
TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



***Improvements Are Needed to Ensure
That Employer Shared Responsibility
Payments Are Properly Assessed***

June 10, 2020

Reference Number: 2020-43-028

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:

1 = Tax Return/Return Information

2 = Law Enforcement Techniques/Procedures and Guidelines for Law Enforcement Investigations or Prosecutions

4 = Attorney Client/ Attorney Work Product

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HIGHLIGHTS

IMPROVEMENTS ARE NEEDED TO ENSURE THAT EMPLOYER SHARED RESPONSIBILITY PAYMENTS ARE PROPERLY ASSESSED

Highlights

Final Report issued on June 10, 2020

Highlights of Reference Number: 2020-43-028 to the Commissioner of Internal Revenue.

IMPACT ON TAXPAYERS

The Affordable Care Act's Employer Shared Responsibility Provision requires employers with an average of 50 or more full-time employees (including full-time equivalent employees) to offer health insurance coverage to full-time employees and their dependents. Employers that did not offer health insurance coverage, or offered health insurance coverage that did not meet minimum value or was not affordable, may be subject to an Employer Shared Responsibility Payment.

WHY TIGTA DID THE AUDIT

This audit was initiated as part of our continued coverage to address the IRS's implementation of tax law changes. This audit evaluated the IRS's processes for assessing and collecting Employer Shared Responsibility Payments to ensure compliance with the Employer Shared Responsibility Provision and related information reporting requirements of the Affordable Care Act.

WHAT TIGTA FOUND

Applicable Large Employers are required to report to the IRS information about the health care coverage, if any, they offered to their full-time employees. This information is used to identify whether these employers are subject to an Employer Shared Responsibility Payment. Our review found that the amount the IRS ultimately assesses is substantially less than its initial calculation of the proposed Employer Shared Responsibility Payment. For Tax Years 2015 and 2016 cases closed or in process as of July 27, 2019, the IRS initially

calculated proposed Employer Shared Responsibility Payments of nearly \$17 billion. However, the IRS assessed only \$749 million. TIGTA found that in most cases, the IRS reduces or eliminates the Employer Shared Responsibility Payments *****2***** that health insurance coverage was provided by the employers.

TIGTA's review of these cases also identified 90 Applicable Large Employers that, based on the name of the entity, may be churches but were not referred to the Tax Exempt/Government Entities Division, which has experience in handling cases for tax-exempt entities. Instead, the cases were worked by Small Business/Self-Employed Division examiners. As such, the IRS did not conduct the necessary in-depth reviews, which ensure compliance with applicable legal provisions and protections, prior to sending the church a proposed assessment.

WHAT TIGTA RECOMMENDED

TIGTA made three recommendations to improve the processes and procedures the IRS uses for Employer Shared Responsibility Payments. These recommendations include requiring Applicable Large Employers *****2***** when they disagree with the proposed Employer Shared Responsibility Payment.

IRS management disagreed with all three recommendations. Management plans to maintain current practices regarding the ***2*** *****2***** required from Applicable Large Employers when they disagree with the proposed Employer Shared Responsibility Payment. Management also did not believe the presence, or not, of any particular word in a taxpayer's name is determinative of status or a claim to status as a church. Management's position is contrary to internal guidelines which state that IRS could infer that an entity is a church by the presence of the word "church" in an organizations name.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

June 10, 2020

MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE

Michael E. McKenney

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Improvements Are Needed to Ensure That
Employer Shared Responsibility Payments Are Properly Assessed
(Audit # 201940319)

This report presents the results of our review to evaluate the processes for assessing and collecting Employer Shared Responsibility Payments to ensure compliance with the Employer Shared Responsibility Provision and related information reporting requirements of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act).¹ This review is included in our Fiscal Year 2020 Annual Audit Plan and addresses the major management challenge of Implementing Tax Law Changes.

Management's complete response to the draft report is included as Appendix VI.

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations. If you have any questions, please contact me or Russell P. Martin, Assistant Inspector General for Audit (Returns Processing and Account Services).

¹ Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of the U.S. Code), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029.



***Improvements Are Needed to Ensure That Employer
Shared Responsibility Payments Are Properly Assessed***

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***Improvements Are Needed to Ensure That Employer
Shared Responsibility Payments Are Properly Assessed***

Abbreviations

ACA	Affordable Care Act
ALE	Applicable Large Employer
ESRP	Employer Shared Responsibility Payment
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
PTC	Premium Tax Credit
SB/SE	Small Business/Self-Employed
TE/GE	Tax Exempt/Government Entities
TIGTA	Treasury Inspector General for Tax Administration
TY	Tax Year



Improvements Are Needed to Ensure That Employer Shared Responsibility Payments Are Properly Assessed

Background

The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act (ACA))¹ include the Employer Shared Responsibility Provision.² This provision applies to employers that had an average of 50 or more full-time employees, including full-time equivalent employees, during the prior calendar year. These employers are referred to as Applicable Large Employers (ALE). Under the provision, ALEs must offer health insurance to full-time employees (and their dependents) during the calendar year through an employer-sponsored plan beginning in January 2015 or an Employer Shared Responsibility Payment (ESRP) may apply. An ALE is liable for an ESRP if:

1. It did not offer health insurance coverage to at least 95 percent of its full-time employees (and their dependents), **and** at least one full-time employee was allowed a Premium Tax Credit (PTC). These payments are assessable under Internal Revenue Code (I.R.C.) Section (§) 4980H(a).
2. It offered health insurance coverage to 95 percent of its full-time employees (and their dependents), **but** at least one full-time employee was allowed the PTC because, for that full-time employee, coverage was not offered, was not affordable, or did not provide minimum value. These payments are assessable under I.R.C. § 4980H(b).

Employer reporting requirement provision

Employers are responsible for determining if they are an ALE. For Tax Year (TY)³ 2017, the Internal Revenue Service (IRS) estimated that there were approximately 376,066 ALEs. The Employer Shared Responsibility Provision requires ALEs to annually file information returns with the IRS and provide statements to their full-time employees about the health care coverage it offered (or did not offer).⁴ Figure 1 summarizes the information return reporting requirements for ALEs beginning in Processing Year⁵ 2016.

¹ Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of the U.S. Code), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029.

² Internal Revenue Code § 4980H.

³ A 12-month accounting period for keeping records on income and expenses used as the basis for calculating the annual taxes due. For most individual taxpayers, the tax year is synonymous with the calendar year.

⁴ I.R.C. § 6056.

⁵ The calendar year in which the tax return or document is processed by the IRS.



