

IRS PENALTY ENFORCEMENT AGAINST ALES

Understanding IRS Letter 5699, IRS Letter 226J, and IRS Notice 972CG

Presented by: Elizabeth Raggio, Law Office of Haff & Raggio, PLLC



In partnership with



LAW OFFICE OF
HAFF & RAGGIO
PLLC

Disclaimer

The materials and information contained herein are intended only to provide general information and in no way constitute legal advice. If you have specific questions or concerns, please consult legal counsel.


Finally, this presentation is current as of July 8, 2021, and the information contained herein is subject to change.

What is an ALE and What does ACA Require of ALEs?

Applicable Large Employer (ALE): Single employer or group of related employers who employed an average of at least 50 full-time employees (including FT equivalent employees) in the prior calendar year.

Employer Mandate: Offer health coverage to at least 95% of full-time employees & dependents and offer minimum value/affordable coverage to full-time employees. ALEs who fail to comply risk exposure to employer shared responsibility penalties (Section 4980H).

Health Coverage Reporting: Report compliance (or lack thereof) with the employer mandate by completing Forms 1094-C/1095-C filing and distribution requirements each tax year. ALEs who fail to comply risk exposure to reporting penalties (Sections 6721 & 6722).



Employers who experienced workforce changes due to COVID-19 should revisit this calculation!

Employer Shared Responsibility Penalty Refresher



Offer

The A Penalty: ALE fails to offer MEC to 95% of FTEs and dependents, and one FTE enrolls in subsidized Exchange coverage.

*2019 A Penalty: **\$2,500 (\$208.33/mo)**
x total FTEs – pro rata share of 30 FTEs*

*2020 A Penalty: **\$2,570 (\$214.17/mo)**
x total FTEs – pro rata share of 30 FTEs*

*2021 A Penalty: **\$2,700 (\$225.00/mo)**
x total FTEs – pro rata share of 30 FTEs*

The B Penalty: ALE offers to 95%, but not MV or affordable (EE required contribution exceeds 9.83% of 2021 income), and one FTE enrolls in subsidized Exchange coverage.

*2019 B Penalty: **\$3,750 (\$312.50/mo)** x
each FTE receiving subsidy*

*2020 B Penalty: **\$3,860 (\$321.67/mo)** x
each FTE receiving subsidy*

*2021 B Penalty: **\$4,060 (\$338.33/mo)** x
each FTE receiving subsidy*



Quality

Failure to File or Furnish Penalty Refresher

Example: If an ALE failed to file 1 Form 1094-C and 100 Forms 1095-C with the IRS and distribute 100 Forms 1095-C to employees, the total penalty exposure is **\$56,280**.

\$50 if corrected within 30 days

\$110 if corrected after 30 days but before Aug. 1

\$280 if no corrections are made

\$560 if acted with intentional disregard



Watch out for double penalties – they apply per form filed with the IRS and furnished to individuals.

How Does the IRS Enforce ALE Obligations?

- IRS Letter 5699
- IRS Notice 972CG
- IRS Letter 226J



IRS


Department of the Treasury
Internal Revenue Service

IRS Letter 5699



We think you are an ALE, so where are your forms?

Reporting Penalty Enforcement for Non-Filer ALEs Begins with IRS Letter 5699

 Department of the Treasury
Internal Revenue Service
1973 North Rulon White Boulevard
Ogden, UT 84201-0062

Date: June 27, 2019
Taxpayer ID number: [REDACTED]
Tax year: 2017
Person to contact: 4980H Response Unit
Employee ID number: L5699
Contact telephone number: 866-379-6176
Contact e-fax number: 877-792-2723



RECEIVED
JUL 1 2019
BY: [REDACTED]

Dear [REDACTED]:

Our records show you may have been an Applicable Large Employer (ALE) in 2017 and therefore required to file certain information returns for 2017. We haven't received those returns for the taxpayer ID number shown at the top of this letter.

