Employment, Labor and Benefits Advisory: Surviving an Audit of Your Massachusetts Fair Share Contribution Practices

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By H. Andrew Matzkin and Patricia A. Moran

Since October 1, 2006, employers with 11 or more Massachusetts employees have faced a difficult decision—either provide medical coverage to employees in accordance with the Massachusetts “Fair Share Law,” or pay the Commonwealth $295 per year, per employee.

Over the past year, the Massachusetts Division of Unemployment Assistance (DUA), the state agency that enforces the Fair Share Law, has substantially ramped up its audit activity. Employers of all sizes and industries have been targeted by these audits, and those who have not convinced the DUA of their compliance have faced devastating penalties: back payment of the fair share contribution, plus interest of 12% per annum. These unlucky employers are left with limited recourse—either they must pay the penalty, or appeal the finding to the DUA and then to state court.

In an article published recently in the Tax Management Compensation and Planning Journal, we explain in detail how to survive all stages of a fair share audit, including how to prepare for the audit, present your case at the audit meeting, and appeal an adverse audit outcome—both to the DUA hearings officers and to state court. Our article also explains the Fair Share Law and describes the issues that are likely to cause problems with an auditor. This article is attached for your review and consideration, and may be accessed here.

While many employers have turned their attention to National Health Care Reform in recent months, it is important that employers remain focused on the Massachusetts Fair Share Law as well. The Commonwealth has made no move to repeal the state law, and we expect the DUA’s audits to continue for the indefinite future. If you have employees working in Massachusetts, we advise you to revisit your Fair Share Law compliance practices and make certain that your practices and documentation will support your case if you are audited by the DUA.

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