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IRS Extends ACA Reporting Deadline and Issues Transition Relief

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The IRS has not yet finalized the ACA reporting forms (i.e., the 1094-B/C and 1095-B/C) for the 2019 tax year, so it is no surprise that the IRS issued guidance this week extending the deadline to furnish the forms to employees and covered individuals (see Notice 2019-63). In addition to extending the deadline to furnish the forms, the IRS also issued transition relief for “B Form” filers that would waive penalties for failure to furnish the B Forms if certain conditions are met.

As a quick background, the ACA reporting requirements are set forth in Sections 6055 and 6056 of the Internal Revenue Code (the “Code”). Under Code Section 6055, health coverage providers are required to file with the IRS, and distribute to covered individuals, forms showing the months in which the individuals were covered by “minimum essential coverage.” Under Code Section 6056, applicable large employers (generally, those with 50 or more full-time employees and equivalents) are required to file with the IRS, and distribute to employees, forms containing detailed information regarding offers of, and enrollment in, health coverage. In most cases, employers and coverage providers will use Forms 1094-B and 1095-B and/or Forms 1094-C and 1095-C. Highlights of the IRS’s recent guidance are provided below.

Section 6055 Transition Relief

When enacted, Section 6055 served two primary purposes: (1) to allow covered individuals to substantiate compliance with the individual mandate, and (2) to provide the IRS with information necessary to determine whether covered individuals were eligible for premium tax credits on the ACA Marketplace. Now that the individual mandate has been repealed, covered individuals no longer need documentation showing that they were enrolled in minimum essential coverage.

The IRS explained that it is evaluating whether and how the Section 6055 reporting requirements should change given the individual mandate’s repeal. In the meantime, the IRS issued transition relief for the 2019 tax year such that no penalties will be assessed against a B Form filer for failing to furnish the forms to covered individuals if two requirements are met. First, the coverage provider must post a notice on its website stating that an individual’s B Form is available and can be requested at any time. This notice must include an email address and physical address where the request can be sent and a phone number where individuals can get additional information. Second, the coverage provider must provide any requested form within 30 days of the request.

This transition relief will primarily benefit insurance companies providing coverage in the group market, non-applicable large employers, and non-employer group coverage providers (such as multiemployer plans). Applicable large employers sponsoring self-insured plans are generally required to use the C Forms, which combine the reporting obligations under Sections 6055 and 6056. The IRS explains that the transition relief does not apply to forms to be furnished to full-time employees of applicable large employers.

Importantly, the transition relief applies only the requirement to furnish the forms to covered individuals. The B Forms still must be submitted to the IRS by the deadline noted below.

Deadline Extended

As it has in the past when necessary, the IRS extended the deadline to furnish the ACA reporting forms to employees and covered individuals. The deadline to file with the IRS, however, was not extended.

	Old Deadline	**New Deadline**
Deadline to Distribute Forms to Employees and Covered Individuals	Jan. 31, 2020	March 2, 2020
Deadline to File with the IRS	Feb. 28, 2020 (paper) March 31, 2020 (electronic)	**NO CHANGE**

The regulations issued under Code Section 6055 and 6056 allow for an automatic 30-day extension to distribute and file the forms if good cause exists. An additional 30-day is extension is available upon application to the IRS. Consistent with prior extensions, Notice 2019-63 provides that these extensions do not apply to the extended due date for the distribution of the forms, but they do apply to the unchanged deadline to file the forms with the IRS.

Good Faith Compliance Standard Renewed

The IRS also continued the interim good faith compliance standard under which the IRS will not assess a penalty for incomplete or incorrect information on the reporting forms if a filer can show that it completed the forms in good faith. As in prior years, this relief only applies if the forms were filed on time. Thus, filers would be wise to distribute and file forms, even imperfect ones, timely and should document their good faith efforts.

Those that do not file by the new deadlines have a more uphill battle to avoid penalties under Code Sections 6721 and 6722. In that case, the IRS would apply a reasonable cause analysis when determining the penalty amount for a late filer. As noted by the IRS in prior guidance, this analysis will take into account such things as whether reasonable efforts were made to prepare for filing (e.g., gathering and transmitting data to an agent or testing its own ability to transmit information to the IRS) and the extent to which the filer is taking steps to ensure that it can comply with the reporting requirements for 2019.

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