



CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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The Honorable Kirsten Gillibrand
United States Senator
780 Third Avenue, Suite 2601
New York, NY 10017-2024

Attention:

Dear Senator Gillibrand:

I am responding to your letter dated May 20, 2016, on behalf of your constituent, _____, about his concern that payroll service provider _____ may not have filed all information returns required under the Affordable Care Act (ACA). _____ wrote specifically about _____ failure to file the required data for over one third of his employees and expressed concerns that this failure to file may subject his employees to IRS penalties. The Department of Labor forwarded your letter to me because the filing requirements raised in the letter are under IRS jurisdiction.

Section 6056 of the Internal Revenue Code (the Code), as added by the ACA, requires applicable large employers to file Forms 1094-C and 1095-C with the IRS and to furnish a copy of Form 1095-C (or an alternative statement) to full-time employees. The information on Forms 1094-C and 1095-C relates to offers of health coverage to full-time employees. This information is relevant to the employer shared responsibility provisions under section 4980H of the Code and to the eligibility of employees (and their spouses and dependents) for the premium tax credit under section 36B of the Code.

We cannot determine whether _____ has failed to file any returns required under section 6056. The filing deadline for 2015 returns is June 30, 2016 (for taxpayers filing electronically). _____ may file all required returns before the deadline.

In addition, section 6056 does not require filing Form 1095-C for all employees. In general, Form 1095-C is only required to be filed for an employee who satisfied the applicable definition of "full-time employee" (30 or more hours of service per week) for one or more months of the year. No Form 1095-C is required to be filed for part-time

employees or for certain employees in a permissible waiting or measurement period.

If _____ has reason to believe _____ failed to file Form 1095-C for any specific employee who was a full-time employee for one or more months of the year, he should confirm that _____ has all the necessary information about the employee, such as records of hours worked.

I assure you, _____ employees would not be subject to tax penalties in connection with any failure to file Form 1095-C. If penalties for non-filing are applicable, the employer with filing responsibility under section 6056 would owe the penalty, not the individual employee. Also, while an employee may owe a payment if he or she fails to maintain minimum essential coverage or does not qualify for an exemption as required under the individual shared responsibility provisions of Code section 5000A, the filing (or non-filing) of Form 1095-C does not affect this payment.

To show compliance with the individual shared responsibility provision, an employee with full year coverage checks the appropriate box on his or her individual tax return. If the employee maintained the necessary coverage, he or she can check this box whether or not the employee received a Form 1095-B or Form 1095-C indicating enrollment.

I hope this information is helpful. If you have any questions, please call me at _____ or _____ at _____.

Sincerely,

Christine Ellison, Acting Chief
Health and Welfare Branch
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)