

**PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES**

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

**§ 1308.11 Schedule I**

\* \* \* \* \*  
(h) \* \* \*

■ 1. The authority citation for part 1308 continues to read as follows:

■ 2. In § 1308.11, add paragraphs (h)(70) and (71) to read as follows:

*	*	*	*	*	*	*
(70) 2-(4-methoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1H-benzimidazole, its isomers, esters, ethers, salts, and salts of isomers, esters and ethers (Other names: N-pyrrolidino metonitazene; metonitazepyne) .....						9762
(71) 5-nitro-2-(4-propoxybenzyl)-1-(2-(pyrrolidin-1-yl)ethyl)-1H-benzimidazole, its isomers, esters, ethers, salts, and salts of isomers, esters and ethers (Other names: N-pyrrolidino protonitazene; protonitazepyne) .....						9763

**Signing Authority**

This document of the Drug Enforcement Administration was signed on September 11, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

**Heather Achbach,**

*Federal Register Liaison Officer, Drug Enforcement Administration.*

[FR Doc. 2024-21058 Filed 9-16-24; 8:45 am]

**BILLING CODE 4410-09-P**

**DATES:** The public hearing scheduled for September 26, 2024, at 10 a.m. ET is cancelled.

**ADDRESSES:** Public comments submitted for the proposed rule can be viewed electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> by searching REG-102161-23. The public hearing scheduled to be held in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Oluwafunmilayo Taylor, Section Chief, the Publications and Regulations Section at (202) 317-6901 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and a notice of public hearing that appeared in the **Federal Register** on July 12, 2024 (89 FR 57111), announced that a public hearing being held in person and by teleconference was scheduled for September 26, 2024, at 10 a.m. ET. The subject of the public hearing is under 26 CFR part 1.

The public comment period for these regulations expired on September 10, 2024. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to testify and an outline of the topics to be addressed. We did not receive a request to testify at the Public Hearing. Therefore, the public hearing scheduled for September 26, 2024, at 10 a.m. ET is cancelled.

**Kalle L. Wardlow,**

*Federal Register Liaison, Publications and Regulations, Associate Chief Counsel, (Procedure & Administration).*

[FR Doc. 2024-21039 Filed 9-16-24; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-116787-23]

**RIN 1545-BR31**

**Definition of the Term “Coverage Month” for Computing the Premium Tax Credit**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and public hearing.

**SUMMARY:** This document contains proposed regulations that would amend the definition of “coverage month” and amend certain other rules in existing income tax regulations regarding the computation of an individual taxpayer’s premium tax credit (PTC). The proposed coverage month amendment generally would provide that, in computing a PTC, a month may be a coverage month for an individual if the amount of the premium paid, including by advance payments of the PTC (APTC), for the month for the individual’s coverage is sufficient to avoid termination of the individual’s coverage for that month. The proposal also would amend the existing regulations relating to the amount of enrollment premiums used in computing the taxpayer’s monthly PTC if a portion of the monthly enrollment premium for a coverage month is unpaid. Finally, the proposed regulations would clarify when an individual is considered to be ineligible for coverage under a State’s Basic Health Program (BHP). The proposed regulations would affect taxpayers who enroll themselves, or enroll a family member, in individual health insurance coverage through a Health Insurance Exchange (Exchange) and may be allowed a PTC for the coverage. This document also provides a notice of a public hearing on these proposed regulations.

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-102161-23]

**RIN 1545-BQ89**

**Identification of Basket Contract Transactions as Listed Transactions; Hearing Cancellation**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of a notice of public hearing on a proposed rulemaking and notice of public hearing.

**SUMMARY:** This document cancels a public hearing on proposed regulations that would identify transactions that are the same as, or substantially similar to, certain basket contract transactions as listed transactions, a type of reportable transaction.

**DATES:** Electronic or written comments must be received by November 1, 2024. A public hearing on this proposed regulation has been scheduled for December 13, 2024, at 10:00 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by November 1, 2024. If no outlines are received by November 1, 2024, the public hearing will be cancelled.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-116787-23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-116787-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Clara Raymond at (202) 317-4718; concerning submission of comments or outlines, or requests for a public hearing, Vivian Hayes at (202) 317-6901 (not toll-free numbers) or [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred).

