Error Messages And The ACA: A Practical Guide To Handling Missing And Incorrect TINs

Insights
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A number of employers have reported troublesome Social Security Number (SSN) issues cropping up when filing Affordable Care Act (ACA) notices with the IRS. Many have received "AIRTN500" error messages, which indicate incorrect SSNs or Taxpayer Identification Numbers (TINs). Employers are often confused in these situations, especially if they have been submitting W-2s to the IRS and the Social Security Administration (SSA) on the employee's behalf for years without problems.

Employers who are required to file IRS Form 1095-C are subject to penalties for failure to promptly correct information on returns and for failure to furnish correct statements to individuals in a timely manner. Although the IRS has stated that the "AIRTN500" error messages are not formal notices of penalties or proposed penalties, this does not mean it cannot assess penalties – as much as $260 per incorrect or incomplete form – at a later point.

Solution Is Proper TIN Solicitation
The IRS may waive penalties against employers if they can show that the failure was due to reasonable cause and not willful neglect. In order to establish this reasonable cause defense, you should properly solicit TINs from employees.

On August 2, 2016, the IRS issued proposed rules regarding TIN solicitation with regard to ACA reporting. These proposed rules instruct employers to use the general TIN solicitation process for mismatched TINs, but also establish a new solicitation process for missing TINs.

Mismatched TINs
For mismatched TINs, the IRS instructs reporting entities to use a modified version of the general TIN solicitation procedure which was previously released in Notice 2015-68. The agency calls on employers to conduct an advance solicitation during the initial plan enrollment, or if the individual is already enrolled as of September 17, 2015, during the next open enrollment season. It then calls for a second solicitation at a "reasonable time" thereafter, and a third solicitation by December 31 of the year following the first solicitation.

Because penalties for failures to report correct information increase as time goes on, it is recommended that you conduct a second solicitation – if you plan on doing one – sooner rather than later. If a TIN is incorrect but you have engaged in the above solicitation procedure, you may be successful in having the penalties waived because you acted in a reasonable manner.

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Missing TINs

The IRS also established a transitional rule for handling employees with missing TINs that treats individuals who were enrolled in coverage prior to July 29, 2016 as if their accounts were opened (i.e., as if the individual submitted a substantially complete application for coverage) on July 29, 2016. According to the rule, the initial solicitation is recognized as long as it was requested as part of an application for coverage or at any point before July 29, 2016. A first annual solicitation should occur after a "reasonable time," which is now defined as within 75 days from July 29, 2016. A second annual solicitation should occur by December 31 of the year following the initial solicitation.

This means that if you reported no TINs for employees on ACA forms, you should make the first annual solicitation by October 12, 2016. If you do not receive a TIN after that solicitation, you have to solicit the TIN again by December 31, 2017 to show reasonable cause.

Handling False Information

During the solicitation process, some employees may provide corrected TINs or may admit that the TIN they were using was false all along. If this happens, you may file corrected Form 1095-Cs and provide the amended versions to the appropriate employees.

In these situations, it is possible that you have been using the same incorrect TINs on other filings as well. Now that you know the TIN was wrong, the question becomes what obligation, if any, you have to correct the TIN on other tax filings.

- **Form W-2:** You have a responsibility to correct erroneous information on W-2 Forms. The same penalties described above for failures to file correct information on the ACA forms also apply to W-2s. Similar to the 1095-C, these penalties can be avoided if you can show that the failure was due to reasonable cause and not willful neglect. You can then file a corrected Form W-2c, after which you should provide a copy to the employee. You may want to review Form W-3s and Form 941s and correct any errors existing there as well.

- **Form 1099:** The IRS has stated if you provided a Form 1099 to an employee, it would only need to be corrected if the monetary amounts were also incorrect. Therefore, no correction is required if only an SSN error occurred.

- There may be other tax forms that you file on behalf of employees, but if the forms do not include the employee's SSN, there is no reason to correct them upon discovery of incorrect SSNs.

You may want to review and revise your ACA reporting procedures as the IRS provides more clarification on these issues. Numerous questions remain and the rules described above have not yet been finalized, but we will keep clients updated on related developments.

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