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Figure 1: Filing Requirements for Employers

Information Return Required	Purpose of Information Return
Form 1094-C, <i>Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns</i>	Used by ALEs to report summary information of health insurance offered and coverage information as well as to transmit Forms 1095-C.
Form 1095-C, <i>Employer-Provided Health Insurance Offer and Coverage</i>	Used by ALEs to report health insurance offer and coverage information for each employee, including the name and Social Security Number of each employee, the type of health insurance offered by the employer each month, and the months the ALEs offered health insurance coverage for employees and their dependents.

Source: Treasury Inspector General for Tax Administration (TIGTA) analysis of information on IRS.gov.

Multistep process used to identify potentially noncompliant ALEs

The IRS uses a multistep process to identify the ALEs that are potentially liable for the ESRP. This process starts with the Small Business/Self-Employed (SB/SE) Division's Examination and Research Unit gathering information and analyzing Form 1094-C, Form 1095-C, and PTC data to identify the population of ALEs potentially subject to the ESRP. Once this is completed, the IRS will calculate the proposed ESRP based on the extent to which insurance coverage is offered by the ALE to its full-time employees and their dependents and whether at least one of those full-time employees was allowed the PTC for a month.⁶ For TY 2016, ALEs potentially liable for the ESRP were identified in September 2018. Almost all letters with proposed ESRPs were sent to ALEs from October 2018 through April 2019. As of October 2019, the IRS is continuing to work these cases. Figure 2 summarizes how the proposed ESRP is calculated.

⁶ For TY 2015, there were various forms of transition relief or affordability safe harbors that, when used, resulted in the ALE's ESRP assessment either being reduced or eliminated. Each form of relief is described in the Employer Shared Responsibility regulations.



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Figure 2: ESRP Calculation

Shared Responsibility Payment Provisions	Payment Calculation
<p>Section 4980H(a) provides for an assessable payment for employers that do not offer health coverage. The payment applies if:</p> <ol style="list-style-type: none"> 1. The ALE offered health insurance coverage to less than 95 percent of its full-time employees (and their dependents). 2. At least one of the ALE's full-time employees receives the PTC. 	<p>The ESRP is \$2,000 (adjusted annually) per employee for the number of full-time employees minus 30. Sections 4980H(a) and (b) provide that the ESRP is imposed on a month-by-month basis. Thus, an employer that owes the payment will pay \$166.67 (1/12 of \$2,000) per month based on the number of employees minus 30.</p>
<p>Hypothetical example: <i>Company K has 100 full-time employees for each month of the calendar year. Company K does not offer the minimum essential coverage to its full-time employees (and their dependents) for any month of the calendar year. Fourteen full-time employees obtain health insurance through an Exchange and receive the PTC for each month. The ESRP is calculated as [the number of full-time employees (100) less 30] x \$2,000 (adjusted annually). This results in an ESRP for Company K of \$140,000 for the calendar year.</i></p>	
<p>Section 4980H(b) provides for an assessable payment for those ALEs that offer coverage to full-time employees, but an employee obtains coverage from an Exchange because the coverage offered was not available to them, was unaffordable, or did not provide minimum value. The payment applies if:</p> <ol style="list-style-type: none"> 1. The ALE offered health insurance coverage to 95 percent or more of full-time employees (and their dependents). 2. At least one of the ALE's full-time employees receives a PTC. 	<p>The ESRP is equal to the lesser of \$3,000 (adjusted annually) for each full-time employee who receives the PTC or the assessable payment calculated under § 4980H(a). Sections 4980H(a) and (b) provide that the ESRP is imposed on a month-by-month basis. Thus, an ALE that owes the payment will pay \$250 (1/12 of \$3,000) per month per the number of full-time employees who received the PTC.</p>
<p>Hypothetical example: <i>Company M has 100 full-time employees for each month of the calendar year and offers the minimum essential coverage to its full-time employees (and their dependents). However, the minimum essential coverage is not affordable for all of the full-time employees. Fourteen of its full-time employees obtain health insurance through an Exchange and receive the PTC for each month of the calendar year. The ESRP is calculated as the lesser of:</i></p> <ul style="list-style-type: none"> • <i>Number of full-time employees who received the PTC for each month of the calendar year (14) x \$3,000 (adjusted annually) = \$42,000 (I.R.C. § 4980H(b)).</i> • <i>[Number of full-time employees (100) less 30] x \$2,000 (adjusted annually) = \$140,000 (I.R.C. § 4980H(a)).</i> <p><i>For the calendar year, Company M is subject to an ESRP of \$42,000.</i></p>	

Source: TIGTA analysis of information on IRS.gov.

The SB/SE Division consults with the Tax Exempt and Government Entities (TE/GE) Division to identify ALEs that are churches

Once the IRS identifies potential ALEs subject to an ESRP, efforts are taken to identify those ALEs that are churches. This additional step is taken because churches are afforded special protections relating to tax inquiries in accordance with I.R.C. § 7611 (commonly referred to as Church Audit Procedures). I.R.C. § 7611 provides statutory restrictions on the IRS's inquiries and examinations regarding church tax status or tax liabilities. Specifically, the IRS may begin a church tax inquiry only if both the following apply:



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- (1) It has reasonable belief that the church is not tax exempt, is involved in a trade or business unrelated to its tax exempt status, or is otherwise engaged in an activity that is subject to taxation.
- (2) It has provided written notification to the church that it is beginning a church tax inquiry because an appropriate high-level Treasury official reasonably believes the requirements for beginning the inquiry have been met.

As such, cases identified as associated with a church are worked separately by revenue agents in the IRS's TE/GE Division who are familiar with the unique protections afforded to churches.

ESRP correspondence

The IRS selects ALE cases to work from the population of potential noncompliant ALE cases. For TY 2016, the IRS identified 59,807 cases with a potential ESRP and selected 32,656 cases (55 percent) to be worked. To initiate the inquiry, the IRS sends the selected ALE a preliminary letter (Letter 226-J, *ESRP Preliminary Contact*) that notifies the ALE of the proposed ESRP, details how it was calculated, and provides the steps the ALE must take to respond. Below is an example of the language included in this letter as to the actions the ALE is required to take:

What you must do

Review this letter carefully. It explains the proposed ESRP and what you should do if you agree or disagree with this proposal. You must tell us whether you agree or disagree with the proposed ESRP by the Response date on the first page of this letter.

If you agree with the proposed ESRP

Complete, sign, and date the enclosed Form 14764, ESRP Response, and return it to us by the Response date on the first page of this letter ... (and) include your payment.

If you disagree with the proposed ESRP

Complete, sign, and date the enclosed Form 14764, ESRP Response, and send it to us so we receive it by the Response date on the first page of this letter. Include a signed statement explaining why you disagree with part or all of the proposed ESRP. You may include documentation supporting your statement.

