

MSP
#20**AFFORDABLE CARE ACT (ACA): The IRS Has Made Progress in Implementing the Individual and Employer Provisions of the ACA But Challenges Remain****RESPONSIBLE OFFICIALS**

Carolyn A. Tavenner, Director, Affordable Care Act Office
 Mary Beth Murphy, Commissioner, Small Business/Self-Employed Division
 Debra Holland, Commissioner, Wage and Investment Division

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Finality*

DEFINITION OF PROBLEM

The IRS is charged with implementing certain provisions of the Patient Protection and Affordable Care Act of 2009 (ACA).² In addition to the existing provisions impacting individuals, some provisions of the ACA impacting employers became effective in tax year (TY) 2015.

In order to ensure that taxpayer rights are protected, TAS has been actively involved with the implementation of the ACA provisions. Some of the issues we reviewed include:

- In 2016, the IRS performed a systemic Individual Shared Responsibility Payment (ISRP) “recovery” to abate certain clearly identifiable ISRP overpayments;
- Premium Tax Credit (PTC) cases rose to become the fourth highest category of TAS case receipts during fiscal year (FY) 2016;³
- Advance Premium Tax Credit (APTC) recipients who incorrectly filed Form 1040-EZ, *Income Tax Return for Single and Joint Filers With No Dependent*, experienced delays in processing their returns;
- The IRS has developed procedures to address “silent returns” (*i.e.*, returns that do not have the minimum essential coverage (MEC) checkbox marked; Form 8965, *Health Coverage Exemptions*; or an amount for the ISRP);

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 Patient Protection and Affordable Care Act of 2009 (ACA), Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act (HCERA) of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

3 TAS Case Advocacy, *Figure 4.1.4, Top 10 Issues for Cases Received in TAS, FYs 2015-2016, infra*.

- Current ISRP exemption procedures impose an unnecessary burden on taxpayers requesting religious exemptions;
- APTC recipients who receive large lump sum payments of Social Security Disability Insurance (SSDI) may be caught off guard by having to repay APTC amounts, as well as penalties and interest;
- Whether employees in the newly-established ACA Business Exam unit would receive specialized training on the parts of ACA implementation that impact businesses, including training on concepts such as applicable large employer (ALE), MEC, and employer shared responsibility payment (ESRP); and
- Whether the IRS would be prepared to handle the additional volume of information-reporting data expected as a result of the ACA provisions impacting businesses becoming effective for the 2017 filing season.

ANALYSIS OF PROBLEM

Background: Filing Season (FS) 2016 Overall Results

The 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 for small businesses, while imposing a personal responsibility on individuals to have health coverage.⁴ During the 2016 filing season, eligible individual taxpayers claimed the PTC on TY 2015 returns. The following figure provides preliminary data through August 25, 2016 regarding the extent to which individual taxpayers claimed the PTC on their TY 2015 returns.

FIGURE 1.20.1, Reporting of the Premium Tax Credit on Forms 8962 for TY 2015 Returns Through August 25, 2016⁵

Returns Filed with Forms 8962, Premium Tax Credit (PTC)	5.7 million
Total PTC Amount Claimed	\$17.1 billion
Average PTC Amount Claimed Per Return	\$2,999
Returns Reporting Advanced PTC	5.3 million (94% of returns with Form 8962)
Total Advanced PTC Reported	\$18.9 billion
Prepared Returns Filed With Forms 8962 (Paid or Volunteer)	3.6 million (62% of returns with Form 8962)

4 ACA, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by HCERA, Pub. L. No. 111-152, 124 Stat. 1029 (2010); Senate Finance Committee, *Description of Policy Options: Expanding Health Care Coverage: Proposals to Provide Affordable Coverage to All Americans* (May 14, 2009).

5 IRS response to TAS information request (Nov. 4, 2016). This data is based on returns that had posted as of the end of August 2016, and is preliminary and subject to change as the IRS reviews the data, processes additional tax year (TY) 2015 returns, and conducts compliance activities.

