

November 15, 2017

IRS Enforcement of ACA for Employers

IRS is charged with enforcement of the [Affordable Care Act](#) (ACA) [employer shared responsibility payment](#) (ESRP) rules and all indications are that they will shortly begin sending enforcement notices to inform businesses with 50 or more full-time equivalent employees – referred to as [Applicable Large Employer](#) or ALEs – what they owe for failing to comply with the ESRP rules. Currently under the ACA, an ALE is required to offer affordable, minimum-value health coverage to full-time employees or risk an ESRP penalty. ALEs are also [required to report](#) information about whether they offered coverage to employees and if so, information about the offer of coverage.

Non-Filer Letters

Since earlier this year some employers have received notifications from the IRS that they have failed to file the IRS reporting forms. [IRS Letter 5699](#) requests missing ACA returns (Forms 1094-C and 1095-C) for 2015. The Letter notifies the recipient that it may have been an ALE in 2015 with ACA reporting obligations and that the IRS has not yet received reporting forms for 2015. This type of noncompliance can be due to an employer failing to file a Form 1094-C for each ALE member. This Letter 5699 is separate from the letter that will be sent about ESRP penalties for failure to offer qualified coverage.

ESRP Payment Due Letters

Recently updated IRS [FAQs](#) address the notification and submission process for payments due for the 2015 calendar year. The IRS expects to issue [Letter 226-J](#) beginning in late 2017 to inform ALEs that filed Forms 1094-C and 1095-C of their potential liability for an ESRP penalty for the 2015 calendar year (as reported in 2016). Determination of ESRP liability is based on information reported on Forms 1094-C and 1095-C and information about full-time employees that received premium tax credits. We understand the process will be as follows:

1. The Letter 226-J will include a list – Form 14765 – that will indicate, by month, which employees qualified for a tax credit and, therefore, caused a penalty to be incurred.
2. It will also include Form 14764, which will be used by the employer to respond to the ESRP penalty notification.
3. If the employer decides to respond to the notice, the IRS will acknowledge the response with “an appropriate version of Letter 227” – which will be coded based on the type of response the IRS gives. While we don’t yet know the contents of Letter 227, the FAQs state that a conference with the IRS Office of Appeals will be

scheduled within 30 days of the date of Letter 227. Employers can use [Form 2848](#) to authorize an individual to represent them before the IRS. The individual authorized must be a person eligible to practice before the IRS.

4. Lastly, if there's no appeal of the penalty, or the appeal is settled and a penalty is still owed, the IRS will issue Notice CP220J with instructions on how to pay the penalty.

Note that responses to these Letters may include conferences with the IRS, so attorneys and tax advisers will necessarily need to be involved in this process. Employers should be on the lookout for the IRS Letters and should present the materials received to their ACA reporting vendors, legal counsel and qualified tax advisers so as to properly respond to any correspondence and handle it appropriately. We strongly suggest that any Letters received be promptly reviewed and deadlines for responding should be noted. Employers may also need to coordinate with their reporting vendors to be sure the appropriate documentation is on hand to challenge any assessment as needed.

Status of Changes to the ACA

Changes to the ACA have not progressed in Washington and so the ACA remains the law of the land at this time. According to the IRS, "legislative provisions of the ACA law are still in force until changed by the Congress, and taxpayers remain required to follow the law and pay what they may owe." As evidenced by these non-filer and ESRP payment Letters, all signs continue to point to the IRS enforcing the ESRP mandate as the IRS has also released final versions of the [Forms 1094-C and 1095-C](#) for the 2017 reporting year (to be reported in 2018). Unless and until there is final action, all provisions of the ACA remain intact and there is still a possibility that there may be no changes with the ACA this year.

We will continue to monitor developments over the coming weeks and months, and provide details on new and revised employer obligations as they take shape over time. Should you have questions about this or any aspect of federal health insurance reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of our Legislative Updates, visit our online [Resource Center](#).



connerstrong.com



877-861-3220



news@connerstrong.com



[Change My Preferences](#)



[Join Our Team](#)

**CONNER
STRONG &
BUCKELEW**

INSURANCE | RISK MANAGEMENT | EMPLOYEE BENEFITS



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