

Employee Benefit Plan Update – IRS Formal Guidance Delaying Implementation of the PPACA Mandate Tax

Following up on a recent announcement, on July 9, 2013 the IRS issued Notice 2013-45 to establish a one-year delay in the implementation of the employer mandate tax and related reporting requirements adopted under the Patient Protection and Affordable Care Act (PPACA).

Background

The employer mandate tax is located in Section 4980H of the Internal Revenue Code (IRC). The mandate tax operates on a calendar year basis and was scheduled to become effective January 1, 2014.

IRC Section 4980H applies to employers with 50 or more full-time employee equivalents. Proposed regulations under IRC Section 4980H establish very complex rules for determining which employees of an employer are full-time employees.

The mandate tax has two basic tiers. The first tier will apply if the employer does not offer a medical plan with “minimum essential coverage” to 95% or more of its full-time employees and their dependents. If so, the tax is \$166.67 per month for each full-time employee (\$2,000.00 per year). The second tier of the tax can apply with respect to a full-time employee who is not offered “affordable coverage” under an employer medical plan, if that employee elects to buy coverage through an Exchange. If applicable, that tax is \$250.00 per month (\$3,000.00 annually).

To implement the provisions of the mandate tax, IRC Sections 6055 and 6056 establish extensive reporting requirements for employers. Essentially, employers have to report to the IRS monthly healthcare coverage information for each full-time employee. Reporting to the employee is also required. Reporting for the 2014 calendar year would be required in January of 2015. Thereafter, the IRS would notify employers if taxes were due for the 2014 calendar year.

Notice 2013-45

Under Notice 2013-45, employers are not required to comply with the annual reporting requirements for the 2014 calendar year. The IRS expects to issue information reporting rules this summer, and voluntary compliance for 2014 is encouraged. Full compliance will be required for the 2015 calendar year.

Because of the delay in the reporting requirements, Notice 2013-45 states that, with respect to the 2014 calendar year, no taxes will be assessed under IRC Section 4980H. This delay in the application of IRC Section 4980H does not distinguish between the type of tax under IRC Section 4980H. It therefore appears that the one year delay applies to both tiers of the IRC Section 4980H mandate tax.

No Other Delays in PPACA Compliance Effective Dates

Notice 2013-45 does not delay the effective date of any other provisions of the PPACA. Thus, for example, individuals buying coverage through an Exchange may still qualify for premium credits or

cost sharing reductions, and employers are still required to provide notices of the Exchanges to employees later this year.

For more information, please consult a Squire Sanders lawyer listed in this publication.

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