Individual taxpayers who did not have MEC or qualify for an exemption were required to make an ISRP on their TY 2015 returns. The following figure provides preliminary data through August 25, 2016 on the reporting of ISRPs on TY 2015 returns.

FIGURE 1.20.2, Reporting of Individual Shared Responsibility Payments (ISRP) on TY 2015 Returns Through August 25, 2016⁶

Returns With ISRP	6.1 million
Average ISRP	\$452
Prepared Returns Reporting ISRP (Paid or Volunteer)	3.9 million (64%)
Returns Filed With Forms 8965, Health Coverage Exemptions	12.2 million
Returns Filed With Forms 8965 Claiming Household Coverage Exemption (Form 8965 Part II)	3.6 million
Returns Filed With Forms 8965 Claiming Coverage Exemption (Part III)	8.6 million
Prepared Returns Filed With Forms 8965	6.6 million (54%)

The IRS Systemically Addressed Tax Year 2014 Individual Shared Responsibility Payment (ISRP) Overpayments

In the 2015 Annual Report to Congress, the National Taxpayer Advocate raised concerns about the significant number of taxpayers who overstated the ISRP on TY 2014 returns.⁷ Between mid-November 2015 and early January 2016, the IRS issued Letters 5600-C, *Overstated SRP Letter*, to almost 319,000 taxpayers informing them of the potential overpayment and instructing them to file an amended return and attach Form 8965, *Health Coverage Exemptions*, if applicable.⁸

The IRS subsequently performed a systemic ISRP “recovery” to abate the ISRP on approximately 151,000 returns for the following taxpayers who did not appear to owe the ISRP for TY 2014:⁹

- Taxpayers who did not claim their personal exemption; and
- Taxpayers with gross income below the filing threshold.

We will continue to work with the IRS to determine whether this recovery resolved most of the TY 2014 overpayments. The IRS has stated that it currently has no plans to address TY 2015 ISRP overstatements

⁶ IRS response to TAS information request (Nov. 4, 2016). This data is based on returns that had posted as of the end of August 2016, and is preliminary and subject to change as the IRS reviews the data, processes additional TY 2015 returns, and conducts compliance activities.

⁷ National Taxpayer Advocate 2015 Annual Report to Congress 167-79. For TY 2014, over 400,000 taxpayers overstated their ISRP, totaling over \$50 million. The average Individual Shared Responsibility Payment (ISRP) overstatement was approximately \$123 per return (this average only includes returns with an ISRP overstatement). IRS Wage and Investment Research and Analysis (currently Wage and Investment Strategies and Solutions) analysis on ISRP overstatements, through cycle 34 (Aug. 27, 2015), on file with TAS Research. The IRS cannot calculate the exact amount of ISRP overpayments until all dependents have filed their TY 2014 tax returns (the amount of the ISRP depends on household income (HHI) pursuant to IRC § 5000A(c)).

⁸ IRS response to TAS information request 6 (Nov. 4, 2016).

⁹ IRS response to TAS fact check (Dec. 19, 2016); IRS response to TAS information request 6 (Nov. 4, 2016); IRS, Servicewide Electronic Research Program (SERP) Alert 16A0229, SRP Adjustments – Work Stoppage Effective Immediately (Aug. 5, 2016, rev. Aug. 19, 2016).

due to the small volume. It attributes this significant reduction to outreach conducted to tax practitioners and software providers.¹⁰ We encourage the IRS to continue performing this outreach for future tax years.

