CONDUENT

FYI®
For Your Information®

Volume 40 | Issue 159 | December 13, 2017

IRS Starts ACA Employer Mandate Enforcement

IRS has begun notifying employers of their potential liability for an ACA employer shared responsibility payment in connection with the 2015 calendar year. It recently released Forms 14764 and 14765, which employers can use to dispute the assessment.

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 substantially all full-time employees and their dependents, or pay a nondeductible 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 employer shared responsibility payment (ESRP) 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*.)

This fall, the IRS announced plans to notify employers of their potential liability for an ESRP for the 2015 calendar year. It released FAQs explaining that Letter 226J will note the employees by month who received a premium tax credit, and provide the proposed ESRP. Additionally, IRS promised to release forms for an employer's ESRP response and the employee premium tax credit list (Employee PTC Listing), respectively. (See our November 10, 2017 *For Your Information*.)

ESRP Response, Employee Premium Tax Credit Forms Now Available

IRS subsequently issued Form 14764, the ESRP Response, and Form 14765, the Employee PTC Listing. Together, these forms are the vehicle for employers to respond to a Letter 226J, which the IRS sends with Letter 226J.

On Form 14764, employers indicate full or partial agreement or disagreement with the proposed ESRP, as well as the preferred ESRP payment option. An employer that disagrees with the assessment must include a signed statement explaining the disagreement, including any supporting documentation. This form also allows employers to authorize a representative, such as an attorney, to contact the IRS about the proposed ESRP.

Employers: Carefully Consider 226J Letter Responses

Miscoding can happen for different reasons, including vendor errors and inaccurate data. To minimize risk of additional IRS exposure, employers should carefully consider how best to respond to a 226J letter given circumstances surrounding the disputed assessments. For example, changing the coding on the 1095-C of an employee from full-time to part-time could trigger further review or questions by the IRS on the process for determining who is a full-time employee – and may increase the likelihood of IRS penalties for reporting errors on an employer's Form 1095-Cs.

On Form 14765, the IRS lists the name and last four digits of the social security number of any full-time employee who received a premium tax credit for one or more months during 2015 and where the employer did not qualify for an affordability safe harbor or other relief via Form 1095-C. Each monthly box has a row reflecting any codes entered on line 14 and line 16 of the employee's Form 1095-C. If a given month is not highlighted, the employee is an assessable full-time employee for that month – resulting in a potential employer assessment for that month.

If information reported on an employee's Form 1095-C was not accurate or was incomplete, an employer wishing to make changes must use the applicable indicator codes for lines 14 and 16 described in the Form 1094-C and 1095-C instructions. The employer should enter the new codes in the second row of each monthly box by using the indicator codes for lines 14 and 16. The employer can provide additional information about the changes for an employee by checking the "Additional Information Attached" column.

If No IRS Notice in 2017, Is an Employer Home Free in Connection with 2015 ESRPs?

In its October FAQs, the IRS stated that it "plans to issue Letter 226J informing ALEs of their potential liability for an employer shared responsibility payment, if any, in late 2017." If the IRS sticks to that timing, all notices should be sent out by the end of this calendar year. However, because the IRS has not indicated that it will inform employers that they have *no* ESRP due, it is impossible to say that an employer not receiving a Letter 226J in 2017 is home free for 2015 ESRPs.

In Closing

Employers should review the newly released forms so they are prepared to respond within 30 days of the date on the Letter 226J. They should also ensure 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 dispute any incorrect assessments.

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