Internal Revenue Code (IRC) Section 6056 requires employers that are ALEs to file information returns with the IRS and provide statements to their full-time employees relating to the health insurance coverage, if any, the employer offered its full-time employees. ALEs meet these reporting requirements using Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Return, and Form 1095-C, Employer-Provided Health Insurance Offer and Coverage.

How to know if you're required to file

In general, an employer is an ALE for a year (and thus subject to the reporting requirements) if it had an average of 50 or more full-time employees (including full-time equivalent employees) during the preceding calendar year. For this purpose, there are specific definitions of full-time employee and full-time equivalent employee, exceptions for certain seasonal workers and employees with TRICARE or Veterans Administration health coverage, and specific rules for employers that are members of an aggregated group under IRC §§ 414(b), (c), (m) or (o). For more information on these rules and other information about how to determine if you were an ALE in 2017, visit the ACA Information Center for Applicable Large Employers (ALEs) at www.irs.gov, keyword "ALEs."

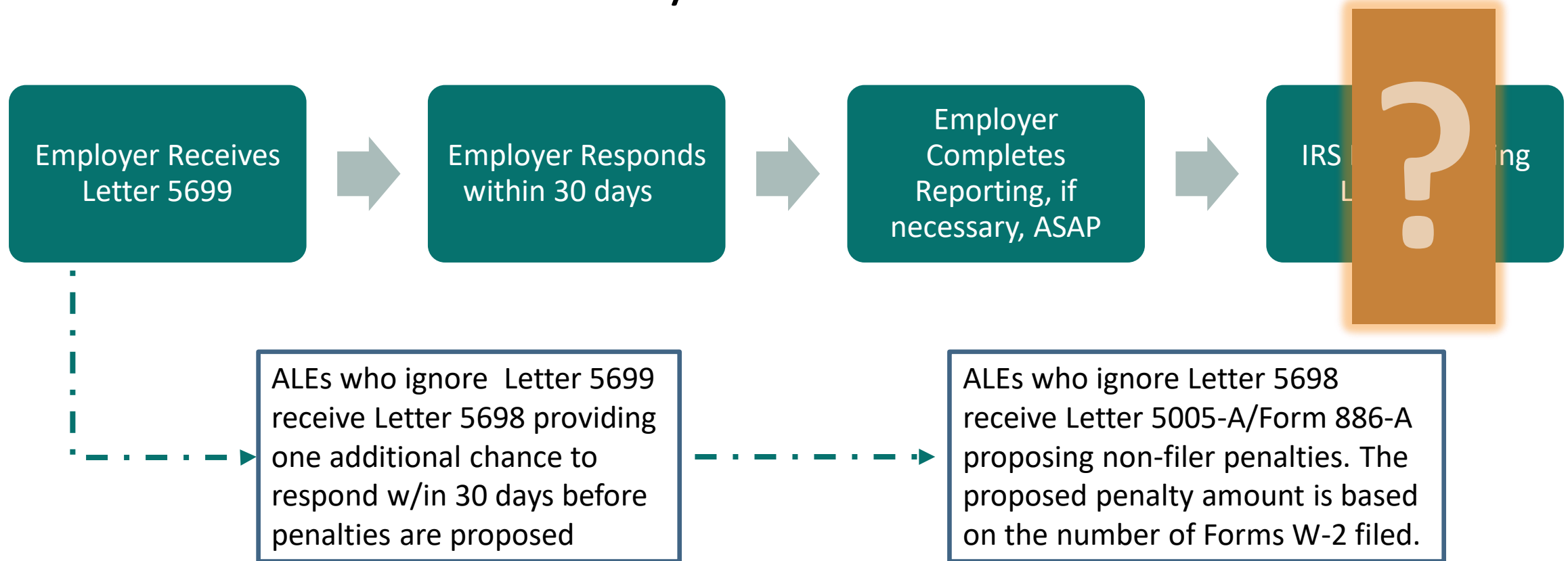
Employers required to file at least 250 Forms 1095-C generally must file electronically. Other employers may file either electronically or on paper. You can find the 2017 Forms 1094-C and 1095-C and Instructions for Forms 1094-C and 1095-C, which includes information on how to file returns with the IRS, at www.irs.gov at the top of the screen select "Forms & Pubs," under the "Browse" heading choose "List of Prior Year Forms & Pubs" and in the "Find" box enter "1094-C" or "1095-C," as applicable).

