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AFFORDABLE CARE ACT INFORMATION REPORTING: Allow Taxpayer Identification Number Matching for Filers of Information Returns Under IRC §§ 6055 and 6056

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Be Informed*
- *The Right to Pay No More Than the Correct Amount of Tax*

PROBLEM

The IRS relies on new information returns to verify data relevant to a number of provisions in the Patient Protection and Affordable Care Act of 2010 (ACA). Although the tax code requires health insurance providers and applicable large employers (ALEs)² to file information returns with the IRS reflecting specific information regarding health insurance coverage,³ the law does not permit these companies to verify taxpayer identification numbers (TINs) with the IRS prior to filing.⁴ Unlike other information return filers who can perfect TINs prior to issuing any information reporting forms if the IRS advises them of any errors, health insurance providers and ALEs must rely on input from their customers and employees while still facing penalties for errors. The IRS expects to receive over 120 million information returns from health insurance providers and ALEs during the 2016 filing season.⁵ If these entities were able to verify name/TIN accuracy prior to filing these information reports, they would avoid unnecessary penalties and the IRS would minimize the resources spent on avoidable penalty abatement requests.

EXAMPLE

ABC Health is a health insurance provider that insures 800,000 individuals in the state of Maryland. As part of the insurance enrollment process, ABC Health obtains TINs from insured individuals that it uses to prepare approximately 600,000 Forms 1095-B (and the associated transmittal Form 1094-C).⁶ ABC Health timely files the forms with the IRS and provides copies to the insured. Upon filing, the IRS finds that 10,000 of the TINs do not match the insureds' names, whether due to transposition errors, name changes, or otherwise. As a result, ABC Health faces \$2.5 million in penalties. If ABC Health also includes the incorrect TINs on statements it furnishes to the insured, it could potentially be liable for

1 See Taxpayer Bill of Rights, available at www.TaxpayerAdvocate.irs.gov/taxpayer-rights.

2 Internal Revenue Code (IRC) § 4980H(a)(1) provides that an ALE must offer minimum essential coverage (MEC) to its full-time employees. In general, an employer is considered an ALE if it employs 50 or more full-time workers (or full-time equivalents (FTEs)), or a combination of full-time and part-time employees that equals at least 50 FTEs. IRC § 4980H(c)(2).

3 IRC §§ 6055 and 6056.

4 In the case of an individual taxpayer, a TIN generally is the Social Security number (SSN). See IRC § 6109(d). The IRS may also issue an adoption taxpayer identification number (ATIN). For an alien individual not eligible for an SSN who has a federal tax reporting requirement, the IRS assigns an individual taxpayer identification number (ITIN). See Treas. Reg. § 1.6109-1(a) and (d).

5 IRS response to TAS information request (Oct. 22, 2015).

6 A health insurer needs to provide a Form 1095-B to each responsible person (the individual who is the primary insured) that will include the information for all other individuals covered under that responsible person. IRC § 6055. The total number of Forms 1095-B will be less than the total number of covered individuals when taking into account self plus one and family plans.

an additional \$2.5 million in penalties. If the errors were due to intentional disregard of the filing and furnishing requirements, the potential penalties would be much greater.

RECOMMENDATION

Amend IRC §§ 6055 and 6056 to allow entities required to file information returns under these sections to verify TINs with the IRS prior to filing annual information returns.

PRESENT LAW

IRC § 6055 requires annual information reporting by health insurance issuers, self-insuring employers, government agencies, and other providers of health coverage. IRC § 6056 requires annual information reporting by ALEs relating to the health insurance that the employer offers (or does not offer) to its full-time employees. Below is a list of information returns the IRS created to meet these reporting requirements:

- Form 1095-B, *Health Coverage* (used by health insurance issuers and carriers to report information about individuals who are covered by MEC);⁷
- Form 1094-B, *Transmittal of Health Coverage* (used by health insurance issuers and carriers to submit Form 1095-B);
- Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage Insurance* (used by ALEs to report information about offers of health coverage and actual coverage of full-time employees);⁸ and
- Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns* (used by ALEs to submit Form 1095-C).

