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Extension for Good-Faith Reporting and 2016 IRS Forms 1095-C and 1094-C

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On November 18, 2016, the Internal Revenue Service issued Notice 2016-70, extending both the due date for furnishing individuals with Forms 1095-C and 1095-B, in addition to certain good-faith transition relief to the 2016 information reporting requirements under Code sections 6055 and 6056.

The Affordable Care Act (ACA) created information reporting requirements for certain large employers and issuers of health insurance coverage under Sections 6055 and 6056 of the Internal Revenue Code (Code). On November 18, 2016, the Internal Revenue Service (IRS) issued Notice 2016-70 (Notice) extending the due date for furnishing individuals with Forms 1095-C and 1095-B. Code sections 6055 and 6056 allow the IRS to grant extensions of time of up to 30 days to furnish Forms 1095-B and 1095-C for good cause. The automatic 30-day extension is from the original due date of January 31, 2017, to March 2, 2017. The IRS has not automatically extended the deadline for employers, insurers and other providers of minimum essential coverage (MEC) to file with the IRS the 2016 Forms 1094-B, 1095-B, 1094-C and 1095-C. The deadline for filing these forms with the IRS continues to be February 28, 2017, or March 31, 2017, if filing electronically.

Notice 2016-70 also extends certain good-faith transition relief to the 2016 information reporting requirements under Code sections 6055 and 6056. Pursuant to the Notice, the IRS will not impose penalties under Code sections 6721 and 6722 on reporting entities that can show they made good-faith efforts to comply with these information-reporting requirements.

Background

The ACA created reporting requirements under Code sections 6055 and 6056. Code section 6055 requires health insurance issuers, self-insuring employers, government agencies and other providers of MEC to file and furnish annual information returns and statements regarding coverage provided. Section 6056 requires an applicable large employer (ALE) to report, on IRS Forms 1094-C and 1095-C, information about offers of health insurance coverage to full-time employees (FTEs) and the provision of MEC to individuals. For 2016, an ALE is generally an employer with 50 or more FTE equivalents. Under Code section 6056, an ALE must annually file with the IRS a report listing the offers of coverage made to its FTEs and enrollment during the reporting year, and must furnish a related statement of such coverage information to its FTEs.

Notice 2016-70 extended the deadline for furnishing Forms 1095-B and 1095-C to individuals. However, for 2016, the filing deadline for filing Forms 1094-B, 1095-B, 1094-C and 1095-C with the IRS has not been extended, as it was in 2015.

The preamble to regulations under Code sections 6055 and 6056 provide that, for reporting of 2015 offers and coverage, the IRS would not impose penalties under Code sections 6721 and 6722 on reporting entities that could show they made good-faith efforts to comply with the information-reporting requirements. This relief applied only to furnishing and filing incorrect or incomplete information reported on a statement or return, and not to a failure to timely furnish or file a statement or return. IRS Notices 2015-87 and 2015-68 reiterated and provided additional guidance on the 2015 relief. Similarly, this relief has been extended to the 2016 filings.



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Forms 1095-C and 1095-B Extension

Section 6056 requires an ALE to report, on IRS Forms 1094-C and 1095-C, information about offers of health insurance coverage to FTEs and the provision of MEC. Notice 2016-70 provides an automatic 30-day extension from the original due date of January 31, 2017, to March 2, 2017, for furnishing individuals with these forms. The IRS has indicated that it will grant no further extensions beyond the revised March 2, 2017, due date. Nevertheless, the IRS is encouraging employers and other coverage providers to furnish the 2016 statements as soon as administratively feasible. The IRS will also not formally respond to extensions that have already been requested by reporting entities.

It is important to note that the due date for health coverage providers and employers to file the 2016 Forms 1094-B, 1095-B, 1094-C and 1095-C with the IRS has not been extended and remains February 28, 2017, or March 31, 2017, if filing electronically. Automatic extensions will still be available by filing a Form 8809. Employers and other coverage providers that do not meet the relevant due dates for filing the 2016 Forms 1094-B, 1095-B, 1094-C or 1095-C with the IRS should still furnish and file. The IRS will take such furnishing and filing into consideration when determining whether to abate penalties for reasonable cause.

Good-Faith Transition Relief

Notice 2016-70 also extends good-faith transition relief from penalties under Code section 6721 and 6722 to the 2016 information-reporting requirements under Code sections 6055 and 6056. This relief previously applied only to incorrect and incomplete information reported on the statement or return, and not to a failure to timely furnish or file a statement or return. Nevertheless, the IRS has extended this relief also to information-reporting requirements under Code sections 6055 and 6056 for 2016.

To qualify for the relief, reporting entities must show they have made a good-faith effort to comply with the information-reporting requirements under Code sections 6055 and 6056 for 2016 (both for furnishing to individuals and for filing with the IRS) for incorrect or incomplete information reported on the return or statement. This relief applies to missing and inaccurate taxpayer identification numbers and dates of birth, as well as other information required on the return or statement. In determining good faith, the IRS will take into account whether an employer or other coverage provider made reasonable efforts to prepare for reporting the required information to the IRS and furnished it to employees and covered individuals, such as gathering and transmitting the necessary data to an agent to prepare the data for submission to the IRS, or testing its ability to transmit information to the IRS. Also relevant to the IRS in granting good-faith transition relief is the extent to which the employer or other coverage provider is taking steps to ensure that it will be able to comply with the reporting requirements for 2017.

Steps for Employers and Other Coverage Providers

Similar to 2015, if an employer takes advantage of this extension, some individual taxpayers may not receive a Form 1095-B or Form 1095-C in time to file their 2016 tax return; thus, communicating the extension to individuals is important. Individual taxpayers may rely on other information received from their employer or other coverage provider for purposes of filing their tax returns, including determining eligibility for the premium tax credit under Code section 36B and confirming that they had MEC for purposes of the individual mandate under Code sections 36B and 5000A. Taxpayers do not need to wait to receive Forms 1095-B and 1095-C before filing their tax returns. Individuals also do not need to send the information relied upon to the IRS when filing their returns, but should keep it with their tax records.

Next Steps and Preparation for 2017

Employers and coverage providers should plan to furnish Forms 1095-C and 1095-B to individuals on or before March 2, 2017. The due date for health coverage providers and employers filing the 2016 Forms 1094-B, 1095-B, 1094-C or 1095-C with the IRS is not extended and remains February 28, 2017, or March 31, 2017, if filing electronically; however automatic extensions are still available by filing a Form 8809. Employers and other coverage providers that do not meet the relevant due dates for filing the 2016 Forms 1094-B, 1095-B, 1094-C or 1095-C with the IRS should still furnish and file. The IRS will take such furnishing and filing into consideration when determining whether to abate penalties for reasonable cause.

The extension of time for furnishing information statements under sections 6055 and 6056 for 2016 does not impact the information-reporting provisions for other years. According to the IRS, there are no plans for extending the reporting deadlines for 2017 or extending the good-faith relief from Code section 6721 and 6722 penalties to the 2017 reporting year. It remains to be seen what impact steps the Trump administration will take to address these and other tax and information reporting requirements under the ACA in 2017. Until further relief is granted, if any, employers are required to comply with the reporting and information return requirements currently in effect.

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