Affordable Care Act Reporting and Penalties

Monday, February 12, 2018

In Notice 2018-06, the IRS provided some relief to employers and insurers that are currently in the process of preparing the annual information returns that are required under the Patient Protection and Affordable Care Act of 2010 (ACA). The annual returns include Forms 1094-B and 1095-B, which are used by entities that provide minimum essential health coverage (e.g., self-insured health plan sponsors and insurers) to report information about the coverage provided, as well as Forms 1094-C and 1095-C, which are used by applicable large employers to report information about offers of coverage made to employees who are "full-time employees" under the ACA rules. Notice 2018-06 grants the following relief:

- **Forms 1095-B.** The due date for furnishing 2017 Forms 1095-B to individuals is extended to March 2, 2018 (from January 31, 2018).

- **Forms 1095-C.** The due date for furnishing 2017 Forms 1095-C to individuals is extended to March 2, 2018 (from January 31, 2018).

- **Relief from Penalties for Good-faith Efforts to Comply with ACA Reporting Requirements.** The Notice also provides relief from potential penalties that could be assessed by the IRS against entities for errors in ACA reporting. The relief applies to reporting entities that can show that they have made good-faith efforts to comply with the ACA information reporting requirements, even though there may be incorrect or incomplete information on Forms 1094-B, 1095-B, 1094-C and 1095-C (e.g., missing or inaccurate taxpayer identification numbers and dates of birth). The relief is not available to reporting entities that do not make good-faith efforts to comply and/or that do not file information returns with the IRS or furnish individuals with the required statements by the applicable due dates for such returns and statements. This relief is an extension of similar relief that the IRS provided with respect to 2016 ACA reporting obligations.

The due date for filing 2017 Forms 1094-B and 1094-C (the transmittal forms that accompany Forms 1095-B and 1095-C) with the IRS remains the same — April 2, 2018, for electronic filers and February 28, 2018 for paper filers.

At the same time, we know that the IRS is paying attention to the reporting that employers have done so far, because the IRS has begun notifying employers that may owe employer shared responsibility payments (ESRPs) for the 2015 plan year. The IRS has posted Q&As describing the process that it will use to propose and assess penalties (see Q&As 42 - 58). At a high level, the process will be as follows:

- The IRS uses information reported on Forms 1094-C and 1095-C to determine if an employer owes a penalty for at least one month in the reporting year.

- The IRS sends Letter 226J to the employer, which will include: (1) an explanation of when an ESRP may be owed; (2) the proposed ESRP amounts by month for the recipient employer; (3) a copy of IRS Form 17464, which is the form the employer must use to respond to the IRS; and (4) a copy of IRS Form 17465, which lists the employer's assessable full-time employees by month and the indicator codes that were reported on each assessable full-time employee’s Form 1095-C.

- The employer uses Form 17464 to respond to the Letter 226J, either agreeing or disagreeing with the proposed ESRP amounts and explaining the basis for any disagreement with the IRS’s determination.
The IRS responds to the employer with Letter 227, which will describe any additional actions the employer may or must take with respect to the proposed assessment. The employer may, among other actions, request to schedule a pre-assessment conference with the IRS Office of Appeals.

The IRS makes its final determination and notifies the employer if an ESRP is required. The notice of determination and demand for payment will be made on Notice CP 220J, which will include instructions on how to make payments.

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