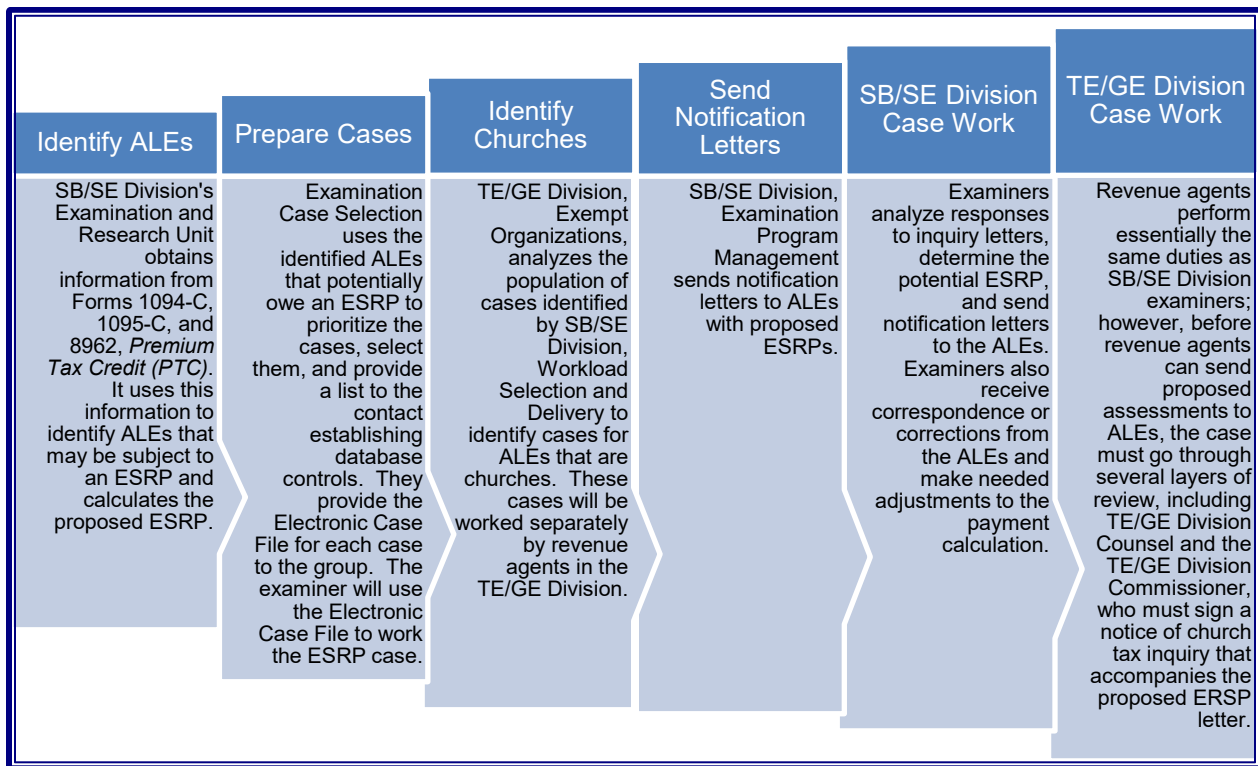
The ALE has 30 days to respond to the initial inquiry letter. If the ALE does not timely respond and the examiner (e.g., tax examiner, tax compliance officer, or revenue agent) is not able to contact the ALE via telephone, internal guidelines require the examiner to send a follow-up letter (Letter 5040J, *Proposed ESRP Follow-Up*) giving the ALE an additional 15 days to respond. If the ALE still does not respond, the examiner is required to assess the ESRP on the ALE's account, and a Notice CP 220J, *4980H Adjustment Balance Due, Even Balance or Overpayment (ESRP) Notice*, (i.e., Notice of Assessment) is sent to the ALE. The Notice of Assessment informs the ALE that the IRS has assessed an ESRP. It also provides a billing summary and an



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overall amount due. The IRS treats instances in which it does not get a response as an “Unagreed” closure and assesses the ESRP on the ALE’s account as part of the closure process. This same process is followed if the IRS sends the ALE a Letter 227-L, *ESRP Acknowledgement – Revised ESRP Calculated*, or a Letter 227-M, *ESRP Acknowledgement – Revised ESRP Unchanged*, and it does not receive a response within 30 days. Figure 3 provides a general overview of steps taken by the SB/SE and TE/GE Divisions to identify ALEs, the groups involved, and their respective responsibilities.

Figure 3: Overview of Processes to Identify and Work ESRP Cases



Source: TIGTA analysis of the Employer Shared Responsibility Provision processes.

This review was performed in the IRS SB/SE Division’s Examination Operations office in Ogden, Utah; the SB/SE Division’s Operations Support office in Bloomington, Minnesota; and the TE/GE Division’s Exempt Organizations office in Ogden, Utah, during the period October 2018 through January 2020. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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The Congressional Budget Office’s Joint Committee on Taxation estimated revenues from ESRPs would be \$167 billion for the 10-year period starting in Fiscal Year⁷ 2016, including \$9 billion in Fiscal Year 2016, \$13 billion in Fiscal Year 2017, and \$15 billion in Fiscal Year 2018. Using the current ESRP assessment rates, we forecast that the IRS will collect nearly \$8 billion for the entire 10-year period.⁸

Inadequate processes and procedures allow ALEs to *****2*****
*****2*****
*****2*****
*****2*****
*****2*****. For example, the notification letter informs the ALEs that they are to:

*Include a signed statement explaining why you disagree with part or all of the proposed ESRP. You **may** include documentation supporting your statement.*

Figure 5 provides a breakdown of the TYs 2015 and 2016 ESRP cases closed by closure action as well as the proposed and actual dollars assessed.

⁷ Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government’s fiscal year begins on October 1 and ends on September 30.

⁸ The IRS sent letters to ALEs for 31,867 TY 2016 cases. At the current rate of assessing 7.4 percent of its proposed assessments, we project that the IRS will assess approximately \$794 million of the \$10.67 billion in proposed ESRPs for TY 2016. Using these totals to project over a 10-year period, the IRS will assess approximately \$7.9 billion for 318,670 ESRP cases between TYs 2016 and 2025.



