Employers Must Remain Vigilant in Addressing IRS Letters 226J for Employer Shared Responsibility Payments

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As we've previously discussed, the IRS started issuing Letters 226J in late 2017. It continues to send these letters to employers each year proposing that the employer owes an Employer Shared Responsibility Payment (ESRP) for certain full-time employees based on the IRS's understanding that "full-time employees" obtained premium tax credits to purchase individual health insurance on a health insurance exchange, and the employer's health insurance was either unaffordable, did not provide minimum value, or not offered to enough full-time employees.

The Letter 226J is the first letter sent by the IRS notifying the employer that it may be subject to an ESRP. These proposed assessments often are met with surprise, given that they tend to be very significant amounts. However, the assessments often result from misunderstandings or failures to properly complete Forms 1094-C and 1095-C, thus employers oftentimes avoid the proposed assessment entirely, or at least in part, early in the process with relatively little cost.

But these misunderstandings and errors can only be corrected if the letters are properly addressed and responses to the IRS are made timely. Responses to the letters are due within 30 days, so it is key that these letters receive immediate attention to ensure that records can be gathered and appropriate responses generated. Doing so puts employers in the best position to avoid the assessment before it gets to a point that requires a formal appeal or the matter is sent to the IRS' collections department. Once the assessment gets to those latter stages, getting the assessment revised or extinguished becomes much more difficult, costly and time consuming.