)(B). Pub. L. 111-344, §113(a), substituted “February 13, 2011” for “January 1, 2011” in introductory provisions.

Subsec. (e)(1)(K). Pub. L. 111-344, §117(a), substituted “February 13, 2012” for “January 1, 2011”.

Subsec. (g)(9). Pub. L. 111-144 substituted “section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009” for “section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009”.

Subsec. (g)(10). Pub. L. 111-344, §115(a), which directed amendment of par. (9) relating to continued qualification of family members after certain events by substituting “February 13, 2011” for “January 1, 2011”, was executed by making the substitution in introductory provisions of par. (10) to reflect the probable intent of Congress and the redesignation of par. (9) as (10) by Pub. L. 111-5, §3001(a)(14)(A), as amended by Pub. L. 113-295, §209(j)(3). See 2009 Amendment and Effective Date of 2014 Amendment notes below.

2009—Subsec. (a). Pub. L. 111-5, §1899A(a)(1), inserted “(80 percent in the case of eligible coverage months beginning before January 1, 2011)” after “65 percent”.

Subsec. (c)(2). Pub. L. 111-5, §1899C(a), amended par. (2) generally. Prior to amendment, text read as follows: “The term ‘eligible TAA recipient’ means, with respect to any month, any individual who is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974 or who would be eligible to receive such allowance if section 231 of such Act were applied without regard to subsection (a)(3)(B) of such section. An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.”

Subsec. (e)(1)(K). Pub. L. 111-5, §1899G(a), added subpar. (K).

Subsec. (g)(9), (10). Pub. L. 111-5, §3001(a)(14)(A), as amended by Pub. L. 113-295, §209(j)(3), added par. (9) relating to COBRA premium assistance and redesignated former par. (9) relating to continued qualification of family members after certain events as (10). Former par. (10) relating to regulations redesignated (11).

Pub. L. 111-5, §1899E(a), added par. (9) relating to continued qualification of family members after certain events and redesignated former par. (9) relating to regulations as (10).

Subsec. (g)(11). Pub. L. 111-5, §3001(a)(14)(A), as amended by Pub. L. 113-295, §209(j)(3), redesignated par. (10) relating to regulations as (11).

2007—Subsec. (d)(2). Pub. L. 110-172 struck out “paragraph (2) or (4) of” before “section 152(e)” and substituted “(as defined in section 152(e)(4)(A))” for “(within the meaning of section 152(e)(1))”.

2004—Subsec. (g)(3). Pub. L. 108-311 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “Amounts distributed from an Archer MSA (as defined in section 220(d)) shall not be taken into account under subsection (a).”

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. EE, title I, §134(b), Dec. 27, 2020, 134 Stat. 3053, provided that: “The amendment made by this section [amending this section] shall apply to months beginning after December 31, 2020.”

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-94, div. Q, title I, §146(b), Dec. 20, 2019, 133 Stat. 3236, provided that: “The amendment made by

this section [amending this section] shall apply to months beginning after December 31, 2019.”

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-27, title IV, § 407(f), June 29, 2015, 129 Stat. 382, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 6501 and 7527 of this title] shall apply to coverage months in taxable years beginning after December 31, 2013.

“(2) PLANS AVAILABLE ON INDIVIDUAL MARKET FOR USE OF TAX CREDIT.—The amendment made by subsection (d)(2) [amending this section] shall apply to coverage months in taxable years beginning after December 31, 2015.

“(3) TRANSITION RULE.—Notwithstanding section 35(g)(1)(B)(i) of the Internal Revenue Code of 1986 (as added by this title), an election to apply section 35 of such Code to an eligible coverage month (as defined in section 35(b) of such Code) (and not to claim the credit under section 36B of such Code with respect to such month) in a taxable year beginning after December 31, 2013, and before the date of the enactment of this Act [June 29, 2015]—

“(A) may be made at any time on or after such date of enactment and before the expiration of the 3-year period of limitation prescribed in section 6511(a) with respect to such taxable year; and

“(B) may be made on an amended return.”

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective as if included in the provisions of the American Recovery and Reinvestment Tax Act of 2009, Pub. L. 111-5, div. B, title I, to which such amendment relates, see section 209(k) of Pub. L. 113-295, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-40, title II, § 241(c), Oct. 21, 2011, 125 Stat. 419, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section, section 7527 of this title, and former section 2918 of Title 29, Labor] shall apply to coverage months beginning after February 12, 2011.

“(2) ADVANCE PAYMENT PROVISIONS.—

“(A) The amendment made by subsection (b)(2)(B) [amending section 7527 of this title] shall apply to certificates issued after the date which is 30 days after the date of the enactment of this Act [Oct. 21, 2011].

