

IRS begins free-rider penalty process - will you be in the hot seat?

In 2017, the IRS began cracking down on applicable large employers that didn't offer affordable minimum value group health benefits to at least 70% of their full-time employees during 2015. It's now turning its attention to calendar year 2016. *Who's in the hot seat:* employers that didn't offer at least 95% of their full-time employees affordable group coverage or that offered coverage that wasn't affordable or didn't provide minimal value, and one employee obtained individual insurance on the exchange and qualified for a premium tax credit.

Free-rider penalties. The IRS will determine your liability for a free-rider penalty by examining the indicator codes you entered on employees' 2016 Forms 1095-C, the information you entered on Form 1094-C and maybe even employees' tax returns. Employers liable for the penalty will receive Letter 226J, which will be accompanied by Form 14765. Your response, on Form 14764, is due back to the IRS within 30 days. You need to take these steps immediately:

- **Compare the codes.** Determine whether the IRS made the mistake by miscoding Form 14765. If the IRS didn't make a mistake, pull out your 2016 Forms 1095-C and review your coding for Lines 14 and 16.
- **Evaluate employees.** Form 14765 lists the employees for whom you may be liable for a penalty. You're off the hook if they didn't work full-time, didn't qualify for a premium tax credit or turned down your offer of coverage. You're also not liable for a penalty if they actually enrolled in your plan or could have enrolled, but didn't.

Pick a letter, any letter. The IRS has created an entire family of letters to respond to your Form 14764. The best letter you can receive is Letter 227-K. It acknowledges receipt of your information and dials the penalty down to \$0. Other letters aren't as agreeable:

- **Letter 227-J** acknowledges the IRS' receipt of Form 14764 and that the penalty will be assessed. You're asked how you would like to pay—either in full or in installments.
- **Letter 227-L** shows that the IRS revised the penalty. It includes an updated Form 14765. You can agree or request a meeting with the manager and/or the IRS' Appeals function.
- **Letter 227-M** shows that the penalty didn't change. You can agree or request a meeting with the manager and/or Appeals.
- **Letter 227-N** acknowledges the decision reached in Appeals and shows your penalty based on the Appeals review.

DIDN'T FILE FORMS 1095-C? YOU'RE NOT OFF THE HOOK: If the IRS suspects you're a 1095-C non-filer, you will receive Letter 5699. You have 30 days to respond. *Reminder:* Forms 1095 are information returns, which mean that in addition to liability for a free-rider penalty, you may be liable for penalties for failing to file information returns and to provide employees with their copies.

Forms 1095 must be provided to employees by March 4. The IRS is extending the time you have to provide employees with Forms 1095-C/1095-B to March 4, 2019. Important: The filing deadlines still apply: Feb. 28, if you're filing on paper or April 1, if you're filing electronically. The IRS is also extending good faith penalty relief

for errors on your 2018 forms. What's good faith: You'll have good faith if you made reasonable efforts to prepare for reporting, such as gathering and transmitting data to your third-party provider or testing your ability to transmit the data to the IRS. (Notice 2018-94, IRB 2018-51)