

REFORM UPDATE

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IRS RELEASES MORE DETAILS ON LETTER 227 – RESPONSE TO APPEAL ON EMPLOYER SHARED RESPONSIBILITY PAYMENT

In late 2017, the IRS started sending employers potential penalty letters on the Employer Shared Responsibility requirements of the Affordable Care Act (ACA). The penalties were associated with the 2015 Forms 1094-C and 1095-C that employers submitted in 2016. Prior to releasing the penalty letters, the IRS posted guidance about how the penalty process would be managed. This guidance was reviewed in our *Reform Update* 137 at <http://mcgrawwentworth.com/resources/reform-update>.

Penalties are proposed to Applicable Large Employers (ALEs) in Letter 226-J. Included with the letter is Form 14764. This is the form ALEs should use to appeal all or a portion of the assessed penalty. ALEs are given 30 days to respond to Letter 226-J.

The IRS responds with Letter 227 to any Form 14764s submitted by ALEs. The IRS's guidance indicated that five different versions of Letter 227 would be created, to address possible outcomes based on the employer's appeal efforts.

The IRS recently posted more information about the different versions of Letter 227 on their website at <https://www.irs.gov/individuals/understanding-your-letter-227>.

Different versions of Letter 227 will either close the Shared Responsibility penalty issue or prompt employers to take additional steps. Such steps may include paying the penalty or following the instructions provided in Letter 227 or Publication 5 to request a pre-assessment conference with the IRS Office of Appeals. A conference should be requested in writing by the response date shown in Letter 227, which will generally be 30 days from the date of Letter 227.

The five Letters 227 are as follows:

- **Letter 227-J** acknowledges receipt of the signed Form 14764, ESRP Response. The employer agreed with the assessed Shared Responsibility penalty. The letter provides details on how the ALE can make the required payment. No response is required.
- **Letter 227-K** acknowledges receipt of the signed Form 14764. The IRS agrees with the ALE's appeal and indicates that the proposed penalty has been reduced to zero. After issuance of this letter, the case will be closed. No response is required.

- **Letter 227-L** acknowledges receipt of the signed Form 14764. The IRS revised the penalty amount based on the ALE's appeal. The letter includes an updated Form 14765 (list of all full-time employees purchasing subsidized coverage in the Marketplace by month) and a revised calculation of the penalty. The ALE can then agree and arrange to pay the penalty. The ALE may also pursue the appeal further by requesting a meeting with the manager and/or office of appeals.
- **Letter 227-M** acknowledges receipt of the signed agreement Form 14764. The IRS does not agree with the appeal and is assessing the penalty included in Letter 226-J. This letter provides an updated Form 14765 and a calculation table. The ALE may pursue the appeal further by requesting a meeting with the manager and/or office of appeals.

The final possible Letter 227 is issued after the ALE has participated in a pre-assessment conference with the IRS. This is the next step in appealing the potential 226-J penalty if the IRS did not accept the first appeal submitted on Form 14764. ALEs must request this conference.

The response to the IRS conference is **Letter 227-N**. It acknowledges the decision reached and shows the penalty amount based on the appeals review. After issuance of this letter, the case will be closed. No response is required.

Only Letters 227-L and 227-M require a response, which must be provided by the date stated in the letter.

Letter 227 is not a bill. The IRS will send Notice CP 220J to collect the employer shared responsibility penalties.

CONCLUDING THOUGHTS

The IRS has issued several batches of penalty letters to ALEs across the country during the last six months. It is important that you respond to the letter within 30 days as indicated in Letter 226-J. In many cases, ALEs have successfully appealed substantial proposed penalties.

The additional information in Letter 227 will help employers to understand any response they receive after filing Form 14764 to appeal the proposed penalty.

It will be interesting to see if the IRS continues to identify potential penalties from the 2015 forms or if they will begin issuing penalty letters for 2016.

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