

Employee Benefits Plan Newsletter

IRS Begins Issuing Penalty Letters to Employers Who Fail to Comply with ACA Reporting Requirements

By Anthony Bianchi, Senior Tax Associate and Louis F. LiBrandi, EA, CEBS, ChFC, TGPC, Principal

The Internal Revenue Service (IRS) has begun sending letters to employers notifying them that they may be subject to penalties for failure to comply with the employer mandate provisions of the Affordable Care Act (ACA). These letters relate to the 2015 tax year, the first year in which applicable large employers (ALEs) were required to provide evidence of employer-provided health coverage to their employees (via the filing of IRS Forms 1094-C and 1095-C). The IRS had been delaying penalty assessments for a few years, saying it needed more time and funding to implement its compliance systems. Now that this issue has been seemingly resolved, the task of enforcement has begun.

Letter 226J

Letter 226J (the “Letter”) advises employers that a penalty is owed and provides a preliminary calculation of the penalty, known as the Employer Shared Responsibility Payment (ESRP). Penalties are calculated separately for each employee and for each month during which a full-time employee (identified as one working at least 30 hours per week) received subsidized ACA coverage through a sponsored exchange and was, therefore, allowed a premium tax credit (PTC) on their individual tax return (i.e., Form 1040) filed with the IRS.

The Letter explains when an ESRP might be owed [namely, when the employer fails to offer minimum essential coverage (MEC) to a percentage of its employees, or offers coverage that is deemed not affordable], prompting the employee to be allowed the premium tax credit on their tax return.

IRS Form 14764: Response to Letter 226J

Employers will have a short period of time (generally 30 days) to respond to the letter. IRS Form 14764 – ESRP Response – is included with the Letter 226J mailed to the employer. Also included with the Letter is Form 14765 – Employee Premium Tax Credit (PTC Listing). This Form lists all the employees of the employer who were allowed a tax credit on their individually filed Form 1040. Employers who agree with the penalty assessment need to simply complete and sign Form 14764 and mail it along with a check for payment. [Those enrolled in the Electronic Federal Tax Payment System (EFTPS) may pay online.]

Employers who disagree with the assessment will still need to complete and sign the Form 14764, and will also need to include a written and signed statement indicating why they disagree with the proposed penalty. Any supporting documentation for the disagreement should also be included, as well as any proposed changes to the employer’s Form(s) 1094-C and 1095-C (via the Form 14765). The IRS has indicated that reasons such as “confusion” or “financial hardship” will not be accepted. Note: Employers should not file an amended Form 1094/1095 series as part of the IRS response.

Inquiries from Certain Clients

Our Employee Benefit Services practice has received a few inquiries from clients for whom we did not prepare the ACA reporting Forms 1094-C and 1095-C and who have received the IRS Letter 226J. We have been able to provide some guidance in these situations based on the unique facts and circumstances applicable to those client situations so we welcome inquiries.

2017 Form 1094 and 1095 Filings

Please note that the Form 1094 and 1095 series for calendar year 2017 are to be filed with the IRS by:

- February 28, 2018 — for those employers eligible for paper filings, or
- March 31, 2018 — if filing electronically

A copy of the Form 1095 series must be furnished to each employee by March 2, 2018. (The original deadline for providing the employee copy was January 31, 2018, but has since been extended by the IRS.)

Contact Us

The Employee Benefit Services Practice at PKF O'Connor Davies is available to assist employers with any correspondence received from the IRS in regard to ACA penalties, as well as provide representation during IRS examinations. We provide a full spectrum of compliance services for qualified and non-qualified benefit plans. For more information, please email Tim Desmond at tdesmond@pkfod.com or Louis F. LiBrandi at [llibrandi@pkfod.com](mailto:lilibrandi@pkfod.com) or telephone 646.449.6327.

About PKF O'Connor Davies

PKF O'Connor Davies, LLP is a full-service certified public accounting and advisory firm with a long history of serving clients both domestically and internationally. With roots tracing to 1891, nine offices in New York, New Jersey, Connecticut and Maryland, and more than 700 professionals, the Firm provides a complete range of accounting, auditing, tax and management advisory services. PKF O'Connor Davies is ranked 28th on *Accounting Today's* 2017 "Top 100 Firms" list and is recognized as one of the "Top 10 Fastest-Growing Firms." PKF O'Connor Davies is also recognized as a "Leader in Audit and Accounting" and is ranked among the "Top Firms in the Mid-Atlantic," by *Accounting Today*. In 2017, PKF O'Connor Davies was named one of the 50 best accounting employers to work for in North America, by *Vault*.

PKF O'Connor Davies is the lead North American representative in PKF International, a global network of legally independent accounting and advisory firms located in over 400 locations, in 150 countries around the world.

Our Firm provides the information in this e-newsletter for general guidance only, and it does not constitute the provision of legal advice, tax advice, accounting services, or professional consulting of any kind.