



LEGAL UPDATE

NO STATUTE OF LIMITATIONS APPLIES FOR ACA PAY OR PLAY PENALTIES

On Feb. 21, 2020, the IRS Office of Chief Counsel released a [memorandum](#) clarifying that there is no applicable statute of limitations on pay or play penalty assessments under the Affordable Care Act (ACA). This means that **there is no time limit for the IRS to issue a penalty assessment** for employers that do not comply with the pay or play rules for a given year.

BACKGROUND

The ACA's employer shared responsibility rules require applicable large employers (ALEs) to offer affordable, minimum value health coverage to their full-time employees or pay a penalty. These rules, also known as the "employer mandate" or "pay or play" rules, impose penalties on ALEs if one or more of their full-time employees obtain an Exchange subsidy (either because the ALE does not offer health coverage, or offers coverage that is unaffordable or does not provide minimum value).

The IRS uses Forms 1094-C and 1095-C filed by ALEs, in conjunction with Forms 1040 filed by individuals, to determine an ALE's pay or play penalty liability, if any, for each year. If the IRS determines that a pay or play penalty is owed, it will send Letter 226-J, followed by Notice CP 220J, to the ALE to propose and assess the penalty. These penalties are subject to IRS lien and levy enforcement actions. Interest will accrue from the date of the notice and demand and continue until the ALE pays the total penalty balance due.

NO STATUTE OF LIMITATIONS APPLIES

In its memorandum, the IRS Office of Chief Counsel clarified that there is no statute of limitations on pay or play penalty assessments. A statute of limitations generally sets a maximum time limit for

HIGHLIGHTS

- The IRS clarified that no statute of limitations applies for ACA pay or play penalty assessments.
- The IRS can assess penalties for an ALE's noncompliance many years after a violation occurred.
- Pay or play penalties are subject to IRS lien and levy enforcement actions. Interest will accrue from the date of the notice and demand and continue until the ALE pays the total penalty balance due.

There is no time limit for the IRS to assess penalties for employers that do not comply with the pay or play rules for a given year. for those states.



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parties to take legal action based on an alleged violation or offense. Because no statute of limitations applies, **the IRS can assess pay or play penalties for an ALE's noncompliance many years after the violation occurred.** As a result, ALEs will want to be sure that they are complying with these rules for each applicable year.

