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Potential Year-End Surprise in Your Mailbox – A Letter from the IRS

SUMMARY

The Affordable Care Act or ACA (a/k/a “Obamacare”) is not dead, yet. Employers are starting to receive letters from the IRS notifying them that they owe assessable payments (“penalties”) under the employer shared responsibility (a/k/a “employer mandate” or “play or pay”) provisions of the ACA.

On November 2, 2017, and without fanfare, the IRS outlined, through FAQs on its ACA website, the process it will use to notify “applicable large employers” (ALEs) of penalties relating to 2015. The text of the FAQs can be found on our HR Total Rewards blog site. (<http://bit.ly/2AHFf2R>)

The notice of assessment will come in the form of a letter (Letter 226J), with penalties based on your coverage reporting on IRS Forms 1094 and 1095. There are two types of penalties that can be assessed by the IRS for 2015:

- The “A” penalty is assessed if the employer failed to offer minimum essential coverage to at least 70% of its full-time employees (and dependents) and at least one of those employees received a premium tax credit from the IRS. The amount of the “A” penalty is \$173.33 per month times the total ACA full-time employees, less 30.
- The “B” penalty is assessed if the employer failed to offer affordable, minimum essential coverage to all of its full-time employees (and dependents) and one or more of those employees receive a premium tax credit from the IRS. The amount of the “B” penalty is \$260 for each affected employee who receives a premium tax credit, up to the amount of the “A” penalty.

Two attachments will accompany Letter 226J – Form 14764 and Form 14765. You can review the sample Letter 226J and its attachments by going to:

Letter 226J (<http://bit.ly/2inb21O>); Form 14764 (<http://bit.ly/2iVkm7y>); and Form 14765 (<http://bit.ly/2A66Hvn>)

Form 14765 will identify each full-time employee who received a premium tax credit from the IRS for the 2015 year. The ESRP Summary Table on Letter 226J will identify whether the employer is being assessed the “A” penalty or the “B” penalty.

Employers who receive these letters will need to respond to the IRS by the response date indicated on the IRS letter. The response is required for all employers who receive the notice. Nonresponse to the IRS notice by the deadline will result in lien and levy enforcement actions by the IRS.

To prepare a response to Letter 226J, employers who receive the notice will need to first review the accuracy of the notice. Upon receipt of Letter 226J, employers are advised to promptly take at least the following steps:

Employers Assessed the “A” Penalty will need to:

- Verify whether the employer offered minimum essential coverage to at least 70% of its ACA full-time employees in 2015;
- Review Form 14765 and confirm that the information reflected on the form is accurate; and
- Review 2015 Forms 1094 and 1095 filed with the IRS to verify their accuracy.

Employers Assessed the “B” Penalty will need to:

- Review Form 14765 and confirm that the information reflected on the form is accurate; and
- Review 2015 Forms 1094 and 1095 filed with the IRS to verify their accuracy.

To dispute the assessed penalty, the employer will need to attach the following to Form 14764:

- A signed statement explaining why it disagrees with the assessment.
- Description of the changes the employer would like to make to Forms 1094 and 1095 for the 2015 year (without actually filing the forms).
- The changes to Form 14765 that it is making. Such changes need to show the indicator codes in the instructions to Forms 1094 and 1095 on the second row of each employee listed.
- Any additional information the employer thinks may assist the IRS with making changes to its records.

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