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Your Farm Business and the Affordable Care Act

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Beginning in 2015, a farm that is an "applicable large employer" (ALE) generally must either provide health coverage to full time employees and their dependents, or pay a penalty for not offering coverage. Generally, a penalty is triggered if an employee of the farm business is offered coverage by the farm business that does not meet the minimum guidelines or if an employee obtains coverage through a Marketplace exchange. The rule that requires the farm business to either provide coverage or pay a penalty has become known as the "play or pay" rule under the Affordable Care Act (ACA).

At this point in 2014, there are several aspects of the ACA that farmers with employees should know about in order to determine how this law affects them. Questions that farmers have regarding this law and its impact on their farm business include the following.

- Is my farm business subject to the mandate or it is exempt?
- Is there any deferral of this mandate for my farm business?
- If I want to offer coverage to full time employees so I don't have to pay a penalty, what are some of the requirements that the coverage must meet?
- How much is the penalty if I do not offer coverage?

COUNTING FARM BUSINESS EMPLOYEES

The farm business is subject to the "play or pay" rule if it falls under the definition of an "applicable large employer" (ALE) under the ACA. A farm business is an ALE if the farm business employed an average of at least 50 full-time employees on business days during the previous calendar year. Under the rules for counting employees, in order to determine whether the farm business has over 50 employees, the farmer must add together:

- All full time employees, and
- Part time employees that will be treated as "full time equivalents" (FTEs).

A full time employee under the rules is an employee that was employed at least 30 hours per week or 130 hours in a calendar month. Part-time employees are counted by adding up the total number of service hours for the month for all part-time employees and dividing that sum by 120.

> **Example.** Liverpool Farms, Inc. (Liverpool) has 17 employees, each of whom works an average of 33 hours per week in each month of 2014. In addition, there are 48 part-time employees. Each of the part-time employees averages 80 hours of service each month for 2014. Liverpool must determine whether it is an ALE for 2015 based on the number of their employees and the average hours the employees have worked during 2014. Liverpool makes this determination using the following calculations.
>
> First, the 17 employees who average 33 hours per week in each month of the previous year are counted as full-time employees because these employees have worked at least 30 hours per week each calendar month for the preceding year.
>
> In addition to the 17 full-time employees, Liverpool must calculate the number of FTEs to determine whether it has 50 or more full-time employees.

$$\text{Number of FTEs} = \frac{\text{Aggregate number of hours worked by all part time employees}}{120}$$

$$= \frac{\text{48 part time employees} \times \text{80 average hours}}{120}$$

$$= \frac{3840}{120}$$

$$= \text{32 FTEs in each month during 2014.}$$

> For purposes of the employer shared responsibility rules, Liverpool has a total of 49 employees in 2014 (17 full-time employees + 32 FTEs). Therefore, it is not subject to the employer mandate in 2015 because it does not have at least 50 full-time employees in 2014.
>
> ***Note.*** *If the result of the FTE calculation is not a whole number, it is rounded to the next lowest whole number in determining the number of FTEs.*

For farmers that own multiple farm businesses, there are special rules that generally require the farmer to aggregate those farm businesses and count all the employees for them as if they were one business.

Applicable Time Period

In determining whether it is subject to the employer mandate for 2015, the farm employer can choose any consecutive 6-month period during 2014 as the time period over which to count farm employees. The farm employer is only subject to the employer mandate if it employed 50 or more full-time workers (taking into account the sum of the full-time employees and FTEs) on business days during the consecutive 6-month period within 2014 that the farm employer chooses.

Seasonal Worker Exception

Farm businesses may be able to make use of a special exception for employees that are seasonal. The farm employer will not be subject to the “play or pay” rules if the farm employer qualifies for the seasonal worker exception. A farm employer qualifies for this exception if both of the following apply.

- The sum of the full-time and FTE employees is greater than 50 for a period of 120 days or less during the preceding calendar year.
- Those employees in excess of 50 qualify as seasonal workers.

Seasonal work is defined as labor ordinarily performed during certain seasons or periods of the year which, by its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal job to another may still be considered a seasonal worker even though that worker may be employed for a major part of the year.