“(B) The amendment made by subsection (b)(2)(D) [amending section 7527 of this title] shall apply to coverage months beginning after the date which is 30 days after the date of the enactment of this Act.”

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-344, title I, § 111(c), Dec. 29, 2010, 124 Stat. 3615, provided that: “The amendments made by this section [amending this section and section 7527 of this title] shall apply to coverage months beginning after December 31, 2010.”

Pub. L. 111-344, title I, § 113(b), Dec. 29, 2010, 124 Stat. 3615, provided that: “The amendment made by this section [amending this section] shall apply to coverage months beginning after December 31, 2010.”

Pub. L. 111-344, title I, § 115(c), Dec. 29, 2010, 124 Stat. 3615, provided that: “The amendments made by this section [amending this section and former section 2918 of Title 29, Labor] shall apply to months beginning after December 31, 2010.”

Pub. L. 111-344, title I, § 117(b), Dec. 29, 2010, 124 Stat. 3616, provided that: “The amendment made by this section [amending this section] shall apply to coverage months beginning after December 31, 2010.”

Pub. L. 111-144, § 3(c), Mar. 2, 2010, 124 Stat. 45, provided that: “The amendments made by this section

[amending this section, sections 139C, 6432, and 6720C of this title, and provisions set out as a note under section 6432 of this title] shall take effect as if included in the provisions of section 3001 of division B of the American Recovery and Reinvestment Act of 2009 [Pub. L. 111-5, set out below] to which they relate, except that—

“(1) the amendments made by subsection (b)(1) [amending provisions set out as a note under section 6432 of this title] shall apply to periods of coverage beginning after the date of the enactment of this Act [Mar. 2, 2010];

“(2) the amendments made by subsection (b)(2) [amending provisions set out as a note under section 6432 of this title] shall take effect as if included in the amendments made by section 1010 of division B of the Department of Defense Appropriations Act, 2010 [Pub. L. 111-118, amending provisions set out a note under this section]; and

“(3) the amendments made by subsections (b)(3) and (b)(4) [amending provisions set out as a note under section 6432 of this title] shall take effect on the date of the enactment of this Act [Mar. 2, 2010].”

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by sections 1899A(a)(1), 1899C(a), 1899E(a), and 1899G(a) of Pub. L. 111-5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of Title 19, Customs Duties.

Pub. L. 111-5, div. B, title I, § 1899A(b), Feb. 17, 2009, 123 Stat. 424, provided that: “The amendments made by this section [amending this section and section 7527 of this title] shall apply to coverage months beginning on or after the first day of the first month beginning 60 days after the date of the enactment of this Act [Feb. 17, 2009].”

Pub. L. 111-5, div. B, title I, § 1899C(b), Feb. 17, 2009, 123 Stat. 425, provided that: “The amendment made by this section [amending this section] shall apply to coverage months beginning after the date of the enactment of this Act [Feb. 17, 2009].”

Pub. L. 111-5, div. B, title I, § 1899E(c), Feb. 17, 2009, 123 Stat. 428, provided that: “The amendments made by this section [amending this section and former section 2918 of Title 29, Labor] shall apply to months beginning after December 31, 2009.”

Pub. L. 111-5, div. B, title I, § 1899G(b), Feb. 17, 2009, 123 Stat. 430, provided that: “The amendments made by this section [amending this section] shall apply to coverage months beginning after the date of the enactment of this Act [Feb. 17, 2009].”

Pub. L. 111-5, div. B, title III, § 3001(a)(14)(B), Feb. 17, 2009, 123 Stat. 465, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Feb. 17, 2009].”

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-311 effective as if included in section 1201 of Pub. L. 108-173, see section 401(b) of Pub. L. 108-311, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 107-210, div. A, title II, § 201(d), Aug. 6, 2002, 116 Stat. 960, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 300gg-45 of Title 42, The Public Health and Welfare, amending section 1324 of Title 31, Money and Finance, and renumbering former section 35 of this title as section 36 of this title] shall apply to taxable years beginning after December 31, 2001.

“(2) STATE HIGH RISK POOLS.—The amendment made by subsection (b) [enacting section 300gg-45 of Title 42] shall take effect on the date of the enactment of this Act [Aug. 6, 2002].”