Taxpayers Are Seeking TAS Assistance for Premium Tax Credit (PTC) Issues

Taxpayers claiming the APTC are required to file Form 8962, *Premium Tax Credit (PTC)*, to reconcile the APTC received during the year with the PTC the taxpayer is actually entitled to receive. Taxpayers use Form 1095-A, *Health Insurance Marketplace Statement*, to prepare Form 8962. When the taxpayer files the return, the IRS ACA Verification System (AVS) checks the Marketplace Exchange Periodic Data (EPD)¹¹ on all individual tax returns to verify if the taxpayer received the APTC and reconciled the APTC on Form 8962.¹² If AVS indicates that the taxpayer received APTC but the taxpayer does not reconcile APTC on Form 8962, the IRS will correspond with the taxpayer by issuing Letter 12C, *Individual Return Incomplete for Processing: Forms 1040, 1040A, & 1040EZ*, and hold the return in an Error Resolution/Rejected Returns unit pending a response.¹³

PTC cases quickly became the fourth highest category of TAS case receipts during FY 2016.¹⁴ In FY 2016, TAS received 10,910 cases with PTC issues. In comparison, TAS received 3,318 PTC cases in FY 2015 — an approximately 229 percent increase over a one-year period.¹⁵ To better understand the cause of the increase, TAS's ACA Rapid Response Team analyzed a random sample of cases. A primary issue leading to the increase in PTC case receipts was that returns were held in the Wage and Investment (W&I) Error Resolution System (ERS) to process taxpayers' response to the IRS Letter 12C. The Letter 12C requested information necessary to process returns with a discrepancy or a missing Form 8962. Specifically, the analysis found the following:¹⁶

- 90 percent involved the IRS ERS/Reject unit;
- 87 percent did not reconcile the APTC. Of these cases, three percent involved APTC paid on a policy under another individual's name (not the taxpayer or spouse);
- 83 percent involved an unfiled Form 8962;
- 20 percent involved math error, Automated Questionable Credit, or an Examination issue; and

10 IRS response to TAS information request 7 (Nov. 4, 2016). As of Cycle 26, the first cycle of July 2016, the number of tax returns received with an over-assessed individual SRPs related to dependents and income below the filing threshold was approximately 6,000 in TY 2015.

11 The IRS receives Exchange Periodic Data (EPD) from the exchanges, stores the EPD in the Coverage Data Repository (CDR), and uses the EPD to verify the accuracy of the maintained data to verify Premium Tax Credit (PTC) claimed by taxpayers. Submission Processing uses the IRS ACA Verification System (AVS) to identify mismatches between taxpayer and third party data. Internal Revenue Manual (IRM) 21.6.3.4.2.13.3, *At-Filing Overview* (Oct. 1, 2015). For a detailed description of the EPD and CDR, see Treasury Inspector General for Tax Administration, *Affordable Care Act – Coverage Data Repository: Risks With Systems Development and Deployment*, Ref. No. 2015-23-041 (June 2, 2015).

12 IRM 3.14.1.6.9.13(2) (Jan. 1, 2016); IRM 21.6.3.4.2.16.3 (Oct. 1, 2015).

13 IRS response to TAS fact check (Dec. 19, 2016).

14 TAS Case Advocacy, *Figure 4.1.4, Top 10 Issues for Cases Received in TAS, FYs 2015-2016, infra.*

15 *Id.*; Business Performance Management System (BPMS), Receipts - Core Issues by Business Operating Division (BOD) & Criteria – Cumulative, FY 2016: 1-October through 12-September (10/01/2016); Business Performance Management System (BPMS), Receipts – Core Issues by BOD & Criteria – Cumulative, FY 2015: 1-October through 12-September (10/01/2015).

16 Unless otherwise indicated, the data in this discussion are drawn from a random sample of 400 cases with a PTC primary or secondary issue code from a population of 8,009 cases TAS received between October 2015 and April 2016. TAS reviewers used an electronic data collection instrument (DCI) to record data from case history reviews from the Taxpayer Advocate Management Information System (TAMIS). Thirty-four cases were excluded from the results because three taxpayers withdrew their cases from TAS and 31 cases were miscoded with a PTC issue code. Cases contained multiple issues so the percentages will not total to a 100 percent. The results are statistically valid at the 95 percent confidence level with a margin of error no greater than +/- 5 percent. Business Objects TAMIS report (April 2016).

- 12 percent involved Marketplace-related issues, such as bad data transmitted to the IRS, missing Forms 1095-A, *Health Insurance Marketplace Statement*, or Form 1095-A errors.