**SUPPLEMENTARY INFORMATION:**

**Authority**

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 36B of the Internal Revenue Code (Code). Section 36B(h) provides an express delegation of authority for the Secretary of the Treasury or her delegate to prescribe regulations as may be necessary to carry out section 36B, including regulations that provide for the coordination of the credit allowed under 36B with the program for advance payment of the credit under section 1412 of the Affordable Care Act.<sup>1</sup> The proposed regulations are also issued under the express delegation of authority under section 7805 of the Code.

<sup>1</sup> The Affordable Care Act (or ACA) refers to the Patient Protection and Affordable Care Act (Pub. L. 111-148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152, enacted on March 30, 2010).

**Background**

*I. Definition of “Coverage Month” and Computation of PTC*

Section 36B provides a PTC for applicable taxpayers who meet certain eligibility requirements, including that a member of the taxpayer's family enrolls in a qualified health plan (QHP) through an Exchange for one or more “coverage months.”

Section 1.36B-3(c)(1) provides that a month is a coverage month for an individual if (i) as of the first day of the month, the individual is enrolled in a QHP through an Exchange; (ii) the taxpayer pays the taxpayer's share of the premium for the individual's coverage under the plan for the month by the unextended due date for filing the taxpayer's income tax return for that taxable year, or the full premium for the month is paid by APTC; and (iii) the individual is not eligible for the full calendar month for minimum essential coverage (within the meaning of § 1.36B-2(c)) other than coverage described in section 5000A(f)(1)(C) of the Code (relating to coverage in the individual market).

Section 1.36B-3(d)(1) provides that the PTC (also called the premium assistance amount) for a coverage month is the lesser of (i) the premiums for the month, reduced by any amounts that were refunded, for one or more QHPs in which a taxpayer or a member of the taxpayer's family enrolls (enrollment premiums); or (ii) the excess of the adjusted monthly premium for the applicable benchmark plan over  $\frac{1}{12}$  of the product of a taxpayer's household income and the applicable percentage for the taxable year. Family is defined in § 1.36B-1(d), and the applicable percentage is defined in § 1.36B-3(g).

Section 36B(f)(3) and § 1.36B-5 require Exchanges to report to QHP enrollees and the IRS certain information, including monthly enrollment premiums, needed to compute the PTC allowed for the enrollee. This information is reported to enrollees on IRS Form 1095-A, *Health Insurance Marketplace Statement*. The Centers for Medicare & Medicaid Services (CMS), part of the Department of Health and Human Services (HHS), is responsible for the Form 1095-A reporting for Exchanges that use the Federal eligibility and enrollment platform (Federally-facilitated Exchanges, or FFEs, and State-based Exchanges on the Federal platform, or SBE-FPs). State Exchanges with their own platforms (State Exchanges) are responsible for the Form 1095-A reporting for individuals who enroll in their State Exchange.

HHS regulations at 45 CFR 156.270(d) implement section 1412(c)(2)(B)(iv)(II) of the Affordable Care Act to require issuers of QHPs to allow a “grace period” for enrollees for whom APTC is paid but who fail to timely pay their share of the premium for the coverage. In general, a QHP issuer must provide a grace period of 3 consecutive months for such an enrollee before the issuer may terminate the enrollee's coverage. During the first month of the grace period, the QHP issuer must pay all appropriate claims for services rendered, and, during the second and third months of the grace period, the QHP issuer may pend claims.

HHS regulations at 45 CFR 155.400(g) allow issuers to implement a premium payment threshold policy under which issuers can consider enrollees to have paid all amounts due if the enrollees pay an amount sufficient to maintain a percentage of total premium paid out of the total premium owed equal to or greater than a level prescribed by the issuer, provided that the level and the policy are applied in a uniform manner to all enrollees. If an enrollee satisfies these conditions, the issuer may provide coverage even though the full enrollment premium is not paid.

In certain States, issuers also may provide coverage without payment of the full enrollment premium if a State department of insurance prohibits an issuer from terminating QHP coverage during a declared emergency.

