

CASE NO. 13-5061
ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SABINA LOVING, ELMER KILIAN, AND JOHN GAMBINO,
Plaintiffs-Appellees,

v.

INTERNAL REVENUE SERVICE; UNITED STATES OF AMERICA; AND DOUGLAS H.
SHULMAN, (FORMER) COMMISSIONER OF INTERNAL REVENUE,
Defendants-Appellants.

On Appeal from the Judgment of the United States District Court
for the District of Columbia

BRIEF AMICI CURIAE OF
FORMER COMMISSIONERS OF INTERNAL REVENUE
IN SUPPORT OF DEFENDANTS-APPELLANTS

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April 5, 2013

**STATEMENT REGARDING CONSENT TO FILE, AUTHORSHIP,
MONETARY CONTRIBUTIONS, AND SEPARATE BRIEFING**

All parties have consented to the filing of this brief.

Pursuant to Federal Rule of Appellate Procedure 29(c), *amici curiae* Former Commissioners of Internal Revenue state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission.

Pursuant to Circuit Rule 29(d), *amici curiae* certify that no other brief of which they are aware addresses the complexity of the Internal Revenue Code and its role in facilitating government assistance programs. To the best of the knowledge of *amici curiae*, there will be one other amicus brief in support of Defendants-Appellants, but it will not overlap with the arguments presented herein. The National Consumer Law Center and the National Community Tax Coalition will submit a brief largely addressing problems with certain paid income tax return preparers. In light of the different issues addressed by these briefs, *amici curiae* certify that filing a joint brief is not practicable and that it is necessary to submit separate briefs.

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

(A) *Parties and Amici.* All parties, intervenors, and amici appearing before the district court and in this court are listed in the Brief for the Defendants-Appellants.

(B) *Rulings Under Review.* References to the rulings under review appear in the Brief for the Defendants-Appellants.

(C) *Related Cases.* To the best of their knowledge, counsel for the *amici curiae* are not aware of any previous or pending related cases.

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I. Interest of Amici Curiae

The *amici curiae* are former Commissioners of Internal Revenue:

Former Commissioner	Service as Commissioner
Mortimer M. Caplin	1961 – 1964
Sheldon S. Cohen	1965 – 1969
Lawrence B. Gibbs	1986 – 1989
Fred T. Goldberg, Jr.	1989 – 1992
Charles O. Rossotti	1997 – 2002

As former Commissioners of Internal Revenue, appointed by Democratic and Republican Presidents, the *amici curiae* have had direct responsibility for the tens of thousands of IRS employees and substantial IRS infrastructure necessary to run the increasingly complex tax system. They have firsthand experience with the massive government assistance programs Congress has chosen to administer through the tax system, which disburse hundreds of billions of dollars each year. *Amici curiae* believe that efficient tax administration depends on taxpayers receiving qualified advice and assistance in presenting their claims for these disbursements on their tax returns.

The *amici curiae* take no position regarding whether the *manner* in which the Treasury has chosen to regulate tax return preparers is advisable, but they

strongly disagree with the District Court's view that Congress has not empowered Treasury to do so.

II. Summary

Tax return preparers advise and assist taxpayers in presenting their cases before the United States Treasury. The District Court equated "representation of persons" (which may be regulated by the Treasury Department under 31 U.S.C. § 330) with advising and assisting in presenting a case, and *amici curiae* assume that position to be correct for purposes of this brief. However, the District Court erred in concluding that "[f]iling a tax return would never, in normal usage, be described as 'presenting a case.'"¹

Contrary to the District Court's opinion, preparing and filing a tax return is indeed the presentation of a case, in which taxpayers pursue a wide variety of financial claims against the Treasury. Most significantly, Congress has decided to administer an increasingly wide variety of government assistance programs through the federal income tax system, including assistance for low income families, health care, education, and homebuyers. In each instance, preparing and filing a tax return is the sole means by which taxpayers are able to present to Treasury their qualification for these programs and to obtain the financial assistance intended by Congress.

¹ Joint Appendix ("JA") 20.

The IRS is able to administer tens of millions of claims for government financial assistance each year with little or no dispute only because the tax return provides such an efficient and safe mechanism for handling these cases. In this manner, the advice and assistance to taxpayers provided by tax return preparers responsible for preparing the taxpayers' returns make them "representatives" of the taxpayers subject to potential regulation under 31 U.S.C. § 330.

III. Non-Tax Policies Are Administered Through the Tax System

The concept of a tax return as an annual bookkeeping function, with the tax return preparer acting as bookkeeper, is an anachronism that has been fully displaced by the sweeping public policy goals of government assistance programs now administered through the modern federal income tax system. Given the content and scope of the modern Internal Revenue Code, a tax return preparer is no longer merely poring over a box of receipts in green eyeshades (if such a caricature ever described the full role of the tax return preparer). Instead, the preparer must explore with taxpayer-clients critical issues such as health care, child care, family relationships, education goals, home ownership, charitable giving, saving for retirement, and any number of other public policy goals that Congress has decided to address through the Internal Revenue Code.

The relationship between these public policy goals and the tax system was most recently highlighted in the Supreme Court's decision confirming the

constitutionality of various portions of the Affordable Care Act.² In that case, the Court, in an opinion by Chief Justice Roberts, explained that, even though the penalty for failure to purchase health insurance was enacted “to shape decisions about whether to buy health insurance,” it was nevertheless a tax, and accordingly Congress’s attempt to shape health care decisions was justified under its taxing power.³

Congress’s willingness to use its taxing power to effectuate public policies in areas such as health care has fundamentally changed the roles of the tax return and tax return preparers. Tax return preparers now find themselves on the front line of administering these programs. They must counsel taxpayers about issues such as the decision to buy health insurance, explain to taxpayers how those decisions affect their claims against or liabilities to the government, and then represent taxpayers by asserting these claims through the taxpayers’ tax returns.