DEFERRAL OF THE MANDATE FOR CERTAIN FARM EMPLOYERS

Originally, the ACA declared that ALE farm businesses would first become subject to the employer mandate for 2014. However, this initial effective date was delayed until 2015.

In addition, farm employers with 50 to 99 employees may continue to be exempt from the employer mandate penalties for a further year until January 2016. This exemption includes all of 2015. Farm employers with a health plan year that is not based on the calendar-year are exempt from the mandate and any penalties until the first date of the 2016 plan year. To qualify for the exemption, the employer with 50 to 99 employees generally must use a special form to certify to the IRS in writing that the farm employer meets the following requirements.

- At least 50 but less than 100 full-time employees were employed during 2014.
- There has been no reduction of work force size or a reduction of overall hours of service in order to meet the required number of employees necessary for this exemption.
- There has been no material reduction or elimination of any health coverage that is offered from the period February 9, 2014, through December 31, 2014.

The rules in this area are complex and there are additional specific limitations and definitions. Farm employee reductions for genuine business reasons are acceptable, and certain reductions in any existing farm business health care plan may also be allowed without disqualifying the farm employer from the exemption. The IRS is still developing the required form to be used for the farm business to certify it qualifies for this additional year of deferral. Presumably, this form will be made available before the end of 2014.

OFFERING COVERAGE TO FARM BUSINESS EMPLOYEES

Generally, the employer mandate of the Affordable Care Act requires the farm employer to either offer "**minimum essential coverage**" (MEC) to full time employees and their dependents or pay a penalty. MEC is generally coverage that is comprehensive medical coverage. A plan that only provides coverage for limited purposes, such as for only dental or vision benefits, nursing home care or that covers only a specific illness or disease will not qualify as MEC. Generally, any plan offered by the Marketplace (the exchange that the farm employer may obtain a plan from for its employees) will qualify. In addition, some plans are "grandfathered" under the Affordable Care Act under special rules. If the farm employer already offered a plan that qualifies for grandfathered status under the applicable rules, that plan will generally qualify as MEC.

In addition, to avoid a penalty, the farm employer that chooses to offer coverage must offer coverage to 95% of full time employees and their dependents. However, for 2015 only, this rule has been made easier to comply with because the farm employer will not face a 2015 penalty if at least 70% of full time employees are offered coverage (and generally, no penalty will be triggered in 2015 if dependents of full time employees are not covered).

In addition, the coverage offered must be "**affordable**" to employees and provide "**minimum value**" under ACA guidelines. "Affordable" generally means that any employee costs for the coverage will not exceed 9.5% of the employee's household income (which is generally a measure of the employee's family income that is calculated under special rules). Because the farm employer will not likely know the income of the employee's spouse or other members of the employee's household, special rules allow the farm employer to rely on the employee's wages that will appear on the employee's Form W-2 (or other amounts attributable to the employee that are known by the farm business) in order to ensure this requirement is met. In addition, the coverage offered will provide "minimum value" to employees if it pays at least 60% of the cost of the health care services the plan covers (taking into account deductibles, copayments and other such costs to the employee).

If the farm employer offers coverage that does not meet these guidelines, or does not offer coverage at all, the employer will face a penalty.

PENALTIES FOR FARM BUSINESSES

There are two alternative penalties that may apply to the farm employer: a penalty for the farm employer that does not offer coverage (referred to as the §4980H(a) penalty) and another penalty that will apply for the farm employer that does offer coverage but does not meet the necessary requirements discussed previously (referred to as the §4980H(b) penalty). Sections 4980H(a) and (b) are the Tax Code sections that outline the details of each penalty. Each of them is calculated differently.

Farm Employers Not Providing Coverage

The ACA does not require farm employers to offer coverage to employees. However, starting in 2015, farm employers with 100 or more employees will be subject to a penalty if:

- The farm employer fails to offer its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an employer-sponsored plan, and
- At least one full-time employee has been certified as having enrolled in a Marketplace exchange and receives the Premium Tax Credit (PTC) or qualifies for cost sharing (because the employee was required to go to the Marketplace to obtain their necessary coverage).

These farm employers are subject to a shared-responsibility payment, which is calculated on a monthly basis using the following steps.