What you must do

Check the box below that applies and mail your response to us to the address shown at the top of this letter within 30 days from the date of this letter.

- I was an ALE for calendar year 2017 and already filed Form 1094-C and Forms 1095-C with the IRS using the following name _____ and employer identification number (EIN) _____ on date _____
- I was an ALE for calendar year 2017 and have included my Form 1094-C and Forms 1095-C with this letter. (Do not use this box if you are required to file electronically.) (Explain reasons for late filing below under "Other")
- I was an ALE for calendar year 2017 and will file my Form 1094-C and Forms 1095-C with the IRS using the following name _____ and EIN _____ by date _____ (If more than 90 days from the date of this letter, explain below under "Other") (Explain reasons for late filing below under "Other")
- I was not an ALE for calendar year 2017. Explain reasons below under "Other".
- Other (Indicate below or attach a statement explaining why you haven't filed the required returns and any actions you plan to take.)

IRS Non-Filer Penalty Enforcement Process



ALEs required to file electronically who receive Letter 5699 should ensure they are working with a vendor who can file for prior tax years & does not overreport.

IRS Letter 972CG



We received your forms, but you owe a penalty due to a filing failure.

NEW: IRS USING NOTICE 972CG TO ENFORCE 6721/6722 PENALTIES FOR LATE FILING, FAILURE TO FILE ELECTRONICALLY, AND TIN MISMATCH

IRS Department of the Treasury
Internal Revenue Service
PHILADELPHIA, PA 19255-0633

000603.837498.272374.23232 2 MB 0.428 1190

0603

IF YOU WRITE OR CALL US, REFER TO THIS INFORMATION:
NOTICE NUMBER: 972CG
BOD CODE: SBS
DATE OF THIS NOTICE: 08/12/2019
TAXPAYER IDENTIFICATION NUMBER: [REDACTED]
FORM: CIVL PEN
TAX PERIOD: 201712
PENALTY REFERENCE CODE: 500

FOR INFORMATION, PLEASE CALL: 1-866-455-7438

A PENALTY IS PROPOSED FOR YOUR 2017 INFORMATION RETURNS

ACTION REQUIRED

OUR RECORDS SHOW THAT YOU DIDN'T FILE CERTAIN INFORMATION RETURNS CORRECTLY AS REQUIRED BY INTERNAL REVENUE CODE (IRC) SECTION 6721 FOR THE TAX PERIOD SHOWN ABOVE. THE LAW ALLOWS FOR A PENALTY FOR FILING INFORMATION RETURNS INCORRECTLY. A PENALTY IS PROPOSED IN THE AMOUNT OF \$208,350.00. INTEREST ON THIS PENALTY WILL NOT BE CHARGED UNTIL AFTER YOU RECEIVE A BILL.

PLEASE READ THIS NOTICE CAREFULLY. IT EXPLAINS THE PROPOSED PENALTY AND WHAT YOU SHOULD DO IF YOU AGREE OR DISAGREE WITH THE PROPOSAL. THIS PENALTY WILL BE CHARGED IF YOU DON'T RESPOND TO THIS NOTICE. THE PROPOSED PENALTY IS EXPLAINED UNDER THE "EXPLANATION OF PENALTY" SECTION.

HOW YOU SHOULD RESPOND TO THIS NOTICE

PLEASE REVIEW YOUR RECORDS REPLY TO FILING THE RETURNS LISTED ON PAGE 2.

