

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

FAULK COMPANY, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 4:24-cv-00609
UNITED STATES OF AMERICA,)	
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 Centers for Medicare)	
& Medicaid Services (CMS),)	
)	
Defendants.)	
_____)	

APPENDIX IN SUPPORT OF UNITED STATES’ MOTION TO DISMISS

The United States provides this appendix in support of its motion to dismiss:

Appendix Pages	Exhibit	Description
APP-001 to APP-006	A	IRS Letter 226-J issued to Plaintiff



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

FAULK COMPANY INC
PO BOX 100533
FORT WORTH, TX 76185

Date:
12/1/2021

Tax year:
2019

Employer ID number:
[REDACTED]

Person to contact:
4980H Response Unit

Employee ID number:
L226J

Contact telephone number:
[REDACTED]

Contact e-fax number:
[REDACTED]

Response date:
12/31/2021

Dear FAULK COMPANY INC:

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

Proposed ESRP \$205,621.71

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
- You offered MEC to at least 95% of your full-time employees (and their dependents), but at least one of your full-time employees was certified as being allowed the PTC (because the coverage was unaffordable or did not provide minimum value, or the full-time employee was not offered coverage).

This letter certifies, under Section 1411 of the Affordable Care Act, that for at least one month in the year, one or more of your full-time employees was enrolled in a qualified health plan for which a PTC was allowed.

Based on this certification and information contained in our records, we are proposing that you owe an ESRP of \$205,621.71.

What you must do

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

The following items are included:

- An explanation of the employer shared responsibility provisions in Internal Revenue Code (IRC) Section 4980H, which are the basis for the ESRP. See **About the ESRP**;
- An **ESRP Summary Table** itemizing your proposed ESRP by month;
- An **Explanation of the ESRP Summary Table**;

Exhibit

A

Letter 226-J (Rev. 11-2020)
Catalog Number 67905G

001

- Form 14764, **ESRP Response**; and
- Form 14765, **Employee Premium Tax Credit (PTC) Listing (Employee PTC Listing)**

It will be useful to have the Form(s) 1094-C and 1095-C that you filed with the IRS for the tax year shown on the first page of this letter available when you review 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 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 by check or money order.
- If you don't pay the entire agreed-upon 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 after you receive your bill.

If you disagree with the proposed ESRP

- Complete, sign, and date the enclosed Form 14764, ESRP Response, and send it to us so we receive it by the Response date on the first page of this letter.
 - Include a signed statement explaining why you disagree with part or all of the proposed ESRP. You may include documentation supporting your statement.
 - Make sure your statement describes changes, if any, you want to make to the information reported on your Form(s) 1094-C or Forms 1095-C. Do not file a corrected Form 1094-C with the IRS to report any changes you want to make to your Form 1094-C filed for the tax year shown on the first page of this letter.
 - Make changes, if any, on the **Employee PTC Listing** using the indicator codes in the Instructions for Forms 1094-C and 1095-C for the tax year shown on the first page of this letter. Do not file corrected Forms 1095-C with the IRS to report requested changes to the Employee PTC Listing; and
 - Include your revised Employee PTC Listing, if necessary, and any additional documentation supporting your changes with your Form 14764, ESRP Response, and signed statement.

About the Form 14765, Employee PTC Listing

The Employee PTC Listing shows the name and truncated social security number of each full-time employee for whom you filed a Form 1095-C if:

- The employee was allowed a PTC on his or her individual income tax return for one or more months of the tax year shown on the first page of this letter; and either
- You did not report an affordability safe harbor or other relief from the ESRP on the employee's Form 1095-C for one or more of the months the employee was allowed a PTC, or
- We have determined based on information reported that you do not qualify for the safe harbor claimed on line 16.

These employees are referred to as assessable full-time employees.

