

Trade Bill Increases Penalties for IRS Reporting Failures Including ACA, Extends HCTC

Last month, President Barack Obama signed into law the Trade Preferences Extension Act of 2015. Included in the bill, whose name connotes only trade issues, were two important provisions that affect welfare and retirement benefit plans. First, the Act sizably increases filing penalties for information return and statement failures under the Internal Revenue Code, effective for filings after December 31, 2015. Employers now face significantly larger penalties for failing to correctly file and furnish the ACA Forms 1094 and 1095 (shared responsibility reporting requirements), and — among other filing requirements — the Forms W-2 and 1099-R. Second, the Act also extends and modifies the Health Care Tax Credit.

Background

Sections 6721 and 6722 of the Internal Revenue Code impose penalties associated with failures to file — or to file correct — information returns and statements. Section 6721 applies to the returns required to be filed with the IRS, and Section 6722 applies to statements required to be provided generally to employees (and other recipients of certain taxable compensation). These penalty provisions apply to the Affordable Care Act (ACA) shared responsibility reporting Forms 1094-B, 1094-C, 1095-B and 1095-C (Sections 6055 and 6056) failures as well as other information returns and statements failures, like those for Forms W-2 and 1099.

For ACA:

- Section 6055 reporting supports IRS enforcement of the individual mandate.
- Section 6056 reporting supports IRS enforcement of the employer mandate and low-income subsidies for coverage purchased in the public marketplace.

The Sections 6055 and 6056 reporting requirements are effective for medical coverage provided on or after January 1, 2015, with the first information returns to be filed with the IRS by February 29, 2016 (March 31, 2016, if filed electronically) and provided to individuals by February 1, 2016. (For more information on the shared responsibility reporting requirements see our [June 26, 2015](#) and [June 17, 2015](#) issues of *For Your Information* and our [February 10, 2015 FYI Alert](#).)



The Health Care Tax Credit (HCTC) assists certain individuals in paying for health coverage (such as COBRA continuation coverage). It is generally available to eligible individuals under the Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) programs, and eligible PBGC pension recipients. (See our [May 15, 2015](#) and [May 29, 2015](#) issues of *Legislate*). The provision had expired at the end of 2013.

Increase in Penalties

The [Trade Preferences Extension Act of 2015](#) (Act) contains several tax provisions in addition to the trade measures that were the focus of the bill. Provided as a revenue offset provision, the law significantly increases the penalty amounts under Sections 6721 and 6722. A failure includes failing to file or furnish information returns or statements by the due date, failing to provide all required information, as well as failing to provide correct information.

The law increases the penalty for:

- General failures — from \$100 to \$250 per return and increases the annual cap on penalties from \$1,500,000 to \$3,000,000
- Intentional failures — from \$250 to \$500 per return with no annual cap on penalties

Other penalty increases also apply, including those associated with timely filing a corrected return (see table below). The increases apply to information returns and statements required to be filed after December 31, 2015. The increased penalties would apply to the first year's filings under the ACA, which relate to 2015 but are due in early 2016.

Comment. Penalties could provide a one-two punch under the ACA for employers and other responsible entities. For example, under the Section 6056 shared responsibility provisions, applicable large employers (ALE) must file information returns to the IRS (the 1094-B and/or 1094-C) as well as furnish statements to employees (the 1095-B or 1095-C). So, incorrect information shared on those forms could result in a double penalty — one associated with the information return to the IRS and the other associated with individual statements to employees.

**IRS penalties for failures to file, or to file correct, information returns and statements
(Amounts indexed in 2017 and every five years thereafter)**

Type of Penalty	Penalty Amount per Return	Maximum Penalty per Calendar Year
Filing incorrect returns	\$250 (previously \$100)	\$3,000,000 (previously \$1,500,000)
Filing incorrect returns if corrected within 30 days	\$50 (previously \$30)	\$500,000 (previously \$250,000)
Filing incorrect returns if corrected by August 1	\$100 (previously \$60)	\$1,500,000 (previously \$500,000)
Intentionally disregarding requirement to file timely and correct returns	\$500 (previously \$250)	No maximum penalty

Limited Relief Provided

Final regulations on the ACA reporting requirements provide short-term relief from these penalties. For reports filed in 2016 (for calendar year 2015 information), the IRS will not impose penalties (under Sections 6721 and 6722) on ALE members that can show “they made good faith efforts to comply with the information reporting requirements.” Specifically, relief is provided for incorrect or incomplete information reported on the return or statement, including Social Security numbers, but not for failing to file timely an information return or statement.

Health Care Tax Credit Extended

The federally funded HCTC reduces the cost of qualified health insurance for certain displaced workers (trade related termination — certified by the DOL as eligible to receive Trade Readjustment Allowances under the Trade Adjustment Assistance program) or others (who are eligible because they receive benefits from the PBGC and are 55 years old or older).

Individuals claiming the HCTC may request information from their health plans (e.g., plan administrators) so they can submit the necessary proof of coverage and payment with their tax returns. The Act adds rules for coordinating the HCTC with the premium tax credit. Effective January 1, 2016, a qualifying individual cannot receive the HCTC with respect to coverage purchased through an ACA marketplace.

The IRS is currently reviewing the modifications and expects to provide guidance shortly. The Act retroactively extends the expired HCTC from January 2014 through 2019. Plan sponsors should check with their plan administrators to ensure that COBRA (e.g., election notices) and the HCTC is managed properly.

In Closing

With the penalties for filing failures packing an even bigger punch, thorough and precise preparation for reporting is even more significant, particularly in meeting the February 1, 2016 ACA reporting deadline.

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