



# Affordable Care Act – Destination Unknown

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## IRS Pay or Play Enforcement Begins

- Christmas presents from the IRS
- Focus is on 2015
- New IRS Letters



## IRS Pay or Play Enforcement Begins

- Letter 226J
- Letter 227
- Notice CP 220J

## “Pay or Play” = IRC 4980H

- “A” penalty - IRC 4980H(a) - Offer
- “B” penalty - IRC 4980H(b) - Affordable

### “Pay or Play” = IRC 4980H

#### IRS ACA Employer Shared Responsibility

	2018	2017	2016	2015	2014
4980H(a) penalty for not offering health coverage	2,320	2,260	2,160	2,080	2,000
4980H(b) penalty for FT EEs with premium tax credit	3,480	3,390	3,240	3,120	3,000
Affordability: maximum percent of income	9.56%	9.69%	9.66%	9.56%	9.5%

## Pay or Play Penalties

- Only for Applicable Large Employer (ALE)
- Prior Year Determination

## Pay or Play Penalties

- Five Step Process for ALE Determinations
  1. Count full-time 30+ hour employees in each month of prior calendar year
  2. Add total hours of non-full-time employees in each month of prior calendar year and divide by 120

## Pay or Play Penalties

3. Add results of #1 and #2 for each month and obtain 12 sums
4. Determine average of the sums in #3 (add all 12 months and divide by 12 – don't round up)
5. 50 or more = ALE for current year



## ALE Calculation - Example

- In 2014, Zebra Company averaged 80 full-time (30+ hours/week) employees per month
- Zebra also had 75 part-time employees and they averaged 60 hours per month
- How many full-time equivalents (FTEs) does Zebra Company have?

### ALE Calculation - Example

- 5 Step Process
  1. 80 full-time employees (30+ hours/week)
  2. For each month: 60 hours x 75 part-time employees = 4,500 hours.  
 $4,500 \div 120 = 37.5$
  3. 80 full-time + 37.5 = 117.5 FTEs for the month

## ALE Calculation - Example

4. Determine average of #3:

$(117.5 \times 12 = 1,410) \div 12 = 117.5$  full-time  
equivalents for the year

5. 50 or more FTEs in prior year = ALE for  
current year

## IRC 4980H Penalty Analysis

- 2018 Calendar Year Analysis
  - 110 Full-Time Employees
  - 3 Employees Receive Subsidized Insurance
    - “A” Penalty – \$185,600
    - “B” Penalty – \$10,440

Cheaper to offer unaffordable insurance rather than no insurance

## Appealing IRC 4980H Pay or Play Penalties

- Review Letter 226J

- Note: Response date

Proposed ESRP

You owe: 4980H(a) or (b)

## Appealing IRC 4980H Pay or Play Penalties

- IRS Letter 226J gives the employer 30 days to respond
- Call contact phone number to obtain an additional 30 day extension to respond
- Must respond using Form 14764 included with the 226J
- Expect letter within 30 days of your response indicating IRS will respond within 60 days

## Appealing IRC 4980H Pay or Play Penalties

- IRS Letter 227 – official response from IRS
- Pre-tax assessment hearing
- IRS Appeals

## Common Form 1094/1095 Problems

- Showing no offer of coverage when coverage was offered
- Not using the part-time employee code for part-time employees during the month
- Not indicating the employee was in the initial measurement period or waiting period



## Common Form 1094/1095 Problems

- The 2015 Form 1094-C had special options available
  - Most employers filing a Form 1094-C used the Section 4980H Transition Relief (50 to 99 or 100 or more)
  - Forgot to put the proper Section 4980H Transition Relief Indication in Part III, column (e)
- These special options are no longer available

## Common Form 1094/1095 Problems

- 2017 Deadlines:
  - 1095-C to Employees: March 2, 2018
  - Filing with the IRS: February 28, 2018 for paper, April 2, 2018 for electronic

## Common Form 1094/1095 Problems

- 2017 Form 1094-C: Certifications of Eligibility
  - Line 22 special options
  - Qualifying Offer Method
  - 98% Offer Method

## THANK YOU

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