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OCTOBER 12, 2020

IRS Extends Transitional Relief for 2020 ACA Reporting

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The Internal Revenue Service (IRS) released Notice 2020-76 on October 2, 2020, announcing a delay in the deadline for distribution of Forms 1095-B and Forms 1095-C to participants by employers, health insurers and other reporting entities from January 31, 2021 to March 2, 2021. However, the IRS has not extended the deadline for filing the Form 1094-B and Form 1094-C so these forms must still be filed with the IRS no later than March 1, 2021 (or March 31, 2021 if filed electronically). Notice 2020-76 is the latest in a string of annual notices issued by the IRS providing for similar delays in every year since 2015 when the Patient Protection and Affordable Care Act ("ACA") reporting requirements first went into effect. However, the IRS states that it will not provide this relief in future years unless it receives comments by February 1, 2021 explaining why the relief continues to be necessary. For those states that have adopted an individual mandate and use the federal forms for information reporting, employers will need to review each state's laws to determine what, if any, impact this relief has on the state's reporting requirements.

The ACA information reporting rules were created, in part, to facilitate compliance with the "individual mandate" in the ACA which requires most individuals to have health coverage or pay a financial penalty. The section in the ACA containing the individual mandate is still good law, but the penalty for failure to comply was set at $0 by the Tax Cuts and Jobs Act starting in 2019. This zero dollar penalty is at the heart of the latest ACA challenge that will be heard by the Supreme Court shortly after the November elections.

Because individuals no longer need information about their health coverage to determine their liability for the individual mandate penalty, the IRS has extended the limited reporting relief announced last year with respect to the requirement to provide a Form 1095-B and the requirement of an "applicable large employer" to provide a Form 1095-C to a participant who is not a full-time employee for any month of that year (e.g., a part-time employee, a retiree or COBRA participant). To qualify for this transition relief, the reporting entity (e.g., the employer or insurer) must post a notice on its website regarding the availability of the Form 1095-B or Form 1095-C upon request. The notice must include an email and physical address where the request can be sent and a phone number which can be used to contact the reporting entity with questions. If a Form 1095-B or Form 1095-C is requested, it must be provided within 30 days of the request. If an employer or insurer takes advantage of this optional distribution method, the Form 1095 must still be included with the Form 1094 that is filed with the IRS. Because this transition relief does not apply to the obligation to provide a Form 1095-C to any individual who was a full-time employee in any month of the year, employers may find it easier to distribute the Form 1095-C to all participants.

As a reminder, there is a 30-day extension available for filing with the IRS the 2020 Forms 1094-B and 1094-C (with the

applicable Forms 1095) that is granted automatically simply by filing Form 8809 with the IRS on or before the filing due date (an additional 30-day extension is available for certain hardship situations). However, the IRS will not grant a request for an additional 30-day extension of time to furnish the Forms 1095 to individuals.

Finally, the IRS extended the relief from penalties to reporting entities that report incorrect or incomplete information on the Form 1094 or 1095 upon a showing of a good faith effort to comply with the applicable information-reporting requirements. However, the IRS states expressly that this is the last year that it intends to provide this relief.