

What Employers Should Know about ACA Shared Responsibility Payments

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A [recently released redacted report](#) from the Treasury Inspector General for Tax Administration (TIGTA) offers some helpful insights for employers who may be assessed shared responsibility payments because the IRS thinks they failed to offer adequate health coverage, as required by the Affordable Care Act (ACA).

The TIGTA report shows a wide gap between the ACA shared responsibility payment amounts the IRS initially predicted would be assessed in 2015 and 2016 (approximately \$17 billion) and the actual amounts assessed once employers were given a chance to contest the proposed amounts (\$749 million). The TIGTA also estimates that longer term revenue from these payments will fall very short of the amount estimated by Congress. For the 10-year period starting with fiscal year 2016, the Joint Committee on Taxation's earlier projection was that the shared responsibility payments would generate revenue of \$167 billion. Using the actual assessment rates, the TIGTA's projection for this same period is approximately \$8 billion.

The TIGTA's report also identified areas where IRS procedural issues or improper employer reporting resulted in an inaccurate initial calculation. In light of this news, employers should keep in mind a few key points with respect to the employer shared responsibility payments.

Monitor compliance with the ACA shared responsibility mandate.

The first step to avoiding shared responsibility payments is to ensure you're complying with the ACA shared responsibility mandate (also known as the "Pay or Play" rule).

This rule requires employers with at least 50 or more full-time employees (including full-time equivalent employees) during a calendar year ("Applicable Large Employers") to offer affordable, minimum essential health coverage to full-time employees and their dependents, and the coverage must provide minimum value. There are nuances in determining full-time status and full-time equivalence, as well as determining affordability, compliance with minimum value requirements and when the offer must be made. Accordingly, an employer reviewing operational compliance with the shared responsibility mandate may want to work closely with benefits counsel.

Generally, if the employer does not offer coverage to at least 95% of full-time employees and their

dependents and even one full-time employee receives a premium tax credit, the employer is subject to a shared responsibility payment under the “A” penalty (under I.R.C. Section 4980H(a)). The A penalty can be quite steep – it is calculated as the “applicable payment amount” (\$2,080 in 2014, adjusted for each year thereafter) multiplied by the total number of full-time employees.

Even if the employer offers coverage to at least 95% of its full-time employees, if a full-time employee receives a premium tax credit because coverage was not offered, was not affordable or did not provide minimum value, then the employer is subject to a shared responsibility payment under the “B” penalty (under I.R.C. Section 4980H(b)). The B penalty is calculated only based on the number of full-time employees who receive a premium tax credit, and was \$3,000 in 2014, adjusted for each year thereafter.

Take care in reporting.

Applicable Large Employers must annually file information returns with the IRS on Forms 1094-C and 1095-C. Once the IRS has analyzed the Forms 1094-C and 1095-C for a tax year, it will calculate potential shared responsibility payments that may be owed and send inquiry letters to employers. Historically this process has taken a couple of years.

To reduce the likelihood of receiving an inquiry letter, an employer should carefully and accurately complete these forms. According to the TIGTA report, a majority of the adjustments to the IRS’s initially proposed share responsibility payment amounts were the result of employer reporting issues. Many employers inaccurately reported on their Form 1094-C that they did not offer health insurance to employees, and when they subsequently notified the IRS of this error, the assessed amount was adjusted accordingly.

Scrutinize any shared responsibility payment notices carefully.

The IRS’s initial inquiry letter will notify an employer of the proposed shared liability payment. The inquiry letter will also enclose a form for the employer to complete and return with either the payment or a statement as to why it disagrees with the proposed shared liability payment. Generally, the employer has 30 days to respond. However, in our experience, the IRS will work with employers that need more time to pull together the information necessary to respond. It is important that an employer respond to an inquiry letter in a timely way.

If you do receive an inquiry letter proposing a shared responsibility payment, it is important to review it carefully and enlist legal counsel as needed. TIGTA’s report shows that in 2015 and 2015, the initial calculations included with the IRS’s inquiry letters were reduced significantly based on employer responses. In our experience, we also find many of these letters to have erroneous assessments. The only way to find out if the calculated payment amount is wrong is to scrutinize the assessment carefully and compare it to the information on the reporting forms. Then, a timely response, including clear explanations and proof as to why the assessment was wrong, can help reduce or eliminate the possible shared responsibility payment obligation.

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National Law Review, Volume X, Number 174

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