These numbers are not surprising given the considerable PTC compliance activities conducted by the IRS. Between January and August 2016, the IRS received approximately 1.7 million returns on which the taxpayers did not reconcile APTC received by reporting it on Form 8962. In response, the IRS issued Letters 12C to this group of taxpayers. About 50 percent of these taxpayers responded to the IRS with information needed to reconcile the APTC. In addition to the other compliance treatments discussed herein (including the issuance of Letters 12C and holding returns in ERS), the following chart sets forth the W&I audit numbers for PTC returns for FS 2016 through August 2016:¹⁷

FIGURE 1.20.3, Premium Tax Credit Compliance Issues

New Start PTC Exams TY 2014 (W&I)	23,354
New Start PTC Exams TY 2015 (W&I)	25,418
PTC Exam Closures TY 2014 (W&I)	20,410
PTC Exam Closures TY 2015 (W&I)	1,967

The IRS receives monthly information from the Marketplace, which may include corrections, so in some cases, the taxpayer's information may have been updated since the IRS sent Letter 12C.¹⁸ Some cases may simply require a subsequent review of the Coverage Data Repository (CDR) for updated information. If a subsequent review of the CDR shows an update since the issuance of Letter 12C and confirms that the information reported on the return is correct, the IRS should continue processing the return. If a review of the CDR does not show any updates and does not confirm the information reported on the tax return, the taxpayer must contact the Marketplace for a corrected Form 1095-A. Taxpayers impacted by this issue have sought assistance from TAS but the IRS should build in procedures to perform subsequent reviews of these cases to avoid unnecessary delays and reduce burden on taxpayers.

TAS has recommended the IRS reject electronic filed returns when the taxpayer received APTC but did not reconcile. This approach would allow taxpayers to reconcile their returns immediately and re-file electronically, thereby minimizing return processing delays.

Delays Involved in Processing Returns for Advanced Premium Tax Credit (APTC) Recipients Who Incorrectly Filed Form 1040EZ

During FS 2016 through August, the IRS received almost 223,000 Forms 1040EZ, *Income Tax Return for Single and Joint Filers with No Dependents*, from APTC recipients.¹⁹ When APTC recipients incorrectly file Form 1040EZ, they do not file the required Form 8962 to reconcile the APTC amounts received. As

17 Information received from the ACA Office (Dec. 27, 2016). IRS response to TAS information request 2-5 (Nov. 4, 2016). The data includes W&I exam starts and closures through August 2016. It does not include Small Business/Self Employed Division (SB/SE) exam starts and closures.

18 IRS response to TAS fact check (Dec. 19, 2016); SERP, *Responding to PTC Letters, 12C* – Paragraph 5, Note (last update Mar. 25, 2016). The IRS has posted information on its website for taxpayers who receive Letters 12C. See IRS, *Understanding Your Letter 0012C*, <https://www.irs.gov/individuals/understanding-your-letter-0012c> (last visited June 3, 2016). In addition, the IRS has posted information to assist impacted taxpayers who received corrected or voided Form 1095-A. See IRS, *Corrected or Voided Form 1095-A*, <https://www.irs.gov/Affordable-Care-Act/Individuals-and-Families/Corrected-or-Voided-Form-1095A> (last visited June 3, 2016).

19 IRS response to TAS information request (Nov. 4, 2016) (the IRS was unable to provide data on the number of days to resolve these conversion issues).

a result, when they file Form 1040EZ, taxpayers experience an additional delay in getting their return processed. After the taxpayers provide the IRS with Form 8962 and other documents for reconciliation, the IRS must convert the Form 1040EZ to a Form 1040, and the additional time needed for the conversion process resulted in processing delays.²⁰

IRS Future Actions on “Silent Returns”

