

Publications

IRS issues employer “shared responsibility” proposed rules under the Affordable Care Act

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On January 2, 2013, Treasury and the IRS published proposed rules and new Q&A’s providing guidance with respect to the employer “shared responsibility” excise tax under section 4980H of the Internal Revenue Code (“Code”), which was added by the Patient Protection and Affordable Care Act (“ACA”) and is effective beginning in 2014. 78 Fed. Reg. 217 (January 2, 2013). The proposed rules are broad in scope and contain several new rules and clarifications. For example, the proposed rules:

- Expand upon earlier IRS safe harbor guidance for determining whether an employee is full-time and for determining whether coverage is affordable.
- Clarify that an employer will not be subject to tax for failure to offer coverage to spouses.
- Clarify that an employer that offers coverage to all but 5% of its full-time employees (or, if greater, 5 full-time employees) and their dependents will be considered to have offered coverage to “substantially all” full-time employees.
- Clarify that each single employer within a controlled group of employers will be separately liable for the tax.
- Provide that employers will be notified that an employee has received a premium tax credit or a cost-sharing reduction for coverage on an Exchange and will have an opportunity to respond before the IRS issues a notice and demand for payment.

Summary of Proposed Rules: The attached memo discusses these new proposed rules.

Opportunity to Comment: Comments on the proposed rules are due on March 18, 2013, and a public hearing is scheduled for April 23, 2013. Although many of the proposed rules are helpful for employers, there is room to improve and simplify the rules to reduce administrative burden and potential tax liability for employers. Given the importance of these rules and the likelihood that the rules will be with us for the foreseeable future, some of our plan sponsor clients may be interested in working with us to prepare a group comment letter on the proposed rules. If you are interested in participating in such a group, please contact your regular Groom attorney or any

member of Groom’s Health and Welfare Practice Group for further information.

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