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November 11, 2013

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Internal Revenue Service
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The Honorable William J. Wilkins
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Mr. Mark Iwry
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U.S. Department of Treasury
1500 Pennsylvania Ave., NW
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RE: Comments Related to Notice of Proposed Rulemaking Issued on Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans

Dear Messrs. Werfel, Wilkins and Iwry:

The American Institute of Certified Public Accountants (AICPA) offers the following comments in response to Notice of Proposed Rulemaking [REG 136630-12] issued on information reporting by applicable large employers on health insurance coverage offered under employer-sponsored plans under the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (the ACA). These comments were developed by the Health Care Tax Task Force of the AICPA's Employee Benefits Tax Technical Resource Panel, and approved by the Tax Executive Committee.

The AICPA is the world's largest member association representing the accounting profession, with over 394,000 members in 128 countries and a 125-year heritage of servicing the public interest. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

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We applaud the efforts of the Internal Revenue Service (IRS) and the Department of the Treasury (“Treasury”) to simplify the section 6056¹ information reporting requirements. These requirements mandate that applicable large employers (ALEs) collect considerable amounts of information concerning their employees and the insurance coverage provided. The proposed regulations identify forms that ALEs may use to furnish this information to the IRS and full-time employees. In general, for purposes of the proposed regulations, a full-time employee includes any employee who was employed on average at least 30 hours per week as well as any full-time equivalent as determined in section 4980H(c)(2)(E).

Given the administrative burden the information collection process places on ALEs, we request that the final regulations limit the required information to that which is absolutely necessary to carry out the purpose of section 6056.

Background

Proposed Reg. § 301.6056-1(d)(1) provides a list of information that must be reported by employers to the IRS on Form 1095-C (an employee statement) or Form 1094-C (a transmittal form). Proposed Reg. § 301.6056-1(g)(1) provides that an ALE member must furnish a statement to each full-time employee identified on a section 6056 return containing the name, address and employer identification number of the ALE member as well as the information required to be reported to the IRS on the section 6056 return with respect to the full-time employee. The preamble to these regulations also provides a list of information that Treasury and IRS expect to request as part of the section 6056 return.

The following are our comments with respect to the information that is required to be reported, or is expected to be requested, on the section 6056 return and the statement furnished to full-time employees.

AICPA Requests Clarification on Certain Reporting Requirements

The AICPA requests that the final regulations clarify which ALE member is subject to the section 6056 reporting requirements when a full-time employee provides services to multiple ALE members.

We do not believe it is the intent of Treasury or the IRS to require each ALE member to whom the full-time employee provides services to file returns under section 6056 for the full-time employee, and furnish an information statement to the full-time employee. This requirement would place an undue administrative burden on the ALE members and result

¹ All section references in this letter are to the Internal Revenue Code of 1986, as amended, or the Treasury regulations promulgated thereunder.

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in the IRS and full-time employee receiving multiple reports containing the same information.

Currently, Prop. Reg. § 301.6056-1(d)(1) requires every ALE member to file a section 6056 information return with respect to each full-time employee who provides services to them. In addition, Prop. Reg. § 301.6056-1(g)(1) requires each ALE member who is subject to the return requirements to furnish a statement to each of its full-time employees disclosing certain information. Proposed Reg. § 301.6056-1(b)(1) provides that the term “applicable large employer” has the same meaning as in section 4980H(c)(2) and any applicable regulations. Proposed Reg. § 54.4980H-1(a)(14) provides that “all employees of a controlled group of entities under section 414(b) or (c), an affiliated service group under section 414(m) or under section 414(o) are taken into account in determining whether the members of the controlled group or affiliated service group together are an applicable large employer.” Proposed Reg. § 301.6056-1(b)(2) defines an “applicable large employer member” as “a person that, together with one or more other persons, is treated as a single employer that is an applicable large employer.”

A controlled or affiliated group that is an ALE member may have full-time employees who provide services to multiple ALE members and therefore, we request that the final regulations clarify which ALE member is subject to section 6056 reporting requirements.

AICPA Concerns with Certain Requested Reporting Information

While the AICPA commends Treasury and the IRS for developing proposed regulations providing clarification and simplification of the annual information reporting requirements for ALEs, we do have some concerns. We believe that some of the requested information is not necessary for the IRS and Treasury to carry out the purpose of section 6056, or in some cases, more flexibility should be afforded ALEs in providing the information.

I. Reporting by Employers - Employer Information

- a. Name and telephone number of the applicable large employer member’s information contact person

The AICPA believes that ALE members will benefit from flexibility concerning the selection of contact persons whose name and telephone number will be provided to full-time employees.