For a month for which a taxpayer's share of the enrollment premium is not paid in full, the current instructions for Form 1095-A require Exchanges to report \$0 on Form 1095-A as the enrollment premium for that month, which signals to the taxpayer and the IRS that no PTC is allowed for that month (non-payment month) because a month in which the premium is not paid in full is not a coverage month. Thus, if an individual is enrolled in a QHP with APTC for a month but does not pay the full amount of the monthly premium as permitted under 45 CFR 156.270(d), 45 CFR 155.400(g), or applicable State law, \$0 should be reported as the enrollment premium for the month, and a PTC is not allowed for that month for the coverage.

CMS has informed the Treasury Department and the IRS that, because CMS is not the entity that collects premium payments from an enrollee, implementing the section 36B definition of coverage month is challenging for CMS in situations in which the taxpayer's share of the premium is not paid in full but the taxpayer (or the taxpayer's enrollee) nevertheless may remain enrolled in a QHP with APTC,

if applicable, under 45 CFR 156.270(d), 45 CFR 155.400(g), or applicable State law. An audit by the HHS Office of Inspector General<sup>2</sup> found that CMS currently reports to FFE and SBE-FP enrollees and the IRS on Form 1095-A the full enrollment premium for the first month of a grace period, notwithstanding that the taxpayer's share of the full premium for that month may never have been paid. Similarly, CMS currently reports to FFE and SBE-FP enrollees and the IRS on Form 1095-A the full enrollment premium (1) for months for which an issuer provides coverage to enrollees who satisfy the premium payment threshold, and (2) for months for which an issuer has been ordered by a State department of insurance, during a declared emergency, not to terminate an enrollee's coverage for the month even though the full premium has not been paid. Consequently, for these two scenarios as well as the grace period scenario, FFEs and SBE-FPs treat a month as a coverage month for which APTC is allowed, and the IRS would not have information to disallow a PTC for the month because the full enrollment premium is reported for the month.

In contrast, some State Exchanges have been reporting \$0 as the enrollment premium for the first month of a grace period and for certain other months for which coverage was provided without the taxpayer's share of the full premium being paid. Consequently, taxpayers in these State Exchanges generally are unable to claim a PTC for those months.

## II. Determination of Ineligibility for a State's BHP

As noted in section I of this Background, § 1.36B-3(c)(1) provides that a month is a coverage month for an individual only if, among other requirements, the individual is not eligible for the full calendar month for minimum essential coverage (within the meaning of § 1.36B-2(c)) other than coverage described in section 5000A(f)(1)(C) of the Code (relating to coverage in the individual market). Under section 5000A(f)(1)(A) and § 1.5000A-2, the term "minimum essential coverage" includes coverage under government-sponsored programs such as Medicaid, Children's Health

Insurance Program (CHIP), and a State's BHP.<sup>3</sup>

Section 1.36B-2(c)(2)(i) provides that, for purposes of determining whether a given month is a coverage month for an individual, an individual generally is considered eligible for government-sponsored minimum essential coverage if the individual meets the criteria for coverage under a government-sponsored program described in section 5000A(f)(1)(A) as of the first day of the first full month the individual may receive benefits under the program.

Section 1.36B-2(c)(2)(v) provides that an individual is treated as not eligible for Medicaid, CHIP, or a similar program for a period of coverage under a QHP if, when the individual enrolls in the QHP, an Exchange determines or considers (within the meaning of 45 CFR 155.302(b)) the individual to be not eligible for Medicaid or CHIP.

Under 42 U.S.C. 18051 and the implementing regulations at 42 CFR part 600, a State is allowed to establish a BHP for eligible individuals. Section 18051(e) provides that a resident of a State cannot be an eligible individual unless the individual is not eligible to enroll in the State's Medicaid program under title XIX of the Social Security Act for benefits that at a minimum consist of the essential health benefits described in 42 U.S.C. 18022(b).

The Treasury Department and the IRS have become aware that the rule in § 1.36B-2(c)(2)(v) relating to an individual being considered ineligible for coverage under a Medicaid, CHIP, or a similar program, is ambiguous as it applies to a State's BHP and should be clarified.

