ACA Shared Responsibility Penalty Letters Arriving Soon

The IRS has issued a notice that Affordable Care Act (ACA) Shared Responsibility penalty letters will be released starting in late 2017 for the 2015 calendar year. Keep in mind that Shared Responsibility applies to Applicable Large Employers (ALEs) which are employers with 50 or more full-time employees or equivalent employees.

An updated FAQ (see the link below) provides details about this requirement. See questions 55 to 58 in the FAQ.

> https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act

You will recall there are two scenarios in which an employer could be responsible for an ACA Shared Responsibility penalty:

- **"A" Penalty.** An employer may incur the "A" Penalty when an ALE does not offer Minimum Essential Coverage (MEC) to at least 95% of full-time employees and their dependents **AND** 1 or more full-time employees qualifies for a Premium Tax Credit at a health insurance marketplace. An employer group health plan meets the requirement for MEC. Note, for 2015 only the "A" penalty is calculated as $2080 annually ($173.33 per month) multiplied by all employees less 80.
- **"B" Penalty.** An employer may incur the "B" Penalty when an employer offers MEC to at least 95% of full-time employees and their dependents, but the coverage offered is not **Affordable** and/or does not meet **Minimum Value** for all eligible employees **AND** 1 or more full-time employees qualifies for a premium tax credit at a health insurance marketplace. The penalty amount for "B" for 2015 is $3,120 annually ($260 per month) for each full-time employee that qualifies for a Premium Tax Credit.

The penalty will be calculated on a monthly basis.

2015 provided some transitional relief to employers.

- Large Employers with between 50 and 99 full-time employees, including full-time equivalents, were not subject to the Shared Responsibility requirement in 2015.
- Large Employers with 100+ full-time employees, including full-time equivalents, were required to offer MEC to at least 70% of full-time employees in 2015. This transitional relief could protect an employer from the "A" penalty but not the "B" penalty.

Steps for Employers

1. **Letter 226J**. If the IRS believes that your business may owe a Shared Responsibility payment, you will receive a 226J letter. ***Do not ignore this letter.*** The letter will include a list of employees which received a Premium Tax Credit. The report will indicate the specific months for which a Shared Responsibility payment is due. The letter will also outline the process for

responding and complying. ***You will need to respond to this letter by the date indicated in the letter.***

- If you agree with the letter, you will complete and return Form 14764 that is included with the letter along with the payment of the amount assessed (or you can pay electronically).
- If you disagree, you will need to complete Form 14764 and include any relevant documentation. This form will be especially helpful if any of the 1095-C forms submitted for 2015 contained inaccurate information. Please see the instructions in the letter for more details.

2. If you disagreed with letter 226J and submitted Form 14764 with comments, you will received an acknowledgement from IRS with letter 227 with further instructions.

3. If necessary, the IRS will schedule a Pre-Assessment conference with the IRS Office of Appeals.

4. If an Assessment is due, the IRS will issue Notice CP 220J as a demand for payment.

See the link below for the template Letter 226J.

https://www.irs.gov/pub/notices/ltr226j.pdf

You may receive the IRS Letter 227 even if you didn't receive an Employer Exchange Notice which was designed to notify employers that one or more employee had been approved to receive a subsidy/tax credit on the Health Insurance Marketplace.

Please note that EBS is sharing this information to assist you with your compliance planning. We recommend that you contact your legal counsel with specific questions relating to this law.

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