CONSTRUCTION

Pub. L. 107-210, div. A, title II, §203(f), Aug. 6, 2002, 116 Stat. 972, provided that: “Nothing in this title [enacting this section and sections 6050T and 7527 of this title, and section 300gg-45 of Title 42, The Public Health and Welfare, amending sections 4980B, 6103, 6724, and 7213A of this title, sections 1165, 2862, 2918, and 2919 of Title 29, Labor, section 1324 of Title 31, Money and Finance, and section 300bb-5 of Title 42, renumbering former section 35 of this title as section 36 of this title, and enacting provisions set out as notes under this section and section 6050T of this title] (or the amendments made by this title), other than provisions relating to COBRA continuation coverage and reporting requirements, shall be construed as creating any new mandate on any party regarding health insurance coverage.”

AGENCY OUTREACH

Pub. L. 114-27, title IV, §407(g), June 29, 2015, 129 Stat. 383, provided that: “As soon as possible after the date of the enactment of this Act [June 29, 2015], the Secretaries of the Treasury, Health and Human Services, and Labor (or such Secretaries’ delegates) and the Director of the Pension Benefit Guaranty Corporation (or the Director’s delegate) shall carry out programs of public outreach, including on the Internet, to inform potential eligible individuals (as defined in section 35(c)(1) of the Internal Revenue Code of 1986) of the extension of the credit under section 35 of the Internal Revenue Code of 1986 and the availability of the election to claim such credit retroactively for coverage months beginning after December 31, 2013.”

SURVEY AND REPORT ON ENHANCED HEALTH COVERAGE TAX CREDIT PROGRAM

Pub. L. 111-5, div. B, title I, §1899I, Feb. 17, 2009, 123 Stat. 431, provided that:

“(a) SURVEY.—

“(1) IN GENERAL.—The Secretary of the Treasury shall conduct a biennial survey of eligible individuals (as defined in section 35(c) of the Internal Revenue Code of 1986) relating to the health coverage tax credit under section 35 of the Internal Revenue Code of 1986 (hereinafter in this section referred to as the ‘health coverage tax credit’).

“(2) INFORMATION OBTAINED.—The survey conducted under subsection (a) shall obtain the following information:

“(A) HCTC PARTICIPANTS.—In the case of eligible individuals receiving the health coverage tax credit (including individuals participating in the health coverage tax credit program under section 7527 of such Code, hereinafter in this section referred to as the ‘HCTC program’)—

“(i) demographic information of such individuals, including income and education levels,

“(ii) satisfaction of such individuals with the enrollment process in the HCTC program,

“(iii) satisfaction of such individuals with available health coverage options under the credit, including level of premiums, benefits, deductibles, cost-sharing requirements, and the adequacy of provider networks, and

“(iv) any other information that the Secretary determines is appropriate.

“(B) NON-HCTC PARTICIPANTS.—In the case of eligible individuals not receiving the health coverage tax credit—

“(i) demographic information of each individual, including income and education levels,

“(ii) whether the individual was aware of the health coverage tax credit or the HCTC program,

“(iii) the reasons the individual has not enrolled in the HCTC program, including whether such reasons include the burden of the process of enrollment and the affordability of coverage,

“(iv) whether the individual has health insurance coverage, and, if so, the source of such coverage, and

“(v) any other information that the Secretary determines is appropriate.

“(3) REPORT.—Not later than December 31 of each year in which a survey is conducted under paragraph (1) (beginning in 2010), the Secretary of the Treasury shall report to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means, the Committee on Education and Labor, and the Committee on Energy and Commerce of the House of Representatives the findings of the most recent survey conducted under paragraph (1).

“(b) REPORT.—Not later than October 1 of each year (beginning in 2010), the Secretary of the Treasury (after consultation with the Secretary of Health and Human Services, and, in the case of the information required under paragraph (7), the Secretary of Labor) shall report to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means, the Committee on Education and Labor, and the Committee on Energy and Commerce of the House of Representatives the following information with respect to the most recent taxable year ending before such date:

“(1) In each State and nationally—

“(A) the total number of eligible individuals (as defined in section 35(c) of the Internal Revenue Code of 1986) and the number of eligible individuals receiving the health coverage tax credit,

“(B) the total number of such eligible individuals who receive an advance payment of the health coverage tax credit through the HCTC program,

“(C) the average length of the time period of the participation of eligible individuals in the HCTC program, and

“(D) the total number of participating eligible individuals in the HCTC program who are enrolled in each category of coverage as described in section 35(e)(1) of such Code,

with respect to each category of eligible individuals described in section 35(c)(1) of such Code.

“(2) In each State and nationally, an analysis of—

“(A) the range of monthly health insurance premiums, for self-only coverage and for family coverage, for individuals receiving the health coverage tax credit, and

“(B) the average and median monthly health insurance premiums, for self-only coverage and for family coverage, for individuals receiving the health coverage tax credit,

with respect to each category of coverage as described in section 35(e)(1) of such Code.

