IRS Does Have Authority to Provide Certification Required to Assess ACA Employer Penalties

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The Affordable Care Act ("***ACA***") states that employer penalties may be assessed only if at least one full-time employee "has been certified to the employer under section 1411 of the [ACA]" as having received a premium tax credit for Exchange coverage. A previous federal district court case, which we discussed here, held that this certification could not come from the IRS and thus ordered the IRS to refund the ACA employer penalties paid by the employer. That decision is currently on appeal to the U.S. Court of Appeals for the Fifth Circuit (whose jurisdiction includes Texas).

Earlier this year, however, another federal district court reached the opposite conclusion in *Supreme Linen Services, Inc. v. U.S.*, 2026 WL 1220078 (S.D. Fla. 2026). That court held that the IRS is responsible for issuing this certification and does so with IRS Letter 226-J. On that basis, the court held the ACA employer penalties were properly assessed.

This more recent decision creates a split between district courts as to whether the IRS's current process for assessing ACA employer penalties satisfies the ACA's certification requirement. Employers should continue to monitor how these cases progress.

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