Form 1095-B was developed to verify compliance with the requirement to have MEC under IRC § 5000A. The form reports the names and TINs of all individuals covered under a health insurance plan and the months of coverage.⁹ If the IRS cannot verify that a taxpayer had MEC, the taxpayer will be assessed an Individual Shared Responsibility Payment (ISRP).¹⁰

⁷ The forms are due by February 28 (or March 31 if filing electronically). IRS, *Instructions for Forms 1094-B and 1095-B* (2015), available at www.irs.gov/pub/irs-pdf/i109495b.pdf.

⁸ The forms are due by February 28 (or March 31 if filing electronically). IRS, *Instructions for Forms 1094-C and 1095-C* (2015), available at www.irs.gov/pub/irs-pdf/i109495c.pdf.

⁹ If an insurer is unable to obtain a TIN for an individual after making a reasonable effort, the regulations allow it to provide the individual's date of birth instead of the TIN.

¹⁰ IRC § 5000A. Taxpayers filing tax year 2014 federal income tax returns were required to report they have MEC or were exempt from the responsibility to have the required coverage. If the taxpayer did not have coverage and was not exempt, he or she was required to make an ISRP when filing a return. For a detailed discussion of the ISRP, see *Affordable Care Act - Individuals: The IRS Is Compromising Taxpayer Rights As It Continues to Administer the Premium Tax Credit and Individual Shared Responsibility Payment Provisions*, *supra*.

Form 1095-C was developed to determine whether an ALE will be subject to an Employer Shared Responsibility Payment (ESRP) for failure to offer affordable MEC to its full-time employees.¹¹ The form reports the names and TINs of all full-time employees, as well as information about their coverage under the employer-provided plan, their offer of coverage, and share of the insurance premium. This information will also be used to verify a taxpayer's eligibility for the Premium Tax Credit (PTC) if he or she claimed one on his or her tax return.¹²

FIGURE 2.9.1, Projected Volume of Information Returns for ACA Exchange Provisions, Tax Years 2015–2017¹³

	Tax Year 2015	Tax Year 2016	Tax Year 2017
Forms 1095-B	46 million	45 million	47 million
Forms 1095-C	77 million	77 million	78 million
Total	123 million	122 million	125 million

As noted above, the IRS expects to receive over 120 million information returns from health insurance providers and ALEs during the 2016 filing season. These information returns facilitate the administration of the ESRP, establish health insurance coverage — or lack thereof — for the ISRP, and impact eligibility for the PTC and Small Business Health Care Tax Credit (SBHCTC).¹⁴

The penalty for failure to file a correct information return is generally \$250, and the penalty for failure to furnish a correct payee statement is also generally \$250.¹⁵ Each penalty is capped at \$3 million for each calendar year. If the failure is due to intentional disregard of the filing or furnishing requirements, the penalty for each return or statement would be at least \$500, with no maximum. IRC § 6724 provides that the IRS will not impose the penalty if the filer shows the failure was due to reasonable cause and

