the Timberland Group
Employee Benefits & Consulting

Timber Alert

Compliance – September 2019

IRS Confirms ACA Pay or Play Penalties Still Apply

OVERVIEW

The IRS Office of Chief Counsel recently released an information letter regarding the employer shared responsibility (pay or play) penalties under the Affordable Care Act (ACA). This information letter confirms that **the pay or play penalties continue to apply** for applicable large employers (ALEs) that fail to offer acceptable health coverage to their full-time employees (and dependents). The information letter also:

- ✓ Indicates that the law **does not provide for any waiver of the pay or play penalties**; and
- ✓ Reiterates that, while several forms of transition relief were available for 2015 and 2016, **no transition relief is available for 2017 and future years**.

As a result, taxpayers must continue to follow the law and pay what they owe.

ACTION STEPS

This information letter reiterates the IRS' position that the ACA's employer mandate penalties still apply. Individuals and ALEs must continue to comply with this requirement, including paying any penalties that may be owed.

BACKGROUND

The ACA's **employer shared responsibility rules** require ALEs to offer affordable, minimum value health coverage to their full-time employees or pay a penalty. These rules, also known as the "employer mandate" or "pay or play" rules, only apply to ALEs, which are employers with, on average, at least 50 full-time employees, including full-time equivalent employees (FTEs), during the preceding calendar year. An ALE may be subject to a penalty only if one or more full-time employees obtain an Exchange subsidy (either because the ALE does not offer health coverage, or offers coverage that is unaffordable or does not provide minimum value).

On Jan. 20, 2017, President Trump signed an executive order intended to "to minimize the unwarranted economic and regulatory burdens" of the ACA until the law can be repealed and eventually replaced. The executive order broadly directs the Department of Health and Human Services and other federal agencies to waive, delay or grant exemptions from ACA requirements that may impose a financial burden. However, the executive order does not include specific guidance about any particular ACA requirement or provision, and does not change any existing regulations.

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HIGHLIGHTS

- The IRS clarified that both the individual and employer mandates continue to apply.
- President Trump's executive order does not change the law. Taxpayers are still required to follow the ACA, including paying any applicable penalties.
- Changes to ACA requirements must be made by Congress through the legislative process.

IMPORTANT DATES

- April 17, 2019
  The IRS issued a letter clarifying the exe cutive order's impact on the ACA's employer mandate.

Source: Zywave

IRS INFORMATION LETTER

The IRS Office of Chief Counsel issued information letter number 2019-0008 clarifying that the ACA's employer shared responsibility penalties continue to apply. This information letter was issued in response to a request from Senator Susan Collins (R-Maine) on behalf of her constituents. In her request, Senator Collins questioned whether an employer shared responsibility penalty may be waived or reduced based on hardship or other factors, as well as whether the IRS will extend the transition relief for ALEs with fewer than 100 employees.

In the information letter, the IRS clarified **that the law doesn't provide for a waiver of an employer shared responsibility penalty**. In addition, while several forms of transition relief were available for 2015 and 2016, the information letter reiterates that **no transition relief is available for 2017 and future years**.

According to the information letter, the executive order does not change the law. The ACA's provisions are still effective until changed by Congress, and taxpayers are still required to follow the law, including paying any applicable penalties they may owe.

MORE INFOMAT

For additional information on the ACA Executive Order and the current tax filing season, please visit www.irs.gov/tax-professionals/aca-information-center-for-tax-professionals.