Affordable Care Act Employer Shared Responsibility Payments
How to estimate Affordable Care Act (ACA) employer penalty costs.

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In early February, the IRS provided clarification on a number of issues in the Affordable Care Act. One of these clarifications provided new guidance on the determination of the cost of a penalty payment assessed under the Employer Shared Responsibility (ESR) provision in the ACA. The IRS also provided additional transitional relief to large employers that maintain a monthly average of 50 - 99 Full-Time Employees (FTEs) as well as some transition relief to those employers with 100 or more FTE's.

As originally announced, the ESR is only for "large" employers. A large employer is defined as one that has a monthly average FTE of 50 or more employees. Under the ESR, large employers have a responsibility to offer a health insurance plan to their full-time employees (those employees working an average of 30 hours of service per week or 130 hours per month). Such insurance must (a) provide 10 essential benefits and (b) cost the employee no more than 9.5 percent of their household income (the affordability requirement). The employer is also responsible for offering a plan that allows the full-time employee to purchase (at the employees expense) insurance for their dependent children up to the age of 26. If the employer either chooses not to offer any health insurance plan or one that does not meet the essential benefits or affordability requirements then a potential penalty exists.

Under the IRS guidance issued in February 2014, large employers that have a monthly average of 50 - 99 employees may apply for transitional relief if the employer meets three specific criteria. If the criteria are met, an employer will not be required to offer health insurance to their full-time employees until January 1, 2016. If an employer does not meet the three criteria or chooses not to apply for relief, the employer must offer health insurance beginning on January 1, 2015. The three criteria are:

Limited workforce size: The employer must maintain an average of 50 - 99 FTEs.

Maintenance of workforce and aggregate hours of service: The employer may not reduce the size or hours of service of its workforce between February 9, 2014 and December 31, 2014.

Maintenance of previously offered health insurance: The employer may not eliminate or reduce any health care coverage that was offered to employees at the as of February 9, 2014.

For all other large employers there is a Limited 4980H(a) Transition Relief for 2015. This provision permits large employers (over 100 employees) to offer required health insurance to at least 70 percent (instead of the 95 percent originally announced) of their full-time employees for the 2015 year only. If these Transition

Relief options cannot be met and the employer chooses not to provide health care coverage or coverage that does not meet minimum essential benefits or the affordability requirement then an ESR penalty may be assessed.

There are two possible ESR penalties. The first ESR penalty (4980H(a)) is for a large employer that chooses not to offer any form of health insurance for their full-time employees. The penalty is triggered when the first full-time employee signs-up for health insurance on the Health Insurance Marketplace (or “exchange”) and qualifies for a cost sharing premium or tax credit and was not offered health insurance by their employer. The penalty is “equal to the number of all full-time employees excluding first 30 full-time employees (80 for the 2015 as a form of Transition Relief) multiplied by one-twelfth of $2,000 for each calendar month” multiplied by the number of months in the year that no employer health insurance plan is offered. The $2,000 penalty per full-time employee may increase from one year to the next.

The second possible (4980H(b)) penalty is for large employers that offer health insurance that either does not meet (a) the minimum essential benefit requirement or (b) the affordability requirement. This penalty is equal to the “number of full-time employees who are certified to the employer as having received an applicable premium tax credit or cost sharing reduction with respect to that employee’s purchase of health insurance exchange multiplied by one-twelfth of $3,000 for each calendar month” multiplied by the number of months in the year that the employee is not offered health insurance that meets the essential benefits or affordability requirements. The maximum 4980H(b) penalty that can be paid will be equal to the maximum potential 4980H(a) penalty. The $3,000 may also increase from one year to the next.

Given these changes for 2014 and 2015, it is essential that large employers understand these penalties to help determine the appropriate course of action in making decisions about whether to offer health insurance to their full-time employees. One other note of concern that employers need to remember is that any penalty that an employer is liable for due to the ACA will not receive a tax benefit as a cash expense to the business.

Michigan State University Extension always reminds you to contact your tax and legal advisors. For further information please contact me at akantrov@msu.edu or view the MSU Extension Farm Information Resource Management webpage.