

CLIENT ALERT



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TO: Clients and Contacts

FROM: D. Brent Wills, Esq.

RE: ***Affordable Care Act*** – Employer Mandate Review #8: What will I have to report to the IRS?

DATE: March 18, 2015

As you may be aware, beginning as of January 1, 2015, the “employer mandate” established by the Affordable Care Act (the “ACA”) became effective. In general, the mandate consists of Sections 4980H, 6055 and 6056 of the Internal Revenue Code (“Section 4980H,” “Section 6055,” “Section 6056,” and the “Code,” respectively). Section 4980H generally requires that “large” employers (in general, employers with 50 or more employees) must offer “affordable,” “minimum value” health insurance coverage to their “full time” employees, as specified in the statute and applicable regulations, or pay a penalty. Final regulations published last year included certain transition relief that may delay the effective date of Section 4980H for some large employers until later in 2015 or until next year. Sections 6055 and 6056 and their related regulations (collectively, the “Reporting Requirements”) establish certain requirements that large employers report information to their employees and to the Internal Revenue Service (the “IRS”) each year. The IRS will use information reported pursuant to the Reporting Requirements to enforce the employer mandate and the ACA’s individual mandate. The IRS recently published the initial forms large employers will use to comply with the Reporting Requirements, in particular Form 1094-C¹ and Form 1095-C² (collectively, the “Reporting Forms”). This Client Alert summarizes certain of the Reporting Requirements, including an overview of the Reporting Forms and the related instructions.³

Reporting Requirements effective in 2015 for *all* large employers

As noted above, certain large employers may be eligible for transition relief that may delay the imposition of penalties under Section 4980H beyond January 1, 2015. Under the Reporting Requirements, however, all large employers will be on the same schedule: every large employer must comply with the Reporting Requirements beginning this year. All reporting will be on a calendar year basis. As discussed further below, large employers will not be required to provide any information to their employees or the

¹ The Form 1094-C is available on the IRS website, at <http://www.irs.gov/pub/irs-pdf/f1094c.pdf>.

² The Form 1095-C is available on the IRS website, at <http://www.irs.gov/pub/irs-pdf/f1095c.pdf>.

³ The (combined) instructions for Form 1094-C and Form 1095-C are available on the IRS website, at <http://www.irs.gov/pub/irs-pdf/i109495c.pdf>.

IRS until early next year, but the information to be reported next year will include information relating back to all months during calendar year 2015, beginning with January, 2015.

Reporting by employers in an aggregated group

Section 4980H requires that certain groups of employers (specifically, groups of employers within a “controlled group” or an “affiliated service group,” within the meaning of applicable IRS rules) must combine (i.e., “aggregate”) their employees to determine whether the group meets the definition of a large employer – i.e., whether the group, collectively, has 50 or more employees. If so, each employer in the group (regardless of whether the employer has 50 or more employees itself) will be treated as a large employer. Among other things, this means that each employer within an aggregated group must (again, regardless of the number of its employees) satisfy the Reporting Requirements on its own; that is, each employer in the group must prepare and deliver the Reporting Forms in accordance with the Reporting Requirements. Consolidated reporting is not permitted.

Form 1095-C: Employer-Provided Health Insurance Offer and Coverage

The Reporting Requirements require that large employers prepare and provide Form 1095-C to their employees not later than January 31 each calendar year, beginning next year.⁴ Large employers that sponsor fully insured health plans must complete Part I and Part II (but not Part III) of the Form 1095-C and deliver the form to each of their full-time employees. Large employers that sponsor self-insured health plans must complete all parts of the Form 1095-C (i.e., Parts I, II and III) and deliver the form to each of their full-time employees, as well as any non-full-time employee covered under the self-insured plan. In both cases, the employer must deliver Form 1095-C to every individual who was a full-time employee (or who was covered under the self-insured plan) in any month during the calendar year, regardless of whether the individual is employed at the end of the year, and, in the case of a full time employee, regardless of whether the employee was offered or enrolled in coverage in any month under the employer’s health plan.

The primary purpose of the Form 1095-C, from the IRS’s perspective, is to notify the employee who receives the form whether the employee may qualify for a premium tax credit (or “subsidy”) to purchase health insurance on a health insurance exchange established pursuant to the ACA.

Besides providing Form 1095-C to the required employees, however, the Reporting Requirements also require that the employer provide a copy of each Form 1095-C it provides to its employees to the IRS, together with the employer’s Form 1094-C (discussed below). So, from the employer’s perspective, the Form 1095-C will indicate

⁴ Because January 31, 2016 falls on a weekend, Form 1095-C must be delivered next year not later than February 1.

to the IRS whether the employer offered the employee affordable, minimum value coverage so that the employer will not be subject to a penalty for the month under Section 4980H(b). Presumably, the IRS will utilize the individualized information furnished in the various Form 1095-Cs to verify the employer-level information reported in the Form 1094-C.

