

EXTENSION OF DUE DATE FOR FURNISHING STATEMENTS AND OF GOOD-FAITH TRANSITION RELIEF UNDER I.R.C. SECTIONS 6721 AND 6722 FOR REPORTING REQUIRED BY I.R.C. SECTIONS 6055 AND 6056 FOR 2016

Notice 2016-70

PURPOSE

This notice extends the due date for certain 2016 information-reporting requirements for insurers, self-insuring employers, and certain other providers of minimum essential coverage under section 6055 of the Internal Revenue Code (Code) and for applicable large employers under section 6056 of the Code. Specifically, this notice extends the due date for furnishing to individuals the 2016 Form 1095-B, *Health Coverage*, and the 2016 Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, from January 31, 2017, to March 2, 2017. This notice also extends good-faith transition relief from section 6721 and 6722 penalties to the 2016 information-reporting requirements under sections 6055 and 6056.

BACKGROUND

Sections 6055 and 6056 were added to the Code by sections 1502 and 1514 of the Patient Protection and Affordable Care Act (ACA), enacted March 23, 2010, Pub. L. No. 111-148, 124 Stat. 119, 250, 256. Section 6055 requires health insurance issuers,

self-insuring employers, government agencies, and other providers of minimum essential coverage to file and furnish annual information returns and statements regarding coverage provided. Section 6056 requires applicable large employers (generally those with 50 or more full-time employees, including full-time equivalent employees, in the previous year) to file and furnish annual information returns and statements relating to the health insurance, if any, that the employer offers to its full-time employees. Section 6056 was amended by sections 10106(g) and 10108(j) of the ACA and was further amended by section 1858(b)(5) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10, 125 Stat. 38, 169. Section 36B, which was added to the Code by section 1401 of the ACA, provides a premium tax credit for eligible individuals who enroll in coverage through a Health Insurance Marketplace. Section 5000A, which was added to the Code by section 1501(b) of the ACA, generally provides that individuals must have minimum essential coverage, qualify for an exemption from the minimum essential coverage requirement, or make an individual shared responsibility payment when they file their federal income tax return.

Section 6721 of the Code imposes a penalty for failing to timely file an information return or for filing an incorrect or incomplete information return. Section 6722 of the Code imposes a penalty for failing to timely furnish an information statement or for furnishing an incorrect or incomplete information statement. Section 6721 and 6722 penalties are imposed with regard to information returns and

statements listed in section 6724(d) of the Code, which includes those required by sections 6055 and 6056.

Final regulations, published on March 10, 2014, relating to the reporting requirements under sections 6055 and 6056, specify the deadlines for information reporting required by those sections. See Information Reporting of Minimum Essential Coverage, T.D. 9660, 2014-13 I.R.B. 842; Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans, T.D. 9661, 2014-13 I.R.B. 855. The regulations under section 6055 provide that every person that provides minimum essential coverage to an individual during a calendar year must file with the Internal Revenue Service (Service) an information return and a transmittal on or before the following February 28 (March 31 if filed electronically) and must furnish to the responsible individual identified on the return a written statement on or before January 31 following the calendar year to which the statement relates. The Service has designated Form 1094-B, *Transmittal of Health Coverage Information Returns*, and Form 1095-B to meet the requirements of the section 6055 regulations.

The regulations under section 6056 require every applicable large employer or a member of an aggregated group that is determined to be an applicable large employer (ALE member) to file with the Service an information return and a transmittal on or before February 28 (March 31 if filed electronically) of the year following the calendar year to which it relates and to furnish to full-time employees a written statement on or before January 31 following the calendar year to which the statement relates. The

Service has designated Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*, and Form 1095-C to meet the requirements of the section 6056 regulations.

