

# Supreme Court Upholds Subsidies Under Affordable Care Act

On June 25, 2015, the Supreme Court issued its decision in *King v. Burwell*, concluding that the Internal Revenue Service ("IRS") permissibly construed provisions of the Patient Protection and Affordable Care Act ("ACA") to extend federal tax credits to health coverage purchased through the Exchange established by the federal government. In rejecting the challengers' argument that tax credits were available only to individuals enrolled in an Exchange established by a state, the Supreme Court's ruling ensures that tax credits remain available to the millions of individuals who purchased coverage in the 34 states using the Federal Exchange.

## Background

The ACA required each state to establish an "Exchange" (also known as a Marketplace) by January 1, 2014. Exchanges offer health coverage to all individuals, targeting those who do not receive coverage through employer or government-sponsored programs. If a state failed to establish its own Exchange, the ACA required the federal government to establish and operate an Exchange on the state's behalf. Only 16 states plus the District of Columbia established their own Exchanges. The remaining 34 states rely on the Exchange operated through the HealthCare.gov website.

The ACA added section 36B of the Internal Revenue Code ("Code") to make premium tax credits available to individuals enrolled in coverage "through an Exchange established by the State" under section 1311 of the ACA. In regulations issued on May 22, 2012, the IRS interpreted Code section 36B to grant tax credits to individuals who purchased coverage through any Exchange. In the preamble to its regulation, the IRS acknowledged that commenters disagreed on whether Code section 36B limited the availability of tax credits to coverage purchased through State Exchanges, but concluded that the statutory language of section 36B, relevant legislative history and other provisions of the ACA supported its interpretation.

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## Circuit Court Split

A group of individuals and employers residing in states that did not establish Exchanges challenged the regulation in federal court. The challengers argued that the IRS ignored the plain text of Code section 36B, exceeding its rulemaking authority in violation of the Administrative Procedure Act. The district court and the Court of Appeals for the Fourth Circuit disagreed, finding the regulation a permissible construction given the ACA's legislative history and statutory framework.

The same day the Fourth Circuit held that the tax credits were available to individuals who purchased coverage through the Federal Exchange, the Court of Appeals for the District of Columbia Circuit reached the opposite conclusion in *Halbig v. Burwell*. Rejecting the government's position and relying heavily on the plain meaning of the statute's text, the D.C. Circuit ruled that Code section 36B did not authorize the IRS to grant tax credits for coverage purchased on the Federal Exchange.

## Supreme Court Decision

By a vote of 6-3, the Supreme Court upheld the availability of federal tax credits to individuals who purchase coverage through both State and Federal Exchanges. Writing for the majority, Chief Justice Roberts stated that the ACA's statutory framework compelled the Court to reject the challengers' interpretation of Code section 36B because "it would destabilize the individual insurance market" and "likely create the very 'death spirals' that Congress designed the Act to avoid." The Court noted the plausibility of the challengers' plain meaning argument, but found other provisions of Code section 36B and the ACA suggesting that tax credits are not limited to State Exchanges. The Court held that tax credits for eligible taxpayers are necessary for both Federal and State Exchanges to function the way Congress intended.

## What King v. Burwell Means for Health Plan Sponsors

This decision preserves the status quo for group health plan sponsors. By upholding tax credits in states with Federal Exchanges, the Supreme Court preserved the individual mandate and employer mandate of the ACA. Employers and other plan sponsors continue to face penalties for failing to offer affordable



coverage that provides minimum value if employees enroll in coverage through any Exchange and qualify for a tax credit.

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