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## IRS Begins Enforcement of Employer Mandate for Calendar Year 2015

The Internal Revenue Service (“IRS”) has begun assessing Employer Shared Responsibility Payments (“ESRPs”) for calendar year 2015. The IRS recently revised the Frequently Asked Questions on its website to state that penalty assessments are forthcoming and to lay out the basic framework for how employers may contest their penalty assessments.

While many questions remain, the following framework has emerged:

- The IRS has begun sending Letters 226J to notify employers that they have been identified as possibly owing an ESRP for the 2015 calendar year.
- The Letter 226J is not a formal notice and demand for payment.
- The Letter 226J itemizes proposed payments, indicates whether the payments are owed due to the employer’s failure to offer any coverage to the appropriate percentage of full-time employees (the “A penalty”) or due to the employer’s failure to offer affordable minimum value coverage to certain full-time employees (the “B penalty”).
- The Letter 226J lists the full-time employees who triggered the potential penalty.
- The Letter 226J includes an employer response form and describes the next steps the employer must take.
- Employers will have a chance to dispute the proposed payments, including engaging with the IRS via written responses and, ultimately, requesting a pre-assessment conference.

It is important that employers be on the lookout for the letter. **Initial responses to the Letter 226J are due to the IRS within 30 days of receipt.** This is true whether the employer agrees with the assessment, in which case the payment must be remitted along with the response, or the employer disputes the assessment. If a timely response is not received, the IRS will send a Notice and Demand for payment. Once such Notice and Demand has been sent, the amount will be subject to IRS lien and levy enforcement actions, and interest will begin to accrue. Employers should review all documents carefully to ensure that the IRS has accurately captured the information the employer reported on its 2015 Forms 1094-C and 1095-C and, if the employer finds a transcription error, it should double check its 2016 Form 1094-C and 1095-C to make sure it did not make that same mistake for the 2016 calendar year.

### **Action Item: Tips for Employers That Receive a Letter 226J**

If you receive a Letter 226J, we recommend taking the following steps:

- Calendar the 30-day response date.
- Locate and review relevant Forms 1094-C and 1095-C from 2015.
- Consider contacting the IRS to request additional time if needed.

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| <ul style="list-style-type: none"><li>• If you <b>agree</b> with the assessment:<ul style="list-style-type: none"><li>○ Sign the enclosed Form 14764, ESRP Response.</li><li>○ Remit payment within the 30-day period.</li></ul></li></ul> | <ul style="list-style-type: none"><li>• If you <b>disagree</b> with the assessment:<ul style="list-style-type: none"><li>○ Complete the Form 14764, ESRP Response.</li><li>○ Prepare signed statement explaining the basis for the disagreement.</li><li>○ Make any needed changes to Form 14765, Employee Premium Tax Credit Listing.</li></ul></li></ul> |
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If you have questions about responding to the Letter 226J or disputing the IRS's assessment of the ESRP, please contact your regular Groom attorney or one of the attorneys listed on this Alert.

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