

IRS to Come Knocking for ACA Employer Shared Responsibility Assessments

The IRS plans to begin notifying employers in “late 2017” of their potential liability for an ACA employer shared responsibility payment in connection with the 2015 calendar year. Recent FAQs explain the process for this notification and for employers to appeal the IRS determination. The assessments will not become due until the IRS provides notice and demand for payment – but employers should be prepared to respond within 30 days of receiving the notice. Additionally, they should ensure that financial processes are in place to make these payments if or when they become due.

Background

The Affordable Care Act (ACA) imposes employer shared responsibility requirements that are commonly referred to as the “employer mandate.” Beginning in 2015, applicable large employers (ALEs) – generally, employers with at least 50 full-time employees – are required to offer minimum essential coverage to full-time employees and their dependents, or pay a non-deductible assessment if at least one full-time employee enrolls in marketplace coverage and receives a premium tax credit. Even if they offer employees coverage, ALEs may still be subject to an assessment if the coverage they offer to full-time employees is “unaffordable” or fails to provide minimum value. (See our [April 17, 2014 FYI In-Depth](#).)

IRS Issues Enforcement Guidance

On November 2, 2017, the IRS issued long-anticipated guidance on the process it will use to assess employers with payments due under the employer shared responsibility provisions. In [Q&As 55-58](#), the IRS states that in “late 2017” it will begin notifying ALEs of their potential liability for an employer shared responsibility payment (ESRP), if any, in connection with the 2015 calendar year. The determination will be based on information reported to the IRS on Forms 1094-C and 1095-C and the individual tax return filed by the ALE’s employees – where, for at least one month in the year, one or more of the ALE’s full-time workers received a premium tax credit (and the ALE did not qualify for an

GOP lawmakers recently proposed legislation that would suspend the employer mandate from 2015 through 2017. See our [November 6, 2017 Legislate](#). However, as this legislation is not expected to be supported by Democrats and may not garner sufficient Republican support either, the employer mandate is here to stay – at least for now.

affordability safe harbor or other relief). (See our [October 12, 2017 For Your Information](#) on the 2017 versions of Forms 1094-C and 1095-C.)

The notice will come via [Letter 226J](#) and will list the employees, by month, who received a premium tax credit and provide the proposed ESRP. It will also provide the employer shared responsibility response form (Form 14764) and the name and information for a specific IRS employee to contact for questions.

The ALE's response – either agreeing with the proposed assessment or disagreeing in whole or in part – will generally be due 30 days from the date of the Letter 226J. The IRS will acknowledge the ALE's response with Letter 227 that describes further actions the employer may need to take. If the employer disagrees with the proposed or revised assessment in Letter 227, the employer can request a pre-assessment conference with the IRS Office of Appeals. Conferences will generally take place 30 days from the date of Letter 227.

If an ALE does not respond to the Letter 226J, the IRS will demand payment in the proposed amount through notice CP 220J. Assessments are due only after the IRS has provided notice and demand for payment.

Understanding your Letter 226J

The IRS recently posted an [explanation](#) of Letter 226J and what ALEs should do in response to it.

In Closing

Employers should be prepared to respond within 30 days of receiving Letter 226J. They should also ensure that processes are in place to make these payments, as necessary. Even employers who are not expecting any assessments will need to prepare to respond to the IRS within the limited timeframe to appeal any incorrect assessments.

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