-- IF YOU AGREE TO THE FULL AMOUNT OF THE PROPOSED PENALTY, DO ALL OF THE FOLLOWING:

- CHECK BOX (A) ON THE RESPONSE PAGE OF THIS NOTICE.
- SIGN AND DATE THE CONSENT TO PENALTY ASSESSMENT.
- ENCLOSE YOUR PAYMENT IN THE ENVELOPE WINDOW. MAKE YOUR CHECK OR MONEY ORDER PAYABLE TO THE UNITED STATES TREASURY.
- ENCLOSE THE APPROPRIATE MAILING STUB TO INDICATE WHETHER A PAYMENT IS INCLUDED. THE ADDRESS APPEARS IN THE ENVELOPE WINDOW.
- ENSURE THE ADDRESS ON THE ENVELOPE APPEARS IN THE ENVELOPE WINDOW.

-- IF YOU DON'T AGREE WITH ALL OR PART OF THIS PENALTY, YOU MAY DISAGREE WITH ALL OR PART OF OUR FINDINGS OR BELIEVE YOU HAVE A REASON WHY THE PENALTY SHOULD NOT BE CHARGED, DO ALL OF THE FOLLOWING:

- CHECK BOX (B) OR (C) ON THE RESPONSE PAGE OF THIS NOTICE.
- ENCLOSE A SIGNED STATEMENT EXPLAINING WHY YOU DISAGREE.
- INCLUDE ANY SUPPORTING DOCUMENTS YOU WISH TO HAVE CONSIDERED.
- IF YOU AGREE TO PART OF THE PENALTY, ENCLOSE YOUR PAYMENT. MAKE YOUR CHECK OR MONEY ORDER PAYABLE TO THE UNITED STATES TREASURY.
- ENCLOSE THE APPROPRIATE MAILING STUB TO INDICATE WHETHER A PAYMENT IS INCLUDED.
- RETURN THE RESPONSE PAGE WITH YOUR STATEMENT AND DOCUMENTS IN THE ENCLOSED ENVELOPE (ENSURE THE ADDRESS APPEARS IN THE ENVELOPE WINDOW). PLEASE INCLUDE A TELEPHONE NUMBER AND THE BEST TIME TO CALL.

IT'S IMPORTANT THAT YOUR COMPLETE RESPONSE BE RECEIVED WITHIN 45 DAYS FROM THE DATE OF THIS NOTICE. YOU HAVE 60 DAYS TO RESPOND IF YOU LIVE OUTSIDE THE UNITED STATES. IF YOU DO NOT RESPOND WITHIN THE 45-DAY PERIOD, YOU WILL RECEIVE A BILL CALLED "NOTICE OF PROPOSED PENALTY." INTEREST WILL BE CHARGED ON THE AMOUNT OF THE "NOTICE OF PROPOSED PENALTY" FROM THE DATE OF THE "NOTICE OF PROPOSED PENALTY" TO THE DATE PAYMENT IS RECEIVED IN FULL.

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, YOU MAY WRITE TO THE RETURN ADDRESS SHOWN ABOVE OR CALL THE TELEPHONE NUMBER SHOWN ABOVE FOR INFORMATION. HOWEVER, THE OFFICE AT THE ADDRESS SHOWN ABOVE IS MOST FAMILIAR WITH YOUR CASE.

RESPONSE TO PROPOSED PENALTY FOR YOUR TAX YEAR 2017 INFORMATION RETURNS

PLEASE CHECK THE BOX THAT APPLIES TO YOU AND RETURN THIS PAGE IN THE ENCLOSED ENVELOPE. PLEASE REMEMBER TO INCLUDE THE APPROPRIATE MAILING STUB AND INSERT IT IN THE ENCLOSED ENVELOPE SO THE ADDRESS APPEARS IN THE ENVELOPE WINDOW.

