



IN THE BUSINESS OF YOUR SUCCESS®

## LEGISLATIVE UPDATE

# Eye on Washington



## TRADE PREFERENCES EXTENSION ACT OF 2015 SIGNIFICANTLY INCREASES PENALTIES FOR FAILURE TO PROPERLY FILE OR PROVIDE AFFORDABLE CARE ACT (ACA) FORMS, FORMS W-2 AND 1099, AND OTHER INFORMATION RETURNS

On June 29, 2015, President Obama signed into law the Trade Preferences Extension Act of 2015, Pub. L. No. 114-27 (the Trade Act). Notably, for employers who file information returns with the IRS, the Trade Act contains revenue-raising provisions that significantly increase penalties for failing to file correct information returns or provide correct payee statements. Among other things, these increased penalties will apply to information returns that most large employers will file for the first time in 2016 under the ACA: (1) Forms 1094-C and 1095-C, which applicable large employers (ALEs) will use to report health insurance coverage offered to full-time employees under employer-sponsored plans in accordance with Section 6056 of the Internal Revenue Code (IRC), and (2) Forms 1094-B and 1095-B, which smaller employers, that provide employees with health coverage through an employer-sponsored self-insured health plan, will use to satisfy the reporting requirements in IRC Section 6055.

These increased penalties also will apply to other information returns that employers file and distribute annually every year, such as Forms W-2 and the 1099-series [e.g., Forms 1099-R and 1099-MISC]. In particular, 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. [Note: 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 new penalties are effective with respect to returns and statements required to be filed after December 31, 2015, which would include the 2015 Forms W-2, 1099-R, 1099-MISC, 1094-B, 1095-B, 1094-C, and 1095-C that are due in early 2016.

### Background

Every employer engaged in a trade or business that makes payments for the year for services performed by an employee must file a Form W-2 for each employee from whom income, Social Security, or Medicare tax was withheld, and furnish the Form W-2 to their employees. An employer is generally required to file a Form 1099-R for each person to whom it has made distributions from a profit-sharing, pension or other type of retirement plan, and is required to file a Form 1099-MISC for each person to whom various other types of payments have been made.

IRC Section 6056 requires ALEs to report to the IRS whether they offer their full-time employees, as defined by the ACA – and their employees' qualified dependents – the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan. An ALE is an employer that, together with other employers in its controlled group, employed an average of at least 50 full-time employees (including full-time-equivalent employees) during the preceding calendar year.

Beginning in January 2016 (for 2015), ALEs are required to file Form 1094-C, a transmittal report which summarizes the associated Forms 1095-C, and a Form 1095-C for each employee who was a full-time employee for one or more months during 2015. In addition, employers with less than 50 full-time employees that sponsor self-insured group health plans – as well as insurers, and others that provide minimum essential coverage – must file Forms 1094-B and 1095-B as required by IRC Section 6055 (and

furnish a copy to each covered individual who is a “responsible individual”). Self-insured ALEs will issue and file a combined Section 6055/6056 report using Form 1094-C and Form 1095-C as Part III of Form 1095-C addresses the Section 6055 reporting elements. The first forms must be furnished to employees/responsible individuals by January 31, 2016, and must be filed with the IRS in accordance with existing deadlines for Forms W-2 (i.e., by March 31, 2016 if filed electronically and February 29, 2016 if filed on paper). Electronic filing is required if 250 or more forms are filed.

Failures to provide correct information returns are subject to penalties under IRC Sections 6721 (relating to penalties for failure to file an information return) and 6722 (relating to penalties for failure to furnish a payee statement). Waiver of penalty and special rules under IRC Section 6724, including abatement of information return penalties for reasonable cause, may apply to certain failures if the IRS determines that the standards for reasonable cause under that section are satisfied.

The IRS has provided short-term relief from penalties under IRC Sections 6721 and 6722 for reporting entities that can show they make good faith efforts to comply with the ACA information reporting requirements for Forms 1094-B, 1095-B, 1094-C, and 1095-C returns filed or statements furnished in 2016 for offers of coverage in calendar year 2015. However, the penalty relief relates only to incorrect or incomplete information reported (including Social Security numbers) and no relief is provided in the case of reporting entities that fail to timely file or furnish a statement.



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## Increased Penalty Provisions Apply for These Information Returns

The Act amends IRC Sections 6721 and 6722 as follows:

PENALTY	OLD AMOUNT	NEW AMOUNT
Failure to file/furnish generally; annual cap on penalties	\$100/return; \$1.5 million annual cap	\$250/return; \$3 million annual cap
Failure to file/furnish generally; lesser cap for persons with gross receipts of not more than \$5,000,000	\$100/return; \$500,000 annual cap	\$250/return; \$1 million annual cap
Failure to file/furnish when corrected within 30 days of the required filing date; annual cap on penalties when corrected within 30 days of required filing date	\$30/return; \$250,000 annual cap	\$50/return; \$500,000 annual cap
Failure to file/furnish when corrected within 30 days of the required filing date; lesser cap for persons with gross receipts of not more than \$5,000,000 when corrected within 30 days of required filing date	\$30/return; \$75,000 annual cap	\$50/return; \$175,000 annual cap
Failure to file/furnish when corrected by August 1 of the year in which the required filing date occurs; cap on penalties when corrected by August 1 of the year in which the required filing date occurs	\$60/return; \$500,000 annual cap	\$100/return; \$1.5 million annual cap
Failure to file/furnish when corrected by August 1 of the year in which the required filing date occurs; lesser cap for persons with gross receipts of not more than \$5,000,000 when corrected by August 1 of the year in which the required filing date occurs	\$60/return; \$200,000 annual cap	\$100/return; \$500,000 annual cap
Penalty (per filing) in case of intentional disregard (Note: no cap applies in this case)	\$250	\$500
Adjustment for inflation	Every five years beginning in 2017	Same, applying against the new amounts

The new penalties are effective with respect to returns and statements required to be filed after December 31, 2015. Thus, the new penalties would apply to the 2015 Forms W-2, 1099-R, 1099-MISC, 1094-B, 1095-B, 1094-C, and 1095-C that are due in early 2016.

## ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP *Eye on Washington* Web page located at [www.adp.com/regulatorynews](http://www.adp.com/regulatorynews).

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