### Explanation of Provisions

#### I. Change to the Definition of "Coverage Month" and Conforming Amendments to PTC Computation

As explained in the Background section of this preamble, a PTC generally is allowed for a taxpayer for months that are coverage months for the taxpayer and other individuals in the taxpayer's family. Further, under § 1.36B-3(c)(1)(ii), a month is not a coverage month for an individual unless the taxpayer pays the taxpayer's full share of the premium for the individual's coverage under the plan for the month by the unextended due date for filing the taxpayer's income tax return for that taxable year, or the full premium for the month is paid by APTC.

<sup>3</sup> Under the authority in section 5000A(f)(1)(A) and § 1.5000A-2(f)(1)(E), coverage through a BHP standard health plan has been recognized as minimum essential coverage. See 42 CFR 600.5.

Under HHS regulations at 45 CFR 156.270(d), issuers must provide coverage to enrollees for whom APTC is paid in the first month of a grace period, even if the enrollee's share of the premium for the coverage is unpaid. Thus, in that situation, the amount of the total premium paid by APTC is sufficient to allow for enrollees to remain covered. In addition, as noted in the Background section, Exchanges are not consistent in the manner they report enrollment premiums for the first month of a grace period, with some reporting the full premium for the month and others reporting \$0. This inconsistent reporting may lead to disparate treatment among taxpayers, with some being allowed to claim a PTC for the first month of a grace period and others being denied PTC for such a month. The Treasury Department and the IRS are of the view that amending the coverage month rule would promote reporting consistency and thus would achieve more consistent treatment among taxpayers. Moreover, because HHS regulations require issuers to provide coverage for the first month of a grace period to enrollees for whom APTC is paid for that month, it is reasonable to provide consistent treatment for tax purposes. Thus, the proposed regulations would treat the first month of a grace period as a coverage month for PTC purposes if the other coverage month requirements in § 1.36B-3(c) are satisfied. These proposed regulations are consistent with the express delegation of authority in section 36B(h)(1) to provide regulations that provide for coordination of the section 36B credit allowed with the APTC program.

In addition to addressing the first month of a grace period, the proposed regulations would address two other scenarios in which an issuer provides coverage even though the full enrollment premium is not paid as permitted under applicable law. In the first scenario, some issuers provide coverage for a month as long as at least a certain portion of the enrollee's premium for the month is paid, as permitted under CMS's premium payment threshold policy. The Treasury Department and the IRS are of the view that a month for which coverage is provided because a premium payment threshold is met should not fail to be a coverage month solely because the full premium has not been paid. Otherwise, a taxpayer could have monthly PTC disallowed due to a relatively small amount of unpaid premium, resulting in a tax liability that far exceeds the amount of the unpaid premium, for a

<sup>2</sup> CMS AUTHORIZED HUNDREDS OF MILLIONS OF DOLLARS IN ADVANCED PREMIUM TAX CREDITS ON BEHALF OF ENROLLEES WHO DID NOT MAKE THEIR REQUIRED PREMIUM PAYMENTS (A-02-19-02005), OIG, March 2021, accessed at <https://oig.hhs.gov/oas/reports/region2/21902005.pdf>.

month in which the amount paid for the coverage met the threshold for the provision of coverage permitted by HHS.

The second scenario involves a State department of insurance prohibiting an issuer from terminating QHP coverage during a declared emergency. In this scenario, if the issuer provides coverage for a month even though the enrollee's portion of the premium has not been fully paid, the Treasury Department and the IRS are of the view that the month should not fail to be a coverage month solely because the full premium has not been paid. This month should be treated as a coverage month because the portion, if any, of the premium that was paid is sufficient to provide coverage to the enrollees during an emergency situation under applicable State law.

Consequently, pursuant to the express delegations of authority in sections 36B(h) and 7805, the proposed regulations would provide that, under these three scenarios, a month may be a coverage month for a taxpayer irrespective of whether the full premium for the month is paid by the unextended due date of the taxpayer's return for the year of coverage. The Treasury Department and the IRS request comments on whether there are other scenarios in which an issuer does not terminate coverage for a month for which the full premium has not been paid and whether such a month should be treated as a coverage month.