PLEASE CHECK ONLY ONE BOX:

(A) TOTAL AGREEMENT WITH THE PROPOSED PENALTY - I CONSENT TO THE IMMEDIATE ASSESSMENT AND COLLECTION OF THE PENALTY AMOUNT SHOWN IN THIS NOTICE, PLUS ANY APPLICABLE INTEREST. I HAVE HAVE NOT ENCLOSED A PAYMENT.

SIGNATURE _____ DATE _____

(B) PARTIAL AGREEMENT WITH THE PROPOSED PENALTY - I AGREE WITH PART OF THE PROPOSED PENALTY SHOWN IN THIS NOTICE. I HAVE ATTACHED A SIGNED STATEMENT AND SUPPORTING DOCUMENTS EXPLAINING WHICH ITEMS I DISAGREE WITH AND WHY I DISAGREE, OR WHY I FEEL YOU SHOULDN'T CHARGE PART OF THE PROPOSED PENALTY. I HAVE HAVE NOT ENCLOSED A PAYMENT.

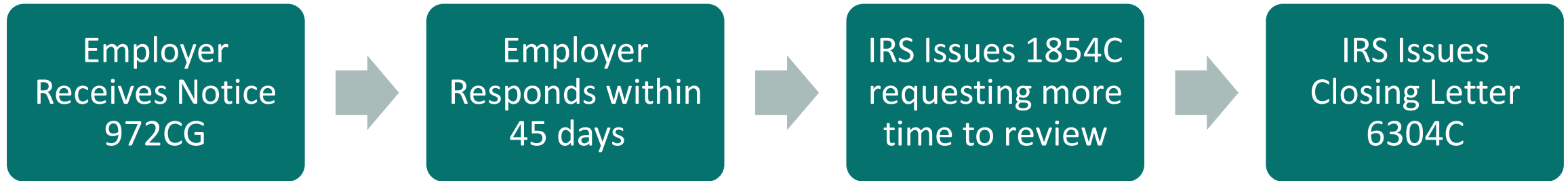
(C) TOTAL DISAGREEMENT WITH THE PROPOSED PENALTY - I DISAGREE WITH THE ENTIRE PROPOSED PENALTY SHOWN IN THIS NOTICE. I'VE ATTACHED A SIGNED STATEMENT AND SUPPORTING DOCUMENTS EXPLAINING WHY THE PROPOSED PENALTY IS INCORRECT, OR AN ACCEPTABLE REASON WHY YOU SHOULDN'T CHARGE THIS PROPOSED PENALTY.

TELEPHONE NUMBER: () _____ BEST HOURS TO CALL: _____
(INCLUDE AREA CODE)

PLEASE DO NOT DETACH

> \$200k in late filing penalties proposed for 2017 Tax Year, in addition to employer shared responsibility penalties!

IRS Filing Failure Penalty Enforcement Process



IRS loses 972CG response & issues Notice CP215



IRS loses CP215 response & issues Notice CP504B



Call the IRS to request a collection hold to allow more time for IRS to complete review



Collection hold lifts & IRS misapplies tax refunds

Important Tips for Responding to IRS Notice 972CG


1. You can request an extension, but employers should avoid if possible.
2. Send all correspondence by mailing with tracking to confirm timely delivery.
3. Response must address good faith and/or reasonable cause relief regulations.
4. For phone calls with IRS, persistence is required and reference “civil penalty”.

IRS Letter 226J



We received your forms, but you owe a penalty due to the offer of coverage reported.

Employer Shared Responsibility Penalty Enforcement Begins with IRS Letter 226J


Department of Treasury
Internal Revenue Service
 1973 North Rulon White Boulevard
 IRS Ogden, UT 84201-0062

[Redacted]

Date: 7/8/2019
 Tax year: 2017
 Employer ID number: [Redacted]
 Contact Name: 4980H Response Unit
 Contact ID number: L226J
 Contact telephone number: 866-379-6176
 Contact e-fax number: 877-792-2123
 Response date: 8/7/2019

Dear Employer,

We have made a preliminary calculation of the Employer Shared Responsibility Payment (ESRP) that you owe.

