

# Legislative Brief

## HCR - ACA Reporting

December 2015

### BREAKING NEWS: IRS Extends the ACA Reporting Deadlines

#### SUMMARY:

- The Internal Revenue Service (IRS) extended the due dates for employers to complete Affordable Care Act (ACA) information reporting:
  - The due date for furnishing reports to full-time employees (Form 1095-C) and responsible individuals (Form 1095-B) has been extended from February 1, 2016 to March 31, 2016; and
  - The due date for filing returns with the IRS (i.e., Forms 1094-B and 1095-B, or Forms 1094-C and 1095-C) has been extended from February 29, 2016 to May 31, 2016 (for paper filing) and from March 31, 2016 to June 30, 2016 (if filing electronically).
- The new extensions for furnishing and filing information reports and returns automatically apply to all reporting entities (including applicable large employers (ALEs)). The reporting guidance previously issued which provided for automatic and permissive extensions for filing reports and returns will not apply to the newly announced extended deadlines for 2015 reporting.
- The ability to request a waiver from electronic filing remains available to reporting entities. Reporting entities that file 250 or more returns with the IRS are required to file those returns electronically through the ACA Information Return (AIR) System. A reporting entity may request a waiver from this electronic filing requirement for 2015 by submitting Form 8508 by February 15, 2016. If a waiver request is granted, the reporting entity may submit its returns via paper, but it is not required to do so (i.e., filing electronically remains available).
- For 2015, the IRS will not impose penalties on reporting entities that can show a **good faith effort** to comply with the reporting requirements, but that relief only applies to furnishing and filing incorrect or incomplete information. A failure to timely furnish or file a statement or return will result in penalties unless **reasonable cause** for such a failure can be demonstrated.

#### Background

Sections 6055 and 6056 were added to the Internal Revenue Code (IRC) by the Affordable Care Act. IRC §6055 requires providers of minimum essential coverage to file and furnish information regarding the coverage provided. This information is provided to assist the IRS with administering the ACA Individual Mandate (requires every individual to have health coverage or be subject to a penalty unless an exemption applies).

IRC §6056 requires an applicable large employer (ALE) to file and furnish information relating to the health insurance that it offers (or does not offer) to its full-time employees and their dependents. An ALE is an employer who employs at least 50 or more full-time employees (including full-time equivalents) on average during the prior calendar year. This information is provided to assist the IRS with administering the ACA Employer Mandate (generally requires ALEs to offer coverage to their full-time employees and their dependents or be subject to a potential penalty). This information also assists the IRS with administering the premium tax credit provided to individuals who enroll in coverage through the Marketplace (Exchange).

As mentioned, an ALE must report information about the health care coverage it offers to its full-time employees and their dependents to the IRS and to full-time employees, regardless of whether the ALE offers health coverage under IRC §6056. Additionally, an ALE who sponsors a self-funded health plan is also subject to covered individual reporting under IRC §6055.

An ALE who expects to file 250 or more ACA Information Returns (Forms 1094 and 1095) for the 2015 calendar year must file those information returns electronically. The 250 or more requirement applies separately to each type of form. For example, if an ALE will file 150 of Form 1095-B and 300 of Form 1095-C, only Form 1095-C must be filed electronically. Any employer may voluntarily file their information returns electronically, even when the amount is less than 250 returns. For the 2015 tax year, the IRS requires the ACA Information Returns be filed electronically through the Affordable Care Act Information Return (AIR) System.

An ALE who fails to comply with the information reporting requirements may be subject to the general reporting penalties (failure to file correction information returns and failure to furnish correct payee statement) and may incur penalties up to \$3,000,000 for the calendar year.

### I. Extension of the ACA Reporting Deadlines

The Internal Revenue Service (IRS) issued [Notice 2016-4](#) extending the due dates for employers to complete the Affordable Care Act (ACA) information reporting. The notice extends the due date for:

- ◆ **Furnishing Form 1095-B and Form 1095-C to responsible individuals and full-time employees from February 1, 2016 to March 31, 2016; and**
- ◆ **Filing Forms 1094-B and 1095-B or Forms 1094-C and 1095-C with the IRS from February 29, 2016 to May 31, 2016 (paper filing) and from March 31, 2016 to June 30, 2016 (filing electronically).**

The notice clarifies that no further extensions will be granted on an employer-by-employer basis because the extensions for furnishing and filing the ACA Information Returns will apply automatically to all filers and are more generous than the original 30-day automatic and permissive extensions. Therefore, an ALE who already applied for an extension but did not receive a response by the IRS, should proceed with furnishing and filing the ACA Information Returns based on the new automatic deadlines.

