



ACA COMPLIANCE BULLETIN

IRS ISSUES LETTER 5699 TO NONCOMPLIANT EMPLOYERS

HIGHLIGHTS

- The IRS has been sending Letter 5699 to ALEs that did not file with the IRS under Section 6056 for the 2015 calendar year.
- Employers who receive Letter 5699 should respond to the IRS completely and accurately within 30 days.
- Penalties for failure to file may still apply for employers who respond to Letter 5699.

IMPORTANT DATES

May 31, 2016

ALEs were required to file paper Forms 1094-C and 1095-C with the IRS by May 31, 2016.

June 30, 2016

ALEs were required to file electronic Forms 1094-C and 1095-C with the IRS by June 30, 2016.

OVERVIEW

The Internal Revenue Service (IRS) has been sending Letter 5699 to employers that have not complied with their Affordable Care Act (ACA) reporting requirements under Internal Revenue Code Section 6056 for the 2015 calendar year.

Letter 5699, *Request for Employer Reporting of Offers of Health Insurance Coverage (Forms 1094-C and 1095-C)*, requests missing information from applicable large employers (ALEs) that were required to report under Section 6056, but failed to file Forms 1094-C and 1095-C with the IRS. The IRS identifies potentially noncompliant ALEs based on their Form W-2 total employee count reported for the 2015 calendar year.

ACTION STEPS

Employers who receive a Letter 5699 should respond to the IRS within the appropriate timeframe. When responding to Letter 5699, employers should provide all appropriate information requested by the IRS, including any Forms 1094-C and 1095-C that are due. **Keep in mind that penalties may apply for any failures to file with the IRS by required deadlines.** The IRS will use information provided in response to Letter 5699 to identify noncompliant ALEs and assess any penalties that may be owed.

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Background

Section 6056 requires ALEs to report certain information to the IRS about the health coverage they offered to their full-time employees, using Forms 1094-C and 1095-C. These reporting requirements were first effective for the 2015 calendar year, with the first forms due to the IRS in early 2016.

An ALE that fails to comply with the Section 6056 reporting requirements may be subject to penalties equal to **\$260 per violation** for failure to file correct information returns by required deadlines. Although good faith relief from penalties was available for the 2015 calendar year reporting, no relief is provided for ALEs that fail to file by the deadlines. However, penalties may be waived or reduced if the failure is due to reasonable cause and not willful neglect.

Prior to 2017, the IRS was unable to enforce these reporting requirements or assess any penalties for noncompliance. However, the IRS began issuing [Letter 226-J](#) to certain ALEs that filed Forms 1094-C and 1095-C to inform them of their potential liability for an employer shared responsibility penalty for the 2015 calendar year. Similarly, the IRS has been issuing Letter 5699 as its enforcement mechanism to identify and assess penalties against ALEs that failed to file Forms 1094-C and 1095-C for the 2015 calendar year.

Letter 5699

The IRS uses Letter 5699 to notify an employer that:

- ✓ It may have been an ALE for the 2015 calendar year; and
- ✓ It may not be in compliance with the Section 6056 reporting requirements for the 2015 calendar year because the IRS has not received Forms 1094-C and 1095-C from the employer for that year.

The IRS identifies potentially noncompliant ALEs based on their Form W-2 total employee count reported for the 2015 calendar year.

The IRS requires the ALE to select one of the following responses to Letter 5699 and return to the IRS within 30 days from the date of the letter:

- ✓ I was an ALE for calendar year 2015 and already filed Form 1094-C and Forms 1095-C with the IRS using the following name _____ and employer identification number (EIN) _____ on date _____.
- ✓ I was an ALE for calendar year 2015 and my Form 1094-C and Forms 1095-C are included with this letter. (An ALE should not select this option if it is required to file electronically.)
- ✓ I was an ALE for calendar year 2015 and will file my Form 1094-C and Forms 1095-C with the IRS using the following name _____ and EIN _____ by date _____. (If more than 90 days from the date of the letter, the ALE must provide an explanation.)

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- ✓ I was not an ALE for calendar year 2015.
- ✓ Other (The ALE must include a statement explaining why it has not filed the required returns and any actions that it plans to take.)

Penalties

ALEs that do not comply with Section 6056 may be assessed penalties, as follows:

PENALTY TYPE	PER VIOLATION	ANNUAL MAXIMUM
General	\$260	\$3,178,500
Corrected within 30 days	\$50	\$529,500
Corrected after 30 days, but before Aug. 1	\$100	\$1,589,000
Intentional disregard*	\$520	None

**For failures due to intentional disregard of the filing requirement, the penalty is equal to the greater of either the listed penalty amount or 10 percent of the aggregate amount of the items required to be reported correctly.*

Each form that was required to be filed, but that was not filed with the IRS on time, is considered a separate violation subject to a separate penalty.

Although good faith relief from penalties was available for the 2015 calendar year reporting, **no relief is provided for ALEs that do not make good faith efforts to comply with the reporting requirements or fail to file by the deadlines.** However, penalties may be waived or reduced if the failure is due to reasonable cause and not willful neglect.

Action Steps for Employers

Employers that receive Letter 5699 should respond to the IRS within the appropriate timeframe. When responding to Letter 5699, employers should **provide all appropriate information requested by the IRS, including any Forms 1094-C and 1095-C that are due.** Employers should be sure that any information or representations provided to the IRS are true and accurate.

The IRS will use information provided in response to Letter 5699 to identify noncompliant ALEs and assess any penalties that may be owed. Although penalties may still apply for employers that appropriately respond to Letter 5699, a response may reduce the penalty amount owed from \$520 per violation (for intentional disregard of the filing requirement) to the general penalty amount of \$260 per violation.