

ACA Penalties: Tricky Navigation For a Parent Who is Not Required to Obtain Insurance Coverage

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When separated or divorced parents share the responsibility for financial support of their minor children, the determination of which parent pays for the children's health insurance can have surprising repercussions at tax time.

Under the Affordable Care Act ("ACA"), all citizens are required to obtain and maintain health insurance coverage for themselves and their dependents and submit proof of coverage on their federal tax return. Anyone who cannot prove the required health insurance coverage was provided in the prior year will incur a financial penalty for noncompliance.

In the case of divorced or separated parents, the responsibility for proving coverage for a minor child can be tricky. The ACA provides that the parent who claims the dependency exemption for a minor child is the parent who must prove to the IRS that the child had the required health insurance during the prior tax year. Difficulties can arise when the custodial parent is the parent who claims the child as a dependent for tax purposes, but the non-custodial parent is the one who either agreed to, or was required to, provide the coverage. In such a case, the custodial parent will have to obtain proof of coverage from the other parent.

In contentious relationships, however, it may be difficult for the custodial parent to obtain this information from the non-custodial parent during the relevant year. This could lead to the custodial parent getting a big surprise at tax time if it is discovered that, in fact, the non-custodial parent never obtained the required insurance coverage.

In addition to the shock of discovering that the child did not have health insurance coverage, the ACA penalty for the child's lack of coverage will be imposed on the parent who qualifies to claim the child as a dependent regardless of whether that parent actually claims the child. Thus, a parent who qualifies for the dependency exemption cannot simply choose not to take the exemption in order to avoid the tax liability for lack of coverage under the ACA -- that parent must still pay the penalty for lack of coverage.

One solution available to a custodial parent in order to avoid the surprise of an ACA no coverage penalty is to go-ahead and purchase an ACA plan for their minor child and require the non-custodial parent to make reimbursement rather than actually purchasing the required coverage. Another option is to specify in the custody agreement or custody order that the parent with the obligation to obtain insurance must also pay the ACA penalty on behalf of the other parent if coverage is not obtained and the penalty is incurred. Of course, either of these options will be effective only if the non-custodial parent has the funds to reimburse the policy cost or pay the penalty. The mere agreement by the non-custodial parent to pay for either will not require the IRS to provide any relief to the frustrated custodial parent.

However, as is often the case, in order to ensure the greatest benefit for both parents as well as their minor child, the parents will need to work together to determine which one should obtain health insurance for the

child and clearly delineate the repercussions of failing to do so.

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