The proposed amendment to the definition of "coverage month" in § 1.36B-3(c)(1) would require a conforming change to the calculation of the monthly PTC amount under § 1.36B-3(d)(1)(i), which provides, in effect, that monthly PTC for a coverage month cannot exceed the premiums for the month, reduced by any amounts that were refunded in the same taxable year as the premium liability. If a month in which a portion of the enrollment premiums is unpaid is a coverage month, the premium used to compute the PTC for the month should not include the unpaid portion. Otherwise, a taxpayer could receive a monthly PTC for coverage that exceeds the amount of the premium paid for the coverage, which would result in an undue windfall to the taxpayer. In addition, as noted previously, existing regulations require, in computing monthly PTC, enrollment premiums to be reduced by amounts refunded in the year of coverage. Consistent with the existing rule for computing monthly PTC, the premiums used for computing monthly PTC under the proposed rule also should be reduced by unpaid amounts. Thus, pursuant to the express

delegations of authority in sections 36B(h) and 7805, the proposed regulations would provide that the premium for a month to be considered in determining PTC for an individual's coverage must be reduced by amounts refunded in the same taxable year as the premium liability is incurred and by any portion of the premium that is unpaid as of the unextended due date for filing the taxpayer's income tax return for the taxable year that includes the month. Taxpayers would be instructed to comply with this rule by reducing their enrollment premiums on Form 8962, *Premium Tax Credit (PTC)*, for a coverage month by any amount that remains unpaid as of the unextended due date of their return.

### *II. Determination of Ineligibility for Medicaid, CHIP, or a Similar Program*

As discussed in the Background section of this preamble, § 1.36B-2(c)(2)(v) provides that an individual is treated as not eligible for Medicaid, CHIP, or a similar program for a period of coverage under a QHP if, when the individual enrolls in the QHP, an Exchange determines or assesses the individual to be not eligible for Medicaid or CHIP. The first part of the sentence references "Medicaid, CHIP or similar program," which includes a State's BHP. See 81 FR 91755, 91756. However, the second part of the sentence references only Medicaid or CHIP determinations under 45 CFR 155.302(b) and says nothing about determinations of eligibility under similar programs such as State BHPs. The unintended consequence of this language is that an individual who meets the criteria for coverage under a State BHP could be considered ineligible for the BHP coverage if the Exchange determines that the individual is ineligible for Medicaid or CHIP. Based on the Exchange determination of ineligibility for Medicaid or CHIP, the individual could enroll in a QHP and be allowed a PTC for the QHP coverage.

Consequently, pursuant to the express delegations of authority in sections 36B(h) and 7805, the proposed regulations would clarify that an individual is treated as not eligible for Medicaid, CHIP, or a similar program such as a State BHP, for a period of coverage under a QHP if, when the individual enrolls in the QHP, an Exchange conducts an eligibility determination or, if applicable, eligibility assessment (within the meaning of 45 CFR 155.302(b)) for Medicaid, CHIP, or a similar program and determines or assesses the individual to be not eligible for coverage under the program. Thus, under the

proposed revision, an individual's determination of ineligibility for Medicaid or CHIP would not affect whether the individual is treated as ineligible for BHP coverage for purposes of determining whether a PTC is allowed.

### *III. Severability*

If any provision in this rulemaking is held to be invalid or unenforceable facially, or as applied to any person or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

### **Statement of Availability of IRS Documents**

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

### **Proposed Applicability Dates**

The proposed regulations under §§ 1.36B-2 and 1.36B-3 are proposed to apply for taxable years beginning on or after the first date of the calendar year that begins after the date these regulations are published as final regulations in the **Federal Register**.

### **Special Analyses**

#### *I. Regulatory Planning and Review*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

#### *II. Paperwork Reduction Act*

These proposed regulations do not impose any additional information collection requirements in the form of reporting, recordkeeping requirements, or third-party disclosure statements. Taxpayers who claim PTC on their income tax returns are required to file Form 8962, which is the sole collection of information requirement imposed by section 36B and the regulations under section 36B. The rules in these proposed regulations, if finalized, would require the IRS to revise the instructions for Form 8962. For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(c)), the reporting burden associated with the collection of information for Form 8962 will be

reflected in the PRA submission associated with income tax returns under the OMB control number 1545–0074. To the extent there is a change in burden because of these proposed regulations, the change in burden will be reflected in the updated burden estimates for Form 8962.

