

ACA – New Figures and Other Developments



Indexed Amounts for 2018 and prior

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Rev Proc 2017-36 (5/4/17) – 2018 figures

	2014	2015	2016	2017	2018
§36B and §4980H affordability safe harbor factors	9.5%	9.56%	9.66%	9.69%	9.56%
§5000A factor for unaffordable exemption	8.0%	8.05%	8.13%	8.16%	8.05%

Rev Proc 2016-24 also provides the §36B Applicable Percentage Table for 2017.

Repayment of APTC

- *Walker*, TC Summary Opinion 2017-50 (7/12/17)
 - 2014 – obtained insurance from Covered California
 - CC determined eligible for PTC of \$1077 per month
 - Modified AGI = \$75,199 (wages, retirement and SS)
 - 400% FPL for two = \$62,040
 - Court – yes, must repay entire APTC of \$12,924 (IRS conceded §6662 penalty of \$2,584)
 - Couple – we would not have bought the insurance if we had known!
 - Court – we are sympathetic to what appears to be CC mistake, BUT must apply law as it is.



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Another APTC Payback Case

- *McGuire*, 149 TC No. 9 (8/28/17)
 - 2013 – Covered California (CC) determines APTC eligibility based on H's earnings.
 - Later in 2013, W gets job and alerts CC
 - CC – no reply
 - Get APTC of \$7,092
 - Must pay it all back!
 - Never rec'd Form 1095-A (but IRS did)
 - Did not attach Form 8962
 - M – we would not have purchased the insurance if we knew the true cost to us (\$14,184 or 20% of their pre-tax income).
 - Court waives penalties!

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One More APTC Case

- *Gibson*, TC Memo 2017-187 (9/25/17)
 - Parents claimed adult son as dependent
 - Household income > 400% of FPL
 - Son did not live with them
 - Obtained insurance on exchange in 2014 and rec'd APTC and 1095-A
 - Parents did not know
 - Argued son had no insurance in 2014
 - Evidence shows insurance coverage
 - Must repay the \$4,628 APTC



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President Trump Exec Order 13765 on ACA (1/20/17)

- Seeks prompt repeal of ACA
- In meantime, wants HHS and other secretaries to exercise authority to “waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.”
- and more ...

<https://www.whitehouse.gov/the-press-office/2017/01/20/executive-order-minimizing-economic-burden-patient-protection-and>

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Affordable Care Act Tax Provisions for Individuals and Families



[Español](#) | [中文](#) | [한국어](#) | [TiếngViết](#) | [Русский](#)

ACA Executive Order and Current Tax Filing Season

The IRS is currently reviewing the Jan. 20, 2017, executive order to determine the implications. Taxpayers should continue to file their tax returns as they normally would.

The Affordable Care Act includes the [individual shared responsibility provision](#) and the [premium tax credit](#) that may affect your tax return.

2/15/17

<https://www.irs.gov/affordable-care-act/individuals-and-families>

IRS Response to EO (at 2/15/17)

- Will not reject 1040s w/o health coverage information.
- “However, legislative provisions of the ACA law are still in force until changed by the Congress, and taxpayers remain required to follow the law and pay what they may owe.”
- “Processing silent returns means that taxpayer returns are not systemically rejected by the IRS at the time of filing, allowing the returns to be processed and minimizing burden on taxpayers, including those expecting a refund. When the IRS has questions about a tax return, taxpayers may receive follow-up questions and correspondence at a future date, after the filing process is completed. This is similar to how we handled this in previous years, and this reflects the normal IRS post-filing compliance procedures that we follow.”

<https://www.irs.gov/affordable-care-act/individuals-and-families/individual-shared-responsibility-provision>

Individual Mandate Still In Effect

- Information Letter 2017-0017 (6/30/17)
 - Response to letter sent to President Trump
 - Still need coverage for 2017 unless meet an exemption or want to pay the mandate (§5000A).
 - EO (1/20/17) relevance

“Executive Order does not change the law; legislative provisions of the ACA are still in force until changed by Congress, and **taxpayers remain required to follow the law**, including requirement to have minimum essential coverage for each month, qualify for a coverage exemption for the month, or make a shared responsibility payment. For additional information on the ACA Executive Order, please visit <https://www.irs.gov/tax-professionals/aca-information-center-for-tax-professionals>.”

