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Employer Reporting – 2017 Draft Forms and Instructions

The IRS released the 2017 draft forms and instructions for the ACA employer reporting requirement. The 2017 draft forms and instructions are very similar to those used for 2016. Given that they have only minor changes (along with a few clarifications of existing requirements), the most significant change is the deletion throughout of anything referring to §4980H transition relief, which is expired and no longer applicable.

BACKGROUND

Under §6056, all applicable large employers (ALEs) – those averaging 50 or more full-time equivalents (FTEs) in the previous calendar year – must report information about the healthcare coverage offered to full-time employees using Forms 1094-C and 1095-C. 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 who choose to purchase coverage through a public Exchange.

Under §6055, all employers offering a self-funded group health plan considered to be minimum essential coverage (MEC) must report 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.

CLARIFICATION/CONFIRMATION OF EXISTING REQUIREMENTS

Waiver of Coverage

The instructions clarify that there is no specific code to indicate a waiver of coverage on Line 16 of Form 1095-C. If a full-time employee is offered coverage and waives it, generally the employer should enter the applicable affordability safe harbor (i.e., Code 2F, 2G, or 2H) or leave it blank.

Affordability Percentage

The applicable affordability percentage for 2017 is 9.69%.

CHANGES FOR 2017

Line 22

In general, most §4980H transition relief was applicable only for 2015 (as well as for a portion of 2016 for non-calendar year plans). In 2017, no further transition relief was available for ALEs required to comply with §4980H, and therefore Box C is marked as “Reserved.” In addition, Part III, column (e) is marked as “Reserved.” This change may simplify reporting slightly in that many employers found reporting for applicable §4980H transition relief confusing.

Line 15 Safe Harbor

Inadvertent errors in reporting the required employee contribution on Line 15 of Form 1095-C may not require correction so long as the amount is de minimis (i.e.,



within \$100 (annually) of the correct amount). See details in Notice 2017-9 found at <https://www.irs.gov/pub/irs-drop/n-17-09.pdf>. NOTE – Individuals receiving the Form 1095-C must be allowed the opportunity to request a corrected statement if they wish to do so. If a corrected form is not provided upon request, then standard penalties may apply.

Mailing Instructions

An updated address was provided for those persons who elect to mail hard-copy forms to Kansas City, MO (the address for those required to mail forms to Austin, TX is unchanged). This includes employers based in Alaska, California, Oregon and Washington.

The instructions also clarify that forms must be printed in landscape format.

Reporting Penalties

The penalty amount caps were raised slightly for 2017, remaining at \$260 per form, but capped at \$3,218,500 annually (up from \$3,193,000 in 2016).

SUMMARY

There are not any major changes to the draft forms or the instructions that alter how or when employer reporting is to be completed. The forms themselves are almost identical. It seems unlikely that we will see any further changes of significance once the final forms and instructions are released. Without any legislation- or regulation-changing employer reporting obligations, we recommend that all ALEs and employers offering self-funded plans begin employer reporting preparations sooner rather than later in order to meet deadlines in early 2018.

The draft forms and instructions may be found on the IRS draft forms website at <https://apps.irs.gov/app/picklist/list/draftTaxForms.html>. Just enter 1095 in the search box.

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