

Part III - Administrative, Procedural, and Miscellaneous

Transitional Penalty Relief and Schedule for Notices of Incorrect Name/TIN Combinations for Information Returns Relating to Payment Card and Third Party Network Transactions

Notice 2013-56

PURPOSE

This notice provides transitional relief from penalties for a section 6050W filer reporting incorrect taxpayer identification number (TIN) information on information returns (Form 1099-K) and payee statements filed under section 6050W of the Internal Revenue Code. The relief provided by this notice is available for certain errors on information returns and payee statements required to be filed or furnished in 2013, based on payments made in calendar year 2012, as well as certain returns and statements that are required to be filed or furnished in 2014, based on payments made in calendar year 2013, provided that the section 6050W filer makes a good faith effort to accurately file the appropriate information return and the accompanying payee statement.

In addition, this notice informs section 6050W filers that Internal Revenue Service (IRS) notices informing payors that payee name and TIN combinations are incorrect (CP2100/CP2100A Notices) will not be sent based on incorrect name and TIN combinations on Forms 1099-K due before January 1, 2014. The first CP2100 and

CP2100A Notices with respect to payments subject to section 6050W will be sent in late 2014 based on incorrect name and TIN combinations on Forms 1099-K filed in 2014 for calendar year 2013 payments.

BACKGROUND

Section 6050W, added by section 3091 of the Housing Assistance Tax Act of 2008, Div. C of Pub. L. No. 110-289, 122 Stat. 2653 (the Act), requires that a payment settlement entity (“payor”) making payment to a participating payee (“payee”) in settlement of reportable payment transactions must make an information return for each calendar year to be filed with the IRS setting forth the gross amount of such reportable payment transactions, as well as the name, address, and TIN of the payee. A similar statement must be furnished to the payee setting forth the gross amount of such reportable payment transactions, as well as the name, address and phone number of the information contact of the person required to make such return.

Section 6050W applies to two types of transactions: (1) payment card transactions and (2) third party network transactions. All payments made in settlement of payment card transactions must be reported in the manner described above. Payments made in settlement of third party network transactions need be reported only if gross payments to a payee exceed \$20,000 and the number of such transactions exceeds 200 with respect to the participating payee. The information is to be reported to the IRS on Form 1099-K, *Payment Card and Third Party Network Payments*.

Section 6721 imposes penalties on a person for, among other things, failing to

include all required information or including incorrect information on an information return. Section 6722 imposes penalties on a person for, among other things, failing to include all required information or including incorrect information on a payee statement. Notice 2011-89, 2011-46 I.R.B. 748, provided transitional penalty relief from penalties for a section 6050W filer reporting incorrect information on information returns (Form 1099-K) and payee statements filed under section 6050W of the Code. This relief was available for information returns and payee statements to be filed in 2012, based on payments made in calendar year 2011, provided that the section 6050W filer made a good faith effort to accurately file the appropriate information return and the accompanying payee statement.

Pursuant to section 3406 and the regulations thereunder, a payor must backup withhold from reportable payments made to a payee that has provided an incorrect name and TIN combination with respect to an account for which an information return was filed. Section 3406(a)(1)(B) requires that the IRS notify the payor that the payee has provided an incorrect name and TIN combination. The IRS notifies a payor of an incorrect name and TIN combination by sending the payor a CP2100 Notice or a CP2100A Notice, listing the incorrect name and TIN combinations reported on information returns filed by the payor. Upon receiving a CP2100 Notice or a CP2100A Notice, payors must send a copy of the notice identifying the TIN mismatch to the payee and attempt to obtain a correct TIN before beginning backup withholding (“B Notice procedures”). See Treas. Reg. § 31.3406(d)-5 (describing the B Notice procedures).

The Act amended section 3406(b)(3) by including payments required to be

reported under section 6050W as reportable payments potentially subject to backup withholding. Treas. Reg. § 31.3406(b)(3)-5(e) requires that backup withholding apply to section 6050W payments made after December 31, 2011, if a payee has not furnished a correct TIN to a section 6050W payor.

Notice 2011-88, 2011-46 I.R.B. 748, postponed for one year the effective date for potential backup withholding obligations imposed under section 3406 for section 6050W payments. Accordingly, the backup withholding requirements of section 3406 apply to section 6050W payments made after December 31, 2012.

DISCUSSION

1. Penalty Relief

Sections 6721 and 6722 are applicable to section 6050W payors that must file information returns for payments made in settlement of reportable payment transactions. Prior to the enactment of section 6050W, payors were not required to file the specific type of information return or to furnish the specific type of payee statement now required by section 6050W. In order to provide additional time to develop appropriate procedures for compliance with these new reporting requirements, Notice 2011-89 provided that the IRS would not impose penalties under sections 6721 and 6722 on payors that must file information returns and furnish payee statements in 2012 based on payments made in calendar year 2011, provided that they make good-faith efforts in filing accurate Forms 1099-K and furnishing the accompanying payee statements. Since that time, the IRS has been made aware that payors subject to section 6050W reporting continue to experience greater than usual difficulty in obtaining

correct name and TIN information from payees and in resolving name and TIN mismatches. Payors have requested additional transition penalty relief in order to enable them to resolve these issues.

After careful consideration of these comments, the Treasury Department and the IRS have decided to extend the penalty relief provided in Notice 2011-89 to certain errors on information returns and payee statements required to be filed and furnished in 2013 and 2014. Specifically, this notice provides relief from penalties under sections 6721 and 6722 for returns and statements required to be filed and furnished in 2013 based on payments made in calendar year 2012 if they have missing TINs, obviously incorrect TINs (as described in section 3406(h)(1))¹, and incorrect name and TIN combinations. In addition, this notice provides relief from penalties under sections 6721 and 6722 for returns and statements required to be filed and furnished in 2014 based on payments made in 2013, but only in cases where the 2013 Form 1099-K contains an incorrect name and TIN combination. Limiting penalty relief for 2013 Forms 1099-K to incorrect name and TIN combinations is warranted because more expansive penalty relief (i.e., relief from penalties for missing or obviously incorrect TINs) would be inconsistent with the payor's backup withholding obligations, which were first effective for payments made on or after January 1, 2013.

This notice does not apply to a payor who erroneously fails to file an information return or payee statement.

¹ An obviously incorrect TIN is a TIN that has more or less than nine numbers, or has an alpha character as one of the nine positions.

2. Schedule for CP2100/CP2100A Notices

Payors have asked for guidance regarding when the IRS will begin sending CP2100/CP2100A Notices with respect to Forms 1099-K. This notice informs payors that the IRS will not issue CP2100/CP2100A Notices based on incorrect name and TIN combinations reported on Forms 1099-K due before 2014. The IRS will begin sending CP2100/CP2100A Notices with respect to Forms 1099-K in late 2014. These CP2100/CP2100A Notices will be based on incorrect name and TIN combinations reported on Forms 1099-K required to be filed in 2014 for calendar year 2013 payments.

CP2100/CP 2100A Notices are not necessary to trigger backup withholding if the payee either did not provide a TIN or provided an obviously incorrect TIN. Payors should continue to backup withhold on calendar year 2013 payments to payees who failed to provide a TIN or who provided an obviously incorrect TIN.

DRAFTING INFORMATION

The principal authors of this notice are Adrienne Griffin and Girish Prasad of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice contact Adrienne Griffin or Girish Prasad at (202) 622-4910 (not a toll-free call).