

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

FAULK COMPANY, INC., §
§
Plaintiff, §
§
vs. §
§
UNITED STATES OF AMERICA, § **CIVIL ACTION NO. 4:24-CV-00609-P**
UNITED STATES DEPARTMENT OF §
HEALTH AND HUMAN SERVICES, §
XAVIER BECERRA, in his official capacity §
as Secretary of HHS, and **CHIQUITA** §
BROOKS-LASURE, in her official capacity §
as Administrator of CMS, §
§
Defendants. §

**APPENDIX IN SUPPORT OF PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO DISMISS AND BRIEF IN SUPPORT**

NOW COMES, Plaintiff Faulk Company, Inc. and files this Appendix in Support of Its Response to Defendant's Motion to Dismiss and Brief in Support.

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>APP NO.</u>
A	IRS Letter 227M 2022-03-28	APP.1-APP.12

Respectfully submitted,

/s/ David L. LeFèvre

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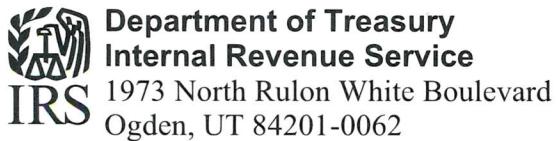
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**ATTORNEYS FOR PLAINTIFF
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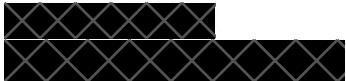
CERTIFICATE OF SERVICE

On December 6, 2024, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Taylor J. Winn
Taylor J. Winn



FAULK COMPANY INC



Date:
3/28/2022

Tax year:
2019

Employer ID number:
[REDACTED]

Contact name:
4980H Response Unit

Contact ID number:
L226J

[REDACTED] number:

Contact e-fax number:
[REDACTED]

Response date:
4/27/2022

Dear FAULK COMPANY INC:

Information about your proposed Employer Shared Responsibility Payment (ESRP)

We received your response to our previous correspondence about your proposed ESRP under Internal Revenue Code Section 4980H.

We considered the information you provided; however, the amount of your proposed ESRP is unchanged. To the extent any of the data used in the computation of your proposed ESRP changed based on the information you provided, the changes are reflected in the updated ESRP Summary Table below which itemizes your proposed ESRP by month. Also enclosed is an explanation of the ESRP Summary Table, Form 14765, Employee Premium Tax Credit (PTC) Listing, which lists your full-time employees who were assessable full-time employees and an explanation of the recalculated ESRP.

What you need to do

Review this letter carefully. It explains the proposed ESRP and what you should do if you agree or disagree with the proposal. You must tell us whether you agree or disagree with the proposed ESRP by the Response date shown on the first page of this letter.

If you agree with the proposed ESRP

- Complete, sign, and date the enclosed Form 14764, ESRP Response, and return it to us by the Response date shown on the first page of this letter.
- Include your payment of \$205,621.71. If you're enrolled in the Electronic Federal Tax Payment System (EFTPS), you can pay electronically instead of paying by check or money order.
- If you don't pay the entire proposed ESRP, you will receive a Notice and Demand (your "bill") for the balance due. For additional payment options, refer to Publication 594, The IRS Collection Process, or call the telephone number on your bill. We will begin the collection process if you do not make payment in full and on time or make other payment arrangements after you receive your bill.

If you disagree with the proposed ESRP

- You may request a meeting or telephone conference with the supervisor of the IRS contact person identified on the first page of this letter. If you do not want to request a meeting or a conference, or you still do not agree after the meeting or telephone conference, you may request a conference with our Office of Appeals.

To make this request:

- Submit either a small case request or a formal written protest to the IRS contact identified above so that we receive it by the Response date shown on the first page of this letter. The total combined ESRP amount for the months that you dispute will determine whether you need to submit a small case request or a formal written protest.
 - **Small case request:** If the total combined ESRP for all the months that you disagree with is \$25,000 or less, you can send us a letter requesting consideration by Appeals. Indicate the reasons why you do not agree.
 - **Formal protest:** If the total combined ESRP for all the months that you disagree with is more than \$25,000 you must submit a formal written protest requesting consideration by Appeals. The requirements for filing a formal protest is explained in the enclosed Publication 5, Your Appeal Rights and How To Prepare a Protest If You Don't Agree.

If you request a conference with our Appeals Office, an appeals officer will contact you. The Appeals Office is an independent office and most disputes considered by the Appeals Office are resolved informally and promptly.

If you do not reach an agreement with Appeals or do not respond to this letter

- We will assess the amount as shown in this letter and you will receive a Notice and Demand (your “bill”) for payment. The ESRP will be subject to IRS lien and levy enforcement actions. Interest will continue to accrue from the date of the Notice and Demand until you pay the total ESRP balance due. We can apply your federal tax refund to the ESRP amount that you owe until it is paid in full.

