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ACA REPORTING ~ May I Have Your Attention Please?

AS SOMEONE with a relatively short attention span, my wife and I have worked out a very effective understanding whenever she has something really important to tell me (especially when it involves picking up the kids or last minute changes in the family calendar). She makes me stop whatever I'm doing and she says, "You need to pay attention, because this is important." With a loving nod to my wife, I'm asking that you stop what you're doing and take a moment and read this article carefully, because this stuff is important.

Two of the most significant reporting provisions of the Affordable Care Act (the ACA or Obamacare) involve providing very specific and detailed information to the IRS. More specifically, they involve (1) information about who had health care coverage during the year and for how long; and (2) whether an "Applicable Large Employer" offered minimum value coverage to employees and their dependents. These reporting requirements apply to grandfathered and non-grandfathered plans.

In an effort to assist employers and taxpayers with their reporting obligations, the "benevolent" IRS has released four forms for use in complying with these reporting requirements. These forms may seem simple at first glance, but believe me, they're anything but. In fact, as you can see below, even this simplified summary of the forms is complicated.

- **FORM 1094-B** is a summary transmittal form that is used to transmit individual statements (Forms 1095-B) containing IRS Code §6055 information to the IRS.
- **FORM 1095-B** is used to report Code §6055 information to "responsible individuals."
- **FORM 1094-C** is a summary transmittal form that is used by applicable large employers to transmit employee statements (Forms 1095-C) containing Code §6056 information (and in the case of a self-funded plan, §6055 information) to the IRS.

- **FORM 1095-C** is used by applicable large employers to report Code §6056 information (and in the case of a self-funded plan, §6055 information) to employees. Every full time employee (FTE) of an applicable large employer (for at least one month) must receive this form by **March 31, 2016**.¹

Of course, the above summary begs the questions: What is §6055 and §6056 information, and why must it be reported to individuals and the IRS? In short, this information establishes whether employers have satisfied their legal obligation under the ACA to offer minimum essential coverage to employees and their dependents (*i.e.*, the "play or pay" mandate), and whether individuals have satisfied their legal obligation under the ACA to maintain minimum essential coverage (*i.e.*, the individual mandate).

More specifically, Code §6055 requires providers of minimum essential coverage (*i.e.*, health insurers and self-insured plans) to report coverage information by filing an information return with the IRS and furnishing a statement to individuals.² This information is used by the IRS to administer the requirement that most Americans maintain health insurance coverage. It also allows the taxpayer to prove compliance with the individual mandate [Code §5000A]. Code §6056 requires Applicable Large Employers (ALEs) to file information returns with the IRS and provide statements to their full-time employees about the health care coverage the employer offered.³ The IRS will use this information to determine whether the ALE offered minimum essential coverage, and to administer the employer "play or pay" shared responsibility provisions [Code §4980H]. Additionally, the employee will use this information to determine and prove whether he or she is eligible for an ACA premium tax credit [Code §36B]. Incidentally, an ALE is generally defined as an employer that employed on average at least 50 full-time employees (*i.e.*, at least 30 hours per week) on business days during the preceding calendar year. Although that definition sounds simple, it is complicated and unclear. Additional information on this topic can be found in the federal regulations published by our friends at the Treasury Department.⁴

¹ This date was originally February 1, 2016, but was extended in accordance with IRS Notice 2016-4, which was issued by the IRS on December 28, 2015.

² For additional information about Code §6055, refer to <https://www.irs.gov/Affordable-Care-Act/Questions-and-Answers-on-Information-Reporting-by-Health-Coverage-Providers-Section-6055>.

³ For additional information about Code §6056, refer to <https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Reporting-of-Officers-of-Health-Insurance-Coverage-by-Employers-Section-6056>.

⁴ See, Treas. Reg. § 54.4980H-2(b)(1).

