IAA Legislative Ledger

January 7, 2013
First Quarter

ACA: Play or Pay in 2014

Play or Pay in 2014 (Shared Responsibility for Employers Regarding Health Coverage) IRS Proposed Regulations Released December 28, 2012

On December 28, 2012, IRS released proposed regulations along with Questions and Answers on the core portions of the Play or Pay rules to take effect in 2014. Numerous transition rules were provided. IAA is currently analyzing these rules, but wanted to give you some guidance.

BACKGROUND

Applicable Large Employers - This is the term the law uses to refer to employers subject to the Play or Pay mandate.

Beginning in 2014, the "Patient Protection and Affordable Care Act" (ACA) imposes financial penalties on applicable large employers (50 or more full-time employees) that do not offer health insurance coverage, as well as financial penalties for offering coverage that is considered "unaffordable." IRS refers to these penalties as the employer shared responsibility provisions under §4980H. **Applicable large employers are potentially subject to one of two penalties.**

No Offer to All Full-Time Employee Penalty

Section 4980H(a) Penalty: Employers with 50 or more full-time employees (or full-time equivalents) on business days during the preceding calendar year are liable for a penalty tax if the employer fails to offer all full-time employees (and their child dependents) the opportunity to enroll in an employer-sponsored plan **AND** any full-time employee is certified to receive an advance premium tax credit or cost-sharing reduction. The determination of employers with 50 or more full-time employees is based on a controlled group.

No Offer to All Full-Time Employee Penalty = $2,000 annually X (the number of full-time employees minus 30) 100 Employees less 30 equals 70. Seventy (70) x $2,000 equals $140,000.

The penalty is calculated on a monthly basis by multiplying 1/12 of $2000 by the number of full-time employees less 30. Only one 30-employee reduction per controlled group of employers is allowed. After 2014, the $2,000 amount will be adjusted for inflation.

Note: No level of employer contribution is required to avoid the 4980H(a) penalty. Employers are not subject to the No Offer penalty for failing to offer coverage to the employee for the initial three calendar months of employment.

Unaffordable Coverage Penalty

What does unaffordable mean? Coverage is unaffordable if the employee's required contribution to the premium cost for single coverage for the employer's lowest cost plan exceeds 9.5% of the employee's household income for the taxable year; or, the employer-sponsored plan does not provide minimum value.

Section 4980H(b) Penalty: If an employer with 50 or more full-time employees (or full-time equivalents) on business days during the preceding calendar year offers minimum essential coverage, but the coverage is not affordable or does not provide minimum value, the employer must pay an excise tax equal to 1/12 of $3,000 per month times the number of its full-time employees who receive a premium tax credit or cost-sharing reduction.

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Unaffordable Coverage Penalty = the lesser of:
$3,000 annually X (the number of full-time employees receiving advance premium tax credits);
Or
$2,000 annually X (the number of full-time employees minus 30)

This excise tax is capped so that it does not exceed the section 4980H(a) liability that would have applied if the employer did not offer coverage. Below this penalty is expressed as a simple mathematical equation.

IRS PROPOSED REGULATIONS

No Offer To All Full-Time Employee Penalty Clarification: The new IRS proposed regulations clarify that coverage must be offered to child dependents to avoid the No Offer Penalty §4980H(a). An offer of coverage to an employee's spouse is not required to avoid the penalty. According to the preamble, §4980H(a) and (b) do not contain a statutory definition of the term dependents. The proposed regulations define an employee's dependents as an employee's child (as defined in section 152(f)(1)) who is under 26 years of age. A child attains age 26 on the 26th anniversary of the date the child was born. Employers may rely on employees' representations concerning the identity and ages of the employees' children. The term dependents do not include any individual other than children.

Unaffordable Coverage Penalty Clarification

The new IRS proposed regulations clarify that plan affordability for employer penalty purposes is tied to employee-only coverage. Employers will not be penalized for failing to offer affordable dependent coverage.

For the unaffordable coverage penalty (section 4980H(b)), liability is contingent on whether the employer offers minimum essential coverage under an eligible employer-sponsored plan, and whether that coverage is affordable and provides minimum value with respect to employee-only coverage.

Unresolved: This proposed regulation does not address whether the dependents will be eligible for premium tax credits if employer-sponsored coverage is available, but it is unaffordable. This is a significant policy decision that is still undecided.

What we do know is that an employer will not be penalized if a dependent receives a premium tax credit through an Exchange. An employer may be liable for a penalty only if one or more full-time employees are certified to the employer as having received a premium tax credit or cost-sharing reduction.

Transition Relief

There are several transitional relief clarifications issued related to special business fiscal years and plans such as MEWAs. They don't apply to all of you so I will spare you the unnecessary reading. However, the following topics were clarified. If you would like the details regarding these specific Transition relief items, send me a request.

- ***Transition Relief for Fiscal Year Plans***
- **Transitional Relief for Cafeteria Plans**
- **Transition Relief: Measurement Periods for Stability Periods Starting in 2014**
- **Transition Relief for Applicable Large Employers Participating in Multiemployer Plans**
- **Transition Relief: Coverage for Dependents**
- **Transition Relief: Applicable Large Employer Determination for 2014**
- **Transition Relief: Variable Hour Employee Definition**
    - This transition relief is not clear; IAA will seek clarification.

More details will follow as we continue to digest the latest guidance.

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Lastly, in an effort to help you with your budget, the link will provide you with updated tax information related to the ACA.

http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions

Please contact IAA if you have questions or would like a current timeline of ACA.

Stay Healthy!

Paul Kelly, President

This information is not intended to be legal advice. Talk to your tax attorney for details on the laws impact on you or your business.

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