

Employer Reporting Errors

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Introduction

Now that the deadline under Sections 6055 and 6056 for issuing statements to employees/covered individuals has passed, employers may begin to identify errors in the statements issued. And once statements are filed with the IRS, the IRS may identify errors or information that does not match its records. In both cases, employers must take steps to rectify the errors or address inconsistencies (or demonstrate reasonable cause) to avoid potential penalties under Code §§6721 and 6722.

Background

For the first time in 2016, all applicable large employers (generally those with 50 or more full-time equivalents) are required to provide a Form 1095-C to any employees who were full-time for at least one month during 2015. And all employers, regardless of size, offering coverage under a self-funded plan during 2015 must provide either a Form 1095-B or a Form 1095-C to any individuals covered under the self-funded plan.

For 2016 only, the IRS extended the reporting deadlines. Reporting using Forms 1094 and 1095 is due to the IRS by May 31 (or June 30 if filing electronically), and a copy of the applicable Form 1095 must have been provided to full-time employees and covered individuals by March 31. Generally, the reporting timeframes will be identical to those required for Form W-2s.

Employers subject to employer reporting requirements who file the required Forms 1095 with errors may face penalties of up to \$250 for each return, up to a maximum of \$3,000,000 during a calendar year. Penalty amounts are reduced for those forms that are submitted and/or corrected within the first 30 days following the deadline.

For the first year of employer reporting, the IRS has indicated that it will not impose penalties for incorrect or incomplete filings on employers who can show a good faith effort to comply with the information-reporting requirements on a timely basis. However, no relief is provided if employers do not make a good faith effort to comply. For this reason, it is important that employers review the requirements for correcting any errors identified in order to demonstrate such a good faith effort.

Addressing Errors

Errors discovered by the Employer

Identified errors must be corrected as soon as possible after they are discovered. Penalties may apply if an employer fails to correct information returns or furnish corrected recipient statements. Such errors may be discovered by the employer or by form recipients (i.e., full-time employees or covered individuals) who report such errors to the employer.

Prior to filing with the IRS

The employer must issue a fully corrected 1095-C or 1095-B to the employee and write "CORRECTED" on the new form (rather than marking the CORRECTED checkbox).

After filing on paper with the IRS

- 1094-C (Authoritative Transmittal only): The employer must file a standalone, fully completed Form 1094-C that includes the correct information and enter an "X" in the CORRECTED checkbox.
- 1095-C and 1095-B: The employer must issue a fully corrected 1095 to the IRS and enter an "X" in the CORRECTED checkbox. The employer should also file a Form 1094 transmittal with the corrected 1095-C; however, the employer **should not** mark the "CORRECTED" checkbox on the Form 1094, and the Form 1094 should not be marked as an authoritative transmittal. The employer must furnish the employee or covered individual a copy of the corrected Form 1095.

After filing electronically with the IRS

Technical instructions for correcting errors in electronic filings can be found in Section 7 of Pub. 5165

(https://www.irs.gov/PUP/for_taxpros/software_developers/information_returns/Draft_Pub_5165_04_2015.pdf), but generally the corrections must also be handled electronically.

Errors discovered by the IRS

Transmission or submission rejection

If the entire filing is rejected by the IRS, appropriate corrections must be made and the entire file (Form 1094-C and all Form 1095-Cs) must be resubmitted. NOTE: When the filing has been submitted electronically, such rejection is generally due to a failure to format the content in accordance with the electronic filing process requirements. Specific information on the requirements may be found here - <https://www.irs.gov/for-tax-pros/software-developers/information-returns/affordable-care-act-information-return-air-program>.

Transmission or submission accepted, but with errors

In general, if the filing is accepted, but with errors, the employer is expected to make corrections. One of the most common errors that employers are running into is having incorrect or missing TINs (usually the Social Security Number or SSN). The instructions for Forms 1094-B/1095-B and 1094-C/1095-C indicate that employers are not required to issue corrected forms when a

covered individual's TIN is missing or incorrect *if* the employer has made a good faith effort to obtain the information in accordance with the standards for reasonable cause.

To establish a good faith effort or reasonable cause, employers who already have an employee's TIN by virtue of the employment relationship (e.g., from a W-4 submitted at the time of hire) should compare the information on Form 1095 with the information included on the W-2s to verify accuracy. For employers reporting on those covered under a self-funded plan, which may include non-employees such as dependents, the employer should take the following steps to demonstrate a good faith effort to solicit the covered individual's TIN:

1. Make an initial solicitation at the individual's first enrollment or, if the individual is already enrolled on September 17, 2015, the next open enrollment season;
2. If the first solicitation is unsuccessful, make a second solicitation at a reasonable time thereafter; and
3. If the second solicitation is unsuccessful, make a third solicitation by December 31 of the year following the initial solicitation.

If an employer is still not successful after taking the steps outlined above, it may use a date of birth in lieu of a TIN for non-employees on the reporting forms.

If after going through this process the employer finds that the information received matches the information previously reported on the 1095 (or if no information was received, in which case the employer is permitted to use the date of birth and should verify that this information matches), the employer should document this review; but it doesn't appear further action is necessary unless further notice is provided by the IRS (see more below). But if the employer reviews its W-2s or the information received from the covered individual in response to a solicitation and *does* discover errors on the 1095s, then the reporting instructions are clear: These errors should be corrected "as soon as possible" in order to avoid potential penalties.

If the IRS is unable to reconcile the TIN/SSN information on Form 1095 with the information in its records, it may issue a Notice 972CG ("Notice of Proposed Civil Penalty"). If the employer receives this notice, it should compare the information on the notice with the information in its records and respond within 45 calendar days. If additional time is needed, an employer may submit a written request to the address listed on the notice before the end of the 45-day period. In the employer's response, the employer will have the opportunity to establish reasonable cause as described herein.

Summary

Although the IRS has promised a bit more leniency and relief overall for this first year of employer reporting, there is no guarantee of penalty relief for a failure to correct errors that are identified by the employer or by the IRS. Employers should carefully review the steps outlined above to ensure that they are able to demonstrate a "good faith effort" toward accurate reporting.

Informal IRS instructions in regard to handling corrections may be found:

- Via video - <http://www.irsvideos.gov/Governments/AffordableCareAct/AffordableCareActInformation>ReturnsCorrectionsProcess> ; and
- Via Powerpoint - http://origin-qps.onstreammedia.com/origin/irsvideoportal/prod/1532_1.pdf.

More detailed information in regard to missing or incorrect TINs may be found in Pub. 1586 (<https://www.irs.gov/pub/irs-pdf/p1586.pdf>) and in IRS Notice 2015-68 (<https://www.irs.gov/pub/irs-drop/n-15-68.pdf>).

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