Perhaps the most important manifestation of Congress’s use of the Internal Revenue Code to administer public policy programs is the increasingly frequent enactment of “refundable” tax credits. A “refundable” tax credit is treated as an overpayment of tax by the taxpayer.⁴ Thus, if the taxpayer owes no tax, the

² *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012).

³ *Id.* at 2596.

⁴ 26 U.S.C. § 6401(b)(1).

taxpayer will receive a cash payment—in the form of a tax refund equal to the amount of the credit—as if the taxpayer had paid tax when none was owed.⁵ In this way, refundable tax credits delink the financial assistance Congress intended to provide from the taxpayer’s actual tax liability, but permit the intended financial assistance to be administered by the tax system through the preparation and filing of tax returns.

Refundable tax credits are generally codified in sections 31-37 of the Internal Revenue Code and include credits such as:

- The earned income credit (§ 32);
- The child tax credit (made partially refundable under § 24(d)(1));
- The health insurance cost credit (§ 35);
- The first-time homebuyer credit (§ 36);
- The making work pay credit (§ 36A); and
- The adoption expense credit (§ 36C, re-codified as § 23).

In each of these instances, Congress provided financial assistance to individual taxpayers (for example to first-time homebuyers, or low-income families, or individuals seeking health care) regardless of their actual tax liability. But in order

⁵ See *Sorenson v. Sec’y of Treasury*, 475 U.S. 851, 855 (1986) (“An individual who is entitled to [a refundable credit] that exceeds the amount of tax he owes thereby receives the difference as if he had overpaid his tax in that amount.”).

to obtain this financial assistance, the taxpayers must present their qualifications for the assistance by preparing and filing tax returns.

In 2012, the IRS processed over 146 million individual income tax returns.⁶ Of those, over 82% (over 120 million) resulted in the government paying a tax refund.⁷ By comparison, in February 2013, the Social Security Administration paid benefits to just over 62 million recipients.⁸ Thus, in 2013 the number of individuals receiving a tax refund is likely to be twice as large as the number of individuals receiving a social security payment.

The total amount of tax refunds paid in 2012 exceeded \$322 billion, for an average refund of \$2,673 per individual income tax return claiming a refund.⁹ A large percentage of the total amount refunded is attributable to excess wage withholding, for which the employee claims a refundable credit under section 31 of the Internal Revenue Code. In addition to excess wage withholding, the earned income credits paid in 2012 totaled nearly \$54 billion, and the child tax credits

⁶ Internal Revenue Service, *Data Book, 2012*, Tbl.3 at 6 (Pub. 55B Mar. 2013), available at <http://www.irs.gov/pub/irs-soi/12datbk.pdf>.

⁷ *Id.* Tbl.7 at 17.

⁸ U.S. Social Security Administration, Monthly Statistical Snapshot, Tbl.1 (Feb. 2013), available at http://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/index.html?number.

⁹ Internal Revenue Service, *Data Book, 2012*, Tbl.8 at 19 (Pub. 55B Mar. 2013), available at <http://www.irs.gov/pub/irs-soi/12datbk.pdf>.

totaled over \$22 billion. The amounts paid for just these two refundable credits total approximately \$76 billion, which exceeds the \$70 billion budget in 2012 for all mandatory payments of veterans' benefits.¹⁰

As illustrated by these figures, the tax system is one of the key avenues by which the government makes disbursements to individuals in order to effectuate a variety of public policy goals. The refundable tax credit enables Congress to provide these benefits through the tax system even when the recipient has no actual tax liability. Thus, the tax return preparer is not merely calculating tax liability; he or she is very often representing the taxpayer by preparing the return establishing the taxpayer's eligibility to receive the benefits provided by these public policy programs.

IV. The Tax System Works Only Through Self-Assessment and Self Reporting

A foundational principle of federal income tax administration is self-assessment, which means that taxpayers must calculate and report their income tax liability (or benefit) by preparing and filing an appropriate tax return. For the 82% of individual taxpayers who received a tax refund in 2012, self-assessment meant that they could receive a refund check (in the average amount of over \$2,500) only

¹⁰ Press Release, U.S. Department of Veteran's Affairs, VA Announces Budget Request for 2012 (Feb. 14, 2011), *available at* <http://www.va.gov/opa/pressrel/pressrelease.cfm?id=2054>.

by filing an income tax return properly to reflect their entitlement to the refund.

Just as the IRS does not send out income tax bills, it generally does not mail refund checks unless a refund is reflected in a properly filed tax return.¹¹

Financial assistance programs administered through the income tax system are also therefore self-assessed, meaning that preparing and filing a tax return is the sole mechanism by which otherwise eligible individuals can assert and obtain the benefits Congress intended to provide to them. Without a properly filed tax return, eligible individuals simply have no claim or case against the government. In this way, each taxpayer claiming a tax refund is similar to an individual who files for disability benefits, workers' compensation, veterans' benefits, or other financial assistance administered outside the tax system.

Although only a tiny fraction of the 120 million claims for refund filed against the Treasury will result in any sort of contested administrative or judicial proceeding, the IRS nevertheless must review and act on each of them. A vigorous annual IRS audit of every return would be prohibitively expensive to the fisc, and inconsistent with our democratic system. But the absence of a contested tax proceeding for every taxpayer for every year does not change the critical fact that a tax return makes a case for the taxpayer's financial claim against the government.

¹¹ *See, e.g.*, Rev. Proc. 2008-21, 2008-1 C.B. 657 (requiring a tax return prior to sending \$600 economic stimulus payments in 2008).

Indeed, the lack of a contested proceeding reinforces the idea that the tax system depends on the expertise and good faith of those who prepare tax returns, including paid preparers.

V. **Complex Tax Laws Result in Complexity in Self-Assessment**

The process of self-assessment and self-reporting requires much more than taxpayers identifying themselves so that the government can determine their eligibility for certain programs. As explained by the Supreme Court:

Congress has given discretion to the Commissioner to prescribe by regulation forms of returns and has made it the duty of the taxpayer to comply. It thus implements the system of self-assessment which is so largely the basis of our American scheme of income taxation. The purpose is not alone to get tax information in some form but also *to get it with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished.*¹²

Consistent with this principle, the complexity and scope of information required to complete a federal income tax return have increased as the number and scope of the policies and programs being administered through the tax system have expanded.

