

Employee Benefit Plans Alert

IRS Penalties for ACA Filings

By Louis F. LiBrandi, Principal and Anthony Bianchi, Tax Supervisor

Sponsors of group health plans should be familiar with the requirement for the annual filing of tax forms with the IRS (Forms 1094-C/1095-C). This requirement is a result of the passage in 2010 of the Patient Protection and Affordable Care Act (ACA). The requirement to file with the IRS in any given year applies to employers who had 50 or more full-time employees (including full-time equivalent employees) in the preceding calendar year. Such employers are known as Applicable Large Employers (ALEs).

Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, provides information to the IRS on the offer of health coverage to individual employees. Incomplete or inaccurate reporting for one or more employees may result in a notice to the ALE from the IRS (through the IRS Letter 226-J, the Letter), notifying the ALE of the potential liability for an Employer Shared Responsibility Payment (ESRP). The determination of whether an ALE may be liable for an ESRP and the amount of the proposed ESRP, as detailed in Letter 226-J, are based on information from Forms 1094-C and 1095-C as filed by the ALE, and the individual income tax returns filed by the ALE's employees.

Receipt of Letter 226-J by the ALE will require a response to the IRS by a deadline specified in the Letter. The response may include proposed changes by the ALE to the reporting for any employee listed in the Letter. The goal here is to eliminate or greatly reduce any proposed ESRP.

Failure to File Forms 1094-C and 1095-C

Of particular importance are the employers who failed to file the Forms 1094-C and 1095-C in any given year due to a misunderstanding of the filing requirements. This is especially true for employers who have union employees whose health coverage is provided through a collectively-bargained agreement, or in a situation where there are related employers who constitute an aggregated ALE group, where the individual employers may each have less than 50 full-time employees, but collectively exceed the threshold.

Many employers mistakenly believe that they do not need to consider union employees or related employers when determining whether the 50 full-time employee threshold is met. In these circumstances, the failure to file the Forms with the IRS and provide the employees with their copy of the Form 1095-C for any given year may result in a penalty notice to the ALE. Upon receipt of this notice, the ALE will need to determine if, in fact, the Forms need to be filed for the year in question based on the number of full-time employees it has.

The Employee Benefit Services Group of PKF O'Connor Davies is currently working with a client who failed to furnish Forms to the IRS for the 2018 calendar year. The Forms were subsequently prepared and electronically filed with the IRS, and a reasonable cause letter provided to the IRS explaining the reasons for the delinquent filing, along with a request to eliminate any proposed penalty. The client then received a response from the IRS notifying them that a penalty abatement for 2018 would not be considered until the Forms 1094-C/1095 for any other applicable year of reporting were completed. It is therefore imperative that ALEs take a close look at all applicable filing years to determine if reporting is required.

Contact Us

The Employee Benefit Services Group at PKF O'Connor Davies is available to assist employers with the preparation and filing of the needed ACA Forms and also to assist in responding to any IRS notice the employer may receive. We also provide a full spectrum of compliance services for qualified retirement plans, nonqualified deferred compensation plans, and welfare plans.

For more information, please contact your client services partner or either of the following:

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