The regulations under sections 6055 and 6056 allow the Service to grant extensions of time of up to 30 days to furnish Forms 1095-B and 1095-C for good cause shown. Treas. Reg. §§ 1.6055-1(g)(4)(i)(B)(1), 301.6056-1(g)(1)(ii)(A). In addition, filers of Forms 1094-B, 1095-B, 1094-C, and 1095-C may receive an automatic 30-day extension of time to file such forms with the Service by submitting Form 8809, *Application for Extension of Time To File Information Returns*, on or before the due date for filing those forms. Treas. Reg. § 1.6081-1; Temp. Treas. Reg. § 1.6081-8T. Under certain hardship conditions, filers who submit Form 8809 before the automatic 30-day extension period expires and explain in detail why the additional time is needed may also receive an additional 30-day extension of time to file Forms 1094-B, 1095-B, 1094-C, and 1095-C with the Service. Id.

The preambles to the section 6055 and 6056 regulations (T.D. 9660, 2014-13 I.R.B. 842; T.D. 9661, 2014-13 I.R.B. 855) provided that, for reporting of 2015 offers and coverage, the Service would not impose penalties under sections 6721 and 6722 on reporting entities that can show that they made good-faith efforts to comply with the information-reporting requirements. This relief applied only to furnishing and filing incorrect or incomplete information reported on a statement or return, and not to a failure to timely furnish or file a statement or return. Notice 2015-87, 2015-52 I.R.B.

889, reiterated that relief, and Notice 2015-68, 2015-41 I.R.B. 547, provided additional information about that relief with regard to reporting under section 6055. The preambles also noted the general rule that, under section 6724 and the related regulations, the section 6721 and 6722 penalties may be waived if a failure to timely furnish or file a statement or return is due to reasonable cause. This requires the reporting entity to demonstrate that it acted in a responsible manner, and that the failure was due to significant mitigating factors or events beyond the reporting entity's control. In addition, proposed regulations under section 6055 published on August 2, 2016 proposed additional rules for reporting. 81 Fed. Reg. 50671.

Notice 2016-4, 2016-3 I.R.B. 279, extended the due dates for the 2015 information-reporting requirements under sections 6055 and 6056 (both those for furnishing to individuals and for filing with the Service). In particular, the notice provided that the furnishing deadline for the 2015 Forms 1095-B and 1095-C was extended from February 1, 2016, to March 31, 2016, and that the filing deadline for the 2015 Forms 1094-B, 1095-B, 1094-C, and 1095-C was extended from February 29, 2016, to May 31, 2016, if not filing electronically, and from March 31, 2016, to June 30, 2016, if filing electronically. In addition, the notice provided that the provisions regarding automatic and permissive 30-day extensions of time for filing information returns and permissive extensions of time (of up to 30 days) for furnishing statements would not apply to the extended due dates.

TRANSITION RELIEF

A. Extension of Due Date for Furnishing to Individuals under Sections 6055 and 6056 for 2016

Following consultation with stakeholders, the Department of the Treasury (Treasury) and the Service have determined that a substantial number of employers, insurers, and other providers of minimum essential coverage need additional time beyond the January 31, 2017, due date to gather and analyze the information and prepare the 2016 Forms 1095-B and 1095-C to be furnished to individuals. Accordingly, this notice extends by 30 days the due date for furnishing the 2016 Form 1095-B and the 2016 Form 1095-C, from January 31, 2017, to March 2, 2017. In view of this automatic extension, the provisions under Treas. Reg. §§ 1.6055-1(g)(4)(i)(B)(1) and 301.6056-1(g)(1)(ii)(A) allowing the Service to grant extensions of time of up to 30 days to furnish Forms 1095-B and 1095-C will not apply to the extended due date. Notwithstanding the extensions provided in this notice, employers and other coverage providers are encouraged to furnish 2016 statements as soon as they are able.

Treasury and the Service have determined that there is no similar need for additional time for employers, insurers, and other providers of minimum essential coverage to file with the Service the 2016 Forms 1094-B, 1095-B, 1094-C, and 1095-C. Therefore, this notice does not extend the due date for filing with the Service the 2016 Forms 1094-B, 1095-B, 1094-C, or 1095-C, which remains February 28, 2017, if not filing electronically, or March 31, 2017, if filing electronically. However, this notice does not affect the provisions regarding automatic extensions of time for filing information

returns, which remain available under the normal rules by submitting a Form 8809.