¹² *Commissioner v. Lane-Wells Co.*, 321 U.S. 219, 223 (1944) (emphasis added).

Consider, for example, the earned income credit, for which there were \$54 billion in claims paid to over 23 million taxpayers in 2012.¹³ A taxpayer seeking the benefit of the earned income credit must complete a tax return claiming that credit. The rules governing that credit are sufficiently complex that the IRS has prepared a 62-page publication explaining how it is done.¹⁴ In addition, the IRS maintains a series of webpages devoted to calculating earned income credit claims.¹⁵ Although the IRS webpages advertise that claiming the credit is “easier than ever,” it also suggests that taxpayers gather the following information before endeavoring to determine their eligibility:

- Your valid driver’s license or other photo id card.
- Social security cards or a Social Security number (SSN) verification letter for all persons listed on the return.
- Birth dates for all persons listed on return.
- A copy of last year’s federal and state return.
- All income statements: Forms W-2 and 1099, Social Security, unemployment, and other statements, such as pensions, stocks, interest and any documents showing taxes withheld. If self-

¹³ Internal Revenue Service, *Data Book, 2012*, Tbls.7-8 at 17-19 (Pub. 55B Mar. 2013), available at <http://www.irs.gov/pub/irs-soi/12datbk.pdf>.

¹⁴ Internal Revenue Service, *Earned Income Credit* (Pub. 596), available at <http://www.irs.gov/pub/irs-pdf/p596.pdf>.

¹⁵ Internal Revenue Service, *EITC Home Page*, <http://www.irs.gov/Individuals/EITC-Home-Page--It's-easier-than-ever-to-find-out-if-you-qualify-for-EITC> (last visited Apr. 5, 2013).

employed or your own or run a business, bring records of all your income.

- All records of expenses, such as tuition, mortgage interest, or real estate taxes. If self-employed or you own or run a business, bring records of all your expenses.
- A copy of last year's state and federal returns, if on hand.
- Bank routing numbers and account numbers to direct deposit any re
- Dependent child care information: name and address of who you paid and either the caretaker's SSN or other tax identification number.
- Both spouses to sign forms to e-file your joint tax return.¹⁶

The taxpayer then must evaluate whether he or she has a "qualifying child," which delves into the age, residence, adoption, and other family status issues of the taxpayers' children.¹⁷

The IRS website and publications regarding the earned income credit are put in place because the statute enacting the earned income credit is the picture of complexity. The entire text of 26 U.S.C. § 32 is attached hereto as Appendix A. Most tax professionals cannot understand the statutory provisions relating to the

¹⁶ Internal Revenue Service, Be Prepared to Get the EITC You Earned, <http://www.irs.gov/Individuals/Be-Prepared-To-Get-The-EITC-You-Earned> (last visited Apr. 5, 2013).

¹⁷ Internal Revenue Service, Qualifying Child Rules, <http://www.irs.gov/Individuals/Qualifying-Child-Rules> (last visited Apr. 5, 2013).

earned income credit without detailed and focused study. And the IRS website dealing with the earned income credit repeatedly encourages taxpayers to seek assistance from a tax professional in determining their eligibility for the refundable credit.

Although the earned income credit is perhaps the most noteworthy example, other tax provisions, whether relating to refundable credits or otherwise, present equal complexities. For example, the attached Appendix B is the full statutory text of the recently enacted health insurance premium tax credit. 26 U.S.C. § 36B. The statute itself is a tangle of technical rules, laced with jargon, acronyms, and tax-speak. Yet, at its core, the statute is intended to provide eligible individuals with a government disbursement equal to over 70% of their health insurance costs, at an estimated cost to the Treasury over \$107 billion from 2014 to 2019.¹⁸ And taxpayers desiring this health insurance subsidy must navigate this complexity and self-report their eligibility through the tax system.

VI. Tax Return Preparers Assist in Self-Assessment and Self-Reporting

Lamenting the complexity of the Internal Revenue Code is easy sport. But that complexity—particularly the increase in complexity over time—is the key to

¹⁸ Letter from the Congressional Budget Office to the Honorable Nancy Pelosi, at Tbl.2 (Mar. 20, 2010), *available at* <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/113xx/doc11379/amendr econprop.pdf>.

understanding the important role tax return preparers perform in helping taxpayers prepare and file their tax returns to present and establish their eligibility for the benefits distributed through the tax system. At the most basic level, tax return preparers assist taxpayers by identifying credits and benefits taxpayers are entitled to claim on a tax return. But even more importantly, tax return preparers assist and advise taxpayers about *how* to claim those credits and benefits on a tax return in order to actually obtain them.

In addition, scrupulous tax return preparers help guard against fraud against both taxpayers and the government. By way of example, a 2010 report by the Treasury Inspector General for Tax Administration (“TIGTA”) highlighted potential fraud related to the first-time homebuyer tax credit.¹⁹ In that report, TIGTA identified 4,608 incarcerated individuals who had attempted to claim the first-time homebuyer credit.²⁰ TIGTA analyzed a sample of 715 prisoners from that group, and found that 174 of the claims had been prepared by paid tax return preparers, and 241 of the claims had been paid, totaling more than \$1.7 million.²¹

¹⁹ Department of the Treasury, *Additional Steps Are Needed to Prevent and Recover Erroneous Claims for the First-Time Homebuyer Credit* (Reference No. 2010-41-069 June 17, 2010), available at <http://www.treasury.gov/tigta/auditreports/2010reports/201041069fr.pdf>.

²⁰ *Id.* at 4.

²¹ *Id.*

As illustrated by the TIGTA report, issues affecting only a tiny fraction of a percentage of the claims handled by the IRS may result in millions of dollars of fraudulent claims being paid. The IRS often must leverage the scruples and competence of taxpayers and, more importantly, tax return preparers, to ensure that these claims are properly self-assessed and self-reported in the first instance.

