

AN ALERT FROM THE BDO FEDERAL TAX PRACTICE

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FEDERAL TAX



SUBJECT

IRS CONFIRMS ACA PENALTIES STILL APPLY, SO ACA REPORTING ON FORMS 1094 AND 1095 CONTINUES TOO

SUMMARY

Amidst the White House and legislative activities aimed at repealing the Affordable Care Act ("ACA" or colloquially referred to as "Obamacare"), many employers are questioning whether the ACA penalties will be enforced for prior year violations and if its reporting requirements still apply to the current year. The IRS has recently confirmed that Obamacare continues to be the law of the land, taxpayers are required to follow the law, and the IRS will continue to enforce its provisions.

DETAILS

Hours after being sworn in on January 20, 2017, President Trump issued an Executive Order, directing the federal agencies to exercise the authority and discretion permitted to them by law to reduce the potential burden imposed by the Affordable Care Act ("ACA"), pending fulfillment of his intent to repeal the law.

The IRS noted, by letters dated April 14, 2017 (regarding the employer mandate) and June 20, 2017 (regarding the individual mandate), that the Executive Order does not change the law; the legislative provisions of the ACA are still in force until changed by Congress; and taxpayers are required to continue following the law.¹ Accordingly:

- ▶ Large employers (generally, employers with at least 50 full-time employees, including full-time equivalent employees, in the preceding calendar year) may owe an "employer shared responsibility payment" if they have not complied with the ACA rules on offering qualifying health insurance (i.e., minimum essential coverage) to substantially all of the employees and their dependents (or offered such coverage, but at least one of the full-time employees received a government subsidy to purchase insurance in the marketplace because the employer's coverage did not provide minimum value or was not affordable).
- ▶ Individuals are required to have minimum essential coverage for each month, qualify for a coverage exemption for the month, or make a shared responsibility payment when filing their federal income tax return.

CONTACT

KIM FLETT

Managing Director
234-466-4068 / kflett@bdo.com

CARL TOPPIN

Managing Director
212-885-8331 / ctoppin@bdo.com

JOAN VINES

Managing Director
703-770-4444 / jvines@bdo.com

¹ No. 2017-0010 (April 14, 2017) and 2017-0017 (June 20, 2017), both released June 30, 2017.

Action Items

All aspects of the ACA, including the information reporting requirements, are still in effect. Enforcement of the employer and individual mandates necessarily requires large employers (and all employers with self-insured plans) to continue to furnish ACA statements to their employees and file information reports with the IRS.

BDO INSIGHTS

As employers approach the due dates for the third year of filing/furnishing ACA information reports, they should not anticipate extensions to be given for this third round (as previously provided). Accordingly, employers should begin organizing the data necessary to prepare the 2017 Forms 1094 and 1095 to ensure timely compliance with the January 31, 2018 deadline to furnish Form 1095s to employees and the February 28, 2018 deadline to file Forms 1094 and 1095 with the IRS (or April 2, 2018, if filing electronically).

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