The IRS plans to reject electronically filed “silent returns” beginning in FS 2017.²¹ Silent returns are ones for which the taxpayer did not: 1) check the box on the return to indicate the tax family had full-year health care coverage, 2) complete and attach Form 8965, *Health Coverage Exemptions*, to show tax family members had exemptions from health coverage requirements, or 3) self-assess an ISRP on the return. Silent returns filed by paper will go to the Error Resolution/Rejected Returns unit as the IRS issues Letter 12C, informing the taxpayer of the issue.²² If the taxpayer does not respond to the Letter 12C, the IRS will issue a notice to inform the taxpayer that the IRS estimated an ISRP and made an adjustment accordingly. If the taxpayer’s original return claimed a refund, the IRS will offset the refund with the ISRP balance.²³

If the taxpayer responds to the Letter 12C with an ISRP amount, the IRS will issue a notice to inform the taxpayer that it changed the refund amount, or the amount owed on the tax return, based on the ISRP provided in the response. If the taxpayer responds with an ISRP amount that equals more than the maximum assessment, the IRS will issue a notice to inform the taxpayer that it reduced the ISRP down to the maximum.²⁴ Finally, if the taxpayer believes that he or she is eligible for an ISRP exemption, Letter 12C instructs the taxpayer to submit Form 8965. If the taxpayer provides Form 8965, then Submission Processing will process it.²⁵

Current Procedures Impose Unnecessary Burden on Taxpayers Requesting Religious Exemptions for the Individual Shared Responsibility Payment (ISRP)

Internal Revenue Code (IRC) § 5000A sets forth various exemptions from the ISRP, one of which is the exemption for religious conscience. Specifically, an individual can obtain an exemption for any month in which he or she is a member of a recognized sect or division that is recognized by the Social Security Administration (SSA) as conscientiously opposed to accepting any insurance benefits, including Medicare and Social Security.²⁶ Members of these religious groups, including the Amish and Mennonites, already request an exemption from Social Security and Medicare taxes on IRS Form 4029, *Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits*. The taxpayer files the form directly with the SSA, which makes the exemption determination and then forwards the form to the IRS.²⁷

Despite the fact that the ACA defines the ISRP exemption through reference to the social security tax provision, to receive an ISRP exemption, eligible taxpayers are required by regulation to apply to the

20 Systemic Advocacy Management System (SAMS) 34625 and 34628.

21 IRS response to TAS information request (Nov. 4, 2016).

22 *Id.* IRM 3.12.3.14, *Error Code 157* (Jan. 1, 2017).

23 IRM 3.12.3.14.1.5, *No Reply Procedures* (EC 157, SRP) (Jan. 1, 2017); IRM Exhibit 3.12.3-2, *Taxpayer Notice Codes* (Jan. 1, 2017).

24 IRM 3.12.3.14.1.4, *Reply Procedures* (EC 157, SRP) (Jan. 1, 2017).

25 *Id.*

26 IRC §§ 5000A(d)(2); 1402(g)(1).

27 IRM 4.19.6.4.1, *Form 4029 – Procedures* (Dec. 14, 2015).

By streamlining Affordable Care Act exemption procedures to claim an Individual Shared Responsibility Payment exemption for these taxpayers, the IRS would save both the taxpayers and the Marketplace time and paperwork and reduce confusion.

relevant health insurance marketplace for an exemption certification number (ECN).²⁸ The taxpayer must then enter the ECN on Form 8965, *Health Coverage Exemptions*, to claim the exemption.²⁹

Through the National Taxpayer Advocate Public Forums, it has come to our attention that thousands of Amish constituents have applied for and have never received ECNs despite repeated attempts to contact the insurance Marketplace and responding to requests for missing information. Marketplace employees are unable to locate and provide correct information for the ECN application process in a timely manner. There is a five page ECN application required at the birth of an eligible individual and another four page application for a new ECN when the individual turns 21 years old. The procedure is time-consuming, confusing, and redundant given the well-established IRS Form 4029 process for the exemption from Social Security and Medicare taxes.³⁰