See Treas. Reg. § 1.6081-1; Temp. Treas. Reg. § 1.6081-8T. It also does not affect the provisions regarding additional extensions of time to file. Id.

Employers or other coverage providers that do not comply with the due dates for furnishing Forms 1095-B and 1095-C (as extended under the rules described above) or for filing Forms 1094-B, 1095-B, 1094-C, or 1095-C are subject to penalties under section 6722 or 6721 for failure to timely furnish and file, respectively. However, employers and other coverage providers that do not meet the relevant due dates should still furnish and file. The Service will take such furnishing and filing into consideration when determining whether to abate penalties for reasonable cause.

The extension of the due date provided by this notice applies only to section 6055 and 6056 information statements for calendar year 2016 furnished in 2017 and does not require the submission of any request or other documentation to the Service. Because the 30-day extension of the due date to furnish granted in this notice applies automatically and is as generous as the permissive 30-day extensions of time to furnish 2016 information statements under sections 6055 and 6056 that have already been requested by some reporting entities in submissions to the Service, the Service will not formally respond to such requests.

Because of the extension granted under this notice, some individual taxpayers may not receive a Form 1095-B or Form 1095-C by the time they are ready to file their 2016 tax return. Taxpayers may rely on other information received from their employer

or other coverage provider for purposes of filing their returns, including determining eligibility for the premium tax credit under section 36B and confirming that they had minimum essential coverage for purposes of sections 36B and 5000A. Taxpayers do not need to wait to receive Forms 1095-B and 1095-C before filing their returns.

Individuals need not send the information relied upon to the Service when filing their returns but should keep it with their tax records.

B. Extension of Good Faith Transition Relief from Section 6721 and 6722 Penalties for 2016

In implementing new information-reporting requirements, short-term relief from penalties frequently is provided. This relief recognizes the challenges involved in developing new procedures and systems to accurately collect and report information in compliance with new reporting requirements. The preambles to the section 6055 and 6056 regulations provided transition relief from penalties under sections 6721 and 6722 to reporting entities that can show that they made good-faith efforts to comply with the information-reporting requirements for 2015. This relief applied only to incorrect and incomplete information reported on the statement or return and not to a failure to timely furnish or file a statement or return. Following consultation with stakeholders, Treasury and the Service have determined that this relief is appropriate for the information-reporting requirements under sections 6055 and 6056 for 2016 also.

Specifically, this notice extends transition relief from penalties under sections 6721 and 6722 to reporting entities that can show that they have made good-faith efforts to comply with the information-reporting requirements under sections 6055

and 6056 for 2016 (both for furnishing to individuals and for filing with the Service) for incorrect or incomplete information reported on the return or statement. This relief applies to missing and inaccurate taxpayer identification numbers and dates of birth, as well as other information required on the return or statement. No relief is provided in the case of reporting entities that do not make a good-faith effort to comply with the regulations or that fail to file an information return or furnish a statement by the due dates (as extended under the rules described above). In determining good faith, the Service will take into account whether an employer or other coverage provider made reasonable efforts to prepare for reporting the required information to the Service and furnishing it to employees and covered individuals, such as gathering and transmitting the necessary data to an agent to prepare the data for submission to the Service, or testing its ability to transmit information to the Service. In addition, the Service will take into account the extent to which the employer or other coverage provider is taking steps to ensure that it will be able to comply with the reporting requirements for 2017.

C. Future Years

The extension of time for furnishing information statements under sections 6055 and 6056 for 2016 provided in this notice has no effect on these information-reporting provisions for other years or on the effective date or application of other ACA provisions. Treasury and the Service do not anticipate extending this transition relief – either with respect to the due dates or with respect to good faith relief from section 6721 and 6722 penalties – to reporting for 2017.

DRAFTING INFORMATION

The principal author of this notice is Hilary March of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice contact Hilary March at (202) 317-6845 (not a toll-free call).