Proposed ESRP **\$2,730,079.96**

Our records show that you filed one or more Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, and one or more Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, with the IRS. Our records also show that for one or more months of the year at least one of the full-time employees you identified on Form 1095-C was allowed the premium tax credit (PTC) on his or her individual income tax return filed with the IRS. Based on this information, we are proposing that you owe an ESRP for one or more months of the year.

You generally owe an ESRP for a month if either:

- You did not offer minimum essential coverage (MEC) to at least 95% of your full-time employees (and their dependents) and at least one of your full-time employees was certified as being allowed the PTC; or

Letter 226-J (Rev. 3-2019)
Catalog Number 67905G

ESRP Summary Table

Information Reported to IRS

Month	a. Form 1094-C Part III, Col (a) Minimum essential coverage offer indicator offered to at least 95%	b. Form 1094-C, Part III, Col (b) Full-time employee count for ALE member	c. Allocated reduction of full-time employee count for IRC Section 4980H(a)	d. Count of assessable full-time employees with a PTC for IRC Section 4980H(a)	e. Count of assessable full-time employees with a PTC for IRC Section 4980H(b)	f. Applicable IRC Section 4980H provision	g. Monthly ESRP amount
January	No	349	30	4	-	4980H(a)	\$ 60,078.33
February	No	370	30	5	-	4980H(a)	\$ 64,033.33
March	No	480	30	7	-	4980H(a)	\$ 84,750.00
April	No	692	30	11	-	4980H(a)	\$ 124,676.66
May	No	1,051	30	10	-	4980H(a)	\$ 192,288.33
June	No	1,236	30	11	-	4980H(a)	\$ 227,130.00
July	No	1,408	30	12	-	4980H(a)	\$ 259,523.33
August	No	1,504	30	18	-	4980H(a)	\$ 277,603.33
September	No	1,727	30	19	-	4980H(a)	\$ 319,601.66
October	No	1,899	30	19	-	4980H(a)	\$ 351,995.00
November	No	2,027	30	21	-	4980H(a)	\$ 376,101.66
December	No	2,113	30	21	-	4980H(a)	\$ 392,298.33
Total Proposed ESRP							\$ 2,730,079.96

Form **14765**
(November 2020)

Department of the Treasury - Internal Revenue Service

Employee Premium Tax Credit (PTC) Listing

Any month not highlighted is a month that the employee received a PTC and no safe harbor or other relief from the ESRP was applicable. The employee is an assessable full-time employee for that month. Any month that shows XF, XG, or XH is due to a determination that you do not qualify for the safe harbor being claimed (2F, 2G, or 2H). If you still think the safe harbor applies, provide your computation with your written request for reconsideration.

