

# **AFFORDABLE CARE ACT 3 THINGS TO KNOW**

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## 3 Things to Know

- Mid-size Businesses are Subject to the ACA
- Review of Form 1095 Reporting
- Preparing for the Cadillac Tax

# Employer Responsibilities

- Under 50 FTE
- Special Rules for 50 to 99 FTE
- 100 or More FTE
- Special Rules for 100+

## Special Rules for 50 to 99 FTE

- 2014 is the Determination Year
- Conditions for No “Pay or Play” Penalty for 2015
- 2/9/14 to 12/31/14 Determination
- Workforce size or hours
- Health coverage
- 95% of dollar amount or same percentage
- Eligible classes
- No Plan Year Change after 2/9/14

## **Special Rules for 50 to 99 FTE - Conditions for Transitional Relief -**

- IRS Final Regulations provide special relief.
- Transition relief applies to calendar and fiscal year 2015.
- Fiscal year relief not available if plan year is modified after February 9, 2014, to begin on a later calendar date (for example, changing the start date of the plan year from January 1<sup>st</sup> to December 1<sup>st</sup>).
- Non-calendar year plan meeting the coverage maintenance period requirements for 2015 may be eligible for the relief for 2015 even if the employer does not meet the coverage maintenance period requirements later (during the portion of the 2015 plan year falling in 2016).

# ACA Small Group Changes

- “Small” Group Increases From 50 to 100 Employees on 1/1/16 – State Issue
- Small Group
- Large Group

# ACA Small Group Changes - Plan Year Problems -

- Avoiding Small Group Designation
- PACE

# Applicable Large Employer Determination

- “Applicable Large Employer” Defined
- Failure to Offer Health Insurance Coverage - \$2,000 – IRC 4980H(a)
- Failure to Pay a Specific Amount - \$3,000 – IRC 4980H(b)

## Pay or Play

- Determining Applicable Large Employer status is determined on a controlled group basis.
- Meeting these rules (the 70% standard or the 95% standard) is done on an Applicable Large Employer member basis.
- Example: If there is a parent corporation and 3 subsidiaries, each entity must meet the 95% standard (70% for 2015) with regard to its own employees.

## Pay or Play (cont.)

- The penalty under 4980H(a) is based on all (excluding the first 30) full-time employees of the Applicable Large Employer Member (ALE Member).
  - Annualized penalty: The number of full-time employees of the ALE Member (reduced by the allocable share of the 30-employee reduction) multiplied by \$2,000.
  - 80-employee reduction for 2015 only.
- The actual number has increased to \$2080.

## Pay or Play (cont.)

- The penalty under 4980H(b) is based on the number of full-time employees who are certified to the employer as having received an applicable premium tax credit or cost-sharing reduction for coverage purchased on the public exchange.
  - 2015 annualized penalty: The number of full-time employees of the ALE member who receive an applicable premium tax credit or cost-sharing reduction multiplied by \$3,000.
- The actual number has increased to \$3,120.

# Form 1094/1095 Reporting and Disclosures

- New Reporting in 2016 for 2015
- Fully-Insured
- Small Self-Insured
- Large Employers
- Multiemployer Plan

# Form 1094/1095 Reporting Required

	Small Employer	Large Employer
Fully-Insured	None	Form 1094-C Form 1095-C
Self-Insured	Form 1094-B Form 1095-B	Form 1094-C Form 1095-C

- Electronic Filing Requirement - 250

# Form 1094/1095 Controlled Group Issues

- W-2s
- Form 1095-C
- FICA / FUTA / SUTA

# Requirement to Obtain the SSN of Dependents

- The SSN is needed for all covered individuals (employee, spouse, dependent children).
- If you are unable to obtain a SSN after making a reasonable effort to do so, the covered individual's date of birth may be reported in lieu of a SSN.

## Reasonable Effort Requirement

- Reasonable Effort
  - Initial request for SSN at the time of enrollment.
  - If no SSN received, first annual solicitation is required by December 31<sup>st</sup> of the year coverage begins.
  - If still no SSN received, second annual solicitation is required by December 31<sup>st</sup> of the following year.
- If no SSN is received after 3 requests, no need to continue to obtain the SSN.

## How & When to File C Forms with IRS

- The 1094-C (transmittal) and the 1095-C statements (or returns) must be filed with the IRS on or before February 28 (March 31 if filed electronically) of the year following the reporting year
- For calendar year 2015, file by February 29, 2016 (March 31, 2016 if filing electronically)

## How & When to File C Forms with IRS (cont.)

- If you are required to file 250 or more Forms 1095-C during a calendar year, you must file the returns with the IRS electronically.
  - To receive waiver from electronic filing, submit Form 8508 at least 45 days before due date for filing the Forms 1095-C.
- If filing by paper, send the form to the IRS by first class mail.

## Extensions for Filing with IRS

- 30-day extension by submitting Form 8809.
- No signature or explanation required.
- Additional 30-day extension possible under certain hardship conditions.

## Information to Individuals

- Must furnish a copy of the Form 1095-C to the person identified as the “Responsible Individual” named on the form by January 31<sup>st</sup> of the year following the year to which the Form 1095-C relates.
  - First statements due to employees on Feb 1, 2016.