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Maximum ISRP for 2017

- Rev. Proc. 2017-48 (8/21/17)
 - Maximum mandate (penalty) = national average cost of Bronze plan
 - Individuals = \$272/month
 - Family of 5 or more = \$1,360/month
- Relevance:
 - Single individual w/o insurance for any month and no exemption, reaches maximum penalty with household income of **\$140,960** for 2017.

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No More Silence Re: ISRP for 2018 Filing Season

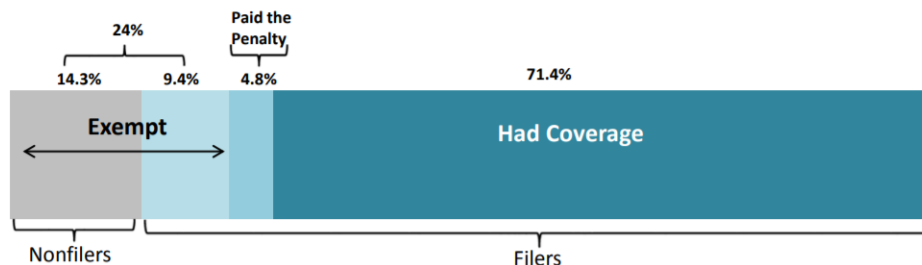
- New info on IRS ACA website for Tax Pros
- “For the upcoming 2018 filing season, the IRS will not accept electronically filed tax returns where the taxpayer does not address the health coverage requirements of” ACA.

<https://www.irs.gov/tax-professionals/aca-information-center-for-tax-professionals>

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ISRP Data From CBO

Tax Returns With Both Primary and Secondary Filers Under Age 65, Tax Year 2015



**So, most individuals check the box on line 61.
But, 24% have to review the exemptions and
complete Form 8965.**

<https://www.cbo.gov/system/files/115th-congress-2017-2018/presentation/53105-presentation.pdf>

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Tax Reform and ACA

IRS Stats for 2014

Figure E. Total Income Tax, Tax Years 2013 and 2014

[Number of returns is in thousands—money amounts are in millions of dollars]

Item	2013		2014		Percentage change	
	Number of returns	Amount	Number of returns	Amount	Number of returns	Amount
	(1)	(2)	(3)	(4)	(5)	(6)
Total income tax	94,532	1,235,040	96,544	1,377,797	2.1	11.6
Alternative minimum tax	3,940	27,426	4,278	28,646	8.6	4.4
Net investment income tax	3,090	16,491	3,591	22,480	16.2	36.3
All other taxes	27,649	69,721	35,475	76,877	28.3	10.3
Self-employment tax	18,875	55,533	19,351	58,468	2.5	5.3
Penalty tax on qualified retirement plans	5,726	5,874	5,726	5,840	[1]	-0.6
Health care individual responsibility payment	N/A	N/A	8,062	1,694	[2]	[2]
Additional medicare tax	2,816	6,273	3,116	7,261	10.7	15.7
Total tax liability	98,651	1,295,299	101,133	1,444,390	2.5	11.5

N/A—not applicable.

[1] Less than 0.05 percent.

[2] Percentage not computed.

SOURCE: IRS, Statistics of Income Division, Publication 1304.

Note – NIIT and add'l Medicare tax > AMT collections!

<https://www.irs.gov/pub/irs-soi/14inintaxreturns.pdf>

Distributional effects of NIIT repeal

Table T16-0169
 Repeal 3.8 Percent Surtax on Net Investment Income
 Baseline: Current Law
 Distribution of Federal Tax Change by Expanded Cash Income Percentile, 2016¹
 Detail Table