As noted by the District Court, the tax laws currently provide a mechanism for enjoining bad tax return preparers such as those who file fraudulent claims for first-time homebuyer credits.²² For example, the Department of Justice recently obtained an injunction²³ against employees of a company that, according to the complaint, claimed to be the fourth largest tax return preparation company in the United States.²⁴ But injunctive relief is available only once the bad acts have occurred and been discovered, and often involves lengthy litigation. Moreover, barring bad tax return preparers from striking again is wholly consistent with the Treasury Department's authority to regulate commercial tax return preparers in ways reasonable designed to prevent these bad acts from happening in the first instance.

²² See JA 25-27 (citing 26 U.S.C. §§ 7407 and 7408).

²³ Order, *United States v. Franklin*, Civ. No. 1:12-cv-394 (S. Ind. Jan. 28, 2013), ECF No. 79.

²⁴ Complaint, *United States v. Franklin*, Civ. No. 1:12-cv-394 (S. Ind. Mar. 28, 2011), ECF No. 1.

The manner in which tax return preparers assist taxpayers in *how* to pursue their claims aligns with the history giving rise to Treasury's authority to regulate representatives under 31 U.S.C. § 330. That section was enacted on July 4, 1884, to address the disreputable conduct of claims agents assisting soldiers seeking pensions, back pay, and various other government benefits.²⁵ The modern counterpart is that benefit claims are pursued through a submission of a tax return to the IRS. A different approach was used in 1884, but in both cases Congress granted to the Treasury Department the authority to regulate representatives who assist those making the claims. Treasury's decision to exercise that authority over tax return preparers is a natural outgrowth of Congress's increasingly frequent use of the federal income tax system to accomplish non-tax policy objectives by delivering the benefits of Federal financial assistance programs to a wide variety of individuals and families.

Consistent with the Supreme Court's view of a self-assessed and self-reported tax system discussed above, a taxpayer's return must self-assess and self-report "*with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished.*"²⁶ For all

²⁵ George M. Morris, *Growth and Regulation of Treasury Bar*, 8 A.B.A. J. 742, 742-43 (1922).

²⁶ *Commissioner v. Lane-Wells Co.*, 321 U.S. 219, 223 (1944) (emphasis added).

but a tiny fraction of taxpayers, the annual tax return is the only opportunity for taxpayers to present to the Treasury their eligibility for the benefits Congress chose to administer through the Internal Revenue Code. Given the overwhelming complexity of many of those provisions, it would be all but impossible for taxpayers to properly claim their eligibility on their tax returns, or for the IRS to accurately evaluate and act on those claims, without extensive advice and assistance from a tax return preparer to present each taxpayer's case for why he or she is entitled to the benefits claimed on the tax return.

VII. Conclusion

In deciding that “[f]iling a tax return would never, in normal usage, be described as ‘presenting a case,’”²⁷ the District Court ignored the real workings of our modern federal income tax system. Far from being a mere bookkeeper, a tax return preparer who advises and assists in preparing a tax return may be solely responsible for “presenting the case” for the taxpayer’s eligibility for the benefits provided by crucial government programs administered through the tax system—government programs that result in hundreds of billions of dollars in Treasury disbursements each year based almost exclusively on self-reporting through a tax return. In 1884, Congress empowered the Treasury to regulate the conduct of claims agents pursuing financial benefits from the government; and in 2013

²⁷ JA 20.

Treasury retains that authority to regulate the conduct of tax return preparers who similarly assist in preparing and filing tax returns that present to the Treasury millions of claims worth billions of dollars each year.

Dated: April 5, 2013

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word limit set forth in Fed. R. App. P. 29(d) and 32(a)(7)(B)(i) because, according to the word count feature of Microsoft Word 2010, the brief contains a total of 3,478 words, excluding the sections listed in Fed. R. App. P. Rule 32(a)(7)(B)(iii) and Circuit Rule 32(a)(1).

I further certify that the foregoing brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman font.

Dated: April 5, 2013

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing brief will be served through the CM/ECF system and by first class mail on counsel of record for all parties on April 5, 2013.

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Appendix A

§ 32. Earned income

(a) Allowance of credit.--

(1) In general.--In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the credit percentage of so much of the taxpayer's earned income for the taxable year as does not exceed the earned income amount.

(2) Limitation.--The amount of the credit allowable to a taxpayer under paragraph (1) for any taxable year shall not exceed the excess (if any) of--

(A) the credit percentage of the earned income amount, over

(B) the phaseout percentage of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds the phaseout amount.

(b) Percentages and amounts.--For purposes of subsection (a)--

(1) Percentages.--The credit percentage and the phaseout percentage shall be determined as follows:

(A) **In general.**--In the case of taxable years beginning after 1995:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	34	15.98
2 or more qualifying children	30	17.68
2 or more qualifying children	40	21.06
No qualifying children	7.65	7.65

(B) **Transitional percentages for 1995.**--In the case of taxable years beginning in 1995:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	34	15.98

2 or more qualifying children	30	17.68
2 or more qualifying children	36	20.22
No qualifying children	7.65	7.65

(C) Transitional percentages for 1994.--In the case of a taxable year beginning in 1994:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	26.3	15.98
2 or more qualifying children	30	17.68
2 or more qualifying children	30	17.68
No qualifying children	7.65	7.65

(2) Amounts.--

(A) In general.--Subject to subparagraph (B), the earned income amount and the phaseout amount shall be determined as follows:

In the case of an eligible individual with:	The earned income amount is:	The phaseout amount is:
1 qualifying child	\$6,330	\$11,610
2 or more qualifying children.	\$8,890	\$11,610
No qualifying children.	\$4,220	\$ 5,280

(B) Joint returns.--In the case of a joint return filed by an eligible individual and such individual's spouse, the phaseout amount determined under subparagraph (A) shall be increased by--

- (i) \$1,000 in the case of taxable years beginning in 2002, 2003, and 2004,
- (ii) \$2,000 in the case of taxable years beginning in 2005, 2006, and 2007, and
- (iii) \$3,000 in the case of taxable years beginning after 2007.

