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IRS Relief from Individual Mandate Penalties for Non-calendar Year Plans

Beginning in 2014, the Affordable Care Act (ACA) requires most individuals to obtain acceptable health insurance coverage for themselves and their family members or pay a penalty. This rule is often referred to as the “individual mandate.” On June 26, 2013, the IRS issued a special rule exempting individuals from the penalty for part of 2014 if they are eligible to enroll in an employer-provided plan that has a non-calendar year plan year.

THE INDIVIDUAL MANDATE

Under the individual mandate, a penalty will be assessed against an individual for any month during which he or she does not maintain “minimum essential coverage,” beginning in 2014 (unless an exemption applies). A taxpayer is also liable for the penalty for any nonexempt individual whom the taxpayer may claim as a dependent.

Minimum essential coverage includes coverage under an eligible employer-sponsored plan. An eligible employer-sponsored plan is a group health plan (whether an insured group health plan or a self-insured group health plan) or group health insurance coverage offered by an employer to the employee that is:

- A governmental plan;
- Any other plan or coverage offered in a state’s small or large group market (including a self-insured group health plan); or
- A grandfathered health plan offered in a group market.

[IRS Notice 2013-42](#) provides **transition relief** from the individual mandate penalty for certain months in 2014 for individuals who are eligible to enroll in eligible employer-sponsored health plans with plan years other than the calendar year (non-calendar year plans).

TRANSITION RELIEF

Many employer-sponsored plans have a non-calendar plan year. In general, most employer-sponsored plans do not permit employees to enroll after the beginning of a plan year unless certain triggering events occur, such as a change in employment status.

To accommodate ACA’s changes for 2014, certain employers with non-calendar year plans may allow employees to make mid-year changes to their elections for pre-tax health plan contributions for 2014. For example, if a non-calendar year plan permits these mid-year changes, eligible employees without health plan coverage can elect to enroll in the plan and pay for coverage on a pre-tax basis, effective Jan. 1, 2014. However, not all non-calendar year plans will allow employees to make these mid-year election changes.

Without transition relief, many individuals eligible to enroll in non-calendar year plans would need to enroll in 2013 (before the individual mandate becomes effective) in order to maintain minimum essential coverage for months in 2014.

Under the transition relief in IRS Notice 2013-42, an employee (or an individual having a relationship to the employee) who is eligible to enroll in a non-calendar year eligible employer-sponsored plan with a plan year beginning in 2013 and ending in 2014 (the 2013-2014 plan year) will not be liable for the individual mandate penalty for certain



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months in 2014. **The transition relief begins in January 2014 and continues through the month in which the 2013-2014 plan year ends.**

Also, any month in 2014 for which an individual is eligible for this transition relief will not be counted in determining a continuous period of less than three months for purposes of the short coverage gap exemption to the individual mandate.

EXAMPLES

Example 1 – Eligible for Enrollment in a Non-calendar Year Plan for the 2013-2014 Plan Year

Taxpayer B is unmarried and has a five-year-old daughter, D. B and D are eligible to enroll in a non-calendar year eligible employer-sponsored plan offered by B's employer, X, whose plan year begins on Aug. 1, 2013 and ends on July 31, 2014. Neither B nor D enrolls in X's employer-sponsored plan for the 2013-2014 plan year. Both B and D are eligible for the transition relief provided in this notice for January 2014 through July 2014.

Example 2 – Married Individuals each Eligible for Enrollment in a Non-calendar Year Plan of an Employer for the 2013-2014 Plan Year and in a Calendar Year Plan of the Other Spouse's Employer for 2014

F and G are married. F and G are eligible to enroll in a non-calendar year eligible employer-sponsored plan offered by F's employer, Y, whose plan year begins on Aug. 1, 2013 and ends on July 31, 2014. Neither F nor G enrolls in Y's employer-sponsored plan for the 2013-2014 plan year. In addition, F and G are eligible to enroll in a calendar year eligible employer-sponsored plan offered by G's employer, Z, beginning on Jan. 1, 2014. Neither F nor G enrolls in Z's employer-sponsored plan for the 2014 plan year. Both F and G are eligible for the transition relief provided in this notice for January 2014 through July 2014.

OTHER RELIEF FOR NON-CALENDAR YEAR PLANS

Effective Jan. 1, 2014, ACA exposes large employers to penalties if they do not offer minimum essential coverage to substantially all full-time employees and their dependents. Large employers that offer coverage may still be liable for penalties if the coverage is unaffordable or does not provide minimum value.

On Jan. 2, 2013, the IRS released a [proposed rule](#) on ACA's employer shared responsibility provisions. The proposed rule contains important transition relief for employers that maintain non-calendar year plans as of Dec. 27, 2012. In general, if a large employer offers coverage to an employee that is affordable and provides minimum value for the first non-calendar year plan year beginning in 2014 (2014-2015 plan year), the employer will not be liable for a penalty with respect to that employee for the period prior to the first day of the 2014-2015 plan year if the employee was eligible to participate in the plan as of Dec. 27, 2012.

Similar relief may also be available for certain employers with respect to employees not eligible to participate in the plan as of Dec. 27, 2012.

In addition, the proposed rule provides transition relief from the cafeteria plan election rules with respect to salary reductions for non-calendar plan years beginning in 2013 (2013-2014 plan year). Under that relief, a large employer may choose to amend its cafeteria plan to permit employees to make election changes during the 2013-2014 plan year. This relief reflects the concern that an employee's preferences may change due to the implementation of ACA.

Source: Internal Revenue Service

This Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.