



COMMISSIONER

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

January 3, 2018

The Honorable Steve Chabot  
Chairman  
Committee on Small Business  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter dated December 14, 2017, regarding our enforcement of the Affordable Care Act (ACA) employer shared responsibility payment (ESRP). In your letter, you requested data on applicable large employers (ALEs) and ESRPs.

Legislative provisions of the ACA are still in force until changed by the Congress, and taxpayers must follow the law and pay what they may owe. The ESRP provisions generally were first effective in 2015, but several forms of transition relief were available for 2015. Only certain forms of transition relief apply in 2016, and no transition relief is available for 2017 and future years. The 50-employee threshold for determination of ALE status is prescribed by the statute.

Employers do not report or include an ESRP with any information return filed. The determination of whether an ALE may be liable for an ESRP and the amount of the proposed payment are based on information from Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns and Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, as well as the individual income tax returns the ALE's employees file.

We will contact employers about their potential ESRP amount, and provide an opportunity to respond before we assess any liability or issue a notice and demand for payment. We send Letter 226-J to ALEs to notify them that they may be liable for an ESRP. For the 2015 calendar year, we began issuing Letters 226-J to ALEs to inform them of their potential liability for the ESRP in late 2017.

We are compiling the data you requested in your letter and will supplement this letter with responses to the specific questions you asked. Once we provide a full response, we will contact your staff to schedule a briefing on these issues for the Committee.

I hope this information is helpful. If you have additional questions, please contact me, or a member of your staff may contact Leonard Oursler, Director, Legislative Affairs, at 202-317-6985.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Kautter". The signature is written in a cursive style with a large initial "D" and "K".

David J. Kautter  
Acting Commissioner