- Subtract 30 employees from the total number of full time and FTE employees
- Multiply that reduced number of employees by $2,000.[1]

Note. *This penalty is* ***not tax deductible*** *by the farm employer.*

Example. During all of 2015, Eastern Farms, Inc. did not offer MEC to its full-time employees. Taking into account all full-time and part-time employees, Eastern Farm's full time employee count for each month was 127. Since this number of full time employees is at least 50, Eastern Farms is an ALE subject to the penalty. Several employees qualified for the premium tax credit (PTC) an/or cost sharing when they obtained coverage through the Marketplace exchange. Because at least one employee qualified for the PTC or cost sharing, Eastern must pay a 2015 penalty.

To calculate this penalty, Eastern Farms first reduces the 127 FTE employee count by 30. This results in an adjusted employee count of 97 (127 – 30 employees).

The §4980H(a) penalty is $194,000 ($2,000 × 97 employees).

Observation. *Although a 30-employee reduction is permitted in the calculation of this penalty to the farm business, this same reduction is* ***not*** *permitted when calculating the number of employees for the purpose of determining whether the farm business is an ALE subject to the "play or pay" rules.*

Farm Employees Providing Coverage[2]

Farm employers that do offer coverage to employees must ensure the coverage qualifies as MEC, is affordable to employees and meets minimum value requirements as discussed earlier, or face a penalty.

[1] The $2,000 amount is subject to an inflation adjustment in future years.
[2] IRC §4980H(d)(2).

This penalty is $3,000 per year for each employee who qualifies for the PAC or cost-sharing reduction. The $3,000 penalty amount is subject to annual inflation adjustments. In addition, the farm employer's penalty under this rule payment cannot be larger than the penalty that would be incurred if the employer did not offer coverage to its employees (discussed in the last section). Accordingly, the cap on the §4980H(b) penalty to the employer offering coverage is the amount of the §4980H(a) penalty the employer would incur, calculated as if that employer did not offer coverage. Moreover, this penalty, like the §4980H(a) penalty mentioned earlier, is not tax deductible by the farm business.

Example. During 2015, Sigma Farms has 90 full-time employees. The company offers MEC to its full time employees but the coverage was not affordable (with regard to the 9.5% rule mentioned earlier) for eight employees. These eight employees obtained their coverage for the entire year from the Marketplace exchange. These eight employees receive a PTC for the year in connection with their plans obtained through the Marketplace exchange. For each of these eight employees, Sigma Farms owes a §4980H(b) penalty of $3,000. The annual penalty is therefore $24,000 ($3,000 × 8 employees). However, the cap this §4980H(b) penalty is the amount of §4980H(a) penalty Sigma Farms would pay had it not offered coverage to employees. This §4980H(a) maximum cap on the §4980H(b) penalty is calculated as follows.

90 employees – 30 employees = 60 employees
Maximum §4980H(a) penalty = $120,000 ($2,000 × 60 employees)

Therefore, while the maximum §4980H(b) penalty is capped at $120,000, Sigma Farms is liable for the $24,000 penalty as calculated above.

Note. *The 30-employee reduction that is allowed in the calculation of the §4980H(a) penalty is not provided in the calculations for the §4980H(b) penalty. In addition, while the above examples are based on penalty amounts for a full year, the actual rules base the penalty on a monthly calculation.*

Notice that the 4980H(a)[1] penalty is based on the total number of employees of the farm business (less the 30 employees the statute permits the farmer to subtract from the total) but the §4980H(b) penalty is based only on the number of employees that qualify for the PTC or other cost subsidization from the Marketplace exchange.

CONCLUSION

In 2015, farm employers with 100 or more employees will become subject to the mandate to either provide coverage that meets certain requirements or pay a penalty. Those farm employers with 50 to 99 employees become subject to this mandate in 2016. Farm employers that have not given this "play or pay" area of the Affordable Care Act much consideration still have enough time to plan ahead to minimize its financial impact and an investigation of the options, assessment of potential penalty liability and the making of key decisions that will affect the farm business permanently should be aspects considered sooner rather than later. Farmers with employees should consult a tax advisor who is very familiar with these ACA rules to obtain the necessary advice if they haven't already done so. This will ensure enough time to properly develop and implement plans to address the major impact the ACA will have on a farm business.

[1] IRS Notice 2012-31, 2012-20 IRB 906.