If you have any questions about this letter, you may write to the IRS contact person identified on the first page of this letter. If you write, please include your daytime telephone number, the best time for us to call you if we need more information, and a copy of this letter to help us identify your account. Keep the original letter for your records.

If you prefer, you may call the IRS contact at the telephone number shown on the first page of this letter. If this number is outside your local calling area, there may be a charge to you.

You also have the right to contact a Taxpayer Advocate. The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

ESRP Summary Table - Updated Based on Submitted Information

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	103	30	8	8	4980H(a)	\$15,208.09
February	No	114	30	8	8	4980H(a)	\$17,499.72
March	No	122	30	9	9	4980H(a)	\$19,166.36
April	No	110	30	6	6	4980H(a)	\$16,666.40
May	No	129	30	8	8	4980H(a)	\$20,624.67
June	No	105	30	6	6	4980H(a)	\$15,624.75
July	No	93	30	7	7	4980H(a)	\$13,124.79
August	No	99	30	4	4	4980H(a)	\$14,374.77
September	No	118	30	5	5	4980H(a)	\$18,333.04
October	No	117	30	5	5	4980H(a)	\$18,124.71
November	No	132	30	7	7	4980H(a)	\$21,249.66
December	No	105	30	5	5	4980H(a)	\$15,624.75
						Total Proposed ESRP	\$205,621.71

Explanation of the Updated ESRP Summary Table

The ESRP summary table includes the following information.

Column (a). Form 1094-C, Part III, Col (a), Minimum essential coverage offer indicator (offered to at least 95%)

This column shows the information you reported on the Form 1094-C, Part III, Column (a) filed with the IRS about whether you offered MEC to at least 95% of your full-time employees and their dependents. If there was no entry on Form 1094-C, Part III, Column (a) for one or more months, each missing entry is shown as "No" in column (a). However, if in response to previous correspondence about the proposed ESRP, you submitted additional information to support changing the information you reported on the Form 1094-C, Part III, Col(a) and we accepted some, or all of your proposed changes, this column has been updated to reflect the changes we accepted.

Column (b). Form 1094-C, Part III, Col (b), Full-time employee count for ALE member

This column shows the information you reported on the Form 1094-C, Part III, Column (b) filed with the IRS reporting the number of your full-time employees. However, if you did not report the number of full-time employees for any month of the year, the full-time employee count in column (b) will reflect the number you reported on Form 1094-C, Part II, line 20, "Total number of Forms 1095-C filed by and/or on behalf of ALE Member." If you reported the number of full-time employees for some, but not all months of the year, the full-time employee count in column (b) for each month for which you did not report will reflect the greatest number of full-time employees you reported for any one month of the year. If in response to previous correspondence about the proposed ESRP, you submitted additional information to support changing the information shown in column (b) on the ESRP Summary Table included with our previous correspondence, and we accepted some, or all of your proposed changes, this column has been updated to reflect the revised number.

Column (c). Allocated reduction of full-time employee count for IRC Section 4980H(a)

This column shows the number by which the full-time employee count in column (b) is reduced when computing an ESRP under IRC Section 4980H(a). In general, under IRC Section 4980H(a), an ALE's number of full-time employees is reduced by its allocable share of 30. If the ALE is not part of an Aggregated ALE Group, the ALE's allocable share is 30. If the ALE is a member of an Aggregated ALE Group, the ALE's allocable share is based upon the number of ALE members reported in Part IV of Form 1094-C. For the 2015 year only, transition relief increased 30 to 80 for an employer that certified on Form 1094-C, Line 22 and entered B on Form 1094-C, Part III, Column (e), reporting that it met the criteria for the transition relief. Even if "yes" is entered in column (a) (meaning no ESRP under IRC Section 4980H(a) applies for the month), this column (c) will be filled in because the amount of a potential ESRP under IRC Section 4980H(a) for a month caps the amount of an ESRP under IRC Section 4980H(b) for a month. If in response to previous correspondence about the proposed ESRP, you submitted additional information proposing a reallocation of the allocated reduction of the full-time employee count and we accepted some, or all of your proposed changes, this column has been updated to reflect the revised allocation.

Column (d). Count of assessable full-time employees with a PTC for IRC Section 4980H(a)

The number shown for each month is the number of your full-time employees who were allowed a PTC on their individual income tax returns and for whom no provision providing relief is applicable under IRC Section 4980H(a). These employees are listed on the Employee PTC Listing and are referred to as assessable full-time employees. You are subject to an ESRP for any month that IRC Section 4980H(a) applies to you, if there is at least one assessable full-time employee for that month. If in response to previous correspondence about the proposed ESRP, you provided information supporting changes to the Employee PTC Listing, and we accepted some, or all of your proposed changes, this column has been updated to reflect the revised count.