The information to be reported in the Form 1095-C includes the following:

- (i) With respect to each month during the applicable calendar year, whether the employee received an offer of health insurance coverage for the month and, if so, whether the offer of coverage included the employee's dependents (i.e., children under 26 years old) and/or the employee's spouse, and whether the offer of coverage provided minimum value, within the meaning of Section 4980H(b).
- (ii) With respect to each month during the applicable calendar year, whether the employee was a full-time employee for the month and, if so, whether the employee enrolled in coverage under the employer's health plan, or, if the employee did not enroll in coverage, (a) whether the employer qualified for transition relief or certain other relief afforded under IRS regulations for the month,⁵ so that Section 4980H did not apply for the month; or (b) if the employer did not qualify for such relief, whether the employee received an offer of affordable coverage for the month, within the meaning of Section 4980H(b).
- (iii) In the case of a large employer that sponsors a self-insured health plan, with respect to each month during the calendar year, the names, dates of birth and social security numbers for all individuals (including non-employees) enrolled in the employer's health plan pursuant to an offer of coverage made to the employee.

The information in (i) and (ii) above will be reported using indicator codes specified in the instructions.⁶ Large employers should familiarize themselves with the indicator codes as soon as possible and use the codes as a guide to establish procedures for compiling and reporting data required by Form 1095-C.

Form 1094-C: Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns

Every large employer must prepare and file Form 1094-C with the IRS not later than March 31 each calendar year, beginning next year. Among other things, the Form 1094-C will indicate to the IRS whether the employer may be subject to a penalty under

⁵ For example, a large employer may not be subject to a penalty under Section 4980H in a particular month with respect to a full time employee who is in a limited nonassessment period, as defined in IRS regulations.

⁶ See pages 7-8 in the Instructions.

Section 4980H(a) (i.e., the “big” penalty) in any month. In this regard, the information that large employers will be required to report in Form 1094-C includes:

- (i) With respect to each month during the applicable calendar year, the number of the employer’s total employees, and the number of the employer’s full-time employees, calculated in accordance with Section 4980H.
- (ii) With respect to each month during the applicable calendar year, verification that the employer offered coverage to a sufficient number of its full-time employees to avoid a penalty under Section 4980H(a), or that Section 4980H(a) did not apply for the month because the employer qualified for transition relief afforded under Section 4980H for the month (and, if so, the type of transition relief).
- (iii) In the case of an employer that is part of an aggregated group that meets the definition of large employer, with respect to each month during the applicable calendar year, the employer must indicate whether it was part of an aggregated group during the month and, if so, provide certain information regarding the other employers in the group (e.g., employer names, addresses and tax identification numbers).

The Reporting Requirements permit a large employer to provide more than one Form 1094-C to the IRS in respect to a calendar year (e.g., in the event the employer delivers Form 1095-C for its full-time employees in multiple batches); provided, however, that the employer must designate a single, “authoritative transmittal” (i.e., Form 1094-C) that captures all the required information for the employer and on which the IRS may rely for monitoring compliance.

Electronic reporting to the IRS

Large employers that file Form 1094-C and Form 1095-C with the IRS electronically must do so not later than the March 31 date specified above. Large employers that must file 250 or more returns to comply with the Reporting Requirements must file electronically. Large employers that do not file electronically must prepare and deliver Form 1095-C and Form 1094-C to the IRS not later than February 28 (or February 29, when appropriate) for the preceding calendar year.

Alternative reporting methods

The Reporting Requirements provide for certain alternative, theoretically simplified reporting methods in certain instances. Large employers that offer affordable, minimum value coverage (including an offer of coverage to the employee’s dependents, and possibly offer of coverage to the employee’s spouse) to all or substantially all their full-time employees, or that offer coverage for which affordability is tied to the applicable federal poverty line, may wish to investigate whether they may qualify to use

an alternative reporting method. The alternative methods may permit a large employer to avoid calculating the number of its full-time employees each month or to utilize a “simplified statement” in lieu of Form 1095-C to provide the required annual notice to its employees.

Penalties

Large employers that fail to comply with the Reporting Requirements may be subject to the existing penalty provisions of Section 6721 (failure to file correct information return) and 6722 (failure to furnish correct payee statement) of the Code similar to failure to file Form W-2 or Form 1099. The amount of the penalty is generally \$100 per return, up to a maximum of \$1.5 million per year in the aggregate.

For 2015 only, however, the Final Rule includes transition relief that precludes the IRS from imposing a penalty on a large employer that makes a good faith effort to comply with the Reporting Requirements. The Reporting Requirements specify that this relief is available for large employers that provide incorrect or incomplete information in the Form 1095-C or Form 1094-C filed with the IRS, or in any other statement provided to an employee, but only if the employer files the required returns with the IRS (and delivers the required statements to its full-time employees) and otherwise demonstrates a good faith effort to comply.

Conclusion

This Client Alert only provides an overview of the Reporting Requirements. Large employers should carefully review the Reporting Requirements, along with the Reporting Forms and the related instructions, with their accountants, legal counsel and other advisers to get a clear understanding of their reporting responsibilities and develop strategies for meeting the Reporting Requirements.

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