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Employer Reporting – 2016 Draft Forms and Instructions

The IRS has released the 2016 draft forms and instructions for the ACA employer reporting requirement. The 2016 draft forms are very similar to the 2015 forms with only a few small changes; the most significant ones explain how to indicate §4980H transition relief for non-calendar year plans on Form 1094-C and coding conditional offers of coverage to spouses on Line 14 of Form 1095-C. The 2016 draft instructions are also similar, but now contain additional language and examples in many of the sections that incorporate clarification of existing requirements, including much of the guidance previously provided only via FAQ and other informal IRS guidance.

BACKGROUND

Under §6056, all applicable large employers (ALEs) – those averaging 50 or more full-time equivalents (FTEs) in the previous calendar year – must report to the IRS information about the healthcare coverage offered to full-time employees using Forms 1094-C and 1095-C. The reporting is required regardless of whether coverage was actually offered; and if offered, regardless of whether the coverage is fully-insured or self-funded. The IRS uses this information to administer the employer shared responsibility provisions under §4980H and the premium tax credits available to some individuals choosing to purchase coverage through a public Exchange. ALEs must also provide employees with a statement (generally a copy of Form 1095-C) that includes the same information provided to the IRS.

Under §6055, all employers offering a self-funded group health plan considered to be minimum essential coverage (MEC) must report to the IRS information about the individuals actually covered under the plan. If an ALE offers a self-funded group health plan, all information required under §6055 and 6056 will generally be reported using Forms 1094-C and 1095-C. If a small employer (fewer than 50 FTEs) offers a self-funded group health plan, coverage information will be reported using Forms 1094-B and 1095-B. For fully-insured plans, this information will be reported by the insurance carrier using Forms 1094-B and 1095-B. The IRS uses this information to enforce the individual mandate requirements. Employers offering a self-funded group health plan must also provide covered individuals with a statement (generally a copy of Form 1095-B or C) that includes the same information provided to the IRS.

CLARIFICATION/CONFIRMATION OF EXISTING REQUIREMENTS

AUTHORITATIVE TRANSMITTAL

Each employer files only one Form 1094-C, marked as the "authoritative transmittal" on Line 19, and then should provide aggregate summary information about the employer. If an employer files more than one Form 1094-C (e.g. one for each of its operating divisions under the same EIN), only one should be marked as the authoritative transmittal.

AGGREGATED ALE GROUPS

For purposes of determining whether an employer or group of employers is an ALE, all employers under common control (an Aggregated ALE Group) are aggregated according to the rules contained in Code §414. If the

Aggregated ALE Group employed on average 50 or more full-time equivalents (FTEs) during the preceding calendar year, then each separate employer within the group is an ALE Member and is individually subject to the employer reporting requirements. Each ALE Member must file its own Forms 1094-C and 1095-C under its own separate EIN reporting offers of coverage to its respective full-time employees. No Authoritative Transmittal (Form 1094-C) should be filed for an Aggregated ALE Group; such summary information is not required for the Aggregated ALE Group because §4980H requirements and associated penalties are generally applicable on a per EIN basis.

For an aggregated ALE Group that may share employees, the hours of service must be aggregated across the member entities to prevent an employee who would otherwise be considered full-time from being reported as part-time. In addition, only the entity that employs the employee for the most hours should report on the employee for the month. This is the case regardless of who actually offers the employee insurance, because in the situation in which the employee is full-time and not offered coverage for a month, this method determines which ALE member would be liable for any potential §4980H penalty.

QUALIFYING OFFER METHOD

The Qualifying Offer Method includes two options: one for simplified coding of Form 1095-C and another for providing an alternative Form 1095-C to certain employees. If the ALE Member is using either of these simplified options, Box A should be checked on Line 22 of Form 1094-C. For employers choosing to use the simplified coding option on Form 1095-C in Part II, Line 15 should be left blank for any month in which Code 1A is used on Line 14, and the employer may choose to leave Line 16 blank as well.

ELECTRONIC FILING

Those filling 250 or more returns must file electronically unless a hardship waiver is obtained. The 250 threshold applies separately to each type of form filed, and also applies separately for original and corrected returns. In other words, even if an employer was required to file electronically originally, for corrections, if the employer is required to file fewer than 250 corrections, the employer could choose to make the corrections on paper.

CODING FOR OFFERS OF COBRA CONTINUATION COVERAGE

An offer of COBRA continuation coverage is reported differently depending on whether the offer is made due to an employee's termination of employment. An offer of COBRA continuation coverage made upon termination of employment should not be reported as an offer of coverage. Instead, Code 1H (no offer of coverage) is entered on Line 14 and Code 2A (not employed during the month) is entered on Line 16, regardless of whether the individual enrolled in the COBRA coverage. On the other hand, an offer of COBRA continuation coverage made to a continuing employee (e.g. upon a reduction in hours) should be reported as an offer of coverage.

CHANGES FOR 2016

LINE 22

Qualifying Offer Method Transition Relief is no longer applicable, so Box B is marked as "Reserved".

In general, most §4980H transition relief was applicable only for 2015. Therefore, Box C – §4980H is applicable in 2016 only for those employers with a non-calendar year plan. Such employers may qualify for transition relief for some months in 2016 prior to the beginning of their 2016 plan year. For those who meet certain conditions and

qualify for the transition relief, Box C should be marked on Line 22, and Code A or B (depending upon employer size) should be entered for the applicable months in Part III, column (e).

CODING CHANGES

Codes 1I and 2I are no longer applicable and will not be used for 2016.

Codes 1J and 1K are new codes available for indicating conditional offers of coverage to spouses. A "conditional offer" is one that is subject to one or more reasonable, objective conditions (e.g. an offer only if the spouse is not eligible for another employer-sponsored group health plan). These additional codes will help clarify whether the spouse is eligible for a tax subsidy if choosing to enroll through a public Exchange, because eligibility for the tax subsidy is affected only if the spouse is actually offered and eligible for the coverage. See code descriptions below:

- **1J.** Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage conditionally offered to spouse; minimum essential coverage not offered to dependent(s).
- **1K.** Minimum essential coverage providing minimum value offered to employee; at least minimum essential coverage offered to dependents; and at least minimum essential coverage conditionally offered to spouse.

INDIVIDUAL INSTRUCTIONS

On Form 1095-C, "Do not attach to your tax return. Keep for your records." was inserted under the title of the form to clarify that the Form 1095-C should not be submitted with the personal tax return, but rather should be kept on file for purposes of potential future audit.

REPORTING PENALTIES

The penalty amounts were raised slightly for 2016, starting at $260 per form (up from $250 per form in 2015) and capped at $3,193,000 annually (up from $3 million in 2015).

SUMMARY

Overall, there are not really any significant changes to the draft forms or the instructions that alter how or when the employer reporting is to be completed. The forms themselves are almost identical, and the differences in the instructions generally serve to provide additional clarification and confirmation of existing requirements rather than make changes. This should help to make the 2016 tracking and reporting a bit smoother as employers and their vendors (if applicable) will have learned from and be able to improve upon the process that was recently completed for the 2015 calendar year.

Draft forms and instructions may be found at **https://apps.irs.gov/app/picklist/list/draftTaxForms.html**.

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