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Figure 5: TY 2015 and 2016 ESRP Cases With Proposed and Actual Dollars Assessed

	Number of Cases	Proposed ESRP Assessment	Actual ESRP Assessment	Difference
TY 2015				
No-Change Closures	18,084	\$8,266,453,842	\$11,674,778 ⁹	\$8,254,779,064
Agreed Closures	4,237	\$1,462,436,743	\$58,361,251	\$1,404,075,492
Unagreed and No-Response Closures	3,166	\$447,511,434	\$160,417,018	\$287,094,416
Reconsiderations/Claims ¹⁰	493	\$39,368,067	\$27,736,640	\$11,631,427
Disposition Pending ¹¹	41	\$30,454,579	\$1,169,740	\$29,284,839
Total Closures	26,021	\$10,246,224,665	\$259,359,427	\$9,986,865,238
TY 2016				
No-Change Closures	15,750	\$5,402,147,580	\$570,060	\$5,401,577,520
Agreed Closures	2,560	\$536,143,680	\$60,865,288	\$475,278,392
Unagreed and No-Response Closures	3,717	\$522,622,170	\$339,933,529	\$182,688,641
Reconsiderations/Claims	544	\$112,479,300	\$82,992,510	\$29,486,790
Disposition Pending	145	\$9,659,700	\$5,412,760	\$4,246,940
Total Closures	22,716	\$6,583,052,430	\$489,774,147	\$6,093,278,283

Source: SB/SE's Examination function as of July 27, 2019.

Since the passage of the ACA, the IRS has devoted resources to educate ALEs and those in charge of completing the forms on their information reporting requirements as well as the ESRP. The IRS created a dedicated web page titled *ACA Information Center for Applicable Large Employers (ALEs)*. This web page provides a wealth of information to assist ALEs in the accurate reporting of health care coverage for their employees. In addition, the IRS devotes substantial resources to administer the ESRP provision of the ACA. For example, IRS

⁹ This represents assessments that are in the process of being reversed. The amount still is reflected as an assessment because there is a timing difference between the IRS's examination inventory system and updates that need to take place to the ALE's tax account on the Master File.

¹⁰ The IRS includes in its tracking ESRP cases that are reopened for reconsideration and for which no action is taken (e.g., the taxpayer does not respond to correspondence after requesting the reconsideration).

¹¹ These ESRP cases represent those for which an assessment has been made, but the case has not been closed in the IRS's examination inventory system.



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management estimates over 50 full-time equivalent positions were assigned to the ESRP program in Fiscal Year 2018, with an administrative cost of over \$7 million.

Although the administration of this provision of the ACA represents a substantial resource commitment on the part of the IRS, the processes and procedures the IRS has put in place are not sufficient to effectively administer the ESRP. Our review identified that billions of dollars in potential ESRP payments are eliminated or reduced *****2***** despite the fact that the IRS’s proposed assessment is based on the ALEs’ self-reporting of health care coverage. With the IRS’s continued challenge of reduced resources, the IRS should take the necessary steps to ensure that resources allocated are being effectively used.

Due to Inadequate Processes and Procedures, ***2***** Adjustments Are Made to Proposed Employer Shared Responsibility Payments**

Our review of a statistically valid sample of 118 TY 2015 ESRP cases¹² identified 90 (76 percent) cases for which examiners adjusted the proposed ESRP amount from nearly \$24 million down to about \$88,000. Most of these cases involved an ALE self-reporting on Form 1094-C that they did not offer health insurance to their employees and at least one of the ALE’s full-time employees received the PTC. For 82 of the 90 cases, the adjustment was based on the ALE noting on the response that it had made an error *****2***** . Based on the results of our sample, we estimate that examiners may have adjusted 17,041 cases, with potential ESRPs totaling almost \$4.5 billion, *****2***** .¹³ Below are some examples of ALE explanations in response to proposed ESRP assessment letters that the IRS *****2***** *****2*****:

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- *****1*****
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- *****1*****
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¹² To select our sample, we used a 5 percent error rate, a ± 5 percent precision factor, and a 95 percent confidence interval.

¹³ This projection, based on a 95 percent confidence interval, is that between 15,053 and 19,028 cases with payments totaling between \$768 million and \$8.2 billion, respectively, were adjusted *****2*****.



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- *****1*****
*****1*****.

For 62 of the 90 cases we reviewed, the ALEs responded to the proposed assessment letter stating that they had in fact provided health care coverage, even though they self-reported on their original Form 1094-C that health care was not provided (*i.e.*, they either left the boxes in Part III of Form 1094-C, indicating minimal essential health insurance coverage was provided, blank or marked “No”). Only four of these ALEs *****2*****
*****2*****
2*. Furthermore, 16 of these 62 ALEs were subsequently identified as having a potential ESRP owed in TY 2016 based on the information they self-reported to the IRS. This included 12 ALEs that continued to report they did not provide coverage, which is exactly what they reported in TY 2015 before later informing the IRS that they had in fact provided coverage.

For the remaining 28 cases, the ALEs responded to the proposed assessment letter by providing updates to Lines 14 (Offer of Coverage (enter required code)) and 16 (Section 4980H Safe Harbor and Other Relief (enter code, if applicable)) of their Form 1095-C (*i.e.*, they initially either left these lines blank or provided an incorrect code on their original submission). **2**
*****2*****

However, similar to the cases discussed above, *****2*****
*****2*****.

The inability ***2***** ALE claims is a significant limiting factor in the ESRP assessment process**

IRS management indicated that since the ESRP cases are not considered examinations, the IRS *****2***** that respond with a disagreement to the proposed ESRP assessment amount. We asked IRS management for additional information to substantiate the position that the IRS *****2***** unless the taxpayer is undergoing an examination. IRS management cited guidance received *****4*****
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The IRS contends, though, *****4*****
*****4*****
*****4*****
*****4*****. The IRS did not provide a sufficient basis for this view. It is not based on Treasury Regulations, given that *****4*****
*****4*****.

The IRS has compliance programs that match information returns with the taxpayer’s tax returns. When information does not match and the information returns indicate more income should have been reported, letters of proposed assessments are sent that advise the taxpayers to send a statement *****2***** if they disagree with the assessment. For example:

- The IRS’s Automated Underreporter Program sends letters of proposed assessments resulting from discrepancies identified via a comparison of information returns the IRS receives from third parties to information reported on a taxpayer’s return. Specifically, the letter sent to taxpayers states:

*If you don’t agree with the proposed changes complete the response form ... and send it to us (IRS) along with a signed statement explaining your disagreement **and** include any documentation that supports your claim...*

For those taxpayers that do not agree *****2*****, the IRS can issue Notice CP 3219A, *Statutory Notice of Deficiency*. This letter proposes a tax change to the taxpayer’s account and gives detailed information about why the IRS proposes a tax change and how the agency determined the change was appropriate.

