A7 – ACA REPORTING UPDATE

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WHO IS ABRC?

- We are a full-service insurance brokerage firm
  - Health insurance
  - Property and casualty insurance
  - Financial services
- We offer a unique suite of specialized resources not offered by our competitors (e.g.,
  - Hotline staffed by attorney specialists;
  - Technology consulting, including RFP management; risk management consulting;
  - Work comp claims management, etc.)
- We are part of Associated Bank, which means
  - We can leverage their resources, and provide
    - Our clients with a more robust array of business solutions

CURRENT LEGAL STATUS OF ACA REPORTING

- Penalties under the individual coverage mandate eliminoted as of 1/1/19
- Penalties under the employer shared responsibility mandate NOT eliminated
- 1094C / 1095C reporting requirements NOT eliminated
- Litigation over constitutionality of entire ACA still pending
“PLAY OR PAY” PENALTY PROCESS

IRS is collecting 2015 and 2016 “play or pay” penalties:
- Collection notices start being sent in late November / early December
- Two potential avenues for penalties:
  - 4980H(a) - “No coverage” penalty for not offering coverage to 70% of ACA-FT employees
  - 4980H(b) - “Unaffordability” penalty for not offering affordable coverage to individual ACA-FT employees
- Six-figure penalty notices common

CP 220J
Demand for payment

Pre-assessment Conference
Appeal before IRS Office of Appeals

Letter 226J
Initial collection notice indicating amount of penalty IRS believes is owed

ESRP Response
Employer response either accepting or challenging penalty amount

Letter 227
IRS response to ESRP Response

Letter 226J
Contains: deadlines, contact information, potential Form 1094-C errors, potential Form 1095-C errors, other helpful instructions
- ESRP response must be submitted within 30 days, unless extension granted (IRS commonly grants 30-day extension)
- Make sure to review the entire Letter 226J, as many employers are misinterpreting the letter and focusing on the wrong errors
**“PLAY OR PAY” PENALTY PROCESS**

**Why does the IRS believe a penalty is owed?**
- Gather internal information *(next slide)*
- Is there a basis to challenge assessment?
- Prepare ESRP Response

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**Gathering Data:**
- All data pertains to 2015/2016 calendar years – but relevant information may be older (e.g., hours of service data under look-back measurement; open enrollment information for non-calendar year plans)

**ACA-FT Status**
- Measurement method and dates used
- Hours of service records for measurement period
- Employment records showing hire/termination dates

**Offer of coverage**
- Records demonstrating coverage was offered to 70% of ACA-FT employees and/or employees who received a subsidy

**Cost of coverage**
- Rate tables for lowest cost single coverage for employees who received a subsidy
- W-2s, hourly rates of pay for employees who received a subsidy

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**ESRP Response**
- The ESRP Response form is used to accept or dispute the assessed penalty
- Correct all errors, not just the one triggering the penalty (initial penalty may be 1094C error, but fixing it could lead to 1095C examination, and discovery of additional errors)
- Although not required, it is worthwhile to include documentation to support the explanation
“PLAY OR PAY” PENALTY PROCESS

ESRP Response – Who Prepares It?

- Your internal staff
- Your accounting firm
- Your law firm
- Your insurance broker
- Whoever does so must have deep knowledge of ACA reporting and penalty process

COMMON PENALTY APPEALS

<table>
<thead>
<tr>
<th>Reason</th>
<th>Case Example</th>
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<tbody>
<tr>
<td>Letter 226J</td>
<td>Info does not match 1094C/1095C</td>
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<tr>
<td>Errors on 1094C/1095C</td>
<td>Employee not ACA-FT or not employed</td>
</tr>
<tr>
<td>Minimum Value coverage offered</td>
<td>Coverage offered satisfied affordability safe harbor or was actually affordable</td>
</tr>
<tr>
<td>Employer was not an ALE in penalty year</td>
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COMMON REPORTING MISTAKES

1094C:

- Improperly completing Part III Column A by either leaving it blank (which defaults to “no”) or marking “no” rather than “yes”
- Leaving Part III Column B blank (the IRS will count the total number of 1096Cs you issued, which will result in a misleading employee count, since it will include former employees)
1094C – PART III

COMMON REPORTING MISTAKES

1095C:

• Issuing a 1095C to individuals who shouldn’t receive them
• Failing to enter proper coding for each month during the year in lines 14 and 16
• Not properly coding mid-year employee status changes (e.g., full-time to part-time, hiring/firing, COBRA, etc.)

Line 14
• Code indicating whether employee, spouse and children were offered coverage
• Every box in Line 14 must be completed unless using “All 12 Months”

Line 15
• Amount the employee would paid to enroll in single coverage on cheapest plan available to that employee

Line 16
• Safe Harbor Code indicating why employer does not owe a penalty even if the employee receives a premium subsidy for the month
• Ideally there should be a code in “All 12 Months” or each monthly box on Line 16, but if no code applies, Line 16 will be blank

1095C – PART II
QUESTIONS

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IMPORTANT DISCLOSURES

Investments, securities and insurance products:

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<th>NOT FINANCED</th>
<th>NOT BANK</th>
<th>GUARANTEED</th>
<th>ADD VALUE</th>
<th>NOT MANAGEMENT</th>
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