Section 6056(c)(1)(A) requires the statement furnished to each full-time employee to include the phone number of the information contact person for the ALE member. Proposed Reg. § 301.6056-1(d)(ii) requires the section

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6056 return to also include the name and telephone number of the ALE member's contact person.

We believe that providing employees with the contact person's name and telephone number on an information statement that they have not received in the past will result in a substantial number of telephone calls to the contact person. Therefore, we suggest that the final regulations allow ALE members to have separate contacts for each division or group of employees within the ALE member and that they be allowed to report the separate contact person's name and telephone number on Form 1095-C. This will ease the administrative burden placed on ALE members and their designated contact person(s).

b. Whether the applicable large employer member was a member of an aggregated group

The AICPA believes that the requirement of an ALE member to provide information regarding whether or not they are a member of an aggregated group is irrelevant in determining if the individual and employer shared responsibility requirements have been met or whether the full-time employee qualifies for a premium tax credit.

The preamble to the proposed regulations states that Treasury and the IRS expect to request an ALE member to indicate if it is a member of an aggregated group, determined under section 414(b), 414(c), 414(m) or 414(o). If applicable, the ALE member will be asked to provide the name and employer identification number of each member of the aggregated group constituting the ALE on any day of the calendar year for which the information is reported.

The collection of this information will place an additional administrative burden on ALE members since some members do not have access to this information. For example, an ALE member may be owned by a foreign parent company and not be aware of which other persons are a member of the aggregated group. Therefore, we suggest that the final regulations should not require this information from ALE members.

c. Total number of all employees by month

We suggest that the final regulations not request the total number of all employees, including full-time and part-time employees, by calendar month because gathering this information will place an unnecessary administrative

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burden on ALE members. If this information is requested from ALE members, then we suggest that it be reported only on transmittal Form 1094-C, rather than Form 1095-C, which is the employee reporting form, because this information will not benefit the full-time employees.

The preamble to the proposed regulations states that Treasury and the IRS expect to request an ALE member's total number of employees, including full-time and part-time employees, by calendar month. We understand that reporting the number of the ALE member's full-time employees by calendar month will assist Treasury and the IRS in determining whether the employer shared responsibility requirements have been met. However, we do not believe additional information indicating the ALE member's number of part-time employees, by calendar month, will provide Treasury and the IRS with information that is needed to enforce the employer shared responsibility requirements.

d. Which month, if any, the applicable large employer was not conducting business

The AICPA requests that the final regulations not require ALE members to report any month they were not conducting business as we do not believe it would promote the intended goals of section 6056. If Treasury and the IRS deem this information necessary, then we suggest that they require reporting only on the transmittal Form 1094-C, rather than Form 1095-C, which is the employee reporting form, because this information will not benefit the employees.

The preamble to the proposed regulations states that Treasury and the IRS expect to request an indication of whether the ALE member was not conducting business during any particular month, by month. In addition, the ALE member must report, by calendar month, its number of full-time employees. If an ALE member reports zero full-time employees for a certain month, then it has already indicated that it was not conducting business for that particular month or that it did not have any full-time employees for that month. No further information should be necessary.

e. Statement if applicable large employer expects it will not be subject to the reporting rules in the following year

The AICPA requests that the final regulations not require that an ALE member report whether it expects to be subject to the reporting rules in the following year.

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The preamble to the proposed regulations states that Treasury and the IRS expect to request an indication if the ALE member expects that it will not be an ALE member the following year. We believe there will be many employers who, on a yearly basis, are on the verge of either meeting the full-time employee / full-time employee equivalent threshold or fall under the threshold. By requiring this information, employers would face an additional administrative burden because they would be required to make the determination of ALE status for the following year by the reporting deadline. In addition, this requirement would cause ALE members who are part of an aggregated group to collect information from the other members of the aggregated group regardless of whether they have access to this information.

II. Reporting by Employers - Employee Information

We do not believe that an ALE member should be required to report whether a full-time employee is eligible to participate in a multiemployer plan due to contributions to the plan by the ALE member. This information is not needed in order to administer the employer shared responsibility rules under section 4980H.

The preamble to the proposed regulations states that if an ALE member is a contributing employer to a multiemployer plan, Treasury and the IRS expect to request an indication as to whether a full-time employee is treated as eligible to participate in a multiemployer plan due to the employer's contributions to the multiemployer plan.

Proposed Reg. § 301.6056-1(d)(iv) requires an ALE member to certify whether a full-time employee was offered the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan. This certification is sufficient to administer the employer shared responsibility rules, the individual shared responsibility rules and eligibility for the premium tax credit and therefore, no further information should be necessary.

