

PLAY TIME IS OVER: IRS REVEALS PROCESS FOR ASSESSING ACA PENALTIES

Nov 27, 2017

The Affordable Care Act (ACA) introduced a “pay or play” scheme, effective January 1, 2015, in which Applicable Large Employers (ALEs) must offer affordable qualifying healthcare to their full-time employees (and their dependent children) or pay a penalty. Despite President Trump’s first Executive Order directing a rollback of the Affordable Care Act (ACA) and instructing the Secretary of Health and Human Services to minimize the “unwarranted economic and regulatory burden of the act,” the Internal Revenue Service (IRS) quietly updated its [Questions and Answers on Employer Shared Responsibility Provisions Under the ACA](#) to include the first official guidance detailing the process for enforcement of the penalty. Notably, this update coincided with an IRS announcement that penalties for the 2015 calendar year will be assessed late this year.

The ALE penalty process starts with [Letter 226J](#), which the IRS will send to ALEs it believes owe a penalty based on information reported on Forms 1095-C and 1094-C. The letter will explain the penalty calculations and describe steps to follow depending on whether the ALE agrees or disagrees with the proposed penalty amount.

If you receive Letter 226J and disagree with the proposed penalty, you may:

- Complete, sign and date [Form 14764](#) ESRP Response (to be included with Letter 226J);
- Include a statement explaining the basis for your disagreement (you may include supporting documentation) and describing any changes you want to make to the information reported on your Form(s) 1094-C or 1095-C (do not file a corrected Form 1094-C); and
- Make any changes to [Form 14765](#), Employee PTC Listing to dispute and make corrections to the assessable full-time employees (including any additional documentation supporting your changes).

Generally, you will have 30 days from the date the letter was issued to respond. If the IRS does not receive your response by the response date indicated on the first page of Letter 226J, it will issue a Notice and Demand for the proposed and assessed penalty.

The IRS will review any response to Letter 226J and respond with the appropriate version of Letter 227, which will outline any further actions you may need to take. If you disagree with the proposed or revised penalty in Letter 227, you may request a “pre-assessment conference” within the IRS Office of Appeals. However, you must do so by the response date indicated on Letter 227, which generally will be 30 days from the date of the letter. If, at the end of this process, the IRS determines a penalty is owed, it will issue a notice and demand for payment using Notice CP 220J.

Given that it is already late November, ALEs should expect to begin receiving Letter 226Js in the near future.

RELATED PRACTICE AREAS

- Employee Benefits & Executive Compensation

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