### III. Regulatory Flexibility Act

When an agency issues a proposed rulemaking, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” that “describe[s] the impact of the proposed rule on small entities.” See 5 U.S.C. 603(a). The term “small entities” is defined in 5 U.S.C. 601 to mean “small business,” “small organization,” and “small governmental jurisdiction,” which are also defined in 5 U.S.C. 601. Small business size standards define whether a business is “small” and have been established for types of economic activities, or industry, generally under the North American Industry Classification System (NAICS). See title 13, part 121 of the Code of Federal Regulations (Small Business Size Regulations). The size standards look at various factors, including annual receipts, number of employees, and amount of assets, to determine whether the business is small. See title 13, § 121.201 of the Code of Federal Regulations for the Small Business Size Standards by NAICS Industry.

Section 605 of the RFA provides an exception to the requirement to prepare an initial regulatory flexibility analysis if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS hereby certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the majority of the effect of the proposed regulations falls on individual taxpayers, and entities will experience only small changes.

Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business.

### IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may

result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

### V. Executive Order 13132: Federalism

E.O. 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the E.O. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the E.O.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble in the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, including the economic impact of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing is being held on December 13, 2024, beginning at 10:00 a.m. ET, in the Auditorium at the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed as well as the time to be devoted to each topic by November 1, 2024. A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS

will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available free of charge at the hearing. If no outlines of the topics to be discussed at the hearing are received by November 1, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to have their name added to the building access list. The subject line of the email must contain the regulation number REG–116787–23 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–116787–23.

Individuals who want to testify by telephone at the public hearing must send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–116787–23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–116787–23.

Individuals who want to attend the public hearing in person without testifying must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to have their name added to the building access list. The subject line of the email must contain the regulation number REG–116787–23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing in Person for REG–116787–23. Requests to attend the public hearing must be received by 5:00 p.m. ET on December 11, 2024.

Individuals who want to attend the public hearing telephonically without testifying must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–116787–23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–116787–23. Requests to attend the public hearing must be received by 5:00 p.m. ET on December 11, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during the hearing, contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred) or by

telephone at (202) 317-6901 (not a toll-free number) by at least December 10, 2024.

**Statement of Availability of IRS Documents**

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

**Drafting Information**

The principal author of these proposed regulations is Clara L. Raymond of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order for §§ 1.36B-1 through 1.36B-3, and 1.36B-6, and revising the entries for §§ 1.36B-0, 1.36B-4, and 1.36B-5 to read in part as follows:

- Authority: 26 U.S.C. 7805 \* \* \*
- \* \* \* \* \*
- Section 1.36B-0 also issued under 26 U.S.C. 36B(h).
- Section 1.36B-1 also issued under 26 U.S.C. 36B(h).
- Section 1.36B-2 also issued under 26 U.S.C. 36B(h).
- Section 1.36B-3 also issued under 26 U.S.C. 36B(h).
- Section 1.36B-4 also issued under 26 U.S.C. 36B(h).
- Section 1.36B-5 also issued under 26 U.S.C. 36B(h).
- Section 1.36B-6 also issued under 26 U.S.C. 36B(h).
- \* \* \* \* \*

■ **Par. 2.** Section 1.36B-2 is amended by:

- 1. Revising the first sentence in paragraph (c)(2)(v);
- 2. Revising paragraph (e)(1); and
- 3. Adding paragraph (e)(6).

The revisions and addition read as follows:

**§ 1.36B-2 Eligibility for premium tax credit.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(v) \* \* \* An individual is treated as not eligible for Medicaid, CHIP, or a similar program such as a Basic Health Program, for a period of coverage under a qualified health plan if, when the individual enrolls in the qualified health plan, an Exchange conducts an eligibility determination or, if applicable, eligibility assessment (within the meaning of 45 CFR 155.302(b)) for Medicaid, CHIP, or a similar program and determines or assesses the individual to be not eligible for coverage under the program. \* \* \*

\* \* \* \* \*

(e) \* \* \*

(1) Except as provided in paragraphs (e)(2) through (6) of this section, this section applies to taxable years ending after December 31, 2013.