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- 11 IRC § 4980H provides that an ALE will be subject to an ESRP if (1) it fails to offer its full-time employees the opportunity to enroll in MEC under an eligible employer-sponsored plan, and (2) a PTC was paid to at least one full-time employee. The amount of the ESRP under IRC § 4980H(a) is \$2,000 per full-time employee per year (determined on a monthly basis). IRC § 4980H(c)(1). The ESRP provisions provide an inflation adjustment mechanism beginning in years after 2014. IRC § 4980H(c)(5). IRC § 4980H(b) requires ALEs to offer affordable MEC that provide minimum value. If an ALE offers MEC but it is not considered affordable, the ALE will be assessed an ESRP of \$3,000 for each employee (pro-rated on a monthly basis) who purchases health insurance from the exchange and is granted a tax credit and/or subsidy for health insurance. IRS § 4980H(b)(1). While an employer may be subject to ESRP under both IRC § 4980H(a) and (b), the liability is limited to the amount under IRC § 4980H(a). Treas. Reg. § 54-4890H, 79 Fed. Reg. 8543 (Feb. 12, 2014), available at www.federalregister.gov/articles/2014/02/12/2014-03082/shared-responsibility-for-employers-regarding-health-coverage.
- 12 PTC is a refundable tax credit paid either in advance or at return filing to help taxpayers with low to moderate income purchase health insurance through the exchange. IRC § 36B. The amount of the credit paid in advance is based on projected household income (HHI) and family size for the year of coverage, while the amount a taxpayer is actually eligible for is based on actual HHI and family size for the year reflected on the tax return. Many taxpayers were required to reconcile the credit amount they received in advance with the PTC to which they were actually entitled. For a detailed discussion of the PTC, see Most Serious Problem: *Affordable Care Act - Individuals: The IRS Is Compromising Taxpayer Rights As It Continues to Administer the Premium Tax Credit and Individual Shared Responsibility Payment Provisions*, *supra*.
- 13 IRS response to TAS information request (Oct. 22, 2015).
- 14 Under IRC § 45R, eligible small employers can claim the SBHCTC for 2010 through 2013 and for two additional years beginning in 2014. A small employer is eligible for the credit if (a) it has fewer than 25 FTE employees, (b) the average annual wages of its employees are less than \$50,000 (adjusted for inflation beginning in 2014), and (c) it pays a uniform percentage for all employees that is equal to at least 50 percent of the premium cost of employee-only insurance coverage. For a detailed discussion of the SBHCTC, see *Affordable Care Act (ACA) - Business: The IRS Faces Challenges in Implementing the Employer Provisions of the Affordable Care Act While Protecting Taxpayer Rights and Minimizing Burden*, *supra*.
- 15 See IRC §§ 6721 and 6722. The penalty amounts are an increase over the previous penalty amount of \$100 and apply to information returns filed after December 31, 2015. The penalty amounts are also indexed for inflation.

not willful neglect.¹⁶ If a health insurance company or ALE reports an incorrect TIN on Form 1095-B or 1095-C due to inaccurate input from their customer or employee, the provider may obtain a penalty waiver upon proving reasonable cause. The health insurance company or ALE must establish that the failure to include a correct TIN was due to events beyond its control and that it acted in a responsible manner by soliciting a TIN from the customer or employee in accordance with specific solicitation rules set forth in regulations.¹⁷

The IRS will not impose penalties under IRC §§ 6721 and 6722 for 2015 information returns on reporting entities that can show that they have made good faith efforts to comply with the information reporting requirements. Specifically, relief is provided from penalties for incorrect or incomplete information reported on the return or statement. No relief is provided for reporting entities that cannot show a good faith effort to comply with the information reporting requirements or that fail to timely file an information return or furnish a statement.¹⁸

Under IRC § 3406(i), the Commissioner has the authority to establish TIN matching programs for information returns that report payments subject to backup withholding, such as dividends or other income. Under such a TIN matching program, a payor with reportable payments as defined in IRC § 3406(b)(1) may contact the IRS prior to filing information returns.¹⁹ The IRS will inform the payor (or an agent of the payor) whether or not a name/TIN combination furnished by the payee matches a name/TIN combination maintained in the database utilized for the particular matching program, which will help participating payors avoid TIN errors and reduce the number of backup withholding notices required under IRC § 3406(a)(1)(B).

