

## IRS to Begin Mailing “Pay or Play” Penalty Letters

The Internal Revenue Service (IRS) has announced that it will begin mailing employers letters informing them of their potential liability for a “pay or play” penalty for the 2015 calendar year in late 2017. However, before any penalty is assessed and a Notice and Demand for payment is made, employers will have an opportunity to respond to the agency.

### What Will the Letter Contain?

The IRS plans to issue [Letter 226J](#) to [applicable large employers](#) (ALEs) – generally those with at least 50 full-time employees, including full-time equivalent employees, on average during the prior year – if it determines that, for at least one month in the year, one or more of the ALE’s full-time employees was enrolled in a qualified health plan for which a premium tax credit was allowed (and the ALE did not qualify for an affordability safe harbor or other relief for the employee). Letter 226J will include, among other things:

- A penalty payment summary table, itemizing the proposed payment by month;
- An “Employee Premium Tax Credit Listing” (Form 14765) which lists, by month, the ALE’s employees who, for at least one month in the year, were full-time employees allowed a premium tax credit and for whom the ALE did not qualify for an affordability safe harbor or other relief;
- A description of the actions the ALE should take if it agrees or disagrees with the proposed penalty payment; and
- Form 14764, a response form.

The response to Letter 226J will be due by the response date shown on the letter, which generally will be **30 days** from the date of Letter 226J. Letter 226J will also contain the name and contact information of a specific IRS employee that the ALE should contact if the ALE has questions about the letter.

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### **How Does an ALE Make a “Pay or Play” Penalty Payment?**

If, after correspondence between the ALE and the IRS, the IRS determines that an ALE is liable for a penalty payment, the IRS will assess the payment and issue a Notice and Demand for payment, **Notice CP 220J**. That notice will instruct the ALE on how to make a payment, if any. Notably, **ALEs will not be required to include the payment on any tax return that they file or to make a payment before Notice and Demand for payment.**

You can find [more information on Employer Shared Responsibility Payments](#) at the IRS website.

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