

SIIA Supports Waiver of ACA Employer Mandate Penalties



With overtones of “The Grinch Who Stole Christmas,” the Internal Revenue Service (IRS) began late last November to send notices of penalties using IRS Letter 2261 to employers as it sought to enforce the Employer Mandate provision of the Affordable Care Act (ACA).

“It was a really awful Christmas card to get,” said a SIIA member, an executive of a benefits management company who requested anonymity. The member noted that its client companies received notices of proposed penalties for 2015 ranging from \$800,000 to \$6 million just at the start of the holiday season.

“The IRS’ sudden enforcement late last year, going back to 2015, came as a surprise to everyone, more so because of congressional efforts to eliminate the mandate altogether,” said Ryan Work, SIIA’s vice president of federal government relations. *“To our knowledge, the IRS had made no announcement of ramping up enforcement of this element of the ACA.”*

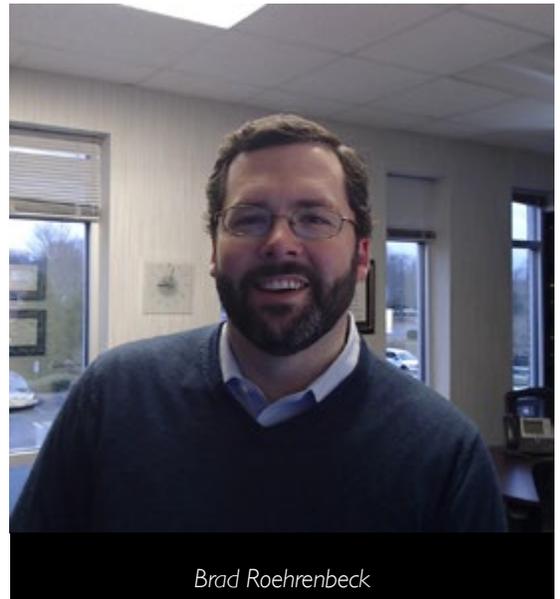
The ACA provides for penalties on employers who fail to offer to substantially all full-time employees affordable employee benefits plans that constitute minimum essential coverage and provide minimum value, roughly equivalent to a “bronze” plan. However, the penalty only applies when a full-time employee purchases an individual policy through a state or federal health insurance exchange and qualifies for the premium tax credit (PTC), even if the employee waived enrolling in the employer’s coverage. To qualify for the PTC, employees self-report certain information about their household income that was not verified with the employer at the time, which

created added confusion. “Unusual for the IRS, the penalty notice provided a means for employers to manually correct certain reported information from 2015 as well as an appeal process if employers believed they were being penalized incorrectly,” said the benefits management company executive.

Many industry stakeholders believe there is a possibility that the text of the original ACA law may in fact prohibit the IRS from assessing penalties unless the ACA exchanges notify an employer that one or more of its employees enrolled in an exchange plan and accessed a federal premium tax credit. While many state exchanges notified employers in 2015, the federally-facilitated exchange sent no such notification to employers for the 2015 period, which may provide grounds to bar the IRS from assessing penalties.

While that point of law was being considered for possible legal actions or agency appeals, Congress entered the fray with legislation proposed by Rep. Devin

Nunes (R-CA) and Rep. Mike Kelly (R-PA) that would waive employer mandate penalties retroactively for 2015-2017 and prospectively for 2018. SIIA lobbyists advocated support for the waiver bill among members of Congress. “We continue to look at legislative vehicles to include waiver language, including a potential omnibus spending bill likely under consideration sometime in January,” SIIA’s Ryan Work said. The result of that legislative effort was not known by the deadline for this issue.



Brad Roehrenbeck

“Everyone was caught off guard” by the IRS action, according to Brad Roehrenbeck, general counsel and vice president of legal services and compliance for MEDCOST, a TPA in Winston-Salem, North Carolina, serving clients in the Carolinas and Virginia. *“There was general confusion and concern among many employers who thought they were doing all they could to comply with the employer mandate,”* he said.



“The IRS reporting forms are very complicated,” Roehrenbeck said. *“Especially for small and medium-sized employers they’re a real struggle.”* He

cited one employer’s data entry issue where examining one reporting column out of context can make it appear that an employer had not offered a health plan to employees, when in actuality it had.

For that employer, the penalty would have been more than \$300,000 under the IRS formula of approximately \$2,000 per full-time employee, regardless of how many employees may have joined an ACA exchange and received a premium tax credit.

Members of the industry view the ACA’s employer mandate as an awkward attempt to incentivize employers to provide health plans but in practice may result in the opposite effect.

“There’s a case to be made that the incentive goal of the employer mandate is unnecessary,” Roehrenbeck said. “Most companies provide coverage even in the absence of a mandate. Even among industries such as hospitality, retail, temporary staffing and others where coverage offerings were historically limited, there may now be market currents that support employer health plans going forward!”

Roehrenbeck agreed that immediate Congressional action on an employer mandate penalty waiver would be a positive step for the industry, but thought longer-term legislation could be even more positive “if Congress will allow employers greater flexibility of coverage and decreased regulatory burden.”

SIIA will report on any related developments to members via digital platforms. Questions or concerns are welcomed by Ryan Work at rwork@siaa.org or (202) 595-0642. ■

