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The ACA and Tax Filing for Survivors of Domestic Violence and Married, Separated and Abandoned Spouses

The Affordable Care Act (ACA) requires married couples to file joint federal income tax returns to qualify for subsidies when purchasing health plans through the marketplace. Separated or estranged spouses who cannot file jointly may be automatically disqualified from receiving Advanced Premium Tax Credits (APTCs) and Cost-Sharing Reductions (CSRs).

However, in some circumstances, persons who are married may be considered unmarried for federal tax filing purposes. In addition, married persons who experience domestic abuse or spousal abandonment and file their federal income taxes separately from their spouses can be deemed to have satisfied the joint filing requirement. The following describes these and other situations where married individuals can file separate federal income tax returns yet still qualify for APTCs/CSRs.

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WHO IS "CONSIDERED UNMARRIED"?

Under certain circumstances, a married taxpayer who is separated from her spouse may be "considered unmarried" and thus not required to file jointly to qualify for APTCs/CSRs. To be "considered unmarried," an individual must meet the following requirements:

- file a separate income tax return;
- pay more than half the cost of keeping up her home for the tax year;
- did not live in the same home as the spouse during the last 6 months of the tax year (the spouse is considered to live in the home even if he is temporarily absent due to special circumstances);
- provide the main home of the taxpayer's child, step-child, or foster child for more than half the year; and
- be able to claim an exemption for the child.

Persons who are "considered unmarried" commonly use the tax filing status "head of household," which provides a lower tax rate and higher deduction than "single."

DOES HAVING A "DECREE OF SEPARATE MAINTENANCE" MEAN A CONSUMER IS UNMARRIED?

In most cases, spouses who separate or who are in the process of getting a divorce are still considered legally married and therefore must file joint federal income taxes to qualify for APTCs/CSRs. However, Internal Revenue Service (IRS) rules recognize a rarely used legal device – a "decree of separate maintenance" – which allows married individuals to file as "single" even if the couple has not yet obtained a final divorce decree.

Not all states have "decrees of separate maintenance," and those that do vary as to whether their "decrees of separate maintenance" have an effect on marital status for tax filing purposes. A "decree of separate maintenance" must be issued by a court. While a "decree of separate maintenance" is not defined in the IRS code or regulations, legal separation or a separation agreement alone has been found insufficient to constitute a "decree of separate maintenance" by the courts.

The following states do not provide for a "decree of separate maintenance" or legal separation action in court:

Delaware, Florida, Georgia, Maryland, Mississippi, New Jersey (except in civil union cases), Pennsylvania and Texas. It is important check with an attorney experienced in family law to find out if a "decree of separate maintenance" is available in a particular state.

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Tax Filing for Survivors of DV and Married, Separated and Abandoned Spouses

ARE SURVIVORS OF DOMESTIC VIOLENCE ELIGIBLE FOR APTCs/CSRs?

Under IRS regulations and guidance from the Department of Health and Human Services (HHS), an individual who is married and a survivor of domestic violence but does not live with her spouse at the time of tax filing can obtain APTCs and CSRs without having to file a joint federal tax return. Those who meet certain requirements can be found to have satisfied the joint filing requirement.

To qualify, the person must:

- file federal income taxes using the “married filing separately” filing status;
- be living apart from the abuser at the time of the tax filing; and
- attest on the return that the person qualifies for this domestic violence exception.

To attest that she or he qualifies for the domestic violence exception on her or his tax return, an individual must check the box for “Exception” on IRS Form 8962. The temporary regulations provide a broad definition of “domestic violence,” including physical, emotional and psychological abuse. The regulations also allow an individual to qualify if the abuse targets a child or other family member living in the house. Under the regulations, an individual can use this exceptions process no more than three years in a row.

The IRS regulations described above apply when an individual files his federal income taxes. However, due to operational limitations with the Federally-Facilitated Marketplace (FFM), individuals seeking the domestic violence exception should list themselves as unmarried and filing taxes as single when applying for coverage through the FFM, according to guidance from HHS. Therefore, those seeking the domestic violence exception should check “single” on their FFM applications for health insurance assistance, and “married, filing separately” on their actual federal income tax filing.

State-Based Marketplaces (SBMs) can chose the latter approach or can adjust their systems to allow such individuals to check “married, filing separately” on their application for health insurance coverage. Assisters should check with their SBM about how consumers who meet these requirements should complete their applications.

ARE ABANDONED SPOUSES ELIGIBLE FOR APTCs/CSRs?

IRS rules also allow certain abandoned spouses to use the “married, filing separately” tax filing status and still qualify for APTCs/CSRs. To qualify, the individual must be unable to locate her spouse after “reasonable diligence.” The abandoned spouse exception is also limited to three consecutive years. Similar to the domestic violence exception, individuals seeking the abandoned spouse exception should list themselves as “single” on their FFM application, according to guidance from HHS.

MORE INFORMATION AND RESOURCES:

[Guidance on Victims of Domestic Abuse and Spousal Abandonment](#), Centers for Medicare and Medicaid Services

[Enrollment for Survivors of Domestic Violence and Spousal Abandonment](#), *In the Loop* Fact Sheet

[Advocate’s Guide to MAGI](#), National Health Law Program
[Publication 501: Exemptions, Standard Deduction and Filing Information](#), Internal Revenue Service

[Advanced Premium Tax Credits](#), *In the Loop* Fact Sheet
[Cost-Sharing Reductions](#), *In the Loop* Fact Sheet

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