### II. Electronic Filing Waiver

An ALE is required to use the AIR System if electronically filing 250 or more ACA Information Returns. The software used to transmit the returns to the IRS must first undergo AIR System testing and approval. AIR System testing began on November 2, 2015.

The extensions provided in Notice 2016-4 are meant to assist with AIR System testing delays. However, even with these newly provided extensions, an ALE may still find it difficult to meet the June 30, 2016 deadline if required to file electronically. Therefore, it is in the best interest of the ALE to request a waiver from filing the information returns electronically.

To request the waiver, an ALE must submit [Form 8508](#) (Request for Waiver from Failing Information Returns Electronically). Form 8508 should be **filed at least 45 days** before the original due date of March 31, 2016 (i.e., **February 15, 2016 for the 2015 calendar year**). **This form cannot be filed electronically** and must be submitted to the address or fax on the instructions of Form 8508: Internal Revenue Service, Attn: Extension of Time Coordinator, 240 Murall Drive Mail Stop 4360, Kearneysville, WV 25430 or (877) 477-0572. Waiver requests will begin to be processed in January 2016.

An ALE must indicate on Form 8508 whether this is a first time request. If this is not a first time request, an ALE must complete Block 8 to establish undue hardship (since 2015 is the first year of reporting, item 8 will be left blank). If the waiver request is not based on undue hardship, an ALE must attach a detailed explanation of why the waiver is needed. Upon receipt of the request, the IRS will evaluate the request and an approval or denial letter will be issued.

If a waiver is granted, an ALE is not required to file its ACA returns in paper form (i.e., the ALE may still elect to file electronically and use the later deadline date for filing electronically). A granted waiver simply provides an ALE the option to submit reporting via paper if issues with electronic filing requirements arise for the 2015 reporting.

### III. Effect on Individual Taxpayers

The purpose of the information provided on Form 1095 is to determine the individual's eligibility for a premium tax credit or to confirm the individual had minimum essential coverage for 2015. Notice 2016-4 recognizes that individuals may not receive Form 1095 in time to file their income tax returns and therefore permits individuals to rely upon other information received from their employer or coverage provider about their coverage for purposes of filing their returns without the need to amend their returns once the individual receives Form 1095. The IRS recommends that individuals keep Form 1095 for their own tax records.

#### IV. Penalties

Employers that do not comply with the extended due dates are subject to penalties for a failure to timely furnish and file the information returns, unless reasonable cause for such a failure can be demonstrated.

- The penalty for an ALE who **fails to file an information return with the IRS** is \$250 for each return for which such failure occurs. The total penalty imposed for all failures during a calendar year shall not exceed \$3,000,000.
- The penalty for an ALE who **fails to distribute a statement to a responsible individual** is \$250 for each statement for which such failure occurs. The total penalty imposed for all such failures during a calendar year shall not exceed \$3,000,000.

Employers that do not meet the extended due dates are still encouraged to furnish and file, because the IRS will take such action into consideration when determining whether to abate penalties for reasonable cause. The IRS will take into account:

- Whether an employer made reasonable efforts to prepare for reporting the required information and furnishing to employees, such as gathering and transmitting the necessary data to an agent to prepare the data for submission to the IRS, or testing its ability to transmit to the IRS; and
- The extent to which the employer is taking steps to ensure it is able to comply with the reporting requirements for 2016.

#### V. Action to Be Taken

The IRS is prepared to accept filings of the ACA Information Returns beginning in January 2016. An ALE should continue to work on completing the ACA Information Returns and is encouraged to furnish and file the returns as soon as possible. To assist in understanding the ACA reporting requirements and completion of Forms 1094 and 1095, an updated 2015 ACA Employer Reporting Guide will be available to clients upon request. To receive the guide, or if you have any questions pertaining to the reporting requirements, please contact your Client Executive.

Health Care Reform —the Affordable Care Act (ACA)—has many complex requirements for employers and health plans. Please contact Kapnick Insurance Group with any questions about how you can prepare for any of the health care reform requirements. This Kapnick Insurance Group Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal or tax advice. The information contained in this communication is intended to provide general information regarding health care reform and related topics, and is based on general information available at the time it was prepared. Readers should contact their tax and/or legal counsel for advice that is appropriate to their specific circumstances. This information cannot be used by any taxpayer to avoid tax penalties.

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