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Congress Significantly Increases Penalties for Information Return Failures

The recently passed Trade Preferences Extension Act of 2015 (the “Act”) significantly increases penalties for failing to file correct information returns or provide correct payee statements. Among other things, these increased penalties will apply to Forms W-2 and the 1099-series, as well as ACA-required employer shared responsibility and minimum essential coverage reporting forms.

Internal Revenue Code sections 6721 and 6722 set forth the statutory penalties that apply to a failure to provide all of the proper information required to be provided on an informational return/payee statement, or the failure to timely file or furnish such return with the IRS or the individual/entity (the “payee”) to whom it must be provided. Informational returns are set forth in Code section 6724 and include the Forms W-2 and the 1099-series (e.g., 1099-R (for pension distributions) and 1099-MISC), as well as the new Forms 1094-B, 1095-B, 1094-C, or 1095-C, that are used to demonstrate whether an individual has qualifying health insurance coverage and whether an applicable large employer has met the employer shared responsibility requirements under the ACA.

In the Act, Congress amended Code sections 6721 and 6722 to increase the penalties associated with a failure to properly provide or file an information return/payee statement. As a result of the amendments, **the basic penalty for failure to file or furnish a correct information return or payee statement will more than double from \$100 to \$250, and the standard annual penalty cap will double from \$1.5 million to \$3 million.** If the failure relates to both an information return and a payee statement, the penalties are doubled (*i.e.*, to \$500 per statement and a \$6 million cap). (The reasonable cause exception to these penalties remains unchanged.) The new penalties are effective with respect to returns and statements required to be filed after December 31, 2015, which would include 2015 informational 2015 Forms that are due in early 2016.

Below is a table summarizing the amendments (which amounts are subject to indexing).

Penalty	New Amount
Failure to file/furnish generally	\$250
Annual cap on penalties	\$3,000,000
Failure to file/furnish – if corrected within 30 days	\$50
Annual cap on penalties if corrected within 30 days	\$500,000
Failure to file/furnish if corrected by August 1	\$100
Cap on penalties if corrected by August 1	\$1,500,000

Lesser cap for persons with gross receipts of not more than \$5,000,000	\$1,000,000
Lesser cap for persons with gross receipts of not more than \$5,000,000 if corrected within 30 days	\$175,000
Lesser cap for persons with gross receipts of not more than \$5,000,000 if corrected by August 1	\$500,000
Penalty in case of intentional disregard (no cap applies in this case)	\$500

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