

February 20, 2015

Assessment and Collection of Pay or Play Penalty

The IRS issued a new [fact sheet](#) in question and answer format containing a basic description of the two different "employer shared responsibility" (ESR) "pay or play" payments employer plan sponsors may be responsible for under the Affordable Care Act (ACA). The fact sheet describes the two potential ESR payments (or "penalties") and how the payments will be calculated. The fact sheet also confirms that ESR payments are not deductible for federal income tax purposes.

The fact sheet links to new IRS webpages describing [transition relief](#) for 2015 and [minimum value and affordability](#), and provides several examples for how payments will be calculated. The fact sheet also describes the IRS' assessment and collection process. Notably, the fact sheet clarifies that employers will not report or include an ESR payment with any tax return they may file. Rather the IRS describes the payment assessment and collection process as follows:

- An employer will not be contacted by the IRS regarding an ESR payment until after their employees' individual income tax returns are due for that year – which would show any claims for the premium tax credit (PTC).
- The IRS will calculate the potential ESR payment based on information from the employer (from Form 1094-C and 1095-C reporting) and from employees' tax returns.
- The IRS will then contact the employer for information on any potential liability.
- The employer will have an opportunity to respond before any assessment or notice and demand for payment is made.
- If, after the employer has had an opportunity to respond to the initial IRS contact, the IRS determines that an employer is liable for an ESR payment, the IRS will send a notice and demand for payment to the employer, instructing the employer as how to make payment.
- The IRS will adopt procedures to ensure that employers receive certification when one or more employees receive a PTC for purchasing coverage through the Marketplace.

The entire ESR assessment and appeal process requires that IRS reconcile employer reporting with individual tax returns. Employers should note that an employer appeal of an assessment may place the employer and employee at odds with one another, and if the employer prevails, the IRS will likely seek to recoup all or a portion of any PTC provided to an employee in error.

Many aspects of the assessment and collection process require more clarification and further regulatory guidance. In the meantime, employer plan sponsors should be sure to maintain records needed to prove that a full-time employee who may trigger a penalty was extended an offer of affordable/minimum value coverage under the plan.

As regulators continue to develop regulations and provide needed guidance, large employers should continue to monitor these rules and develop appropriate administrative procedures. Contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220 should you have any questions. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



connerstrong.com



877-861-3220



news@connerstrong.com



[Change My Preferences](#)



INSURANCE | RISK MANAGEMENT | EMPLOYEE BENEFITS



[Click here to change your email preferences or unsubscribe from all communication.](#)