- The IRS’s Automated Questionable Credit program receives cases for treatment after a matching process is completed to identify suspicious returns meeting certain criteria for false or inflated wages or withholding with a refundable credit claimed on the tax return. Taxpayers selected for the Automated Questionable Credit program receive Letter 4800C, *Questionable Credit 30 Day Contact Letter*. This letter specifically states that the Automated Questionable Credit program “is not an audit.” Yet, if taxpayers disagree with the IRS’s findings, they are **required** to *****2*****
*****2*****. If they do not, the IRS sends the taxpayer a Statutory Notice of Deficiency or makes an immediate adjustment to the taxpayer’s account, depending on the nature of the inquiry.

After we raised concerns to IRS management, *****4*****
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*****4*****:



Improvements Are Needed to Ensure That Employer Shared Responsibility Payments Are Properly Assessed

*****4*****
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*****4*****

IRS management further indicated that if the ESRP *****4*****, this could cause other issues with their *****4*****, for example, their workplan volume. This means that IRS management would need to add coverage in their workplan to address ESRP cases, which will *****4*****. However, unless the IRS can provide determinative guidance to the contrary, we believe *****2***** is consistent with other compliance programs *****4*****. As such, we believe that the IRS should require ALEs *****2*****.

Penalty relief continues to be offered to ALEs that file incorrect information returns

I.R.C. § 6721 and § 6722 provide the IRS with the authority to assess penalties against an ALE for failure to provide a correct information return (*i.e.*, Forms 1094-C and 1095-C). The TY 2015 penalty amount was \$250 for each incorrect return provided to the IRS, with the total penalty for a calendar year not to exceed \$3,000,000. For TY 2018, the penalty amount increased to \$270 for each incorrect return provided to the IRS, with the total penalty for a calendar year not to exceed \$3,275,500. Our review has shown that, even after performing outreach regarding the information reporting requirements to ALEs, ALEs submitted incorrect information returns yet were not penalized. When we discussed our concerns with IRS management, they indicated that Notice 2016-70, *Extension of Due Date for Furnishing Statements and of Good-Faith Transition Relief Under I.R.C. Section 6721 and 6722 for Reporting Required by I.R.C. Section 6055 and 6056 for 2016*, states that the IRS would not impose penalties against those ALEs that could show they complied with the information reporting requirements in good faith.

When we asked IRS management how they determine if an ALE met this “good-faith effort” criterion, they indicated that it meant that the ALE tried to comply with the information reporting requirements. Management further noted that determining a good-faith effort is subjective and depends upon the facts and circumstances of each case. On December 2, 2019, the IRS issued Notice 2019-63, which once again extends the good-faith transition relief for the TY 2019 information reporting requirements.



Improvements Are Needed to Ensure That Employer Shared Responsibility Payments Are Properly Assessed

Recommendations

The Commissioner, SB/SE Division, should:

Recommendation 1: Revise Letter 226-J *****2*****
*****2***** when they disagree with the proposed ESRP amount.

Management’s Response: The IRS disagreed with this recommendation. IRS management stated that it is appropriate to request an explanation for the discrepancies detailed in Letter 226-J for a Campus matching program but *****4*****
*****4***** if the IRS revises Letter 226-J consistent with TIGTA’s recommendation *****2*****
*****2*****. IRS management also believes that, if an ESRP compliance inquiry were to be conducted as an employment tax examination, there would be significant ramifications *****4*****
*****4*****.

Office of Audit Comments: Management continues to cite the risk of the ESRP process being considered an examination if the IRS revised Letter 226-J *****2*****
*****2*****. However, the IRS does not provide any conclusive support for this view. In addition, management disagreed with our potential outcome measure, stating our sample size was too small to provide a precise estimate and that, without the completion of an ESRP inquiry, it cannot be determined if ESRPs will be reduced. However, as noted in our report, we consulted with a professional statistician who calculated the \$4.5 billion. Moreover, the IRS would be able to make the determination *****2*****.

Recommendation 2: For those ALEs that do not *****2***** , a follow-up notice should be sent followed by a notice of assessment if *****2***** is still not *****2*****.

Management’s Response: The IRS disagreed with this recommendation. IRS management plans to maintain current practices regarding the *****2*****
*****2*****. Written procedures and follow-up letters are already in place if required to be sent to an ALE. Additionally, a required follow-up letter prior to adjusting the proposed ESRP is currently sent when appropriate.

Office of Audit Comments: The position that the IRS has taken on this issue results in the elimination or reduction of billions of dollars in proposed ESRPs *****2*****
*****2***** could result in inequitable treatment and allows *****2*****.



***Improvements Are Needed to Ensure That Employer
Shared Responsibility Payments Are Properly Assessed***

**Processes and Procedures to Identify and Work Church Employer
Shared Responsibility Payment Cases Need Improvement**

Our review identified that some cases for ALEs that appear to be churches were not identified or referred to the TE/GE Division as required. For example, our review of 59,131 TY 2015 and TY 2016 ESRP cases identified 90 ALEs that may be churches that were not referred and worked by the TE/GE Division, which has experience in handling cases for tax-exempt entities.

To identify the 90 ALEs that might be a church, we identified keywords in the organization's name such as church, chapel, *etc.*, and manually reviewed the results to eliminate cases in which the name indicated it was some other type of business (*****1*****). The IRS identifies ALE churches by searching the tax accounts associated with the ESRP cases selected to be worked to identify specific codes included on a tax account that designates the taxpayer as a church. Because these 90 ALEs cases were not identified as potential churches, the cases were worked by SB/SE Division examiners. As a result, the IRS worked these church cases with different IRS processes and did not conduct the necessary in-depth reviews prior to sending the church a proposed assessment.

The separate processes followed by the TE/GE Division in working ESRP cases involving a church are to ensure that the IRS complies with I.R.C. § 7611. I.R.C. § 7611 states that the IRS cannot begin a subsequent church tax inquiry or examination of a church for a five-year period without the written approval of the appropriate designated IRS official unless the previous inquiry or examination resulted in a revocation, a notice of deficiency, or an assessment; involved a request for a significant change in church operations, including a significant change in accounting practices; or does not involve the same or similar issues in the preceding inquiry or examination. The ESRP is not one of the exceptions to I.R.C. § 7611. Thus, if the IRS sends a church a proposed assessment letter for an ESRP in TY 2015 and closes the case without making an assessment, the IRS may not send the church another proposed ESRP assessment letter for five years unless the Commissioner of the TE/GE Division provides written approval.