A less burdensome solution would be to discard the ECN application process and allow taxpayers to enter “4029 exempt” instead of an ECN on Form 8965. The IRS would be able to verify the information internally, because it already receives the Form 4029 from SSA. By streamlining the ACA exemption procedures to claim an ISRP exemption for these taxpayers, the IRS would save both the taxpayers and the marketplace time and paperwork and reduce confusion.³¹ To address this issue, the National Taxpayer Advocate has included in this report a related legislative recommendation.³²

Treasury Has Concluded There Is No Administrative Fix for Issues With Lump Sum Social Security Disability Insurance (SSDI)

When taxpayers receive lump sum Social Security Disability Insurance (SSDI) payments, the additional income may push their household income (HHI) above 400 percent of the federal poverty line for the applicable family size, which will make them ineligible for the PTC.³³ For those taxpayers who received APTC during the tax year, they will need to repay the entire amount because the repayment limitations do not apply if HHI is above the 400 percent federal poverty line threshold.³⁴ The National Taxpayer Advocate raised concerns about this issue in her 2015 Annual Report to Congress as well as her FY 2017 Objectives Report.³⁵ In addition, Senator Angus S. King (I-Maine) raised this issue in a letter to the Secretary of Treasury and Commissioner of Internal Revenue John Koskinen.³⁶

28 45 C.F.R. § 155.605.

29 IRS, *Individual Shared Responsibility Provision – Exemptions: Claiming or Reporting*, <https://www.irs.gov/affordable-care-act/individuals-and-families/aca-individual-shared-responsibility-provision-exemptions#Exemptions> and Who Grants Them (last visited Aug. 22, 2016).

30 Oral Statement of Wayne H. Wengerd, Director, Old Order Amish Steering Committee, National Taxpayer Advocate Public Forum 27-29 (Aug. 16, 2016); Luca Gattoni-Celli, *Amish Community Leader Describes IRS Challenges At TAS Forum*, TAX NOTES (Aug. 17, 2016).

31 Luca Gattoni-Celli, *Amish Community Leader Describes IRS Challenges at TAS Forum*, TAX NOTES (Aug. 17, 2016).

32 See Legislative Recommendation: *Streamline Religious Exemptions: Streamline the Religious Exemption Process for the Individual Shared Responsibility Payment (ISRP)*, *infra*.

33 IRC § 36B(c)(1)(A).

34 IRC § 36B(f)(2).

35 National Taxpayer Advocate 2015 Annual Report to Congress 167-79; National Taxpayer Advocate FY 2017 Objectives Report to Congress 141-42.

36 A copy of the letter is posted at <https://www.king.senate.gov/download/?id=E7B96C93-2D10-4B01-B8FD-31FCA4ACAA51&inline=file> (last visited Apr. 13, 2016).

TAS requested that the Office of Chief Counsel consider issuing guidance to relieve the financial burden administratively. However, subsequent to this request, the Office of Legislative Affairs in the Department of Treasury responded to the aforementioned letter from Senator King and indicated that it cannot identify an administrative basis to exclude retroactive lump sum SSDI payments from the calculation of modified adjusted gross income for purposes of the PTC and APTC. Treasury's response also indicated that it is continuing to review this issue.³⁷ Based on this response, it is unlikely that the Office of Chief Counsel will grant TAS's request for relief through administrative guidance, in which case we will consider pursuing a legislative recommendation. In the meantime, TAS Systemic Advocacy is working on a project to better educate the public on the consequences of receiving lump sum payments, including SSDI payments.

The IRS Has Yet to Fully Develop Training to Employees Responsible for Making Employer Shared Responsibility Payment (ESRP) Assessments on Applicable Large Employers (ALEs)

Certain provisions of the ACA that impact employers became effective in TY 2015. Employers and the IRS have had a few years to digest the new requirements, but 2016 was the first year some of these provisions came into play.

