MARSH & McLENNAN AGENCY

REFORM UPDATE

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TAX CUTS AND JOBS ACT OF 2017
EXTENSION OF DUE DATES FOR EMPLOYER REPORTING

On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act of 2017. This Act made significant changes to the tax code, and includes a number of provisions related to employer-sponsored health plans.

In addition, the IRS released Notice 2018-06 at the end of 2017. This Notice delays the due date of Form 1095-C to employees and extends good-faith relief to employers for the 2017 forms.

This *Reform Update* reviews the new law and IRS Notice and their impact on employer-sponsored health plans.

TAX CUTS AND JOBS ACT OF 2017

The Tax Cuts and Jobs Act is a significant overhaul of the United States Tax Code. It will impact both personal tax rules and corporate tax rules. You should look to your tax consultants for the details. This Act includes a number of provisions that may affect employer-sponsored benefit plans:

- **Repeals individual mandate.** The individual mandate is the requirement for individuals to secure minimum essential coverage or pay a tax penalty. The repeal of the individual mandate will be effective for the **2019 tax year**. However, the employer mandate **is unchanged** by the Tax Act. This means employers must continue to offer full-time employees coverage or be at risk for a tax penalty.

  The repeal of the individual mandate may impact employers as follows:

  – If any employees elected employer-sponsored coverage specifically to avoid the tax penalty, they may choose to opt out of the plan in 2019.

  – Employers who have self-funded health plans will likely not have to complete Part III of the 2019 Form 1095-C. The IRS will need to amend guidance to make this change.

  – Employers may need to review employee communications for 2019 if those communications address the individual mandate.

- **Reduces individual tax threshold to deduct medical expenses.** For tax years beginning after December 31, 2016 and ending before January 1, 2019, the threshold on itemized medical expense deductions is reduced to 7.5 percent of adjusted gross income for all taxpayers. The current threshold is 10 percent of adjusted gross income. Employers may include this threshold amount in communications for medical flexible spending accounts.
- **Eliminates the employer deduction for Qualified Transportation Plans**. The Tax Act eliminates the employer deduction for qualified transportation fringe benefits. However, the tax exclusion is generally preserved for employees. In addition, the exclusion for qualified bicycle commuting reimbursements is suspended and unavailable for tax years beginning after 2017 and before 2026.
- **Creates a business tax credit for employers that offer paid family leave benefits.** For wages paid in tax years beginning after December 31, 2017, but not beginning after December 31, 2019, the Tax Act allows businesses to claim a general business tax credit. This credit is equal to 12.5 percent of the amount of wages paid to qualifying employees during any period when they are on family and medical leave (FML). The wage payment must be at least 50 percent of the wages normally paid to an employee. The credit is increased by 0.25 percentage points (but not above 25 percent) for each percentage point by which the rate of payment exceeds 50 percent. All qualifying full-time employees have to be given at least two weeks of annual paid FML leave to qualify for the business credit.

As with any major legislation, more details will be released through future regulations. The repeal of the individual mandate may have a significant impact on insurance carriers' willingness to offer individual coverage through the Marketplace. Additional legislation is being considered to help stabilize the individual market, but Congress has not yet been able to come to agreement on what provisions to include.

EXTENSION OF DUE DATES FOR EMPLOYER REPORTING

Notice 2018-06 extends the due date for furnishing individuals the 2017 Form 1095-B, *Health Coverage*, and the 2017 Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, from January 31, 2018, to March 2, 2018. This notice also extends good-faith transition relief for 2017 employer reporting on the Forms 1095-C.

This Notice **does not** delay the due date to file the 2017 Forms 1094-C and 1095-C with the Internal Revenue Service (IRS). These due dates remain:

- February 28, 2018, if submitted on paper
- April 2, 2018, if submitted electronically

Since the IRS is providing an extension of 30 days to provide Forms 1095-B and 1095-C to individuals, they will not grant any requests made to extend the deadline automatically for 30 days. No entity granted the 30-day extension will have the extension applied after March 2, 2018.

Because of the extension granted under this notice, some individual taxpayers may not receive a Form 1095-B or 1095-C by the time they are ready to file their 2017 tax returns. Taxpayers may rely on other information received from their employer or coverage provider when filing their returns. However, taxpayers do not need to wait to receive Forms 1095-B and 1095-C before filing their returns. Individuals are not required to include the form when filing their tax returns, but should keep it with their tax records in the event they are audited.

The extension of good-faith efforts to the 2017 forms means the IRS will not impose penalties on reporting entities that can show that they made good-faith efforts to comply with the information reporting requirements. This relief applies only to furnishing and filing incorrect or incomplete information on a statement or return. It recognizes the ongoing challenges involved in developing procedures and systems that accurately collect and report information in compliance with the reporting requirements. This relief applies to missing and inaccurate taxpayer identification numbers and dates of birth, as well as other information required on the return or statement. In determining good faith, the IRS will take into account whether an employer made reasonable efforts to prepare for reporting the required information, such as gathering and transmitting the necessary data to an agent to prepare the data for submission. The IRS will also take into account the extent to which the employer is taking steps to ensure that it will be able to comply with the reporting requirements for 2018.

The “good-faith effort” relief does not apply to a failure to timely furnish or file a statement or return.

The extension of the due dates and good-faith relief applies only to the 2017 forms.

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