GROOM LAW GROUP

Publications

Happy Holidays from the IRS: The IRS Finalizes the ACA Reporting Relief and Deadline Extensions!

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On December 12, 2022, the Department of Treasury ("Treasury") and the Internal Revenue Service ("IRS") released final regulations that provide reporting relief for ACA reporting—specifically, Forms 1095-B and 1095-C (collectively, the "Forms"). The final regulations are generally consistent with the proposed regulations that were issued in November 2021. Most significantly, they (1) extend the deadline to furnish Forms to individuals and (2) allow employers and coverage providers to satisfy their obligation to "furnish" the Forms to certain individuals by posting the Forms on a website. Our summary of the proposed regulations is here.

The final regulations apply for calendar years beginning after December 31, 2021, and taxpayers may rely on the proposed regulations beginning with calendar year 2021.

Relief for Large Employers

- **Deadline to furnish Forms 1095-C to individuals** – By statute, employers are supposed to furnish the Form 1095-C by January 31. The final regulations provide a permanent, automatic 30-day extension from January 31 to March 2 (March 1 in a leap year). If this date falls on a weekend day or legal holiday, the Forms are due on the next business day.

GROOM INSIGHT: A handful of states have state minimum essential coverage reporting requirements, some of which follow the IRS deadlines, and some of which do not. These states generally allow coverage providers to satisfy the state requirements by furnishing the appropriate federal reporting form. Commenters asked that this automatic extension be communicated to the state governmental bodies that have their own reporting requirements, so that the state deadlines can be coordinated with the federal deadline. The preamble states, however, that Treasury and the IRS have no authority over state reporting and furnishing requirements, and whether state deadlines for filing returns or other documents relating to health coverage will align with the regulations is a question of state law. Thus, they did not revise the regulations to coordinate with state reporting requirements.

- **Alternative method of furnishing Forms 1095-B/C to individuals (revised from proposed regulations)** – the final regulations provide that an employer is not required to send Forms 1095-B/C to part-time employees and non-employees enrolled in the employer's self-insured plan, as long as the employer posts a "clear and conspicuous notice," in a location on its website that is reasonably accessible to all employees and other responsible individuals, stating that individuals may receive a copy of their Form upon request. The notice must:
  - include an email address, a physical address where the individual can send his/her request, and a telephone number where individuals can contact the employer with questions;
  - be written in plain, non-technical terms and in a font size large enough (including any visual clues or graphical figures) to call to a viewer's attention that the information pertains to tax statements reporting that individuals had health coverage; and
  - be posted by March 2 (or other date described above) and retained in the same website location through October 15 of the year following the calendar year to which the statements relate (or the 1st business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday).
- The employer must furnish the Form to individuals within 30 days upon request. Notably, this relief does not apply with respect to full-time employees.

GROOM INSIGHT: Commenters requested that this alternative method of reporting be extended to full-time employees, now that the ACA's penalty for not maintaining "minimum essential" health coverage has been eliminated. The preamble states that because certain full-time employees need to have information about their coverage offer to help determine eligibility for federal premium tax credits, Treasury and the IRS decided that this alternative manner of furnishing should not apply with regard to full-time employees.

Relief for Insurers, Multiemployer Plans, and Other Non-Large Employer Sponsors of Minimum Essential Coverage

- **Deadline to furnish Forms 1095-B to individuals** – Reporting entities are also supposed to furnish Forms 1095-B by January 31 under the statutory language. The final regulations provide a permanent, automatic 30-day extension from January 31 to March 2 (March 1 in a leap year). If this date falls on a weekend day or legal holiday, the Forms are due on the next business day.
- **Alternative method of furnishing Forms 1095-B to individuals (revised from proposed regulations)** – the final regulations provide that a reporting entity is not required to send Forms 1095-B to the "responsible individual" (i.e., a primary insured or employee), as long as the reporting entity posts a "clear and conspicuous notice," in a location on its website that is reasonably accessible to all responsible individuals, stating that individuals may receive a copy of their Form upon request. The notice must:
  - include an email address, a physical address where the individual can send his/her request, and a telephone number where individuals can contact the reporting entity with questions;
  - be written in plain, non-technical terms and in a font size large enough (including any visual clues or graphical figures) to call to a viewer's attention that the information pertains to tax statements reporting that individuals had health coverage; and
  - be posted by March 2 (or other date described above) and retained in the same website location through October 15 of the year following the calendar year to which the statements relate (or the 1st business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday).

The reporting entity must furnish the Form to individuals within 30 days upon request.

GROOM INSIGHT: A commenter requested that Treasury and the IRS eliminate the Code section 6055 reporting requirement altogether, since the ACA's penalty for not maintaining "minimum essential coverage" has been eliminated and because of the burdens and costs of maintaining records systems to complete Forms 1095-B that are requested under the alternative method of furnishing statements. However, Treasury and the IRS concluded that because Congress did not repeal or otherwise modify the reporting and furnishing requirements in Code section 6055, there is insufficient statutory authority to eliminate the Form 1095-B requirement.

End of "Good Faith" Relief for Form 1094-B/C and 1095-B/-C Reporting

In order to give reporting entities time to come into compliance with the ACA reporting rules when they were first implemented, Treasury and the IRS previously stated they would not impose penalties for the reporting of incorrect or incomplete information if the reporting entity could show it made good faith efforts to comply with the information reporting requirements. In Notice 2020-76, Treasury and the IRS advised that 2020 was the last year that "good faith" relief would apply, and the proposed regulations similarly reiterated that good faith relief would be discontinued. Consistent with the proposed regulations, the final regulations do not extend the good faith penalty relief, so it no longer applies after calendar year 2020.

GROOM INSIGHT: Some commenters requested that Treasury and the IRS reconsider the elimination of "good faith" relief, because the reporting is complicated, and many employers continue to make unintentional mistakes. Another commenter noted that several states have imposed individual mandates regarding health insurance that require reporting, the IRS modifies the instructions for reporting Forms annually, and plans have faced compliance problems caused by the COVID-19 pandemic. But, Treasury and the IRS stated that the good faith relief was intended to be transitional, and the reporting requirements have now been in place for seven years. Thus, they believe the relief is no longer appropriate or necessary to address the commenters' concerns. The preamble notes that there is an alternative avenue for relief—Code section 6724, which provides that penalties will not be imposed if a taxpayer can show that a reporting failure is due to "reasonable cause" and not willful neglect. In Treasury and the IRS's view, this "reasonable cause" exception provides adequate relief from penalties for filers that fail to timely or accurately complete their reporting requirements, assuming they can demonstrate such "reasonable cause."