When we discussed our results with IRS management, they noted that *****2*****
*****2*****. However, IRS management stated that, in the event that the ALE identifies itself as a church during the ESRP process, SB/SE examiners are required to transfer the case to the TE/GE Division for completion. This process was neither outlined in the IRS's internal guidelines nor were the tax examiners that we interviewed aware of this requirement. IRS management advised us that they subsequently updated their internal guidelines on November 21, 2019.

As a temporary solution to maximize the benefit of correspondence while complying with the five-year limitation, TE/GE Division management stated that they identified churches scheduled to receive letters in both TYs 2015 and 2016 so they could send them a combined letter. Furthermore, IRS management indicated that they will consider revising their procedures to issue



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an advisory letter rather than an assessment proposal. The advisory letter would inform the churches of concerns related to noncompliance with health care coverage and errors in reporting on Forms 1094-C or 1095-C that may need to be changed.

Recommendation

Recommendation 3: The Commissioner, TE/GE Division, should expand existing criteria used to identify churches to include key word searches and ensure that these cases are referred to the TE/GE Division as required.

Management's Response: The IRS disagreed with this recommendation. IRS management does not believe the presence, or not, of a particular word in a taxpayer's name is determinative of status, or claim to status, as a church. IRS management also mentioned a prior TIGTA report¹⁴ which concluded that "using the names...of organizations is not an appropriate basis for identifying" it for review. Management also stated that the use of the recommended criteria could result in the inaccurate imposition of § 7611 procedures, which would inappropriately delay the case of a taxpayer to which they do not apply. The IRS already has in place procedures to mitigate the risk that § 7611 will not be applied to organizations claiming church status. Any taxpayer that was not initially identified as a church under the existing criteria but that claims church status during the ESRP process will have its case transferred to the TE/GE Division.

Office of Audit Comments: IRS management's response misapplies conclusions from a previous TIGTA report which address Applications for Recognition of Exemption under I.R.C. Sections 501(c)(3) and 501(c)(4). IRS management states that they do not believe the presence, or not, of a particular word in a taxpayer's name is determinative of status, or claim to status, as a church. This is contrary to their own internal guidelines which state that the IRS may infer that an entity is a church from facts such as by inclusion of the word "church" in the organization's name. The guidance further states that if it is unclear whether the organization claims to be a church, the examiner should ask the organization during the initial contact if it claims to be a church. Finally, the implementation of our recommendation would assist the IRS in ensuring that it mitigates the risk of not complying with the law, which provides extra protections for these entities. If once a case is selected and reviewed by TE/GE, it is determined that the entity is not a church, the IRS can transfer the case back to SB/SE Division.

¹⁴ TIGTA, Ref. No. 2013-10-053, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 2013).



***Improvements Are Needed to Ensure That Employer
Shared Responsibility Payments Are Properly Assessed***

***Management Has Taken Actions to Assist Taxpayers With Misapplied
Employer Shared Responsibility Payments***

In a prior TIGTA report,¹⁵ we identified 83 tax accounts with payments totaling \$450,846 that were incorrectly posted as an ESRP payment. These payments we identified were likely misapplied as a result of taxpayer error. In this audit, we identified and notified the IRS of *****1***** that were incorrectly posted as an ESRP. We recommended that the IRS research and resolve, if necessary, the 83 original accounts. The IRS agreed with our recommendation. However, when we performed a follow-up review on March 6, 2019, 43 accounts with misapplied payments totaling \$230,733 were still unresolved. Management advised us that, as of January 2, 2020, all the accounts have been resolved.

¹⁵ TIGTA, Ref. No. 2018-43-022, *Affordable Care Act: Processes to Identify Employers Subject to the Employer Shared Responsibility Payment Need Improvement* (Mar. 2018).



***Improvements Are Needed to Ensure That Employer
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Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective was to evaluate the IRS's processes for assessing and collecting ESRPs to ensure compliance with the Employer Shared Responsibility Provision and related information reporting requirements of the ACA.¹ To accomplish our objective, we:

- I. Assessed the effectiveness of the IRS's processes to identify and select TY² 2016 cases with the highest potential for assessment of the ESRP.
 - A. Reviewed the processes for identifying ALEs that are potentially liable for I.R.C. § 4980H(a) ESRPs.
 - B. Reviewed the processes for identifying ALES that are potentially liable for I.R.C. § 4980H(b) ESRPs.
 - C. Evaluated the Electronic Case File the IRS uses for its preliminary case evaluations and ESRP calculations.
- II. Ensured that the IRS took corrective actions to address previously reported concerns.
 - A. Continued to follow up on 83 cases previously identified as misapplied payments, and *****1*****, to ensure that they are properly resolved.
 - B. Determined if the IRS is properly following its established procedures for identifying and addressing misapplied payments.
- III. Assessed the effectiveness of the IRS's procedures to properly work TY 2015 cases for which an ALE was identified as liable for the ESRP.
 - A. Identified the population of 26,475 TY 2015 cases selected by SB/SE Examination.
 - B. Worked with the contracted statistician to select a statistically valid sample of 118 TY 2015 cases,³ and pulled a stratified sample with three strata: No-Change, Agreed, and Unagreed. A statistically valid sample was taken so we could project our results to the population of TY 2015 cases.

¹ Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of the U.S. Code), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029.

² A 12-month accounting period for keeping records on income and expenses used as the basis for calculating the annual taxes due. For most individual taxpayers, the tax year is synonymous with the calendar year.

³ To select our sample, we used a 5 percent error rate, a ± 5 percent precision factor, and a 95 percent confidence interval.



Improvements Are Needed to Ensure That Employer Shared Responsibility Payments Are Properly Assessed

- C. Obtained the ESRP desk procedure guides and Internal Revenue Manuals for case processing.
- D. Determined if examiners followed procedures for processing cases for the sample.
 - 1. Reviewed a statistically valid sample of 118 cases made up of three strata: 85 No-Change cases; 12 Agreed cases; 21 Unagreed cases.
 - 2. Reviewed responses to the inquiry letters to include documentation received, statements, and explanations provided – as documented in the Electronic Case File for each case.
 - 3. Reviewed examiner actions taken dependent on responses, including follow-up letters sent and correspondence with the ALE – as documented in the Electronic Case File for each case.
- E. Discussed the procedures used with examiners.
 - 1. Obtained their observations about procedures and areas for improvement.
 - 2. Obtained their input about the high no-change rate and the possible reasons.
 - 3. Obtained their input about the procedures for working cases identified as churches.
- IV. Assessed the effectiveness of the IRS’s procedures to identify church entities during case selection and processing.
 - A. Identified and obtained the selection lists for all ALEs potentially liable for the ESRP for 26,475 TY 2015 cases and 32,656 TY 2016 cases.
 - B. Identified and obtained the pertinent I.R.C. sections pertaining to church entities.
 - C. Identified the names of the 90 ESRP cases in IV.A to determine if the entities listed claimed to be churches.