FORM	RESPONSIBLE PARTY	INFORMATION REQUIRED TO BE REPORTED	RECIPIENT
1094-B (Summary Transmittal)	Insurers and Non-ALE Self-Funded employers	Individual Statements (Forms 1095-B) Containing §6055 Information (Minimum Essential Coverage) for Purposes of the Individual Mandate	IRS
1095-B	Insurers and Non-ALE Self-Funded employers	§6055 Information (Minimum Essential Coverage) to Allow the Taxpayer to Prove Compliance with the Individual Mandate	Individuals
1094-C (Summary Transmittal)	Applicable Large Employers	Employee Statements (Forms 1095-C) Containing §6056 Information (Coverage Offered) for Purposes of the “Play or Pay” Mandate and Subsidy Eligibility (and §6055 Information if Self-Funded)	IRS
1095-C	Applicable Large Employers	§6056 Information (Employer Coverage) for Premium Tax Credit Purposes (and §6055 Information if Self-Funded)	Employees

Under the ACA, employers are responsible for the accuracy and timeliness of these filings. Code §6055 and §6056 reporting is based on a calendar year, and data is reported for each month. If an employer changes between fully-insured and self-funded plans, or adjusts its coverage offerings during the year, it will undoubtedly create havoc.

Regardless of the administrative and operational challenges of these reporting requirements, failing to timely file these forms, or filing inaccurate forms, can result in severe penalties of up to \$250 per form (up to an annual maximum of \$3 million). As proof of its benevolence, however, the IRS has promised that penalties won't be applied in 2015 against employers acting in good faith. Any employer that willfully violates these laws will most certainly be taken to the woodshed by the taxman.

The reporting entity (*i.e.*, the health insurer or the self-funded plan) is required to prepare and furnish separate documents for each “responsible individual.” These information returns must also be filed with the IRS along with the transmittal form. Reporting deadlines are similar to W-2 reporting requirements, and extensions may be granted in certain circumstances.

In general, the deadline to furnish statements to “responsible individuals” is January 31, and the deadline for filing the return and transmittal with the IRS is February 28 (March 31 if filed electronically). When these days fall on a Saturday, Sunday or a legal holiday, the deadlines are extended to the next business day. In December 2015, the IRS issued Notice 2016-4, which extended these deadlines for 2016. So ... absent an additional extension, the first Code §6055 statements (Forms 1095-B) that are sent to individuals, and the first Code §6056 statements (Forms

1095-C) that are sent to employees, must be furnished to those individuals by Thursday, March 31, 2016; paper returns (Forms 1094-B and 1094-C) must be filed with the IRS by Tuesday, May 31, 2016; and electronic returns will be due on Thursday, June 30, 2016.

Now that we've sorted through the most basic elements of what information is required and how it is to be disseminated to individuals and filed with the IRS, we need to take a quick look at support that is available to employers. Without endorsing any of these companies or the products they sell, I'm listing a few in order to provide you a starting point for your compliance effort. Neither WMI nor I have used the products offered by any of these companies, but each company purports to have software and support that will help employers wade through this morass.

- **1099FIRE** – According to their website, their software will import data from Excel, print the required forms and generate the XML file(s) required for electronic filing. They even allow employers to outsource the project to them so they can print and mail copies to employees and securely efile the requisite forms with the IRS (www.1099fire.com).
- **Thomson Reuters** – This company's ONE-SOURCE solution for ACA compliance reporting purports to offer software and service solutions to manage the entire filing process (www.tax.thomsonreuters.com/onesource/aca-compliance).
- **Paycor** – This company promises to help you generate, print and file the ACA forms, track and manage employee hours, manage benefits through an online platform that integrates with payroll, and access an online resource center that includes guides, checklists and calculators (www.paycor.com).

I hope this article has helped familiarize you with the basic reporting requirements of the ACA, and the related 1094 and 1095 forms. If you have any questions, feel free to contact me at **(801) 263-8000** or davidleo@wmimutual.com. Please understand, however, that any information or guidance I might be able to provide you, including this article, is limited and is not intended to constitute legal advice. I would urge you to consult with your legal and accounting professionals who can review these complex requirements in light of your company's specific facts and circumstances, and can provide you the necessary guidance and direction that will be specific to your company's particular situation.