Each monthly box on the Employee PTC Listing has two rows. The first row reflects the codes, if any, that were entered on line 14 and line 16 of the employee's Form 1095-C for each month. However, if you claimed a safe harbor on line 16, and we determined based on information reported that you do not qualify for that safe harbor, it will show an XF, XG, or XH instead of the 2F, 2G, or 2H that was reported. For each employee, if the month is **not highlighted**, the employee is an assessable full-time employee for that month. If the month is highlighted, the employee is not an assessable full-time employee for that month.

Employees who are not considered assessable full-time employees **for all twelve** months of the year (either because the employee was not allowed a PTC for any month in the calendar year or a safe harbor or other provision providing relief was reported on Form 1095-C for each month the employee was allowed a PTC) are not included on the Employee PTC Listing.

Specific instructions for making changes to the Employee PTC Listing

- If the information reported on an assessable full-time employee's Form 1095-C was inaccurate or incomplete, you may make changes to the Employee PTC Listing using the applicable indicator codes for lines 14 and 16 that are described in the Instructions for Forms 1094-C and 1095-C. Make any changes, for each employee, as necessary, by entering new codes on the 2nd row of each monthly box.
- When making changes, first enter the indicator code for line 14 and then enter the indicator code for line 16. Separate the two codes with a slash (e.g., 1H/2A).
- If the same indicator code applies for all 12 months of the calendar year, enter that code in the "All 12 Months" column, and do not make entries for any of the months.
- If you are providing additional information about the changes for an employee, enter a check in the column titled "Additional Information Attached." Otherwise, leave this column blank.

NOTE: If more than one indicator code could apply for a month, enter only one code for that month on the Employee PTC Listing. Note any additional indicator codes that could apply for the affected employee in your signed statement. Include the employee's name, the applicable months and the additional indicator codes for each month.

We will review what you submit and will contact you.

Please ensure the signed statement and all documents submitted include the tax year and your employer ID number in the top right corner.

If we don't hear from you

If you don't respond by the Response date on the first page of this letter, we will send you a Notice and Demand for the ESRP that we proposed and assessed. The ESRP will be subject to IRS lien and levy enforcement actions. Interest will accrue from the date of the Notice and Demand and continue until you pay the total ESRP balance due.

About the ESRP

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.

The ESRP applies and is calculated on a monthly basis. Each month is a taxable period. An ALE may be liable for an ESRP for any month under either IRC Section 4980H (a) or (b) if it:

- **Did not offer MEC** to at least 95% of its full-time employees (and their dependents) and at least one full-time employee was allowed the PTC (**IRC Section 4980H(a)**); or

- **Did offer MEC** to at least 95% of its full-time employees (and their dependents) and at least one full-time employee was allowed the PTC (because the coverage was unaffordable or did not provide minimum value, or the full-time employee was not offered coverage) (**IRC Section 4980H(b)**).

The ESRP is not deductible for income tax purposes.

Our authority for proposing the ESRP is IRC Section 4980H. For more information about IRC Section 4980H, including definitions of key terms, such as full-time employee, how to determine ALE status and whether the ALE has made an offer of coverage visit the ACA Information Center for Applicable Large Employers (ALEs) at www.irs.gov, keyword "ALEs." In addition, for information about completing Forms 1094-C and 1095-C and available transition relief, see the Instructions for Forms 1094-C and 1095-C for the tax year shown at the top of the page. You can find prior year Instructions at www.irs.gov (at the top of the screen select "Forms and Pubs," under the "Browse" heading choose "List of Prior Year Forms & Pubs" and in the "Find" box enter "1094-C" or "1095-C").

ESRP Summary Table

Information Reported to IRS

Month	a. Form 1094-C, Part III, Col (a) Minimum 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 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).

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.

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.

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.

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.

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).

Column (g). Monthly ESRP amount

This column shows the 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 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/ltr226J.
- 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.

If you need assistance, please don't hesitate to contact us.

Sincerely,



Lissa Baddley
Operation Manager

Enclosures:
Publication 1
Notice 609
Form 14764
Form 14765