Data validation methodology

During this review, we relied on data provided by the IRS to identify the ESRP cases selected for review for TYs 2015 and 2016. To assess the reliability of computer-processed data, we ensured that each data extract contained the specific data elements we needed and did not contain any obvious errors or omissions. In addition, for TY 2015, we took a statistically valid sample of 118 cases and obtained the original case files to ensure that the cases were selected for review. As a result of our testing, we determined that the data were sufficiently reliable for the purposes of this report.



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Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: the IRS's policies and procedures for selecting cases to ensure employer compliance with the Employer Shared Responsibility Provision and information reporting requirements. We accomplished this by interviewing IRS management; reviewing the Internal Revenue Manual, relevant I.R.C. sections, management information reports, and letters associated with this provision; and reviewing a statistically valid sample of Tax Year 2015 cases to evaluate how examiners reviewed cases.



***Improvements Are Needed to Ensure That Employer
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Appendix II

Major Contributors to This Report

Russell P. Martin, Assistant Inspector General for Audit (Returns Processing and Account Services)

Diana M. Tengesdal, Director

Nikole L. Smith, Audit Manager

Kenneth L. Carlson, Lead Auditor

Lorenzo D. Moss, Auditor



***Improvements Are Needed to Ensure That Employer
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Appendix III

Report Distribution List

Deputy Commissioner for Services and Enforcement
Commissioner, Small Business/Self-Employed Division
Commissioner, Tax Exempt and Government Entities Division
Director, Customer Account Services, Wage and Investment Division
Director, Submission Processing, Wage and Investment Division
Director, Enterprise Audit Management



Improvements Are Needed to Ensure That Employer Shared Responsibility Payments Are Properly Assessed

Appendix IV

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Increased Revenue – Potential; \$4.5 billion from 17,041 ALEs that we project had their ESRPs reduced *****2***** (see page 9).

Methodology Used to Measure the Reported Benefit:

Our review of a statistically valid sample of 118 TY 2015 ESRP cases¹ identified 82 (69 percent) cases for which examiners adjusted the proposed ESRP amounts from nearly \$24 million to about \$88,000. In each of these cases, the adjustment was based on a response from the ALE *****2*****.

Based on the results of our sample, we estimate that examiners may have adjusted 17,041 cases with potential ESRPs totaling almost \$4.5 billion based *****2*****.

To estimate that examiners adjusted 17,041 cases *****2*****, our contracted statistician took the following steps:

- Stratified the 118 sampled cases and population of 24,687 TY 2015 cases into three stratum: No-Change cases; Agreed cases; and Unagreed cases.
- Based on the sample, computed the attribute rate (the percentage of cases that examiners adjusted *****2*****) for each stratum: 78.82 percent for No-Change cases; 41.67 percent for Agreed cases; and 47.62 percent for Unagreed cases.
- Multiplied each stratum’s attribute rate by its population of cases in each stratum to get its estimated number of cases in which an examiner adjusted a case *****2****.

¹ To select our sample, we used a 5 percent error rate, a ± 5 percent precision factor, and a 95 percent confidence interval.

² This projection, based on a 95 percent confidence interval, is that between 15,053 and 19,028 cases with payments totaling between \$768 million and \$8.2 billion, respectively, were adjusted *****2*****.



Improvements Are Needed to Ensure That Employer Shared Responsibility Payments Are Properly Assessed

*****2*****: 13,943 No-Change cases; 1,642 Agreed cases; and 1,456 Unagreed cases.

- Totaled the estimates from above to arrive at 17,041 cases that tax examiners adjusted *****2*****.

To estimate that examiners adjusted \$4.5 billion *****2*****, the statistician took the following steps:

- Stratified the total number of TY 2015 ESRP cases into three categories (No Change, Agree, and Unagreed).
- Within each stratum, computed a point estimate³ for both proposed and actual assessment amounts.
- Computed dollar estimates for each stratum by multiplying the appropriate point estimate by the population of cases within each stratum. This was done for both proposed and actual assessments. For example, the point estimate for No Change proposed assessments is \$4,385,887,784. This was computed by taking the average dollar amount for the proposed ESRP assessment for the sampled No Change cases, or \$247,944.36, and multiplying it by the population of 17,689.
- Computed the estimated amount of proposed assessments (\$4,488,497,646) and the estimated amount of actual assessment projections (\$15,312,425) by adding together the point estimates for each strata.
- Subtracted the estimate for total actual assessments from the estimate for total proposed assessments to get a total adjustment estimate of \$4,473,185,221.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 90 ALEs the IRS selected for an ESRP review that were not afforded the protections under the I.R.C. § 7611 (see page 14).

Methodology Used to Measure the Reported Benefit:

Our review of 59,131 TY 2015 and TY 2016 ESRP cases identified 90 ALEs that may be churches and were not worked by the TE/GE Division. To determine if an organization might be a church, we identified keywords in the organizations name such as church, chapel, *etc.*, and manually reviewed the results to eliminate cases in which the name indicated it was some other type of business (e.g., *****1*****).

³ In this case, a point estimate is the average dollar amount for sampled cases within a stratum multiplied by the population of cases within that stratum.



Improvements Are Needed to Ensure That Employer Shared Responsibility Payments Are Properly Assessed

Appendix V

Small Business/Self-Employed Letters Used During Employer Shared Responsibility Payment Processing

Letter	Description
Letter 226-J, ESRP Preliminary Contact	Notifies the ALE of the proposed ESRP owed. These letters include how the ESRP was calculated; instructions on what to do if the ALE agrees or disagrees with the proposal; explanations for any reasons/changes; and Form 14764, <i>ESRP Response</i> , and Form 14765, <i>Employee Premium Tax Credit (PTC) Listing</i> .
Form 14764, ESRP Response	Included with Letters 226-J, 227-L, and 227-M; allows the ALE to provide a response to the letters by indicating agreement or partial/total disagreement with a proposed assessment.
Form 14765, Employee Premium Tax Credit (PTC) Listing	Included with Letters 226-J, 227-L, and 227-M; shows the name and truncated Social Security Number of each full-time employee for whom the ALE filed a Form 1095-C, <i>Employer-Provided Health Insurance Offer and Coverage</i> , if the employee claimed a PTC and the ALE did not report an affordability safe harbor or other relief from the ESRP.
Letter 5040J, Proposed ESRP Follow-Up	Issued if no response to Letter 226-J is received by the IRS within 30 days. Includes another copy of Letter 226-J and all attachments.
Letter 227-J, ESRP Acknowledgement Closing Letter	Notifies the ALE that the IRS received its response and agreement with the proposed ESRP and notifies it of ways it can make the payment.
Letter 227-K, ESRP Acknowledgement – No Change	Notifies the ALE that the IRS received its response, accepted the changes it provided, and determined that the recalculated ESRP is now \$0. This is referred to as a “No-Change” case.
Letter 227-L, Revised ESRP Calculated	Notifies the ALE that the IRS received its response and, based on the information provided, the IRS has recalculated the proposed ESRP. Also included are Forms 14764 and 14765.
Letter 227-M, ESRP Acknowledgement – Revised ESRP Unchanged	Notifies the ALE that the IRS received its response and, based on the information provided, the proposed ESRP is unchanged. Also included are Forms 14764 and 14765.
Letter 227-N, ESRP Acknowledgement – Appeals Determination	Notifies the ALE of the ESRP determination made after an appeals conference.