AICPA Comments Regarding Proposed Simplification Options

The AICPA recommends that the IRS designate one form and one reporting method for ALEs to report to the IRS the information required under section 6056. The multiple forms and methods available under the proposed regulations may create confusion and discourage compliance by employers and employees.

The proposed regulations provide for a general method of information reporting. They state that a section 6056 return may be made by filing transmittal Form 1094-C and Form

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1095-C or other forms the IRS designates. Alternatively, taxpayers may comply by submitting other forms designated by the IRS or a substitute form that includes all of the information required on Forms 1094-C, 1095-C or other forms designated by the IRS.

The proposed regulations also provide employers certain simplification options to fulfill the information reporting requirements. Section 6056(d) provides that to the maximum extent feasible, the Secretary may permit combined reporting under section 6056, section 6051 (Form W-2 wage reporting), and section 6055. Also, in certain cases, an ALE member may be able to enter into an agreement with an issuer to include information required under section 6056 with the return and statement required to be provided by the issuer under section 6055.

All employers are required to use a Form W-2 to report an employee's wages, and the forms issued by employers are substantially similar, regardless of the employer who provides the forms. If separate ALE members are permitted to use different forms or methods for reporting the section 6056 information, employees may be confused when they receive the information in multiple forms from different employers. A single designated form will allow employees to compare information provided on separate forms, and make it easier for the employees to report this information on his or her Form 1040.

I. Subsection A – Eliminating section 6056 employee statements in favor of Form W-2 reporting for certain groups of employees offered coverage

The AICPA is in favor of eliminating the section 6056 employee statements in favor of Form W-2 reporting for certain groups of employees who are offered coverage.

The proposed regulations provide that ALEs must report on a separate section 6056 return to each full-time employee, information regarding the health care coverage the ALE member provided during a calendar year. The AICPA believes these reporting requirements could be fulfilled with the Form W-2 reporting with regards to certain groups of employees, versus requiring another return that is to be generated and provided to employees within the same time frame as Form W-2.

II. Subsection B – No need to determine full-time employees if minimum value coverage is offered to all potentially full-time employees

The AICPA supports the proposal that if an employer offers coverage to all or nearly all of its employees and certifies that the only employees not offered coverage are not full-time employees or are ineligible for coverage, then

section 6056 reporting would not require an employer to identify the full-time status of its employees. We are aware of the possibility that if an employee claimed a premium tax credit, the employer may be asked to confirm the employee's status at a later date. We agree that since some employers have indicated that they anticipate few of their employees claiming the credit, the proposed method is administratively easier for employers.

III. Subsection C – Self-insured employers offering employees, their spouses and dependents mandatory no-cost minimum value coverage

The AICPA supports the proposal that self-insured employers offering employees, their spouses and dependents mandatory, no-cost minimum value coverage, only be required to file and furnish the return required under section 6055, a code on the Form W-2, the summary information provided in the section 6056 transmittal form and no further information reporting under section 6056.

We agree with the implication in the proposed regulations that the section 6055 return provides the individual taxpayer with the information necessary to accurately file the taxpayers' income tax return and the IRS with the information concerning administering the premium tax credit, as well as the employer shared responsibility provisions.

IV. Subsection E – Reporting for employees potentially ineligible for the premium tax credit

The AICPA concurs with the idea that many employees are relatively highly paid and will unlikely qualify for a premium tax credit. Employers will not have all the information they need to determine if an employee's household income exceeds 400 percent of the Federal poverty line since the only pertinent information that the employer has in regards to an employee's adjusted gross income is their wages. Therefore the employee would not benefit from receiving the information otherwise included with a section 6056 employee statement.

We support setting a benchmark for non-reporting tied to a measureable benchmark that is already established. One such benchmark that would more likely than not be able to set a level with sufficient confidence would be the social security wage base.

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Conclusion

The AICPA appreciates that Treasury and the IRS have provided proposed regulations that clarify and simplify the information reporting rules of ALEs. We ask that the final regulations mandate that employers be required to provide only that information absolutely necessary to carry out the purpose of section 6056. We also request that the simplification options be carefully considered so as not to add confusion to the information reporting process.

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We appreciate the opportunity to comment on these proposed regulations, and welcome a further discussion of the comments. If you have any questions, please me at (304) 522-2553 or jporter@portercpa.com; Eddie Adkins, Member, AICPA Health Care Tax Task Force and Member, AICPA Tax Executive Committee, at (202) 521-1565 or eddie.adkins@us.gt.com; Kristin Esposito, AICPA Technical Manager, at (202) 434-9241 or kesposito@aicpa.org.

Sincerely,



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Chair, Tax Executive Committee