Affordable Care Act - Individual Shared Responsibility Provision – §5000A

Return Preparer Best Practices (Updated 3/1/2017)

Note: There are no special or specific due diligence requirements related to Affordable Care Act (ACA) issues. This document represents best practices for practitioners to gather necessary information to use in preparing 2016 tax returns for their clients, including information that may be helpful to demonstrate compliance with the ACA's health coverage requirements. General requirements on filing a complete and accurate tax return continue to apply. Preparers are expected to resolve conflicting or contradictory statements from their clients during the return preparation process, as they do today.

Under the individual shared responsibility provision of the ACA, all individuals are required to have qualifying health care coverage (called minimum essential coverage), qualify for an exemption, or make an individual shared responsibility payment, or ISRP, with their Federal income tax returns. An individual is responsible for him or herself, his or her spouse (if filing a joint return), and any individuals who could be claimed as dependents (collectively, the tax household).

Section 1: Did your client have qualifying health care coverage for all members of their tax household (which includes the client) for the full year? If your client and all members of their tax household did not have qualifying coverage for the entire year, did they have coverage for part of the year?

1. If yes, review your client's documentation to determine what portion of the tax year they had qualifying health care coverage for all members of their tax household. Documentation may include: • Form 1095-A, Form 1095-B or Form 1095-C and/or
• Form W-2 and/or
• Other documentation that may substantiate coverage, such as: • Medical bills showing that during the tax year an amount due was paid by a health insurance company (indicates coverage)
• Documentation/statement from an employer indicating health insurance coverage
• Medicare card
• Record of advance payments of the premium tax credit

If your client doesn't have any of the documents mentioned above, you should discuss the nature of their coverage including the months they were covered to get a reasonable assurance so that you can accurately complete the tax return. Taxpayers are responsible for the accuracy of the information on the tax returns that they sign. See below for a discussion of the current standards for practitioners.
If your client thinks they should have gotten a form but did not get it, they need a replacement form, or they believe the form they received has an error they should contact the issuer. Each 1095 form has a different issuer.
• Form 1095-A, Health Insurance Marketplace Statement, is issued by the Marketplace.
• Form 1095- B, Health Coverage, is issued by the coverage provider.
Form 1095 -C, Employer-Provided Health Insurance Offer and Coverage, is issued by the employer if

the employer is an applicable large employer. Employers that offer health coverage referred to as "self-insured coverage" send this form to individuals they cover, with information about who was covered and when. Not everyone will receive these forms but some may receive several forms. The forms are provided to different groups of people.

• Form 1095-A - Only individuals who enroll in coverage through the Marketplace will get this form.
• Form 1095-B – Individuals who have health coverage outside of the Marketplace will get this form (except for employees of applicable large employers that provide self-insured coverage, who will receive Form 1095-C instead).
• Form 1095-C - Individuals who work full-time for applicable large employers will get this form. In addition, part-time employees also will get this form if they enroll in self-insured coverage provided by an applicable large employer.

If clients are expecting to receive a Form 1095-A, they should wait to file their 2016 income tax return until they receive that form. However, it is not necessary to wait for the 2016 Form 1095-B or 1095-C in order to file.

Because of the extension granted to issuers that extends to March 2, 2017 the due date for furnishing forms to individuals, some clients may not receive a Form 1095-B or Form 1095-C by the time they are ready to file their 2016 tax return. While the information on these forms may assist in preparing a return, they are not required. Like last year, taxpayers can prepare and file their returns using other information about their health coverage. Your clients should not attach any of these forms to their tax return.

While at least one provision in the Internal Revenue Code – the Earned Income Tax Credit – has specific statutory due diligence requirements, there are no new due diligence requirements arising from ACA provisions. Therefore, as a tax return preparer, you are subject to the same due diligence standards with respect to ACA provisions as you are with most other tax provisions. Those standards provide that, after making appropriate inquiries, you may rely in good faith and without verification upon information provided by the taxpayer. This would apply unless you have other information indicating that the information may be incorrect, inconsistent, or incomplete. You should exercise the same due diligence entering your clients health coverage information as you would exercise in calculating and entering nearly all other amounts on the tax return, such as charitable contribution or medical expense deductions.