(3) Special rules for for certain years.--In the case of any taxable year beginning after 2008 and before 2018--

(A) Increased credit percentage for 3 or more qualifying children.--In the case of a taxpayer with 3 or more qualifying children, the credit percentage is 45 percent.

(B) Reduction of marriage penalty.--

(i) In general.--The dollar amount in effect under paragraph (2)(B) shall be \$5,000.

(ii) Inflation adjustment.--In the case of any taxable year beginning in 2010, the \$5,000 amount in clause (i) shall be increased by an amount equal to--

(I) such dollar amount, multiplied by

(II) the cost of living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins determined by substituting “calendar year 2008” for “calendar year 1992” in subparagraph (B) thereof.

(iii) Rounding.--Subparagraph (A) of subsection (j)(2) shall apply after taking into account any increase under clause (ii).

(c) Definitions and special rules.--For purposes of this section--

(1) Eligible individual.--

(A) In general.--The term “eligible individual” means--

(i) any individual who has a qualifying child for the taxable year, or

(ii) any other individual who does not have a qualifying child for the taxable year, if--

(I) such individual’s principal place of abode is in the United States for more than one-half of such taxable year,

(II) such individual (or, if the individual is married, either the individual or the individual’s spouse) has attained age 25 but not attained age 65 before

the close of the taxable year, and

(III) such individual is not a dependent for whom a deduction is allowable under section 151 to another taxpayer for any taxable year beginning in the same calendar year as such taxable year.

For purposes of the preceding sentence, marital status shall be determined under section 7703.

(B) Qualifying child ineligible.--If an individual is the qualifying child of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall not be treated as an eligible individual for any taxable year of such individual beginning in such calendar year.

(C) Exception for individual claiming benefits under section 911.--The term "eligible individual" does not include any individual who claims the benefits of section 911 (relating to citizens or residents living abroad) for the taxable year.

(D) Limitation on eligibility of nonresident aliens.--The term "eligible individual" shall not include any individual who is a nonresident alien individual for any portion of the taxable year unless such individual is treated for such taxable year as a resident of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

(E) Identification number requirement.--No credit shall be allowed under this section to an eligible individual who does not include on the return of tax for the taxable year--

(i) such individual's taxpayer identification number, and

(ii) if the individual is married (within the meaning of section 7703), the taxpayer identification number of such individual's spouse.

(F) Individuals who do not include TIN, etc., of any qualifying child.--No credit shall be allowed under this section to any eligible individual who has one or more qualifying children if no qualifying child of such individual is taken into account under subsection (b) by reason of paragraph (3)(D).

(2) Earned income.--

(A) The term “earned income” means--

(i) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income for the taxable year, plus

(ii) the amount of the taxpayer’s net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f).

(B) For purposes of subparagraph (A)--

(i) the earned income of an individual shall be computed without regard to any community property laws,

(ii) no amount received as a pension or annuity shall be taken into account,

(iii) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account,

(iv) no amount received for services provided by an individual while the individual is an inmate at a penal institution shall be taken into account,

(v) no amount described in subparagraph (A) received for service performed in work activities as defined in paragraph (4) or (7) of section 407(d) of the Social Security Act to which the taxpayer is assigned under any State program under part A of title IV of such Act shall be taken into account, but only to the extent such amount is subsidized under such State program, and

(vi) a taxpayer may elect to treat amounts excluded from gross income by reason of section 112 as earned income.

(3) Qualifying child.--

(A) In general.--The term “qualifying child” means a qualifying child of the taxpayer (as defined in section 152(c), determined without regard to paragraph (1)(D) thereof and section 152(e)).

(B) Married individual.--The term “qualifying child” shall not include an

individual who is married as of the close of the taxpayer's taxable year unless the taxpayer is entitled to a deduction under section 151 for such taxable year with respect to such individual (or would be so entitled but for section 152(e)).

(C) Place of abode.--For purposes of subparagraph (A), the requirements of section 152(c)(1)(B) shall be met only if the principal place of abode is in the United States.

(D) Identification requirements.--

(i) In general.--A qualifying child shall not be taken into account under subsection (b) unless the taxpayer includes the name, age, and TIN of the qualifying child on the return of tax for the taxable year.

(ii) Other methods.--The Secretary may prescribe other methods for providing the information described in clause (i).

(4) Treatment of military personnel stationed outside the United States.--For purposes of paragraphs (1)(A)(ii)(I) and (3)(C), the principal place of abode of a member of the Armed Forces of the United States shall be treated as in the United States during any period during which such member is stationed outside the United States while serving on extended active duty with the Armed Forces of the United States. For purposes of the preceding sentence, the term "extended active duty" means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

(d) Married individuals.--In the case of an individual who is married (within the meaning of section 7703), this section shall apply only if a joint return is filed for the taxable year under section 6013.

(e) Taxable year must be full taxable year.--Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

(f) Amount of credit to be determined under tables.--

(1) In general.--The amount of the credit allowed by this section shall be determined under tables prescribed by the Secretary.

(2) Requirements for tables.--The tables prescribed under paragraph (1) shall reflect the provisions of subsections (a) and (b) and shall have income brackets of not greater than \$50 each--

(A) for earned income between \$0 and the amount of earned income at which the credit is phased out under subsection (b), and

(B) for adjusted gross income between the dollar amount at which the phaseout begins under subsection (b) and the amount of adjusted gross income at which the credit is phased out under subsection (b).

(i) Denial of credit for individuals having excessive investment income.--

(1) In general.--No credit shall be allowed under subsection (a) for the taxable year if the aggregate amount of disqualified income of the taxpayer for the taxable year exceeds \$2,200.

