

CLIENT ALERT



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TIN Solicitation Procedures in Connection with ACA Reporting Process

The IRS recently released new proposed guidance on taxpayer identification number (TIN; generally the social security number) solicitation procedures as required by the ACA information reporting process (i.e. preparing and filing Forms 1095-C). These TIN solicitation procedures come into play in two situations.

FORM 1095-C PART I INCORRECT TIN ERROR MESSAGE

When an employer prepares and files a Form 1095-C for each full-time employee, the employer must include the employee's TIN on the form in Part I. As many employers are now altogether too familiar, following submission of the 2015 Forms 1095-C (in May or June 2016), many employers received error messages indicating that the TIN used for a particular employee was incorrect. The error message could have been the result of incorrect data entry, a marriage that occurred during the year (resulting in a new last name that doesn't match the IRS system), or the intentional falsification of a TIN by an employee. Regardless of the reason for the error, employers receiving these notices need to take appropriate steps to protect against penalties for incorrect filings. This is particularly true as employers gear up for 2016 filings (due in early 2017). The IRS indicated it would show leniency for 2015 filings, given that it was the first year of information returns, but penalties increase next year.

Guidance from the IRS indicates that penalties for incorrect filings will be waived if the employer can show that the submission of incorrect information was due to reasonable cause and not willful neglect. In establishing that the error was due to reasonable cause, the employer must show that it acted in a reasonable manner in seeking correct information. The IRS has clarified what an employer must do to meet this standard. An employer receiving an error message should first review its records to ensure the error is not the result of incorrect data entry, including wrong display of an employee name. If the filing correctly reflected the information in the employer's files, to show it acted reasonably, the employer must:

- Solicit the correct information from the employee by the end of the year in which you receive the error message, or, if the error message is received in December of a particular year, by January 31 of the following year. Make any necessary corrections based on the information received.

- If the first solicitation does not correct the error, make a second solicitation seeking correct TIN number by December 31 of the year following the year in which the error message was received.

*Certain error messages appear to have been triggered by confusion in how to display last names. For example, if your employee's last name contains an apostrophe (i.e., "O'Brien"), the apostrophe should be deleted when preparing the form. Two-part last names can also create issues. The first last name listed in the last name field of the Form 1095-C must be the one registered with the social security administration, or an error message will be triggered.

SELF-FUNDED EMPLOYER TIN SOLICITATION FOR PART III OF FORM 1095-C

Employers that sponsor a self-funded health plan must complete section III of the Form 1095-C, which requires the name and TIN of all covered individuals, including employees and dependents. The employer is allowed to use a date of birth if the TIN can not be obtained; however, to avoid a penalty, the employer must show it made a reasonable effort to obtain the TIN of all covered individuals. The TIN solicitation procedures follow IRS procedures previously in place for financial institutions. These procedures require that the employer:

- Make an initial request for TIN at the time the employee or other eligible individual first "opens an account". For purposes of the Form 1095-C, the "account is opened" when the employer receives a substantially completed application for new coverage or when a covered individual is adding a spouse and/or dependent to the plan. (Note, if an individual is enrolled in coverage prior to July 29, 2016, the account is considered opened on July 29, 2016, and the employer is deemed to have satisfied the first request requirement by asking for TINs as part of the prior enrollment process or at any point prior to July 29, 2016.)
- If needed, make a first annual solicitation by the 75th day after the date on which the "account was opened" (per the rules in the above bullet).
- If needed, make a second annual solicitation no later than December 31 of the year after the year the account is opened.

Employers must institute adequate TIN solicitation procedures to avoid penalties for incorrect or missing TINs.

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