The IRS online interactive or bulk TIN matching program is accessible 24 hours a day, seven days a week.²⁰ The IRS response is generally limited to notification of a match or mismatch.²¹ If the IRS response indicates a TIN mismatch, the payor has the opportunity to resolve the inaccuracy with the payee, prior to filing an information return. Otherwise, the IRS generally may not disclose a taxpayer's name, TIN, or other return information, pursuant to IRC § 6103.²²

16 See IRC § 6724(a).

17 See Treas. Reg. § 301.6724-1(c)(6) and (d)(2).

18 IRS, *Questions and Answers on Information Reporting by Health Coverage Providers (Section 6055)*, Question 3, available at <https://www.irs.gov/Affordable-Care-Act/Questions-and-Answers-on-Information-Reporting-by-Health-Coverage-Providers-Section-6055> (last visited Nov. 23, 2015). However, consistent with the existing information reporting rules, reporting entities that fail to timely meet the requirements still may be eligible for penalty relief if the IRS determines that the standards for reasonable cause under IRC § 6724 are satisfied.

19 See Treas. Reg. § 31.3406(j)-1; Rev. Proc. 2003-9, 2003-8 I.R.B. 516.

20 See IRS Pub. 2108A, *On-line Taxpayer Identification Number (TIN) Matching Program*.

21 The TIN Matching Program provides a numerical response indicator for each match request. The potential responses include: '0' - Name/TIN combination matches IRS records; '1' - Missing TIN or TIN not nine-digit numeric; '2' - TIN not currently issued; '3' - Name/TIN combination does NOT match IRS records; '4' - Invalid request (i.e., contains alphas, special characters); '5' - Duplicate request; '6' - (Matched on SSN), when the TIN type is (3), unknown, and a matching TIN and name control is found only on the NAP DM1 database; '7' - (Matched on EIN), when the TIN type is (3), unknown, and a matching TIN and name control is found only on the EIN N/C database; '8' - (Matched on SSN and EIN), when the TIN type is (3), unknown, and a matching TIN and name control is found on both the NAP DM1 and the EIN N/C databases. IRS Pub. 2108A, *On-line Taxpayer Identification Number (TIN) Matching Program* § 14, FAQ 9 at 9.

22 See IRC § 6103. See also National Taxpayer Advocate 2003 Annual Report to Congress 232 (Legislative Recommendation: *Confidentiality and Disclosure of Returns and Return Information*). Third-party payors and their authorized agents who participate in the TIN Matching Program must sign an online Terms of Agreement (TOA) clause stating they will attempt to match name/TIN combinations only for the types of reportable payments listed in Rev. Proc. 2003-9. IRS Pub. 2108A, *On-line Taxpayer Identification Number (TIN) Matching Program* § 4.3 at 4.

REASONS FOR CHANGE

Currently, IRC § 3406 authorizes the IRS TIN matching program only for payors of reportable payments subject to backup withholding. Currently, that is the only statutory authorization for TIN matching; the IRS is precluded under IRC § 6103 from disclosing information to filers of returns not subject to backup withholding. The filers of other information returns that are not subject to backup withholding have no ability to verify the accuracy of the information provided to the IRS, yet are subject to the same penalties for failure to file an accurate information return as those who have access to TIN matching. Because these filers do not have access to TIN matching, they may file information returns with incorrect name/TIN combinations and receive penalty notices, and will have to prove reasonable cause to abate penalties imposed, thereby increasing taxpayer burden and IRS rework.

In 2013, the National Taxpayer Advocate included a legislative recommendation to expand TIN matching to colleges and universities to reduce burden on all parties involved.²³ Similarly, a legislative change that would allow filers required to file information returns under IRC §§ 6055 and 6056 to use TIN matching to verify TINs with the IRS prior to filing annual information returns would benefit the IRS, employers, health insurance providers, and taxpayers by facilitating accurate information returns.