\* \* \* \* \*

(6) The first sentence of paragraph (c)(2)(v) of this section applies to taxable years beginning on or after [insert the first date of the calendar year that begins after the date of publication of the final regulations in the **Federal Register**]. The first sentence of paragraph (c)(2)(v) of this section, as contained in 26 CFR part I edition revised as of April 1, 2024, applies to taxable years ending after December 31, 2013, and beginning before [insert the first date of the calendar year that begins after the date of publication of the final regulations in the **Federal Register**].

**Par. 3.** Section 1.36B-3 is amended by:

- 1. Revising paragraph (c)(1)(ii);
- 2. Redesignating paragraphs (c)(4) and (c)(5) as paragraphs (c)(5) and (c)(6), respectively, and adding new paragraph (c)(4);
- 3. Revising paragraph (d)(1)(i);
- 4. Revising paragraph (n).

The revisions and additions read as follows:

**§ 1.36B-3 Computing the premium assistance credit amount.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) The taxpayer pays the taxpayer's share of the premium for the individual's coverage under the plan for the month by the unextended due date for filing the taxpayer's income tax return for that taxable year, the full premium for the month is paid by advance credit payments, or the amount of the premium paid (including by advance credit payments) for the month is sufficient to avoid termination of the

individual's coverage for that month under one of the scenarios described in paragraph (c)(4) of this section; and

\* \* \* \* \*

(4) *Scenarios for payments sufficient to avoid coverage termination.* The scenarios under which the amount of the premium paid (including by advance credit payments) for the month is sufficient to avoid termination of an individual's coverage for that month under paragraph (c)(1)(ii) of this section are the following:

- (i) The first month of a grace period described in 45 CFR 156.270(d) for the individual.
- (ii) A month for which a premium payment threshold under 45 CFR 155.400(g) has been met and for which month the issuer of the individual's qualified health plan provides coverage.
- (iii) A month for which a State department of insurance has, during a declared emergency, issued an order prohibiting the issuer of the individual's qualified health plan from terminating the individual's coverage for the month irrespective of whether the full premium for the month is made.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) The enrollment premiums, which are the premiums for the month for one or more qualified health plans in which a taxpayer or a member of the taxpayer's family enrolls, reduced by any amounts—

- (A) Refunded in the same taxable year as the premium liability is incurred; or
- (B) Unpaid as of the unextended due date for filing the taxpayer's income tax return for the taxable year that includes the month, or

\* \* \* \* \*

(n) *Applicability dates.* (1) Except as provided in paragraphs (n)(2) through (4) of this section, this section applies to taxable years ending after December 31, 2013.

(2) Paragraphs (d)(1)(i) and (d)(2) of this section apply to taxable years beginning after December 31, 2016. Paragraph (f) of this section applies to taxable years beginning after December 31, 2018. Paragraphs (d)(1) and (d)(2) of § 1.36B-3, as contained in 26 CFR part I edition revised as of April 1, 2016, apply to taxable years ending after December 31, 2013, and beginning before January 1, 2017. Paragraph (f) of § 1.36B-3, as contained in 26 CFR part I edition revised as of April 1, 2016, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2019.

(3) Paragraphs (c)(4) through (6) of this section apply to taxable years

beginning on or after [insert the first date of the calendar year that begins after the date of publication of final regulations in the **Federal Register**]. Paragraph (c)(4) of this section, as contained in 26 CFR part I edition revised as of April 1, 2024, applies to taxable years beginning after December 31, 2016, and beginning before [insert the first date of the calendar year that begins after the date of publication of the final regulations in the **Federal Register**]. Paragraph (c)(5) of this section, as contained in 26 CFR part I edition revised as of April 1, 2024, applies to taxable years ending after December 31, 2013, and beginning before [insert the first date of the calendar year that begins after the date of publication of the final regulations in the **Federal Register**].