Applicable Large Employers (ALEs)

IRC § 4980H(a)(1) imposes an assessable payment if an ALE fails to offer its full-time employees (and dependents) an opportunity to enroll in MEC under an eligible employer-sponsored plan, and PTC was paid to at least one full-time employee. In general, an employer is considered an ALE if it employs 50 or more full-time employees, or a combination of full-time and part-time employees that equals at least 50 full-time equivalents (FTEs).³⁸

An employer calculates its full-time employees based on each employee's hours of service. For purposes of the ESRP, an employee is considered full-time for a calendar month if he or she averages at least 30 hours of service per week. Under the final regulations, for purposes of determining full-time employee status, 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week.³⁹

Employer Shared Responsibility Payment (ESRP)

IRC § 4980H provides that ALEs 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).⁴⁰ If an ALE offers MEC but it is not considered affordable, it will be assessed an ESRP of \$3,000 for each employee (determined on a monthly basis) that purchases health insurance from the exchange and is granted a tax credit and/or subsidy for health insurance.⁴¹

37 *Treasury Addresses Treatment of Retroactive SSDI Payments*, TAX NOTES TODAY (Aug. 31, 2016).

38 IRC § 4980H(c)(2).

39 Treas. Reg. § 54-4890H, 79 FR 8543 (Feb. 12, 2014), www.federalregister.gov/articles/2014/02/12/2014-03082/shared-responsibility-for-employers-regarding-health-coverage.

40 IRC § 4980H(c)(1). The ESRP provisions provide an inflation adjustment mechanism beginning in years after 2014. IRC § 4980H(c)(5).

41 IRC § 4980H(b)(1).

Minimum Essential Coverage (MEC) and Minimum Value

MEC and minimum value relate to the determination of ESRP. MEC is defined in IRC § 5000A(f) and the regulations under that section, and includes employer-provided health care coverage. IRC § 36B(c)(2)(C)(ii) provides the definition of minimum value. An employer-sponsored health plan meets this standard if it is designed to pay at least 60 percent of the total cost of medical services for a standard population.

Although the IRS developed and delivered a substantial amount of training prior to the 2016 filing season, much of that training focused on the components of the ACA that affected individual taxpayers.⁴² With certain provisions of the ACA impacting employers becoming effective for the 2015 tax year, the IRS has to ensure that its employees who work ACA-related issues are properly trained on the aspects of the ACA that impact business taxpayers.

For example, ALEs not in compliance with the provisions under IRC § 4980H may be subject to an assessable payment, referred to as the ESRP. These ESRP cases will be worked by a special group of Employment Tax Compliance Officers.⁴³ The training for this group will be delivered in January 2017.⁴⁴ The training materials are currently under development, so TAS did not have an opportunity to review them for completeness and whether they adequately protect taxpayer rights.

The Inability of the IRS to Adequately Test the Accuracy of Information Reporting Data Before the Filing Season May Cause Significant Taxpayer Burden

The IRS relies on information reports to verify data relevant to the ESRP liability and eligibility for the Small Business Health Care Tax Credit. 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 and therefore aren't liable for the individual shared responsibility payment; due to the IRS by February 28 (or March 31 if filing electronically));⁴⁵
- 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* (furnished by ALEs to any full-time employee for one or more months of the year; due to the IRS by February 28 (or March 31 if filing electronically));⁴⁶ and
- Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns* (used by ALEs to submit Form 1095-C).

42 See National Taxpayer Advocate 2014 Annual Report to Congress 71.

43 IRS response to TAS information request (Nov. 4, 2016).

44 *Id.*

45 IRS, *Instructions for Forms 1094-B and 1095-B* (2015), www.irs.gov/pub/irs-pdf/i109495b.pdf.

46 IRS, *Instructions for Forms 1094-C and 1095-C* (2015), www.irs.gov/pub/irs-pdf/i109495c.pdf.

The IRS was not equipped to test the accuracy of information reporting data before the 2016 filing season. Prior to the 2016 filing season, the IRS had estimated that it would receive and process an estimated 77 million new Forms 1095-C from ALEs.⁴⁷ By the end of August, the IRS had received substantially more than this estimated amount — approximately 104 million — with 5.4 percent of such Forms 1095-C being rejected.⁴⁸ Reasons for rejected returns include faulty transmission validation, missing (or multiple) attachments, error reading the file, or duplicate files.⁴⁹

