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More Incentive to File IRS Returns Correctly and Timely

The Trade Preferences and Extensions Act signed at the end of June includes an unpleasant surprise for employers. Penalties for many types of information returns employers are required to provide under the Internal Revenue Code and that are filed on or after January 1, 2016, will more than double, including for Forms W-2, Forms 1099, and the new information returns that are required as part of the Affordable Care Act to report full-time employees and individuals covered under group health plans (Forms 1095). These penalties are provided in Code Sections 6721 and 6722.

The penalty for each return that is not timely filed (or that is inaccurate) will increase from $100 to $250, and the maximum that can be assessed each year will increase from $1.5 million to $3 million. For intentional failures, the per return penalty will increase to $500, without a cap on the maximum penalty. These increased penalties apply to both the forms filed with the IRS and, separately, to the statements provided to employees. In other words, an unintentional failure relating to one individual can result in a $500 fine ($250 for the return provided to the IRS and $250 for the one provided to the employee).

One piece of good news is that the relief announced previously relating to ACA information returns that are completed in good faith in 2016 continues to apply. That is, if an employer completes and files a Form 1095 in good faith, no penalties for errors will apply for the returns provided in 2016.