

IRS Releases Guidance for ACA Employer Shared Responsibility Payment Process

November 15, 2017

The IRS recently updated its Questions and Answers on Employer Shared Responsibility Provisions under the Affordable Care Act (the “**FAQs**”) to include a description of the employer shared responsibility payments process in the form of revised FAQs #55 – 58. FAQ #58 indicates the IRS will send assessments for the 2016 reporting year in late 2017. A brief overview of this process is described below:

1. The IRS will send Letter 226J to the employer. This letter will include: (i) the assessment amount the IRS believes is owed by the employer for each month of the prior reporting year; (ii) a list of the full time employees resulting in the assessment (the list will include the Form 1095-C Part II indicator codes provided to the IRS, if any, by the employer); (iii) the steps the employer should take if it agrees or disagrees with the assessment; and (iv) the steps the IRS will take if the employer does not timely respond to the letter. Letter 226J will include instructions on how to respond and a response due date, which will generally be 30 days from the date of the letter. The letter will also include the name and contact information for a specific IRS employee.
2. If the employer timely disputes the assessment as provided in Letter 226J, the IRS will respond to the employer with Letter 227, which will describe any additional actions the employer may need to take to dispute the assessment and provide the employer with the opportunity to schedule a pre-assessment conference. Letter 227 may contain a revised assessment amount based on the employer’s response to Letter 226J. The employer must either agree or disagree with the assessment amount and request the pre-assessment conference in writing by the response due date, which will generally be 30 days from the date of the Letter 227.
3. The IRS will deem an assessment amount to be correct and issue a notice and demand for payment using Notice CP 220J if any of the following occur: (i) the employer fails to timely respond to Letters 226J or 227; (ii) the employer agrees with the assessment amount; or (iii) the IRS determines an assessment is due following the pre-assessment conference. The IRS will issue Notice CP 220J describing the available payment methods and due date(s).

Thirty days will be a relatively short time for many employers to gather the necessary information and respond to the IRS. The FAQs do not address whether any extension of time to respond will be available or under what conditions an extension might be granted. Similarly, the FAQs do not describe any available appeals process for an employer should the IRS determine an assessment is due following the pre-assessment conference. [View the updated FAQs.](#)