Source: TIGTA review of forms provided by IRS management and identified in the Product Catalog.



Improvements Are Needed to Ensure That Employer Shared Responsibility Payments Are Properly Assessed

Appendix VI

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

April 17, 2020

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Eric C. Hylton Eric C. Hylton Digitally signed by Eric C. Hylton
Date: 2020.04.17 13:21:16 -04'00'
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Improvements Are Needed to Ensure
Employer Shared Responsibility Payments Are Properly
Assessed (Audit # 201940319)

Thank you for the opportunity to review the above subject draft audit report. IRS has responsibility for key provisions of the Affordable Care Act (ACA) including the Employer Shared Responsibility Payment (ESRP). The ESRP applies to employers that had an average of 50 or more full-time employees, including full-time equivalent employees during the prior calendar year, referred to as Applicable Large Employers (ALEs). Under the provision, ALEs must offer health insurance to full-time employees (and their dependents) during the calendar year through an employer-sponsored plan beginning in January 2015, or an ESRP may apply. The ESRP is a payment that is assessed and collected in the same manner as a penalty. Administering health care legislation, particularly the ESRP, presented many unique challenges the IRS has diligently worked to address.

The IRS began contacting ALEs about TY 2015 ACA information returns and potential liability for an ESRP in November 2017. The new information reporting requirements caused an unanticipated level of confusion and uncertainty on how to correctly complete the required ACA information returns. Since then the IRS has engaged in numerous outreach and education efforts to improve ALEs' understanding of how to correctly complete and file the ACA information returns, including the complex returns involving aggregated ALE groups. These outreach and education efforts have resulted in a substantial reduction in the number of incomplete information returns filed.

We have also made substantial improvements to our information return intake, assimilation, and perfection processes, and our non-filer and post-filing compliance programs. We refined our compliance program selection processes by improving data mining and matching capabilities. However, our selection criteria are based on the accuracy of the information returns filed by an ALE. After receiving our compliance inquiry, many ALEs indicated they did not accurately complete their ACA information



Improvements Are Needed to Ensure That Employer Shared Responsibility Payments Are Properly Assessed

2

returns. Once the inaccuracies are resolved, through the compliance inquiry process, the ALE is not assessed an ESRP.

*****2*****
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Attached is our detailed response addressing your recommendations and outcome measures. If you have any questions, please contact me or Scott Irick, Director, Examination Operations.

Attachment



***Improvements Are Needed to Ensure That Employer
Shared Responsibility Payments Are Properly Assessed***

2

CORRECTIVE ACTION(S) MONITORING PLAN:

N/A

RECOMMENDATION 3:

The Commissioner, TE/GE Division, should expand existing criteria used to identify churches to include key word searches and ensure these cases are referred to TE/GE as required.

CORRECTIVE ACTION:

The presence, or not, of any particular word in a taxpayer's name is not determinative of status, or a claim to status as a church. In TIGTA Report 2013-10-053, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*, it was observed that "[u]sing the names ... of organizations is not an appropriate basis for identifying" it for review. The use of the recommended criteria could result in the inaccurate imposition of Section 7611 procedures, which would inappropriately delay the case of a taxpayer to which they do not apply. Moreover, as the report confirms, IRS already has in place procedures to mitigate the risk that Section 7611 will not be applied to organizations claiming church status: any taxpayer that was not initially identified as a church under the existing criteria but that claims church status during the ESRP process will have its case transferred to TE/GE. See IRM 4.23.2.2.3.2 ("If for some reason an employment tax examiner encounters a church employment tax issue, the examiner should immediately contact TE/GE Exempt Organizations Examinations...").

IMPLEMENTATION DATE:

N/A

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION(S) MONITORING PLAN:

N/A

OUTCOME MEASURE 1:

Increased Revenue – Potential; \$4.5 billion from 17,041 ALEs that we project had their ESRPs reduced based solely on ALE statements *****2*****.

IRS RESPONSE:

The sample size of 118 was designed as an attribute sample, which is appropriate for estimating cases but is too small to provide a precise estimate for a dollar value with a wide range of outcomes. As a result, the confidence interval around the potential revenue estimate is very wide and cannot aid in decision making. Additionally, without the completion of an ESRP inquiry it cannot be determined if the ESRP will be reduced.



Improvements Are Needed to Ensure That Employer Shared Responsibility Payments Are Properly Assessed

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OUTCOME MEASURE 2:

Taxpayer Rights Protected – Potential; 90 ALEs the IRS selected for an ESRP review that were not afforded the protections under the I.R.C. § 7611.

IRS RESPONSE:

TIGTA's description concedes that its methodology identified cases that "may be" churches, not organizations that are or claim to be churches. TIGTA "identified keywords in the organization[']s name such as church, chapel, etc." and then undertook a manual review to eliminate cases in which the name "indicated it was some other type of business." This approach is inherently a subjective and unreliable approach to identify churches or organizations claiming to be churches for purposes of the application of I.R.C. § 7611.

The term "church" is not used by all faiths. For Federal tax purposes, the term encompasses all places of worship, including but not limited to synagogues and mosques (IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*). Further, there is no particular word or words that are determinative of an organization being a house of worship. For example, the term "ministry" is used by many religious organizations that are not necessarily "churches."

While TIGTA's methodology is inherently subjective, the IRS's methodology utilizes objective indicators of organizations that have claimed to the IRS that they are churches, specifically organizations that have requested and been recognized with a church foundation status under I.R.C. § 170(b)(1)(A)(i) or obtained an exception to the annual information return filing requirement applicable to most tax-exempt organizations because they are a church (See I.R.C. § 6033(a)(3)(A)(i)).