The IRS had little opportunity to identify problems and even less opportunity to fix them early in the filing season to prevent potential rejected returns and delays for taxpayers. Furthermore, without legislative action from Congress, the IRS is not able to expand the taxpayer identification number (TIN) matching program to include health insurers and self-insured employers that are required to file Form 1095-B, which may lead to mismatches and unnecessary notices.⁵⁰

If the IRS receives incomplete or inaccurate data, taxpayers will be harmed.⁵¹ For example, ALEs may unnecessarily be required to substantiate coverage to employees if the data is unreliable and contains false positives. If the IRS receives inaccurate data regarding coverage, it may erroneously assess ESRPs on ALEs, which can be costly and time-consuming for both employers and the IRS to rectify.

CONCLUSION

The IRS has made significant progress on the implementation of the tax provisions of the ACA. The 2016 filing season was especially challenging for the IRS as it implemented several ACA provisions that impacted employers and processed a significant amount of new information returns from insurers and ALEs. TAS commits to continue actively working with the IRS to ensure that taxpayer rights are protected, especially as the IRS implements the remaining compliance initiatives surrounding these provisions. We are concerned that TAS PTC case receipts spiked over the past year and will evaluate administrative and legislative fixes to resolve the underlying issues in an effort to reduce taxpayer burden.

TAS will continue to address ACA-related issues as they arise and identify systemic problems. TAS will assign ACA Rapid Response Team members to immediately address any potential ACA systemic issues that arise. In addition, we encourage both internal and external stakeholders to report any suspected ACA systemic issues on TAS's Systemic Advocacy Management System.⁵²

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

48 IRS response to TAS information request (Nov. 4, 2016). After the initial rejection, the transmitter could have resubmitted the Form 1095-C and gotten through.

49 *Id.*

50 See National Taxpayer Advocate 2015 Annual Report to Congress 167-79 (Most Serious Problem: *The IRS Is Compromising Taxpayers Rights As It Continues to Administer the Premium Tax Credit and Individual Shared Responsibility Payment Provisions*); National Taxpayer Advocate 2015 Annual Report to Congress 383-88 (Legislative Recommendation: *Affordable Care Act Information Reporting: Allow Taxpayer Identification Number Matching for Filers of Information Returns Under IRC §§ 6055 and 6056*).

51 See National Taxpayer Advocate 2015 Annual Report to Congress 329-339 (Legislative Recommendation: *Math Error Authority: Limit the IRS's Summary Assessment Authority*); National Taxpayer Advocate 2014 Annual Report to Congress 75-76 (discussing TIN matching for Form 1095-B; the IRS will use Form 1095-B to verify compliance with IRC § 5000A).

52 Stakeholders can report suspected systemic issues at www.irs.gov/sams.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Apply the ISRP overpayment recovery procedures used for TY 2014 to TY 2015 ISRP overpayments and to overpayments made in future tax years.
2. Take preventive measures to avoid ISRP overpayments in the future, such as distributing educational notices to preparers associated with overpayments and conducting a comprehensive review and testing of private-sector tax filing software to ensure that the overpayment problems do not recur.
3. Reject electronic filed returns when the taxpayer received APTC and did not reconcile on Form 8962, *Premium Tax Credit (PTC)*, as the IRS plans to do for silent returns that do not include Form 8965, *Health Coverage Exemptions*.
4. Develop procedures to perform reviews of cases for which the IRS issued Letter 12C to determine if the CDR has been updated with new Marketplace data.
5. Ensure instructions to the Form 1040 series returns and the Form 8962 clearly state that the taxpayer cannot file Form 1040EZ if the APTC was paid on the taxpayer's behalf.
6. Conduct outreach and education on the consequences of receiving large lump sum SSDI distributions to APTC recipients and the Social Security Administration.