Employer name

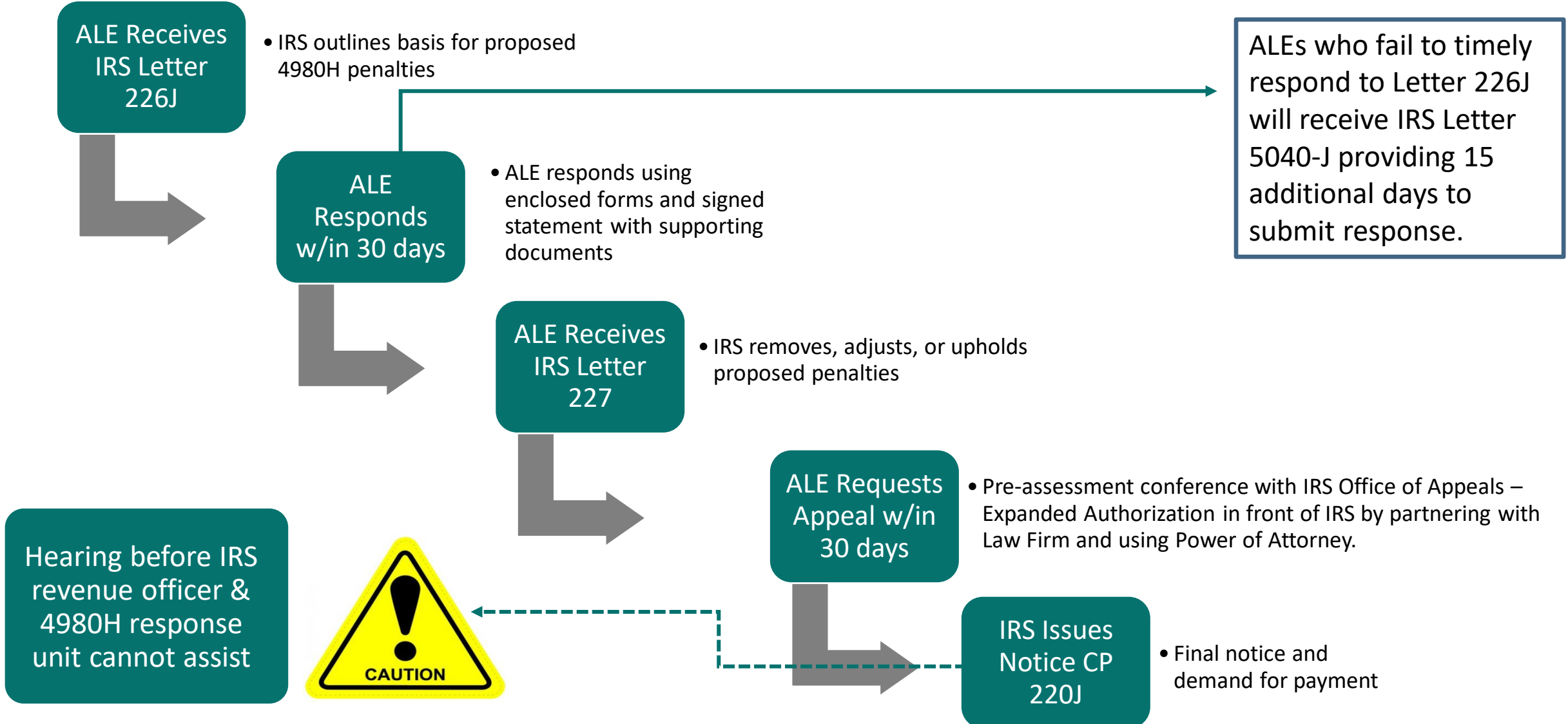
Employer ID number

Tax year

Addressing Affordability in the 226J Response

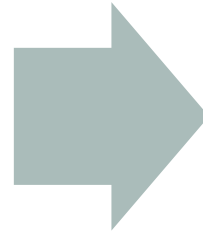
- If Form 14765 shows XF, XG, or XH, it means the IRS has determined that coverage offered did not meet the affordability safe harbor reported.
- Employers contesting this determination, must show their work!

ESRP Enforcement Process



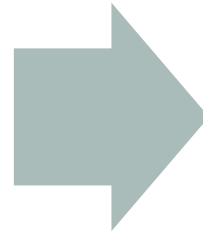
What is on the horizon for IRS enforcement?

Expiration of good faith relief for 2021 reporting



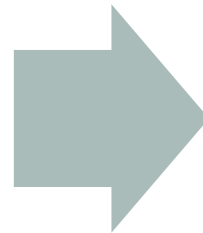
Increased exposure to 6721/6722 penalties

No statute of limitations for 4980H penalties



IRS could reconcile late filings and issue 226J letters

Increased funding for IRS enforcement & PTCs



Increased exposure to ALE penalties

Thank you for joining today's presentation!

Questions? Please visit www.eligibilitytrackingcalculators.com or contact us at counsel@eligibilitytrackingcalculators.com

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