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BENEFITS BRIEF

July 29, 2015 www.groom.com

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The Health Coverage Tax Credit: Retroactively Reincarnated

On July 6, 2015, President Obama signed into law the Trade Preferences Extension Act of 2015 (the "Act"), which *retroactively* reinstated, extended, and modified the Health Coverage Tax Credit ("HCTC") from 2014 through 2019.

The HCTC is a refundable tax credit that was first available in 2002 and allowed certain individuals to pay only a portion of their qualified health insurance. The credit was available to certain displaced workers certified by DOL as eligible to receive Trade Readjustment Allowances under the Trade Adjustment Assistance Program ("TAA") and certain individuals who receive benefits from the PBGC and are at least 55 years old. The HCTC previously expired on January 1, 2014.

The Act reinstated the HCTC. The HCTC provision is a six-year extension, retroactive to January 1, 2014 and carrying though December 31, 2019 at a 72.5% credit level. The IRS has indicated that it is currently reviewing the new legislation and will provide guidance shortly on steps that individuals will need to take to claim the tax credit.

Before the HCTC expired, DOL's model COBRA notice contained language regarding the HCTC. This language was removed when the HCTC expired, and DOL has not yet revised the notice to reflect the reinstatement of the HCTC. It is likely that in the future, DOL will revise the model notices to include HCTC language.

New Provisions

The Act is not simply a reinstatement of prior law. Instead, it contains several new provisions, including the following:

- Certified individuals may claim retroactive payments for "qualified health insurance" (see below for definition) from January 1, 2014 through July 6, 2015 on an amended tax return any time before the expiration of the 3-year statute of limitations with respect to the applicable taxable year.
- By July 6, 2016, the Secretary of Treasury must establish a program for making payments on behalf of certified individuals to providers of qualified health insurance.
- The term "qualified health insurance" is revised, effective January 1, 2016, to specifically exclude individual coverage through an exchange established under the Patient Protection and Affordable Care Act. "Qualified health insurance" generally includes coverage under individual health insurance, and thus, until January 1, 2016, it appears that individual coverage purchased through an exchange would be considered "qualified health insurance."

- Removed the requirement that the individual must be covered under the individual health insurance during the entire 30-day period before the individual separated from employment that qualified the individual as a TAA, RTAA, or PBGC pension recipient.
- Provides rules for coordination with the Code section 36B premium tax credit.
- The HCTC is not available for any coverage month unless the taxpayer makes an election for such month. The Secretary of Treasury may provide that (1) an election for any eligible coverage month in a taxable year must be made no later than the due date (including extensions) for that year's tax return and (2) any election 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.
- Removed the rule regarding bridging a 63- day or longer break in creditable coverage (because the ACA now prohibits preexisting condition exclusions and limitations).

General HCTC Rules

Who is generally eligible for the HCTC?

- Eligible TAA recipient;
- Eligible ATAA recipient; or
- Eligible PBGC pension recipient; and
- The qualifying family members of any of the above.

Who is an eligible TAA recipient?

An eligible TAA recipient is any individual who (1) is receiving a trade readjustment allowance under the Trade Act; (2) would be eligible to receive a trade readjustment allowance but for being in a break for training (under an approved training program) that exceeds the period specified in Trade Act section 233(e), but is within the period for receiving the allowance under Trade Act section 233(a). An individual is treated as an eligible TAA recipient until the end of the month after he or she stops receiving TAA benefits.

Who is an eligible ATAA recipient?

An eligible ATAA recipient is any individual receiving an alternative trade adjustment assistance benefit under a demonstration program for older workers. An individual is treated as an eligible ATAA recipient until the end of the month after he or she stops receiving TAA benefits.

Who is an eligible PBGC recipient?

An eligible PBGC recipient is any individual who is at least 55 years old and receiving pension benefits paid by the PBGC. Receipt of a lump sum (after August 5, 2002) from the PBGC for his/her PBGC benefit is considered to be receiving PBGC pension benefits for as long as he/ she would have received such benefits if he or she had not accepted the lump sum payment.

Who is a qualifying family member?

A qualifying family member is any individual who is either the eligible individual's spouse or dependent, and who does not have other specified coverage.

What are the conditions for HCTC availability?

The HCTC is available each month to eligible individuals who:

- Pay premiums for and are covered by qualified health insurance;
- Are not in prison;

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* Cannot be claimed as dependent on someone else's tax return; and
* Do not have other specified coverage, including Medicare.

What is qualified health insurance ("QHI")?

* Code section 35(e) lists what constitutes QHI.
* QHI includes some COBRA coverage, but not all COBRA coverage. For example, COBRA coverage under FSAs is not QHI. Premiums paid with HSAs or Archer MSAs are also not eligible for HCTC. QHI includes coverage under any employee benefit plan funded by a VEBA that is established pursuant to a bankruptcy order or by agreement with a Title 11 (bankruptcy) authorized representative.
* Effective January 1, 2016, QHI does not include individual coverage through an exchange established under the Patient Protection and Affordable Care Act. QHI generally includes coverage under individual health insurance, and thus, until January 1, 2016, it appears that individual coverage purchased through an exchange would be considered QHI (note there are rules for coordination between the HCTC and the Code section 36B premium tax credit).

What is other specified coverage?

Other specified coverage includes health coverage for which 50% or more of the cost is paid or incurred by the current or former employer of the eligible individual or the eligible individual's spouse. (For ATAA recipients, other specified coverage includes health coverage if an employer pays or incurs any portion of the cost of such coverage.)

Other specified health coverage also includes health coverage under any of the following programs:

* Medicare Part A or Part B
* Medicaid
* State Children's Health Insurance Program ("CHIP")
* Federal Employees Health Benefits Program ("FEHBP")
* TRICARE

Are there any special rules concerning group health plans?

Group health plans are not required to participate in the HCTC program (i.e., accept payments from the IRS for coverage). In order to participate in the HCTC program, group health plans must enroll in the program. If a plan is enrolled in the HCTC program, the plan must accept full and timely payments from the IRS. If a group health plan is not enrolled in the HCTC program, eligible individuals will still be able to claim the HCTC on their tax returns.

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