(2) Disqualified income.--For purposes of paragraph (1), the term “disqualified income” means--

(A) interest or dividends to the extent includible in gross income for the taxable year,

(B) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter,

(C) the excess (if any) of--

(i) gross income from rents or royalties not derived in the ordinary course of a trade or business, over

(ii) the sum of--

(I) the deductions (other than interest) which are clearly and directly allocable to such gross income, plus

(II) interest deductions properly allocable to such gross income,

(D) the capital gain net income (as defined in section 1222) of the taxpayer for such taxable year, and

(E) the excess (if any) of--

(i) the aggregate income from all passive activities for the taxable year (determined without regard to any amount included in earned income under subsection (c)(2) or described in a preceding subparagraph), over

(ii) the aggregate losses from all passive activities for the taxable year (as so determined).

For purposes of subparagraph (E), the term “passive activity” has the meaning given such term by section 469.

(j) Inflation adjustments.--

(1) In general.--In the case of any taxable year beginning after 1996, each of the dollar amounts in subsections (b)(2) and (i)(1) shall be increased by an amount equal to--

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined--

(i) in the case of amounts in subsections (b)(2)(A) and (i)(1), by substituting “calendar year 1995” for “calendar year 1992” in subparagraph (B) thereof, and

(ii) in the case of the \$3,000 amount in subsection (b)(2)(B)(iii), by substituting “calendar year 2007” for “calendar year 1992” in subparagraph (B) of such section 1.

(2) Rounding.--

(A) In general.--If any dollar amount in subsection (b)(2)(A) (after being increased under subparagraph (B) thereof), after being increased under paragraph (1), is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10.

(B) Disqualified income threshold amount.--If the dollar amount in

subsection (i)(1), after being increased under paragraph (1), is not a multiple of \$50, such amount shall be rounded to the next lowest multiple of \$50.

(k) Restrictions on taxpayers who improperly claimed credit in prior year

(1) Taxpayers making prior fraudulent or reckless claims

(A) In general.--No credit shall be allowed under this section for any taxable year in the disallowance period.

(B) Disallowance period.--For purposes of paragraph (1), the disallowance period is--

(i) the period of 10 taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to fraud, and

(ii) the period of 2 taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to reckless or intentional disregard of rules and regulations (but not due to fraud).

(2) Taxpayers making improper prior claims.--In the case of a taxpayer who is denied credit under this section for any taxable year as a result of the deficiency procedures under subchapter B of chapter 63, no credit shall be allowed under this section for any subsequent taxable year unless the taxpayer provides such information as the Secretary may require to demonstrate eligibility for such credit.

(l) Coordination with certain means-tested programs.--For purposes of--

(1) the United States Housing Act of 1937,

(2) title V of the Housing Act of 1949,

(3) section 101 of the Housing and Urban Development Act of 1965,

(4) sections 221(d)(3), 235, and 236 of the National Housing Act, and

(5) the Food and Nutrition Act of 2008,

any refund made to an individual (or the spouse of an individual) by reason of this section, and any payment made to such individual (or such spouse) by an employer under section 3507, shall not be treated as income (and shall not be taken into account in determining resources for the month of its receipt and the following month).

(m) Identification numbers.--Solely for purposes of subsections (c)(1)(E) and (c)(3)(D), a taxpayer identification number means a social security number issued to an individual by the Social Security Administration (other than a social security number issued pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act).

Appendix B

§ 36B. Refundable credit for coverage under a qualified health plan

(a) In general.--In the case of an applicable taxpayer, there shall be allowed as a credit against the tax imposed by this subtitle for any taxable year an amount equal to the premium assistance credit amount of the taxpayer for the taxable year.

(b) Premium assistance credit amount.--For purposes of this section--

(1) In general.--The term “premium assistance credit amount” means, with respect to any taxable year, the sum of the premium assistance amounts determined under paragraph (2) with respect to all coverage months of the taxpayer occurring during the taxable year.

(2) Premium assistance amount.--The premium assistance amount determined under this subsection with respect to any coverage month is the amount equal to the lesser of--

(A) the monthly premiums for such month for 1 or more qualified health plans offered in the individual market within a State which cover the taxpayer, the taxpayer’s spouse, or any dependent (as defined in section 152) of the taxpayer and which were enrolled in through an Exchange established by the State under 1311 of the Patient Protection and Affordable Care Act, or

(B) the excess (if any) of--

(i) the adjusted monthly premium for such month for the applicable second lowest cost silver plan with respect to the taxpayer, over

(ii) an amount equal to 1/12 of the product of the applicable percentage and the taxpayer’s household income for the taxable year.

(3) Other terms and rules relating to premium assistance amounts.--For purposes of paragraph (2)--

(A) Applicable percentage.--

(i) In general.--Except as provided in clause (ii), the applicable percentage for any taxable year shall be the percentage such that the applicable percentage for any taxpayer whose household income is within an income tier specified in

the following table shall increase, on a sliding scale in a linear manner, from the initial premium percentage to the final premium percentage specified in such table for such income tier:

In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is--	The final premium percentage is--
Up to 133%	2.0%	2.0%
133% up to 150%	3.0%	4.0%
150% up to 200%	4.0%	6.3%
200% up to 250%	6.3%	8.05%
250% up to 300%	8.05%	9.5%
300% up to 400%	9.5%	9.5%

(ii) Indexing.--

(I) In general.--Subject to subclause (II), in the case of taxable years beginning in any calendar year after 2014, the initial and final applicable percentages under clause (i) (as in effect for the preceding calendar year after application of this clause) shall be adjusted to reflect the excess of the rate of premium growth for the preceding calendar year over the rate of income growth for the preceding calendar year.

(II) Additional adjustment.--Except as provided in subclause (III), in the case of any calendar year after 2018, the percentages described in subclause (I) shall, in addition to the adjustment under subclause (I), be adjusted to reflect the excess (if any) of the rate of premium growth estimated under subclause (I) for the preceding calendar year over the rate of growth in the consumer price index for the preceding calendar year.

(III) Failsafe.--Subclause (II) shall apply for any calendar year only if the aggregate amount of premium tax credits under this section and cost-sharing reductions under section 1402 of the Patient Protection and Affordable Care Act for the preceding calendar year exceeds an amount equal to 0.504 percent of the gross domestic product for the preceding calendar year.

