

Get Ready to Respond to IRS Letter 226J: Employer Shared Responsibility Payment Assessments

Article By:

Employment, Labor, Workforce Management

In a recent update to the IRS' [Questions and Answers on Employer Shared Responsibility Provisions under the Affordable Care Act](#), the IRS has advised that it plans to issue Letter 226J informing applicable large employers (ALEs) of their potential liability for an employer shared responsibility payment for the 2015 calendar year, if any, sometime in late 2017. The IRS plans to issue Letter 226J to an ALE if it determines that, for at least one month in the year, one or more of the ALE's full-time employees was enrolled in a qualified health plan for which a premium tax credit (PTC) was allowed (and the ALE did not qualify for an affordability safe harbor or other relief for the employee). The IRS will determine whether an employer may be liable for an employer shared responsibility payment, and the amount of the potential payment, based on information reported to the IRS on Forms 1094-C and 1095-C and information about the ALEs full-time employees that were allowed the premium tax credit.

In my blog last year "[ACA Information Reporting: Ensuring Big Data Analyses Do Not Lead to Big Penalties](#)," the terms of a Letter 226J were still unclear, yet the imperative to establish an approach for reviewing and responding to these types of letters was forewarned. If an ALE receives a Letter 226J from the IRS, the employer will have only 30 days from the date of the letter to dispute liability for a penalty payment. With the holiday season and other year-end deadlines, preparing a response with sufficient detail will undoubtedly become a daunting task. As provided on the model Letter 226J, employers that wish to dispute the liability assessment will need to:

- Complete, sign, and date a Form 14764, Employer Shared Responsibility Payment (ESRP) Response, and send it to the IRS by the due date along with a signed statement explaining why the employer disagrees with part or all of the proposed ESRP,
- Ensure that the statement describes changes, if any, the employer wants to make to the information reported on Form(s) 1094-C or Forms 1095-C,
- Make changes, if any, on the **Employee PTC Listing** using the indicator codes in the Instructions for Forms 1094-C and 1095-C for the tax year shown on the first page of this letter,
- Include the revised Employee PTC Listing, if necessary, and any additional documentation

supporting the employer's changes with the Form 14764, ESRP Response, and signed statement.

If the ALE responds to Letter 226J, the IRS will acknowledge the ALE's response to Letter 226J with an appropriate version of Letter 227 (a series of five different letters that, in general, acknowledge the ALE's response to Letter 226J and describe further actions the ALE may need to take). If, after receipt of Letter 227, the ALE disagrees with the proposed or revised employer shared responsibility payment, the ALE may request a pre-assessment conference with the IRS Office of Appeals. The ALE should follow the instructions provided in Letter 227 and Publication 5, Your Appeal Rights and How To Prepare a Protest if You Don't Agree, for requesting a conference with the IRS Office of Appeals. A conference should be requested in writing by the response date shown on Letter 227, which generally will be 30 days from the date of Letter 227.

Now is the time to consider a self-audit of 1095-C reporting, as well as organization of documents that may be needed to prepare a response and/or appeal to the IRS. If the ALE does not respond to either Letter 226J or Letter 227, the IRS will assess the amount of the proposed employer shared responsibility payment and issue a notice and demand for payment, Notice CP 220J.

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