Column (e). Count of assessable full-time employees with a PTC for IRC Section 4980H(b)

The number shown for each month is the number of your full-time employees who were allowed a PTC and for whom no safe harbor or other provision providing relief is applicable under IRC Section 4980H(b). These employees are listed on the Employee PTC Listing and are referred to as assessable full-time employees. You are subject to an ESRP for these employees for any month that IRC Section 4980H(b) applies to you, if there is at least one assessable full-time employee for that month. If in response to previous correspondence about the proposed ESRP, you provided information supporting changes to the Employee PTC Listing, and we accepted some, or all of your proposed changes, this column has been updated to reflect the revised count.

Column (f). Applicable IRC Section 4980H provision

This column shows whether the ESRP, if any, has been computed under IRC Section 4980H(a) or (b). If in response to previous correspondence about the proposed ESRP, you provided information that affected whether the proposed ESRP was computed under IRC Section 4980H(a) or (b) and we accepted some, or all of the information you provided, this column has been updated accordingly.

Column (g). Monthly ESRP amount

This column shows the revised proposed ESRP amount per month, if any. Each month is a separate taxable period. The total proposed ESRP amount for the year is shown at the bottom. For more information, see "Calculation of your ESRP" below.

Calculation of your ESRP

NOTE: References to all columns relate to the updated ESRP Summary Table above.

We computed your ESRP amount on a month-by-month basis as shown in column (g). For any month, an employer may owe no ESRP or an ESRP under either IRC Section 4980H(a) or 4980H(b) as described below, but not both. (See column (f) for the ESRP provision, if any, that applies to you for each month.)

IRC Section 4980H(a) applies for a month when column (a) Minimum essential coverage offer indicator (offered to at least 95%) is marked "No" and column (d) Count of assessable full-time employees with a PTC for IRC Section 4980H(a) is at least one for that same month. An IRC Section 4980H(a) ESRP is computed by taking the number in column (b), IRC Section 4980H full-time employee count for ALE member, subtracting the number in column (c), Allocated reduction of full-time employee count for IRC Section 4980H(a), and multiplying the resulting number by \$2,500/12 or \$208.33 to arrive at the monthly ESRP amount.

IRC Section 4980H(b) applies for a month when column (a) Minimum essential coverage indicator (offered to at least 95%) is marked "Yes" and column (e) Count of assessable full-time employees with a PTC for IRC Section 4980H(b) is at least one for that same month. An IRC Section 4980H(b) ESRP is computed by taking the number in column (e), Count of assessable full-time employees with a PTC for 4980H(b), and multiplying that number by \$3,750/12 or \$312.50 to arrive at the monthly ESRP amount.

NOTE: The ESRP amount under IRC Section 4980H(b) in column (g) cannot be more than the amount that would have been proposed under IRC Section 4980H(a) had it applied to you for that same month. If you are a member of an Aggregated ALE Group and are subject to an ESRP under IRC Section 4980H(a) or are subject to an ESRP under IRC Section 4980H(b) that may be limited by IRC Section 4980H(a) cap, please contact the person identified on the first page of this letter to ensure the allocation has been correctly computed.

Additional information

- For more information about this letter, visit www.irs.gov/ltr227m.
- For information about Appeals with the IRS, visit www.irs.gov/individuals/appeals-resolving-tax-disputes.
- For information about the ESRP and the PTC, visit www.irs.gov/aca.
- For information about the collection process, visit www.irs.gov/Pub594.
- For tax forms, instructions and publications, visit www.irs.gov/forms-pubs or call 800-TAX-FORM (800-829-3676).
- Keep this letter for your records.

Sincerely,



Lissa Baddley
Operation Manager

Enclosures:
Form 14764
Form 14765
Explanation of Recalculated ESRP
Publication 5

Form **14764**
(February 2018)Department of the Treasury - Internal Revenue Service
ESRP Response

Complete both sides of this form and return it to the address shown on the letter received.

Provide Your Contact InformationName
FAULK COMPANY INC

Address (if you changed your address, make the changes below)

City	State	Country	Zip code
Primary telephone number		Best time to call	
Secondary telephone number		Best time to call	

Indicate Your Agreement or Disagreement**Agreement with proposed assessment** I consent to the assessment and collection of the proposed assessment of the ESRP in the amount of \$205,621.71

Signature

Date

Print name and title of the person who signed above

Partial/Total disagreement with proposed assessment I disagree with part or all of the proposed assessment of the ESRP**Indicate Your Payment Option (check all that apply)** Full payment using EFTPS on _____ Partial payment using EFTPS on _____ Enclosed full payment of \$205,621.71 Enclosed partial payment of \$ _____ No payment

• Write your employer ID number (75-1778728), the tax year (2019) and ESRP on your payment and any correspondence.

• Make your check or money order payable to the United States Treasury.