(B) Applicable second lowest cost silver plan.--The applicable second lowest cost silver plan with respect to any applicable taxpayer is the second lowest cost silver plan of the individual market in the rating area in which the taxpayer resides which--

(i) is offered through the same Exchange through which the qualified health plans taken into account under paragraph (2)(A) were offered, and

(ii) provides--

(I) self-only coverage in the case of an applicable taxpayer--

(aa) whose tax for the taxable year is determined under section 1(c) (relating to unmarried individuals other than surviving spouses and heads of households) and who is not allowed a deduction under section 151 for the taxable year with respect to a dependent, or

(bb) who is not described in item (aa) but who purchases only self-only coverage, and

(II) family coverage in the case of any other applicable taxpayer.

If a taxpayer files a joint return and no credit is allowed under this section with respect to 1 of the spouses by reason of subsection (e), the taxpayer shall be treated as described in clause (ii)(I) unless a deduction is allowed under section 151 for the taxable year with respect to a dependent other than either spouse and subsection (e) does not apply to the dependent.

(C) Adjusted monthly premium.--The adjusted monthly premium for an applicable second lowest cost silver plan is the monthly premium which would have been charged (for the rating area with respect to which the premiums under paragraph (2)(A) were determined) for the plan if each individual covered under a qualified health plan taken into account under paragraph (2)(A) were covered by such silver plan and the premium was adjusted only for the age of each such individual in the manner allowed under section 2701 of the Public Health Service Act. In the case of a State participating in the wellness discount demonstration project under section 2705(d) of the Public Health Service Act, the adjusted monthly premium shall be determined without regard to any premium discount or rebate under such project.

(D) Additional benefits.--If--

(i) a qualified health plan under section 1302(b)(5) of the Patient Protection and Affordable Care Act offers benefits in addition to the essential health benefits required to be provided by the plan, or

(ii) a State requires a qualified health plan under section 1311(d)(3)(B) of such Act to cover benefits in addition to the essential health benefits required to be provided by the plan,

the portion of the premium for the plan properly allocable (under rules prescribed by the Secretary of Health and Human Services) to such additional benefits shall not be taken into account in determining either the monthly premium or the adjusted monthly premium under paragraph (2).

(E) Special rule for pediatric dental coverage.--For purposes of determining the amount of any monthly premium, if an individual enrolls in both a qualified health plan and a plan described in section 1311(d)(2)(B)(ii)(I) of the Patient Protection and Affordable Care Act for any plan year, the portion of the premium for the plan described in such section that (under regulations prescribed by the Secretary) is properly allocable to pediatric dental benefits which are included in the essential health benefits required to be provided by a qualified health plan under section 1302(b)(1)(J) of such Act shall be treated as a premium payable for a qualified health plan.

(c) Definition and rules relating to applicable taxpayers, coverage months, and qualified health plan.--For purposes of this section--

(1) Applicable taxpayer.--

(A) In general.--The term “applicable taxpayer” means, with respect to any taxable year, a taxpayer whose household income for the taxable year equals or exceeds 100 percent but does not exceed 400 percent of an amount equal to the poverty line for a family of the size involved.

(B) Special rule for certain individuals lawfully present in the United States.--If--

(i) a taxpayer has a household income which is not greater than 100 percent of an amount equal to the poverty line for a family of the size involved, and

(ii) the taxpayer is an alien lawfully present in the United States, but is not eligible for the medicaid program under title XIX of the Social Security Act by reason of such alien status,

the taxpayer shall, for purposes of the credit under this section, be treated as an applicable taxpayer with a household income which is equal to 100 percent of the poverty line for a family of the size involved.

(C) Married couples must file joint return.--If the taxpayer is married (within the meaning of section 7703) at the close of the taxable year, the taxpayer shall be treated as an applicable taxpayer only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(D) 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.

(2) Coverage month.--For purposes of this subsection--

(A) In general.--The term "coverage month" means, with respect to an applicable taxpayer, any month if--

(i) as of the first day of such month the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer is covered by a qualified health plan described in subsection (b)(2)(A) that was enrolled in through an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act, and

(ii) the premium for coverage under such plan for such month is paid by the taxpayer (or through advance payment of the credit under subsection (a) under section 1412 of the Patient Protection and Affordable Care Act).

(B) Exception for minimum essential coverage.--

(i) **In general.**--The term "coverage month" shall not include any month with respect to an individual if for such month the individual is eligible for minimum essential coverage other than eligibility for coverage described in section 5000A(f)(1)(C) (relating to coverage in the individual market).

(ii) Minimum essential coverage.--The term “minimum essential coverage” has the meaning given such term by section 5000A(f).

(C) Special rule for employer-sponsored minimum essential coverage.--For purposes of subparagraph (B)--

(i) Coverage must be affordable.--Except as provided in clause (iii), an employee shall not be treated as eligible for minimum essential coverage if such coverage--

(I) consists of an eligible employer-sponsored plan (as defined in section 5000A(f)(2)), and

(II) the employee’s required contribution (within the meaning of section 5000A(e)(1)(B)) with respect to the plan exceeds 9.5 percent of the applicable taxpayer’s household income.

This clause shall also apply to an individual who is eligible to enroll in the plan by reason of a relationship the individual bears to the employee.

(ii) Coverage must provide minimum value.--Except as provided in clause (iii), an employee shall not be treated as eligible for minimum essential coverage if such coverage consists of an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) and the plan’s share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs.

(iii) Employee or family must not be covered under employer plan.--Clauses (i) and (ii) shall not apply if the employee (or any individual described in the last sentence of clause (i)) is covered under the eligible employer-sponsored plan or the grandfathered health plan.

(iv) Indexing.--In the case of plan years beginning in any calendar year after 2014, the Secretary shall adjust the 9.5 percent under clause (i)(II) in the same manner as the percentages are adjusted under subsection (b)(3)(A)(ii).