Expanded Cash Income Percentile ^{2,3}	Percent of Tax Units ⁴		Benefit as a Percent of After-Tax Income ⁵	Share of Total Benefit	Average Benefit		Share of Federal Taxes		Average Federal Tax Rate ⁶	
	With Benefit	Without Benefit			Dollars	Percent of Federal Taxes	With Provision	Without Provision	With Provision	Without Provision
Lowest Quintile	0.0	100.0	0.0	0.0	0	0.0	0.8	0.8	3.5	3.5
Second Quintile	0.0	100.0	0.0	0.0	0	0.0	3.7	3.7	8.2	8.2
Middle Quintile	0.0	100.0	0.0	0.0	0	0.0	9.7	9.6	13.4	13.4
Fourth Quintile	*	**	0.0	0.0	0	0.0	18.1	17.9	17.3	17.3
Top Quintile	18.1	81.9	0.5	100.0	1,260	1.5	67.5	67.9	25.4	25.7
All	2.5	97.5	0.3	100.0	170	1.0	100.0	100.0	19.6	19.8
Addendum										
80-90	0.3	99.7	0.0	0.1	*	0.0	14.3	14.1	20.0	20.0
90-95	6.6	93.4	0.0	0.5	30	0.1	10.6	10.5	21.9	21.9
95-99	62.9	37.1	0.2	9.3	620	0.6	15.4	15.3	25.0	25.2
Top 1 Percent	95.1	4.9	1.6	90.2	23,890	3.4	27.3	27.9	31.9	33.0
Top 0.1 Percent	98.6	1.4	2.2	59.3	153,910	4.5	13.4	13.9	32.7	34.2

Tax Policy Center 8/16/16

<http://www.taxpolicycenter.org/model-estimates/individual-income-tax-expenditures-july-2016/t16-0169-repeal-38-percent-surtax-net>

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Other effects of repeal ...

- No exclusion for employer-provided coverage of a non-dependent (such as 25 year old child)
- Medical deduction returns to 7.5% AGI
- Repeal PTC, ISRP and ESRP
- Repeal excise taxes
- Repeal W-2 reporting
- Insurance changes:
 - No need to insure if have pre-existing condition
 - Can wait longer than 90 days to cover new employee
 - \$1 million lifetime limit prohibition
 - Need for minimum value
 - Mental health parity not required
 - Remove some black lung benefits

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Questions to resolve if ACA repealed ...

- If made §469 regrouping when first subject to NIIT, can you (must you) go back to original grouping?
- Will it also include repeal of HRA change by PL 114-255 (12/13/16)?
- What kind of transitional relief?
 - For example, repeal of exclusion for employer coverage on non-dependent child ...
 - Effective 1/1/18 or when the coverage ends (assuming it ends)?

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Doesn't look like ACA will be repealed or perhaps even repaired ...

But what about tax reform?

**DESCRIPTION OF THE CHAIRMAN’S MODIFICATION
TO THE CHAIRMAN’S MARK OF
THE “TAX CUTS AND JOBS ACT”**

Scheduled for Markup
Before the
SENATE COMMITTEE ON FINANCE
on November 15, 2017

New proposal (page 10) –

<https://www.finance.senate.gov/imo/media/doc/11.14.17%20Chairman's%20Modified%20Mark.pdf>

Description of Proposal

Under the proposal, the amount of the individual shared responsibility payment enacted as part of the Affordable Care Act is reduced to zero.

Effective Date

The proposal is effective with respect to health coverage status for months beginning after December 31, 2018.

JOINT COMMITTEE ON TAXATION
November 17, 2017
JCX-59-17

**ESTIMATED REVENUE EFFECTS OF
THE “TAX CUTS AND JOBS ACT,”
AS ORDERED REPORTED BY THE COMMITTEE ON FINANCE ON NOVEMBER 16, 2017**

Fiscal Years 2018 - 2027

<https://www.jct.gov/publications.html?func=startdown&id=5043>

[Billions of Dollars]

Provision	Effective	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018-22	2018-27
G. Reduce ACA Individual Shared Responsibility Payment Amount to Zero [2][8][9].....	pdtn ba cy 2018	---	6.5	10.2	28.8	37.5	41.2	44.1	46.8	50.1	53.2	83.0	318.4

Footnotes:

[2] Estimate includes the following outlay effects:	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018-22	2018-27
10%, 12%, 22%, 24%, 32%, 35%, and 38.5% tax brackets.....	---	1.0	1.1	1.2	1.2	1.2	1.2	1.2	1.3	[28]	4.4	9.3
Modify standard deduction.....	---	9.4	9.7	10.2	10.4	10.5	10.6	10.7	10.9	[28]	39.7	82.5
Repeal personal exemptions.....	-10.8	-15.9	-16.3	-16.6	-16.9	-17.2	-17.4	-17.7	-5.3	---	-76.6	-134.2
Alternative inflation measure	---	-0.3	-0.6	-1.3	-1.6	-2.1	-2.5	-3.1	-3.6	-4.1	-3.9	-19.3
Modification of child tax credit.....	---	18.0	18.4	18.3	18.3	20.3	20.2	20.2	20.2	---	73.0	153.8
Require valid Social Security number of each child to claim refundable portion of child credit (otherwise \$500 dependent credit).....	---	-3.2	-3.0	-2.9	-2.9	-2.9	-2.9	-2.8	-2.8	-0.5	-12.0	-23.9
Repeal of itemized deductions for taxes not paid or accrued in a trade or business, interest on home equity debt, non-disaster casualty losses and certain miscellaneous expenses.....	---	-0.5	-0.4	-0.4	-0.4	-0.4	-0.4	-0.4	-0.4	---	-1.6	-3.3
Repeal of alternative minimum tax on corporations.....	10.8	3.8	-0.4	-0.3	---	---	---	---	---	---	13.9	13.9
Reduce amount of the ACA individual shared responsibility payment to zero.....	---	-6.2	-12.9	-28.2	-35.2	-38.4	-40.7	-43.1	-45.2	-47.8	-82.5	-297.7
Clarification of IRS whistleblower awards.....	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	[28]	0.1

[8] Estimate provided by the Joint Committee on Taxation staff in collaboration with the Congressional Budget Office.

[9] Estimate includes the following budget effects:	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018-22	2018-27
Total Revenue Effect.....	---	6.5	10.2	28.8	37.5	41.2	44.1	46.8	50.1	53.2	83.0	318.4
On-budget effects.....	---	6.5	9.4	26.9	35.2	38.8	41.4	43.9	47.2	50.4	78.0	299.6
Off-budget effects.....	---	0.1	0.8	1.9	2.3	2.4	2.7	2.9	2.9	2.8	5.0	18.7

DISTRIBUTION EFFECTS OF THE CHAIRMAN'S MODIFICATION TO
THE CHAIRMAN'S MARK OF THE "TAX CUTS AND JOBS ACT,"
SCHEDULED FOR MARKUP BY THE COMMITTEE ON FINANCE ON NOVEMBER 15, 2017 (1)
<https://www.jct.gov/publications.html?func=startdown&id=5042>

Distribution of the Proposal

INCOME CATEGORY	CHANGE IN FEDERAL TAXES (\$ millions)				
	2019	2021	2023	2025	2027
Less than \$10,000.....	-\$395	-\$97	\$178	\$218	\$341
\$10,000 to \$20,000.....	-\$1,013	\$2,818	\$3,728	\$3,732	\$6,257
\$20,000 to \$30,000.....	-\$1,861	\$2,991	\$3,165	\$3,779	\$7,987
\$30,000 to \$40,000.....	-\$4,615	-\$1,542	-\$257	-\$163	\$4,628
\$40,000 to \$50,000.....	-\$6,371	-\$3,646	-\$2,700	-\$2,621	\$4,070
\$50,000 to \$75,000.....	-\$22,420	-\$19,672	-\$16,998	-\$17,327	\$3,981
\$75,000 to \$100,000.....	-\$21,482	-\$20,923	-\$17,980	-\$18,925	-\$747
\$100,000 to \$200,000.....	-\$64,130	-\$63,181	-\$51,695	-\$54,069	-\$3,918
\$200,000 to \$500,000.....	-\$59,377	-\$59,592	-\$49,392	-\$53,805	-\$4,589
\$500,000 to \$1,000,000.....	-\$24,753	-\$23,884	-\$18,515	-\$19,799	-\$1,817
\$1,000,000 and over.....	-\$33,670	-\$28,134	-\$12,740	-\$15,343	-\$5,580
Total, All Taxpayers.....	-\$240,090	-\$214,865	-\$163,155	-\$174,331	\$10,637

Not clear how cost-sharing reductions and Medicaid spending factored in.

Per explanation at SFC hearing on 11/16/17 – repeal of mandate means fewer people will seek coverage and few will get a PTC. If people are entitled to a PTC but don't claim it, apparently shows up in table as tax increase.

Query – how much of the 2027 tax increase for those < \$75K of income is due to foregone PTC rather than also to ending of most tax changes for individuals after 2025?