## Information to Individuals (cont.)

- Statements must be furnished on paper, unless the recipient affirmatively consents to receive the specific form in electronic format (e.g., e-mail, posting on intranet).
  - If mailed, send to the recipient's last known address.
  - A statement may be electronically provided only if the individual affirmatively consents to such disclosure.
  - Publication 5223 contains instructions on obtaining an individual's consent for electronic delivery.

## Form 1095 Penalties

Action	Effective 1/1/2016
Failure to file or furnish forms	\$250 per return \$3 million per year cap
Corrected within 30 days	\$50 per return \$500,000 per year cap
Corrected by 8/1	\$100 per return \$1.5 million per year cap
Note: Lower caps for smaller entities (gross receipts less than or equal to \$5 million), applicable to the three corresponding actions above	\$1 million \$175,000 \$500,000
Intentional disregard	\$500 per return No cap

## Penalty Relief – 2016

- IRS will not impose penalties on ALEs that have made a good faith effort to comply with the Form 1094/1095 reporting requirements.
  - Must timely file to obtain the relief.
  - Reasonable cause relief is available for late filers.

# Forms 1094-C and 1095-C – ALE Member

- Reporting requirements apply to each separate entity (ALE Member), regardless of insured status.
- If an employer is not a member of a controlled group, then the ALE Member is same as ALE.
- If employer is a member of controlled group which is, in aggregate, an ALE, then ALE Member is each legal entity in the controlled group.
- Each ALE Member is responsible for filing for its own employees

# Forms 1094-C and 1095-C – Controlled Group –

- Holding company (no employees) owns 100% of 3 subsidiaries with the following average FTE counts in the prior calendar year:
  - Corp A – 25 employees
  - Corp B – 20 employees
  - Corp C – 10 employees
- The combined entity is an ALE because the controlled group had at least 50 full-time (including FTEs) employees combined. All 3 subsidiaries are ALE Members.
- Each subsidiary has a separate reporting obligation – each one is an ALE Member.

# Form 1095-C – Which Individuals Must You Report On?

- An ALE Member must file a Form 1095-C for each full-time employee, whether enrolled or not.
  - Generally, an ALE member must file Form 1095-C (or a substitute form) for each employee who was a full-time employee of the ALE member for any month of the calendar year.

## Form 1095-C – Which Individuals Must You Report On? (cont.)

- Form 1095-C is not required for the following employees (unless the employee or the employee's family member was enrolled in a self-insured plan sponsored by an ALE member):
  - an employee who was not a full-time employee in any month of the year; or
  - an employee who was in a limited non-assessment period for all 12 months of the year (for example, a new variable hour employee still in an initial measurement period).

## Form 1095-C – Which Individuals Must You Report On? (cont.)

- Only one Form 1095-C filed for employment with employer
  - If a full-time employee works for more than one employer that is a member of the same Aggregated ALE Group, the employee must receive a separate Form 1095-C from each employer.
  - For any calendar month in which a full-time employee works for more than one ALE Member of an Aggregated ALE Group, only one ALE Member is treated as the employer (employee is treated as an employee of the employer for whom the employee has the greatest number of hours of service for that calendar month).

# Form 1094-C

## Authoritative Transmittal

- A Form 1094-C (transmittal) must be attached to any Forms 1095-C filed by an employer.
- An ALE Member may choose to submit multiple Forms 1094-C (transmittal), each accompanied by Forms 1095-C for some of its employees, provided that, in combination, Forms 1095-C are filed for each employee for whom that ALE Member is required to file.
- An ALE Member must file a single Form 1094-C (transmittal) reporting aggregate employer-level data for all full-time employees of the employer and identify on the Form 1094-C (transmittal), as the Authoritative Transmittal.
- One Authoritative Transmittal must be filed for each ALE Member.

## Cadillac Plan Tax

- 40% excise tax on amounts over thresholds effective 2018
- Thresholds (will be adjusted annually):
  - Based on employer and employee premium contributions for applicable coverage (COBRA rate).
    - Individual coverage—\$10,200
    - Family Coverage—\$27,500
  - Retirees over 55, high risk professions and workers employed to repair or install electrical or telecommunication lines have higher threshold.
    - \$11,850 for individual coverage
    - \$30,950 for family coverage
- Excess Benefits is calculated monthly and on each individual.

# What is Included in Threshold

- Coverage (active and all retirees) includes:
  - Major medical
  - Pharmacy
  - Account based plans (Health FSA, HSA, and HRA) - Employer contributions and pre-tax employee contributions
  - Gap coverage (if paid with pre-tax dollars and/or employer contributes)
  - Fixed indemnity, specific disease and hospital indemnity plans if contributions are pre-tax or employer contributes
  - Certain wellness benefits may also be included

# Cadillac Tax Employer Strategies

- Scale back coverage
- Pass on cost to employees
- End employer contributions to tax free accounts
- Engage unions early

## Cadillac Tax Example

	Individual	Family
Cost of Coverage (2018)	\$10,600	\$28,500
Threshold	\$10,200	\$27,500
Amount in Excess	\$400	\$1,000
Excise Tax (40%)	\$160	\$400
Number of Enrollees	75	125
Penalty	\$12,000	\$50,000

- The Total Cadillac Tax is \$62,000 for 2018