

June 2015 Client Bulletin

HEALTH CARE TAXES AND COMPLIANCE FOR 2015 AND 2016

President Obama and his administration are currently in their lame duck session. A look back at one of their crowning achievements is the passing of the Affordable Care Act, affectionately called "Obamacare." This act was passed before his second term as President and many challenges became clear to enact this legislation in full. Nevertheless, most all the provisions have taken effect. The major provision enacted for 2014 is the individual mandate or the individual shared responsibility payment. For the next two years several provisions will go into effect. This update addresses these basic provisions for employers and their reporting requirements. The three main issues are the shared responsibility payment under the employer mandate provisions, information reporting by certain large employers, and excise tax provisions related to group health plans.

Beginning in 2015, an applicable large employer may be subject to a shared responsibility payment if either of the following applies:

- 1) The employer does not offer its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage (MEC), under an eligible employer-sponsored plan.
- 2) The employer offers its full-time employees (and their dependents) the opportunity to enroll in MEC, but it is unaffordable, or does not provide adequate coverage (or minimum value).

The shared responsibility payment is calculated differently for the infraction above. The monthly penalty for not offering health care coverage is equal to the number of full-time employees less the first 30 who are waived from the penalty multiplied by \$167. The latter penalty is based on whether a full-time equivalent employee declines coverage of the employer and obtains a premium assistance credit in the marketplace. The monthly penalty for each employee who receives a premium assistance credit is equal to \$250. The latter penalty cannot exceed the former penalty.

There is a safe harbor for determining coverage. If health care coverage is provided to all but 5%, or if greater, five full-time equivalents, then the penalty for not offering health care coverage is not assessable for that particular month. For 2015, this percentage is dropped to 30%. Also, for 2015 only, the penalty covers 80 employees as oppose to the first 30 employees.

These penalty provisions apply to large employers, generally an employer with 50 full-time equivalent employees. However, for 2015, this definition has been modified for employers with 100 or more full-time equivalents. Beginning in 2016, the penalty provision applies to employers with 50-99 full-time equivalent employees.

For 2014, large employers have a new information reporting requirement to the Service to report health insurance coverage provided to employees. A large employer for this purpose is any employer with 50 or more equivalent employees. However, Revenue Notice 2013-45 delayed the enactment of this requirement to 2015 but requested voluntary compliance with the reporting provision in 2014. Small employers (employers with less than 50 employees) are exempt from this reporting requirement; however, the insurance company is responsible for reporting the health coverage of these individuals. Also, individuals that purchase health insurance through the marketplace will get information from the marketplace as oppose to the health insurance provider or employer.

The employer will report information on a Form 1095-C. The information necessary to be reported to the Service is as follows:

- The name, address and employer identification number of the large employer.
- The name and telephone of the large employer's contact person.
- The calendar year for which the information is reported.
- A certification as to whether the large employer offered to its employees (and their dependents) the opportunity to enroll in the minimum essential coverage under an eligible employer-sponsored plan, by calendar month.
- The months during the calendar year for which minimum essential coverage under the plan was available.
- Each full-time employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value offered to that full-time employee under an eligible employer-sponsored plan, by calendar month.
- The number of full-time employees for each month during the calendar year.
- The name, address, and taxpayer identification number of each full-time employee during the calendar year and the months, if any, during which the employee was covered under the plan.
- Any other information specified in forms, instructions, or published guidance.

The reporting requirement is met if the employer files with the IRS a Form 1095-C, *Employer Provided Health Insurance Offer and Coverage*, for each full-time employee along with Form 1094-C, *Transmittal of Employer-Provided Health Insurance and Coverage Information Return*. Forms 1094-C and 1095-C must be filed with the IRS on or before February 28 (March 31, if filed electronically). A 30-day extension may be granted if employer applies to the IRS in writing and shows good cause. An alternative form to filing a 30-day extension can be made on Form 8809. Similar to W-2s, Form 1095-C must be provided to the employee by February 1, 2016.

Penalties may be assessed for failure to file Form 1095-C with the IRS as well as filing a corrected copy to the employee. No penalties may be assessed in 2016 if the employer makes a good faith effort to comply with the provisions. The penalties for each type of failure can range from \$30 to \$100 with a maximum penalty of \$1.5 million. For employers with gross receipts of \$5 million or less for the most recent three tax years, the maximum penalty is \$500,000.

The final topic is the excise tax on group health care plans. Employers offering group health plans which fail to meet certain requirements may be subject to a \$100 a day excise tax for each day these requirements are not met. When the requirements are fully met, the employer is not subject to the tax. Group health plans now must conform to certain market reforms.

The general rule is an employer providing a medical plan covering more than one current employee that fails to comply with the provisions of group health care plans requirements (including Affordable Care Act (ACA) requirements) could be subject to an excise tax up to \$100 a day for each day in the noncompliance period with respect to each individual to whom such failure occurs. The requirements both under the Internal Revenue Code and Affordable Care Act are too cumbersome and exhaustive for this update; however, the IRS ruled in Revenue Notice 2013-45 along with Department of Labor Technical Release 2013-03 that health reimbursement arrangement plans (HRA) or employer payment plans violate the ACA requirements unless the employer also provides a qualifying ACA medical plan along with the HRA or the employer payment plan.

Many small employers have discovered in the past decade that having a reimbursable health care plan saves more money than the employer group plan. The major reason for this cost savings is that employees can model their insurance coverage to fit their health care needs thereby saving dollars on health care through individual policies as oppose to the more expensive business group plans that may need to cover workers both young and old. These group plans likely violate the ACA's minimum essential coverage rules and put the employer at risk for owing the \$100 a day excise tax. An S Corporation with more than one shareholder/employee who uses these health care reimbursement arrangements blessed by Revenue Ruling 2008-1 may find themselves having a group plan that violates the ACA provisions and will be subject to the \$100 a day excise tax. However, the excise tax will not apply to the S Corporation with a one shareholder/employee.

One avenue for small employers to turn is to have the employees get insurance through the marketplace. However, the marketplace incurred major burdens with design flaws, too much web activity, or other reasons. These burdens have made assessing these potential excise taxes for employers difficult that the administration has delayed assessing these taxes for large employers to the 2015 calendar year. For small employers and S Corporation shareholders, assessing the tax has been delayed further. The conclusions reached in Revenue Notice 2013-54 were reiterated in Revenue Notice 2015-13; however, the notice indicates that small employers will not be assessed the \$100 a day excise tax before June 30, 2015. Beginning July 1, 2015, employers who are not large employers may be subject to this excise tax. The new notice also reiterates that S Corporation 2% shareholders can continue to rely on Revenue Notice 2008-1 by including the reimbursed cost of health insurance into the shareholder's W-2 wages and deducting the health insurance as a self-employed medical insurance adjustment to gross income.

This update discusses the basic provisions taking effect in 2015 and 2016. Employers who owe these excise taxes above will file Form 8928 and file the return directly to the Service. This return can be extended with the tax due payable on Form 7004. Behind the basic provisions; however, are several layers of regulations issued by three executive branches of government. The Affordable Care Act will continue to evolve and change as regulations, notices, rulings will be issued monthly by these branches. We will strive to keep you updated through the year with these changes.

Should you have any questions regarding this bulletin, please contact us.