(4) Paragraph (d)(1)(i) of this section applies to taxable years beginning on or after [insert the first date of the calendar year that begins after the date of publication of the final regulations in the **Federal Register**]. Paragraph (d)(1)(i) of § 1.36B–3, as contained in 26 CFR part I edition revised as of April 1, 2016, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2017. Paragraph (d)(1)(i) of § 1.36B–3, as contained in 26 CFR part I edition revised as of April 1, 2022, applies to taxable years beginning after December 31, 2016, and beginning before January 1, 2023. Paragraph (d)(1)(i) of § 1.36B–3, as contained in 26 CFR part I edition revised as of April 1, 2024, applies to taxable years beginning after December 31, 2022, and beginning before [insert the first date of the calendar year that begins after the date of publication of the final regulations in the **Federal Register**].

Douglas W. O'Donnell,  
Deputy Commissioner.

[FR Doc. 2024–20758 Filed 9–16–24; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG–106851–21]

RIN 1545–BQ95

#### Tribal General Welfare Benefits

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations regarding the

exclusion from gross income of certain Tribal general welfare benefits. The proposed regulations address the requirements that would apply to determine whether the benefits that an Indian Tribal government program provides qualify as Tribal general welfare benefits. These proposed regulations would affect Indian Tribal governments, agencies or instrumentalities of such governments, Federally-recognized Tribes, members of such Tribes, such members' spouses and dependents, and other Tribal program participants. This document also requests comments on certain provisions and provides a notice of a public hearing on the proposed regulations that will be in addition to Tribal consultation on the proposed regulations.

#### DATES:

**Comments:** Electronic or written comments on this proposed rule from the public must be received by December 16, 2024.

**Public Hearing:** The public hearing is scheduled to be held on January 13, 2025, at 10 a.m. Eastern time (ET). Requests to speak and outlines of topics to be discussed at the public hearing must be received by December 16, 2024. If no outlines are received by December 16, 2024, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on January 9, 2025. Requests for special assistance during the hearing must be received by 5 p.m. ET on January 8, 2025. See the Comments and Public Hearing section of the **SUPPLEMENTARY INFORMATION** for additional information.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG–106851–21) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish any comments to the IRS's public docket. Send paper submissions to: CC:PA:PR:01 (REG–106851–21), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Jonathan A. Dunlap of the Office of Associate Chief Counsel (Income Tax and Accounting), (202) 317–4718 (not a toll-free number); concerning submissions of comments or outlines,

the hearing, or any questions to attend the hearing by teleconferencing, Publication and Regulations Section at (202) 317–6901 (not a toll-free number) or preferably by email to [publichearings@irs.gov](mailto:publichearings@irs.gov). If emailing, please include the following information in the subject line: Attend, Testify, or Question and REG–106851–21.

#### SUPPLEMENTARY INFORMATION:

##### Authority

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 139E of the Internal Revenue Code (Code). Section 139E(c)(3) provides an express delegation of authority for the Secretary of the Treasury or her delegate (Secretary) to, “in consultation with the Tribal Advisory Committee (as established under section 3(a) of the Tribal General Welfare Exclusion Act of 2014), establish guidelines for what constitutes lavish or extravagant benefits with respect to Indian tribal government programs.” The proposed regulations are also issued under the express delegation of authority under section 7805(a) of the Code.

##### Background

This notice of proposed rulemaking contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to implement section 139E of the Internal Revenue Code (Code).

Section 61 of the Code provides that, except as otherwise provided by law, the term “gross income” means all income from whatever source derived. The term “income” is broadly defined as “instances of undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion.” *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955). As a general rule, exclusions from income are construed narrowly, and taxpayers must bring themselves within the clear scope of the exclusion for the exclusion to apply. *Commissioner v. Schleier*, 515 U.S. 323, 328–329 (1995). Tribal members are subject to the same requirement to pay Federal income taxes as non-Tribal members, unless exempted by a treaty or agreement between the United States and the Tribal member's Tribe or an Act of Congress dealing with Indian affairs. *Squire v. Capoman*, 351 U.S. 1, 6 (1956).

Generally, if the provision of a benefit satisfies the requirements of section 139E (discussed in part IV of this Background), section 139E will apply to exclude the value of the benefit from the