[(D) Repealed. Pub.L. 112-10, Div. B, Title VIII, § 1858(b)(1), Apr. 15, 2011, 125 Stat. 168]

(3) Definitions and other rules.--

(A) Qualified health plan.--The term “qualified health plan” has the meaning given such term by section 1301(a) of the Patient Protection and Affordable Care Act, except that such term shall not include a qualified health plan which is a catastrophic plan described in section 1302(e) of such Act.

(B) Grandfathered health plan.--The term “grandfathered health plan” has the meaning given such term by section 1251 of the Patient Protection and Affordable Care Act.

(d) Terms relating to income and families.--For purposes of this section--

(1) Family size.--The family size involved with respect to any taxpayer shall be equal to the number of individuals for whom the taxpayer is allowed a deduction under section 151 (relating to allowance of deduction for personal exemptions) for the taxable year.

(2) Household income.--

(A) Household income.--The term “household income” means, with respect to any taxpayer, an amount equal to the sum of--

(i) the modified adjusted gross income of the taxpayer, plus

(ii) the aggregate modified adjusted gross incomes of all other individuals who--

(I) were taken into account in determining the taxpayer’s family size under paragraph (1), and

(II) were required to file a return of tax imposed by section 1 for the taxable year.

(B) Modified adjusted gross income.--The term “modified adjusted gross income” means adjusted gross income increased by--

(i) any amount excluded from gross income under section 911,

(ii) any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax, and

(iii) an amount equal to the portion of the taxpayer's social security benefits (as defined in section 86(d)) which is not included in gross income under section 86 for the taxable year.

(3) Poverty line.--

(A) In general.--The term "poverty line" has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

(B) Poverty line used.--In the case of any qualified health plan offered through an Exchange for coverage during a taxable year beginning in a calendar year, the poverty line used shall be the most recently published poverty line as of the 1st day of the regular enrollment period for coverage during such calendar year.

(e) Rules for individuals not lawfully present.--

(1) In general.--If 1 or more individuals for whom a taxpayer is allowed a deduction under section 151 (relating to allowance of deduction for personal exemptions) for the taxable year (including the taxpayer or his spouse) are individuals who are not lawfully present--

(A) the aggregate amount of premiums otherwise taken into account under clauses (i) and (ii) of subsection (b)(2)(A) shall be reduced by the portion (if any) of such premiums which is attributable to such individuals, and

(B) for purposes of applying this section, the determination as to what percentage a taxpayer's household income bears to the poverty level for a family of the size involved shall be made under one of the following methods:

(i) A method under which--

(I) the taxpayer's family size is determined by not taking such individuals into account, and

(II) the taxpayer's household income is equal to the product of the taxpayer's household income (determined without regard to this subsection) and a fraction--

(aa) the numerator of which is the poverty line for the taxpayer's family

size determined after application of subclause (I), and

(bb) the denominator of which is the poverty line for the taxpayer's family size determined without regard to subclause (I).

(ii) A comparable method reaching the same result as the method under clause (i).

(2) Lawfully present.--For purposes of this section, an individual shall be treated as lawfully present only if the individual is, and is reasonably expected to be for the entire period of enrollment for which the credit under this section is being claimed, a citizen or national of the United States or an alien lawfully present in the United States.

(3) Secretarial authority.--The Secretary of Health and Human Services, in consultation with the Secretary, shall prescribe rules setting forth the methods by which calculations of family size and household income are made for purposes of this subsection. Such rules shall be designed to ensure that the least burden is placed on individuals enrolling in qualified health plans through an Exchange and taxpayers eligible for the credit allowable under this section.

(f) Reconciliation of credit and advance credit.--

(1) In general.--The amount of the credit allowed under this section for any taxable year shall be reduced (but not below zero) by the amount of any advance payment of such credit under section 1412 of the Patient Protection and Affordable Care Act.

(2) Excess advance payments.--

(A) In general.--If the advance payments to a taxpayer under section 1412 of the Patient Protection and Affordable Care Act for a taxable year exceed the credit allowed by this section (determined without regard to paragraph (1)), the tax imposed by this chapter for the taxable year shall be increased by the amount of such excess.

(B) Limitation on increase.--

(i) In general.--In the case of a taxpayer whose household income is less than 400 percent of the poverty line for the size of the family involved for the

taxable year, the amount of the increase under subparagraph (A) shall in no event exceed the applicable dollar amount determined in accordance with the following table (one-half of such amount in the case of a taxpayer whose tax is determined under section 1(c) for the taxable year):

If the household income (expressed as a percent of poverty line) is:	The applicable dollar amount is:
Less than 200	\$600
At least 200% but less than 300	\$1,500
At least 300% but less than 400	\$2,500.

(ii) Indexing of amount.--In the case of any calendar year beginning after 2014, each of the dollar amounts in the table contained under clause (i) shall be increased by an amount equal to--

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting “calendar year 2013” for “calendar year 1992” in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

(3) Information requirement.--Each Exchange (or any person carrying out 1 or more responsibilities of an Exchange under section 1311(f)(3) or 1321(c) of the Patient Protection and Affordable Care Act) shall provide the following information to the Secretary and to the taxpayer with respect to any health plan provided through the Exchange:

(A) The level of coverage described in section 1302(d) of the Patient Protection and Affordable Care Act and the period such coverage was in effect.

(B) The total premium for the coverage without regard to the credit under this section or cost-sharing reductions under section 1402 of such Act.

(C) The aggregate amount of any advance payment of such credit or reductions under section 1412 of such Act.

(D) The name, address, and TIN of the primary insured and the name and TIN

of each other individual obtaining coverage under the policy.

(E) Any information provided to the Exchange, including any change of circumstances, necessary to determine eligibility for, and the amount of, such credit.

(F) Information necessary to determine whether a taxpayer has received excess advance payments.

(g) Regulations.--The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations which provide for--

(1) the coordination of the credit allowed under this section with the program for advance payment of the credit under section 1412 of the Patient Protection and Affordable Care Act, and

(2) the application of subsection (f) where the filing status of the taxpayer for a taxable year is different from such status used for determining the advance payment of the credit.