

December 7, 2017

IRS Updates Employer Shared Responsibility Payment Information

Last month, the IRS provided guidance regarding the procedures it will use to propose and assess employer shared responsibility payments under the Affordable Care Act (“ACA”). More recently, the IRS issued sample Forms [14764](#), [14765](#) and [Letter 226J](#) that provide a window into the employer shared responsibility information it has collected and will be reporting to employers.

Below is a brief summary of the guidance, which was issued in the form of updates to the IRS’ web-based frequently asked questions (“FAQs”).

How Will an Applicable Large Employer (“ALE”) Know that It Owes a Shared Responsibility Payment?

In [FAQ 55](#), the IRS explained that it intends to issue Letter 226J to ALEs that it has determined had one or more employees who enrolled, for at least one month in the year, in a qualified health plan for which a premium tax credit was allowed. Letter 226J will include, among other information, a brief explanation of Code Section 4980H, a table summarizing the proposed employer shared responsibility payment(s) by month, an employer shared responsibility response form (Form 14764 “ESRP Response”) and a description of the actions that the ALE should take if it agrees or disagrees with the proposed payment(s) set forth in the letter.

[FAQ 55](#) further states that a response to Letter 226J will generally be due 30 days from the date of the letter. Contact information for a specific IRS employee that an ALE can contact with questions will also be provided in the letter.

Letter 226J will also include Form 14765, which will have information on employees who received a premium tax credit in 2015, the months that the IRS determines there to be any “assessable full-time employees,” and a row to correct any coding errors made on the Form 1095-C provided to any assessable full-time employee.

Does an ALE Who Receives a Letter 226J Have an Opportunity to Respond to the IRS about the Proposed Shared Responsibility Payment?

Yes, [FAQ 56](#) explains that Letter 226J will provide instructions to ALEs for responding in writing to a letter before any shared responsibility payment is assessed and notice and demand for payment is made. Any response by an ALE will be acknowledged by the IRS through one of five versions of Letter 227. If an ALE still disagrees with the proposed or revised shared responsibility payment set forth in Letter 227, then it may request a pre-assessment conference with the IRS Office of Appeals, as described in Letter 227.

Failure by the ALE to respond to either Letter 226J or Letter 227 will result in the IRS assessing the proposed shared responsibility payment and issuing a notice and demand for payment under Notice CP 220J.

How Does an ALE Make a Shared Responsibility Payment?

[FAQ 57](#) explains that Notice CP 220J will instruct an ALE on how to make a shared responsibility payment if, following any correspondence between the ALE and the IRS, including a pre-assessment conference as described

above, the IRS determines that the ALE is liable for such payment. ALEs do not need to make a shared responsibility payment or include it on any tax return filed before receipt of Notice CP 220J.

When Does the IRS Plan to Notify ALEs of Potential Shared Responsibility Payments?

[FAQ 58](#) confirms that the IRS plans to issue Letter 226J in late 2017 informing ALEs of their potential liability, if any, for an employer shared responsibility payment with respect to the 2015 calendar year.

Please contact your Ropes & Gray advisor or a member of the Ropes & Gray [Executive Compensation and Employee Benefits](#) practice group if you receive a Letter 226J. We stand ready to work with you to assess any potential liability under the employer shared responsibility provisions of the ACA and help you prepare a response to the IRS.