While information matching is a critical part of the IRS's compliance strategy, it is only as effective as the accuracy of the data provided.²⁴ Health insurance companies and ALEs have an information reporting requirement for which they need to verify TINs.²⁵ TINs may not match an individual's name for various reasons, such as transposition errors or name changes. The IRS's inability to accurately match a taxpayer against a Form 1095-B or 1095-C will place him or her at risk for receiving notices from the IRS that he or she is liable for an ISRP. Still, other taxpayers may have their PTC claims questioned. Furthermore, ALEs may unnecessarily be required to substantiate coverage to employees if the data is unreliable or in error. If the IRS receives inaccurate data regarding coverage, it may erroneously assess ESRP on ALEs, which can be costly and time-consuming for both employers and the IRS to rectify. This increased burden can be avoided if Congress expands TIN matching beyond the currently authorized program to allow these filers to verify name/TIN combinations and learn of inaccuracies prior to filing information returns. This recommendation benefits the IRS, information return filers, and taxpayers by facilitating accurate information returns.

EXPLANATION OF RECOMMENDATION

ACA was enacted by Congress in 2010 to provide affordable health care coverage for all Americans. To accomplish this goal, the ACA provides targeted tax credits for low income individuals and small businesses while imposing a personal responsibility on individuals to have health coverage.²⁶ Information returns allow the IRS to cross-check taxpayer claims against third-party reports. In the case of ACA, health coverage and offers of coverage are contained on Forms 1095-B and 1095-C, required by IRC §§ 6055

23 See National Taxpayer Advocate 2013 Annual Report to Congress 319-21 (Legislative Recommendation: *Tuition Reporting: Allow TIN Matching By Colleges*).

24 See National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 83 (calling for improved accuracy of third-party reporting data); National Taxpayer Advocate 2011 Annual Report to Congress 82 (questioning the accuracy of third-party data as a source for math error adjustments).

25 Many of these filers may already have access to TIN matching for other information returns they are required to file.

26 IRC § 4980H(a)(1) imposes a responsibility for ALEs to offer health care to employees in certain circumstances. ACA, Pub. L. No. 111-148, 124 Stat. 119 (Mar. 23, 2010), as amended by the Health Care & Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (Mar. 30, 2010); S. Fin. Comm., 111th Cong., DESCRIPTION OF POLICY OPTIONS: EXPANDING HEALTH CARE COVERAGE: PROPOSALS TO PROVIDE AFFORDABLE COVERAGE TO ALL AMERICANS (May 14, 2009), available at <http://finance.senate.gov/download/?id=1DD95955-E95D-4AC7-919D-DAA62490D249>.

and 6056, which include information that helps facilitate accurate administration of the law. The ACA contains a number of new provisions, and 2016 marks the first year applicable entities will have to file these information returns. If the information provided is inaccurate, taxpayers and employers could be assessed penalties, the IRS will have to work through avoidable penalty abatement requests, audits, and amended returns — all of which impacts taxpayers' *right to pay no more than the correct amount of tax*.

The TIN matching process reduces errors in information reported, resulting in fewer inaccurate IRS notices and penalties, saving both taxpayer and IRS resources. As a result, both the Information Reporting Program Advisory Committee (IRPAC)²⁷ and practitioners have called for an expansion of the TIN matching program to filers of Forms 1095-B and 1095-C.²⁸ The IRS has already announced penalty relief for 2015 forms filed in 2016, recognizing that entities will face difficulty with compliance amid potential issues. By extending TIN matching to Forms 1095-B and 1095-C, the recommendation reduces unnecessary burden and work for health insurance companies, ALEs, the IRS, and taxpayers.

27 IRPAC is a federal advisory committee whose primary purpose is to provide a public forum for the IRS and members of the information reporting community in the private sector to discuss relevant information reporting issues.

28 IRPAC, *2014 Information Reporting Program Advisory Committee (IRPAC) Public Report*, 19-22, available at <https://www.irs.gov/pub/irs-utl/2014%20Public%20Report%20Final.pdf>; Treas. Reg. §§ 1.6055-1 and 1.6055-2 (summary of comments), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-03-10/pdf/2014-05051.pdf>; Michael M. Lloyd & S. Michael Chittenden, *Expand TIN Matching Program to Avert Another ACA Debacle*, Tax Notes 424-28 (Jan. 27, 2014).