

EMPLOYEE BENEFITS**IRS ISSUES TRANSITION RELIEF ON THE ONE-YEAR DELAY IN PPACA'S INFORMATION REPORTING AND EMPLOYER SHARED RESPONSIBILITY RULES**by *Jordan Schreier*

Late on July 9, 2013, the IRS issued Notice 2013-45 which provides some additional information regarding the Department of Treasury's recently announced delay in the information reporting and employer shared responsibility provisions of PPACA. Notice 2013-45 does not provide much in the way of substantive detail other than to confirm the delay in the implementation of these requirements and relief from penalties for not complying with these requirements in 2014. Specifically, the Notice provides:

- The IRS expects to issue proposed rules later this summer related to the information reporting that employers sponsoring self-insured group health plans, insurers and certain others have to make under Code Section 6055 related to the minimum essential coverage they offer and that applicable large employers have to make under Code Section 6056 related to the coverage offered to full-time employees. Once the proposed rules are issued, the IRS encourages employers, insurers and others to voluntarily comply with the rules for 2014 (by filing reports in 2015 related to 2014). The IRS notes that real world testing of reporting systems and plan designs through voluntary compliance for 2014 will help with a smoother transition to full implementation for 2015. However, there will be no penalty for not voluntarily reporting as suggested by the IRS.
- The information reporting and employer shared responsibility rules will take effect for 2015.
- Under the employer shared responsibility requirements, an applicable large employer must generally offer affordable, minimum value health coverage to its full-time employees or pay a tax penalty under Code Section 4980H if one or more of its full-time employees purchases coverage through the marketplace and receives a premium tax credit. The IRS recognizes that because an employer will not typically know if a full-time employee received a premium tax credit, the employer will not have the information it needs to know if it will owe a tax penalty (for not providing sufficient coverage to its full-time employees). Importantly, employers will not be required to calculate tax penalties or file returns submitting tax penalties under Code Section 4980H. Rather, the IRS will assess tax penalties following a process roughly sketched out in the Notice. After the IRS receives the information reporting from employers under Code Section 6056 and information from employees claiming the premium tax credit, the IRS will determine if any of an employer's full-time employees received the premium tax credit and if so, whether an employer owes a tax penalty. If the IRS concludes a tax penalty is due, the IRS will contact the employer and the employer will have an opportunity to respond to the IRS before a tax penalty is assessed.
- Individuals will still be eligible for the premium tax credit in 2014 if they enroll in a qualified health plan through a marketplace

and they otherwise qualify for the tax credit based on household income and lack of other qualifying health coverage.

- The transition relief does not impact other provisions of PPACA such as the premium tax credit and the requirement that most individuals in the U.S. have health coverage in 2014 or potentially be subject to a tax.

Much of what is contained in Notice 2013 repeats what the Department of Treasury said when it announced the implementation delay last week. The rough sketch of the employer shared responsibility tax assessment process is helpful though again, it reflects what was generally understood to be the basic reporting and assessment concept. A number of commentators and government officials (e.g., members of Congress) have stated that President Obama did not have the legal authority to delay the implementation of the employer shared responsibility rules and some members of Congress have asked the Administration to explain why it is delaying some aspects of the coverage mandate (the employer portion) but not others (the individual portion). We should expect to hear more about the implementation delay as the summer progresses.

Dickinson Wright's employee benefits practice team will continue to follow developments in this area. In the meantime, we are available to assist businesses as they analyze how to respond to the implementation delay and comply with the other requirements of PPACA. Please contact the author of this Alert, any member of the employee benefits practice team or your regular Dickinson Wright attorney for guidance.

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