

October 2018

IRS Releases FINAL 2018 ACA Forms and Instructions 1094-C and 1095-C

The Internal Revenue Service (“IRS”) has released the final 2018 version of the Affordable Care Act (“ACA”) Information Reporting forms, a.k.a. Forms 1094-C and 1095-C and instructions. Applicable Large Employers (“ALEs”)¹ are obligated to issue and file the 2018 ACA information returns. **Other than some formatting modifications, there are no significant changes from the 2017 forms and instructions.** As a reminder, the ACA individual mandate penalty for 2018 remains in effect and therefore, employers with self-funded health plans must continue to report information for employees and dependents enrolled in the self-funded health plan.

IRS Assessments

Many employers who received IRS Letter 226J for prior filing years (i.e. 2015) indicating an employer mandate penalty may be assessable, oftentimes realized the assessment was generated due to improperly completing the information on Forms 1094/1095-C. Employers should review processes and procedures to ensure all information that must be reported is being properly captured and accurately recorded to populate 2018 employee statements and file with the IRS.

The IRS has also been issuing Letter 5699 to employers it believes may be an Applicable Large Employer for a prior tax year (i.e. 2016) for which it has not received the ACA Forms 1094/1095-C. For example, some ALEs with fully insured health plans were under the assumption that *only* the insurance carrier had a reporting obligation, which is not correct. Employers who believe they are not subject to the ACA employer mandate or filing requirements should confirm their ALE status for the current and prior tax years.

For 2015 - 2017, the IRS indicated it would not impose penalties for the incorrect distribution or filing of forms when a “good faith effort” to comply could be demonstrated. Unless the IRS makes a further announcement, **this good faith effort provision is NOT available for 2018.** Penalties of \$270 per statement (maximum penalty of \$3,275,500) may be imposed for failure to file a correct statement with the IRS and the same penalty amount may be imposed for failure to issue a correct statement to a full-time employee. A penalty of \$270 per return may also apply for failure to file electronically, unless an approved waiver has been granted or reasonable cause can be established. The instructions provide guidance on how to prepare and/or file a corrected statement.

ACA Information Filing for the 2018 Tax Year

The 2018 deadline to issue participant statements is **January 31, 2019** and to file with the IRS is **February 28, 2019** (paper filing) or **April 1, 2019** (electronic filing required when filing 250+ Forms 1095-C to the IRS). The instructions provide guidance on how to request an extension of time to furnish statements to employees, file with the IRS and to request a waiver to file electronically. In addition, affirmative consent is needed from employees if an employer wishes to issue participant statements electronically. This requirement ensures that the participant statements (Forms 1095-C) are only issued electronically to those individuals who can access them.

Forms 1094-B and 1095-B and instructions have also been released. These forms are used by insurance carriers and other health coverage providers to report Minimum Essential Coverage (“MEC”), including small employers with self-funded plans not subject to the ACA employer mandate. Employers with self-funded health plans may elect to use the “B” forms to report health coverage for plan members who were never an ACA full-time employee for the entire 2018 calendar year (i.e. COBRA participants).

More information about the ACA reporting requirements may be found on the IRS website

¹An Applicable Large Employer is an employer with 50 or more full-time employees (including full-time equivalent employees) in the previous year (2017). For purposes of determining if an employer or group of employers is an Applicable Large Employer, all member companies under common control are aggregated together.¹ An Applicable Large Employer is an employer with 50 or more full-time employees (including full-time equivalent employees) in the previous year (2017). For purposes of determining if an employer or group of employers is an Applicable Large Employer, all member companies under common control are aggregated together.

ADDITIONAL INFORMATION

Information contained in this Client Alert is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance with respect to matters of law, tax and related regulation. Cherry Bekaert Benefits Consulting, LLC provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management, qualified and non-qualified retirement plans, private client services, transaction services, and compensation and human resources.

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