2. If no, go to section 2.

Section 2: For any month that your client or a member of their tax household did not have qualifying coverage, did they apply for a health coverage exemption from the Marketplace (also known as an Exchange)?

1. If yes, was an Exemption Certificate Number (ECN) received from the Marketplace for each individual in the tax household?
• If yes, report the ECN in Part I of Form 8965.
• If no, see the Instructions to Form 8965 to find out how to report pending exemption applications.

2. If no, go to section 3. Note that certain health coverage exemptions are available only from the Marketplace.

Section 3: Does your client or member of their tax household qualify for an exemption that may be claimed on their tax return filed with the IRS?

There are several exemptions that eligible individuals may claim on their tax returns without visiting the Marketplace. These exemptions include:

• **Member of an Indian Tribe** – this category includes members of Federally-recognized Indian tribes and other individuals who are eligible for services from an Indian health care provider including the Indian Health Service. Supporting proof may include statement from a Federally- recognized Indian tribe or other indication of membership (e.g., an ID card), or documentation showing services received from an Indian health care facility.*
• **Member of a Health Care Sharing Ministry (HCSM)** – In general, a HCSM is a tax-exempt organization whose members share a common set of ethical or religious beliefs, share medical expenses in accordance with those beliefs even after a member develops a medical condition, and have shared such medical expenses continuously since December 31, 1999. Supporting proof may include a statement from the HCSM providing the name and location of the HCSM and indicating your client's membership.*
• **Incarcerated Individuals** – this category includes individuals who were incarcerated in a jail, prison, or similar penal institution after the disposition of charges. Supporting proof may include a statement indicating the individual's prisoner ID number and the name and location of the jail or prison, or court records detailing the individual's incarceration.*
• **Short Coverage Gap** – this exemption may apply if the individual lacked qualifying coverage only for less than 3 consecutive calendar months. If the gap in coverage was more than 3 months, the individual does not qualify for this exemption. Only one short coverage gap exemption may be claimed in a year.
• **Not Lawfully Present** – this category includes individuals who are not lawfully present in the U.S. and individuals who are not present in the U.S. long enough to be treated as resident aliens for tax purposes.
• **Below the Filing Threshold** – this exemption applies if the individual cannot be claimed as a dependent by someone else and the individual's gross income is low enough that they are not required to file a tax return. Eligible individuals are not required to file a return solely to claim this exemption.
• **Certain Hardship Exemptions** – there are several hardship exemptions that may be claimed with a tax return without first applying for the exemption from the Marketplace. See Notice 2014-76 for a complete list of these hardship exemptions.
• **Citizens Living Abroad** or in a United States Territory – all bona fide residents of a foreign country or a United States territory are exempt from the individual shared responsibility provision.

*** These exemptions could be claimed on your tax return or through the Marketplace. But, as of Sept 1, 2016, the Federally-facilitated Marketplace is no longer granting these exemptions. Eligible individuals can still claim these exemptions on a tax return.**

1. If the answer to the above question is yes, complete Part II or III of Form 8965 and attach it to the applicable Form 1040 series return.
2. If no, your client must calculate and pay the ISRP.

Use worksheets provided in the instructions to Form 8965 to calculate the amount of the ISRP due. With appropriate taxpayer consent, obtain copies of the tax return(s) for all members of the tax household who have a filing requirement. Information on those returns is needed to calculate the amount of the ISRP due. The ISRP is based, in part, on household income (HHI). HHI is the sum of the modified adjusted gross income (MAGI) of the primary taxpayer and the MAGI of all other members of the tax household for whom a personal exemption is claimed on the tax return and who have an income tax return filing requirement. MAGI for purposes of the ISRP is adjusted gross income plus tax-exempt interest and excludable foreign earned income. See the instructions to Form 8965 for more information.