

LEGAL UPDATES

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## Services

Employee Benefits &  
Executive  
Compensation  
Tax Controversy

## Professionals

DAVID W. ECKHARDT  
MILWAUKEE:  
414.978.5414  
DAVID.ECKHARDT@  
HUSCHBLACKWELL.COM

CRAIG A. KOVARIK  
KANSAS CITY:  
816.983.8249  
CRAIG.KOVARIK@  
HUSCHBLACKWELL.COM

# IRS ACA Penalty Letters Have Landed in Your Mailbox...Now What?

In mid-November, the Internal Revenue Service (IRS) began issuing letters to employers who may owe an employer shared responsibility penalty under the Affordable Care Act (ACA) for the 2015 coverage year. Because responses to the IRS are due within 30 days, employers who receive these letters should gather all relevant documentation and prepare to act immediately.

An assessed penalty may be incorrect for a host of reasons. For example, the employer may have offered compliant coverage but failed to report its offers of coverage correctly. Those types of errors should be correctable through the initial response to the IRS.

It is also possible that an employee who was offered coverage by the employer provided incorrect information when enrolling in health coverage through the health insurance marketplace. In such a case, the employee should not have qualified for a premium tax credit and the employer penalty should not have been triggered.

Employers may be able to utilize various safe harbor defenses, including a good faith compliance effort in certain instances. Employers should use every possible defense when challenging an assessment.

## What This Means to You

Employers will have only 30 days to respond to the IRS, and it is not clear whether the IRS will grant extensions of time to answer. Therefore, employers that receive a penalty letter should gather all relevant documentation and be prepared to take immediate action. Failure to respond within 30 days could preclude the employer from challenging the assessment.

## Contact Us

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For more information about how receipt of IRS Letter 226J may affect your organization, contact David W. Eckhardt, Craig A. Kovarik or another member of Husch Blackwell's Employee Benefits & Executive Compensation or Tax Controversy teams.