

FREQUENTLY ASKED QUESTIONS

DACAmented and Undocumented Immigrants and the Obamacare Tax Penalty

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The Affordable Care Act, the law that created Obamacare, requires most people in the United States to either have health insurance or pay a penalty when they file their taxes. However, some people, including many immigrants, are exempt from the requirement and don't have to pay the penalty if they don't have health insurance. The Internal Revenue Service (the U.S.'s tax agency, which most people know as "the IRS") calls this requirement to have health insurance the "individual shared responsibility provision." It is also sometimes called the "individual mandate."

The rule is enforced through people filing their income tax returns during tax-filing season, and it can be confusing. People who are "DACAmented" (people who have Deferred Action for Childhood Arrivals, or DACA) and undocumented immigrants need to know how this rule applies to them so they don't pay a tax penalty they don't owe or become a victim of fraud. More information about DACA is available at www.nilc.org/fagdeferredactionyouth/.

This FAQ answers questions about what DACAmented and undocumented immigrants should know about the Obamacare tax penalty rule when they file their taxes.

■ Do DACAmented and undocumented immigrants have to pay the tax penalty if they didn't have health insurance?

No. DACAmented and undocumented immigrants are exempt from the requirement to have health insurance. They also are not required to pay the tax penalty for not having health insurance. There are many reasons under the Obamacare law why you or your family members might qualify for an exemption from the "individual mandate." Being a "certain noncitizen," which includes being DACAmented or undocumented, is one of them. More information about this is available at www.nilc.org/acapenalty/. More information about how to claim this exemption when you file your taxes is provided below.

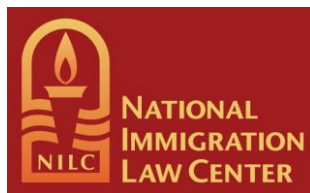
Unfortunately, DACAmented and undocumented people are also not eligible to sign up for an Obamacare health insurance plan or to buy insurance in the Obamacare health insurance marketplaces, such as healthcare.gov. To be eligible for Obamacare health insurance, you must be either a U.S. citizen or national, or have an immigration status that is considered to be "lawfully present" under the Affordable Care Act. Even though DACAmented people are lawfully present for other purposes, are authorized to work, and have Social Security numbers, they are not eligible for Obamacare programs. For a full list of which immigrants are eligible for Obamacare health insurance, see www.nilc.org/lawfullypresent/.

■ I am undocumented, but my spouse has a green card and my child is a U.S. citizen. Do I have to pay a tax penalty for them if they did not have health insurance?

Yes—if you file your taxes jointly with your spouse and child (on the same tax form) and

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there is no other reason why they were not required to have health insurance, then you have to pay a tax penalty for them (but not for yourself).

But you may not have to pay the tax penalty for them if they qualify for another exemption from the “individual mandate.” For example, if your household income is so low that you don’t have to file a tax return, then everyone in the household is exempt and you don’t have to pay the tax penalty for them. Or if health insurance for your spouse and child is too expensive compared to your income, they may qualify for an exemption. Or if your household is going through one of the financial hardships listed in the Obamacare law—such as you are homeless or your utilities are being cut off—your spouse and child may qualify for an exemption.

The IRS’s website has more information about these exemptions. Go to www.irs.gov/Affordable-Care-Act/Individuals-and-Families/ACA-Individual-Shared-Responsibility-Provision-Exemptions.

REMEMBER: Even if your immigration status makes *you* ineligible for Obamacare health insurance, your family members may be able to get it, along with help paying for it.

- I’ve heard that immigrants with a Social Security number (SSN) have to pay the tax penalty if they don’t have health insurance, but immigrants who have an Individual Taxpayer Identification Number (ITIN) do not. Is that right?

Not necessarily. You can’t tell what a person’s immigration status is based on whether they have an SSN or an ITIN. Some “lawfully present” immigrants are not eligible to get an SSN but *are* eligible for Obamacare and required to either have health insurance or pay the tax penalty. On the other hand, some immigrants who are eligible to have an SSN, like those who are DACAmented, are *not* eligible for Obamacare and are exempt from having to pay the penalty. For more information about ITINs, see www.nilc.org/itinfo/.

- I am undocumented or DACAmented. When I file my taxes, how do I show that my immigration status makes me exempt from having to pay the tax penalty?

When you file your taxes, you will include an extra form—called Form 8965—on which you will tell the IRS the reason you are exempt from having to pay the tax penalty. If your reason is because of your immigration status, you will enter code “C” on the form (in Part III, column c — Exemption Type). Being not “lawfully present” is one of several reasons under this code. If you are DACAmented or undocumented, code “C” applies to you.

- Do I have to say what my immigration status is or that I am undocumented?

No. The code “C” you use to tell the IRS that you are not “lawfully present” is the same code used by U.S. citizens who live outside the U.S. and by “tax residents” of other countries.

- If I say I do not have to pay the tax penalty because of my immigration status, does that put me at risk of being deported?

No. You do not have to state your immigration status or say that you are undocumented. There are also strict confidentiality rules the IRS must follow that prevent it from sharing any information from your tax forms with U.S. Immigration & Customs Enforcement (ICE).

- If I have to pay the tax penalty for a family member, how do I pay it?

You pay the tax penalty directly to the IRS as part of your tax payment, or have it subtracted from your tax refund if you have one coming. For tax year 2015, each person subject to the penalty would owe either \$325 (half this amount per child) or a percentage of their income (whichever is greater) for the full year, or less than \$325 if the person didn’t have insurance only some months during the tax year.

Tax preparers should never ask you to pay the penalty directly to them. If they do ask, you should refuse to pay it directly to them.

Tax preparers who ask you to pay the penalty directly to them are *committing fraud*. If you pay them the amount of the penalty, you will not have met the tax penalty payment requirement. You will still owe the tax penalty to the IRS.

■ **I have DACA or am undocumented but paid the tax penalty last year. Can I get that money back?**

Yes. If you have DACA or are undocumented and you paid the tax penalty last year because you didn't know you were exempt or because you were told to do so by a tax preparer, you may file an amended tax return to correct the tax return you filed last year and get back the money you paid. You must file [Form 1040X](#), Amended U.S. Individual Income Tax Return, along with [Form 8965](#), Health Coverage Exemptions. In Part III (Coverage Exemptions Claimed on Your Return for Individuals) of Form 8965, you will need to write your name under "Name of Individual," then write the letter "C" under "Exemption Type."

This year (2016), you can file an amended tax return to correct a tax return you filed in 2015, 2014, or 2013. According to the IRS, "Generally, you must file Form 1040X within three years from the date you filed your original return or within two years from the date you paid the tax, whichever is later" (see <https://www.irs.gov/uac/Nine-Facts-on-filing-an-Amended-Return>).