Authorization (optional)

If you would like to authorize someone, in addition to you, to contact the IRS concerning this proposed ESRP matter, include the person's information, your signature, and the date.

The authority granted is limited as indicated by the statement above the signature line. The contact may not sign returns, enter into agreements, or otherwise represent you before the IRS. If you want to have a designee with expanded authorization, see IRS Publication 947, Practice Before the IRS and Power of Attorney.

Full name of authorized person

Address

City	State	Country	Zip code
------	-------	---------	----------

Primary telephone number	Best time to call
--------------------------	-------------------

Secondary telephone number	Best time to call
----------------------------	-------------------

I authorize the person listed above to discuss and provide information to the IRS about this letter.

Signature	Date
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Print name and title of the person who signed above

Employer: FAULK COMPANY INC
Employer ID Number: 
Year: 2019

Date: 3/28/2022

Explanation of Recalculated Employer Shared Responsibility Payment

Issue:

Whether the Employer is subject to the proposed Employer Shared Responsibility Payment (ESRP) under Internal Revenue Code (IRC) Section 4980H.

Recalculated proposed ESRP: \$205,621.71

If the Employer disagrees with the information outlined on this Explanation of Recalculated ESRP, additional information may be submitted by the date listed on the Letter 227M.

Facts:

The ESRP rules only apply to an employer that is an applicable large employer (ALE). In general, an employer is an ALE for a year if it had an average of 50 or more full-time employees (including full-time equivalent employees) during the preceding calendar year.

Based on the filed Form(s) 1094-C/1095-C, the ALE did not provide Minimum Essential Coverage (MEC) to at least 95% of its full-time employees and their dependents for one or more months during 2019. Letter 226J was mailed to the ALE with a proposed ESRP assessment of \$205,621.71. The ALE did not agree with the proposed ESRP assessment listed on Letter 226J. The ALE provided suggested changes to be considered by the examiner.

Examiner's Position:

Details of the proposed ESRP are shown in the ESRP Summary Table in the Letter 227M.

The examiner has considered the response provided by the ALE. The Department of Health and Human Services (HHS) regulations at 45 C.F.R. § 155.310(i) provide that as part of its determination of whether an employer has a liability under section 4980H of the Internal Revenue Code, the Internal Revenue Service will adopt methods to certify to an employer that one or more employees has enrolled for one or more months during a year in a Qualified Health Plan for which a premium tax credit or cost-sharing reduction is allowed or paid. The Letter 226J is the ALE's certification under section 1411 of the Affordable Care Act.

Employer: FAULK COMPANY INC
Employer ID Number: 75-1778728
Year: 2019

Date: 3/28/2022

Explanation of Recalculated Employer Shared Responsibility Payment

Examiner's Position Continued:

Law:

IRC Section 4980H(a) applies for a month when the minimum essential coverage is not offered to at least 95% of the assessable full-time employees (and their dependents) and at least one full-time employee receives a Premium Tax Credit (PTC). IRC Section 4980H(a) is calculated by multiplying the number of assessable full-time employees less the allocated reduction of full-time employees by \$2,500.00 divided by 12 or \$208.33 per month.

IRC Section 4980H(b) applies for a month when the minimum essential coverage is offered to at least 95% of the assessable full-time employees (and their dependents) and at least one full-time employee receives a PTC. IRC Section 4980H(b) is calculated by multiplying the number of assessable full-time employees that received a PTC per month by \$3,750.00 divided by 12 or \$312.50 to arrive at the proposed monthly ESRP assessment.

The ESRP amount under IRC Section 4980H(b) cannot be more than the amount that would have been proposed under IRC Section 4980H(a) had it applied for that same month.

Reminder:

The proposed ESRP is based on the information on the Form 1094-C and Form 1095-C, lines 14 and 16. See the instructions for Form 1094-C and 1095-C at www.irs.gov/forms-pubs for more information. These instructions provide a detailed description of the codes used on the Form 1095-C, line 14, Code Series 1 – Offer of Coverage, and line 16, Code Series 2 – Section 4980H Safe Harbor Codes and Other Relief for Employers. The codes used on Forms 1095-C appear on the Form 14765, Employee Premium Tax Credit (PTC) Listing, which is included.

Conclusion:

Under IRC Section 4980H, the ALE is liable for the proposed ESRP shown above. The proposed ESRP amount has been revised based on the response provided by the ALE.

Employee Premium Tax Credit (PTC) Listing

Department of the Treasury - Internal Revenue Service

Department of the Treasury - Internal Revenue Service

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, you may provide your computation with your written request for reconsideration.

Employee Premium Tax Credit (PTC) Listing

Department of the Treasury - Internal Revenue Service

Department of the Treasury - Internal Revenue Service

Form 14765
(May 2021)

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, you may provide your computation with your written request for reconsideration.