“(3) In each State and nationally, an analysis of the following information with respect to the health insurance coverage of individuals receiving the health coverage tax credit who are enrolled in coverage described in subparagraphs (B) through (H) of section 35(e)(1) of such Code:

“(A) Deductible amounts.

“(B) Other out-of-pocket cost-sharing amounts.

“(C) A description of any annual or lifetime limits on coverage or any other significant limits on coverage services, or benefits.

The information required under this paragraph shall be reported with respect to each category of coverage described in such subparagraphs.

“(4) In each State and nationally, the gender and average age of eligible individuals (as defined in section 35(c) of such Code) who receive the health coverage tax credit, in each category of coverage described in section 35(e)(1) of such Code, with respect to each category of eligible individuals described in such section.

“(5) The steps taken by the Secretary of the Treasury to increase the participation rates in the HCTC program among eligible individuals, including outreach and enrollment activities.

“(6) The cost of administering the HCTC program by function, including the cost of subcontractors, and recommendations on ways to reduce administrative costs, including recommended statutory changes.

“(7) The number of States applying for and receiving national emergency grants under [former] section 173(f) of the Workforce Investment Act of 1998 [former] 29 U.S.C. 2918(f), the activities funded by such grants on a State-by-State basis, and the time necessary for application approval of such grants.”

§ 36. First-time homebuyer credit

(a) Allowance of credit

In the case of an individual who is a first-time homebuyer of a principal residence in the United States during a taxable year, there shall be allowed as a credit against the tax imposed by this subtitle for such taxable year an amount equal to 10 percent of the purchase price of the residence.

(b) Limitations

(1) Dollar limitation

(A) In general

Except as otherwise provided in this paragraph, the credit allowed under subsection (a) shall not exceed \$8,000.

(B) Married individuals filing separately

In the case of a married individual filing a separate return, subparagraph (A) shall be applied by substituting “\$4,000” for “\$8,000”.

(C) Other individuals

If two or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed \$8,000.

(D) Special rule for long-time residents of same principal residence

In the case of a taxpayer to whom a credit under subsection (a) is allowed by reason of subsection (c)(6), subparagraphs (A), (B), and (C) shall be applied by substituting “\$6,500” for “\$8,000” and “\$3,250” for “\$4,000”.

(2) Limitation based on modified adjusted gross income

(A) In general

The amount allowable as a credit under subsection (a) (determined without regard to this paragraph) for the taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so allowable as—

(i) the excess (if any) of—

(I) the taxpayer’s modified adjusted gross income for such taxable year, over
(II) \$125,000 (\$225,000 in the case of a joint return), bears to

(ii) \$20,000.

(B) Modified adjusted gross income

For purposes of subparagraph (A), the term “modified adjusted gross income” means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(3) Limitation based on purchase price

No credit shall be allowed under subsection (a) for the purchase of any residence if the

purchase price of such residence exceeds \$800,000.

(4) Age limitation

No credit shall be allowed under subsection (a) with respect to the purchase of any residence unless the taxpayer has attained age 18 as of the date of such purchase. In the case of any taxpayer who is married (within the meaning of section 7703), the taxpayer shall be treated as meeting the age requirement of the preceding sentence if the taxpayer or the taxpayer’s spouse meets such age requirement.

(c) Definitions

For purposes of this section—

(1) First-time homebuyer

The term “first-time homebuyer” means any individual if such individual (and if married, such individual’s spouse) had no present ownership interest in a principal residence during the 3-year period ending on the date of the purchase of the principal residence to which this section applies.

(2) Principal residence

The term “principal residence” has the same meaning as when used in section 121.

(3) Purchase

(A) In general

The term “purchase” means any acquisition, but only if—

(i) the property is not acquired from a person related to the person acquiring such property (or, if married, such individual’s spouse), and

(ii) the basis of the property in the hands of the person acquiring such property is not determined—

(I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(II) under section 1014(a) (relating to property acquired from a decedent).

(B) Construction

A residence which is constructed by the taxpayer shall be treated as purchased by the taxpayer on the date the taxpayer first occupies such residence.

(4) Purchase price

The term “purchase price” means the adjusted basis of the principal residence on the date such residence is purchased.

(5) Related persons

A person shall be treated as related to another person if the relationship between such persons would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants).

(6) Exception for long-time residents of same principal residence

In the case of an individual (and, if married, such individual’s spouse) who has owned and