



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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The Honorable Bill Huizenga
Member, U.S. House of Representatives
4555 Wilson Avenue SW, Suite 3
Grandville, MI 49418

Attention:

Dear Representative Huizenga:

I am responding to your inquiry dated February 14, 2017, on behalf of your constituent, _____ of the tax-exempt _____ states that the _____ is a large employer under the Affordable Care Act (ACA) and is asking for help because it may owe an employer shared responsibility payment (ESRP) for tax year _____ because it has not complied with the ACA rules on offering health insurance to its employees for both financial and religious reasons.

Section 4980H of the Internal Revenue Code provides that if an applicable large employer (generally, an employer with at least 50 full-time employees, including full-time equivalent employees, on business days in the preceding calendar year) fails to offer health coverage to its full-time employees, and if the other conditions in the statute are met, the employer is liable under the statute for the ESRP. A large employer will generally owe an ESRP under section 4980H if either:

- The employer fails to offer minimum essential health coverage to substantially all of its full-time employees (and their dependents), and at least one full-time employee is allowed the Premium Tax Credit (PTC), or

- The employer offers minimum essential coverage to substantially all of its full-time employees (and their dependents) but at least one of the full-time employees was allowed the PTC because the coverage does not provide minimum value or is not affordable, or the full-time employee was not offered coverage.

There is no provision in the statute that provides for the waiver of an ESRP.

The recent Executive Order Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal (January 20, 2017), directed federal agencies to exercise authority and discretion permitted to them by law to reduce potential burden imposed by the ACA. The Executive Order does not change the law; the legislative provisions of the ACA are still in force until changed by the Congress, and taxpayers remain required to follow the law and pay what they may owe. For additional information on the ACA Executive Order and the current tax filing season, please visit <https://www.irs.gov/tax-professionals/aca-information-center-for-tax-professionals>.

An eligible nonprofit religious organization that objects to providing coverage for contraceptive services on religious grounds can seek to exclude this coverage from its health plan under the 2015 Final Rules on Coverage of Certain Preventive Services under the ACA.

I hope this information is helpful. If you need additional information, please contact or me at .

Sincerely,

Denise Trujillo
Branch Chief,
Health and Welfare Branch,
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)