

**INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE**

**BURDEN REDUCTION
SUBGROUP REPORT**

**PAUL BANKER
MARY C. KALLEWAARD
TONY Y. LAM
PATRICIA L. SCHMICK
PAUL P. SCHOLZ
LONNIE YOUNG
JULIA K. CHANG, SUBGROUP CHAIR**

A. Erroneous 1099-MISC Reporting

Erroneous Forms 1099-MISC, Miscellaneous Income – information returns filed with the IRS that incorrectly report non-reportable types of payments, payments reported in the wrong field, or payments reported to exempt payees, create a burden on small-business and individual taxpayers and burden the IRS with inaccurate data. The burden on taxpayers and the IRS is further compounded when filers fail to properly file corrections for erroneously filed 1099-MISC forms. The following recommendations address these problems:

Recommendations

1. Establish a free e-service on the IRS website for small-business payers to manually enter on-screen, and electronically file with the IRS, up to 100 Forms 1099-MISC and up to 50 corrected Forms 1099-MISC.

Electronic filing of 1099-MISC by small businesses would increase accuracy and reduce costs for all parties concerned. Currently, the Social Security Administration (SSA) has a similar service for W-2 forms which has been successful. IRPAC also recommends that this feature be linked to Taxpayer Identification Number (TIN) Matching to reduce or eliminate B notices.

2. Improve the *Instructions for Form 1099-MISC*
 - a. Add new basic language about corrections:
If you need to correct a Form 1099-MISC that you have already sent to the IRS:
 - *For paper forms, see the General Instructions for Certain Information Returns, part H “Corrected Returns on Paper Forms” or for electronic filing of corrections see Publication 1220, Specifications for Filing Form 1098,1099,5498,and W2-G Electronically.*
 - *If filing a correction on a paper Form 1099-MISC, do not check the “VOID” box on the form. The “VOID” box on the paper Form 1099 alerts IRS scanning equipment to ignore the form and proceed to the next one. Your correction will not be entered into IRS records if the “VOID” box is checked.*
 - b. Add a new bullet point in the “Exceptions” list on page 1 of the Instructions for Form 1099-MISC:
 - *Generally, payments to a corporation (including a limited liability company that is treated as a C or S Corporation). See Reportable payments to a corporation, later.*
 - c. Consolidate the instructions that explain what is reportable in box 7. Instructions applicable to box 7 appear in several different sections on different pages of the Instructions for Form 1099-MISC.

Burden Reduction Subgroup Report

- d. In addition to the list of examples of payments reportable in box 7, insert a short list of payments that are not reported on the 1099-MISC box 7.
3. Improve the “Instructions for Payer” on the paper Form 1099-MISC

IRPAC recommends adding a new paragraph titled “Corrections” with a brief explanation of the process; where to find the full explanation on how to make corrections with paper forms, what the “VOID” box is used for, and that a correction to previously filed information should not be marked “VOID”.
 4. Add to the Form 1099-MISC information page(s) on the irs.gov website
IRPAC recommends the following additions to IRS.gov:
 - a. An expanded list of the types of payments reportable on the 1099-MISC
 - b. A short list of payments that are not reportable and should not be reported on the 1099-MISC
 - c. FAQs about 1099-MISC reporting
 - d. A flow chart (or charts on jump pages) for 1099-MISC reporting and filing
 5. Create a Form 1099-MISC link on the irs.gov home page.
It is understood that there will be many topics that should be featured from time to time on the irs.gov home page, but a Form 1099-MISC link is particularly recommended during January and February, and rotation at other times of the year.

Discussion

Every year taxpayers receive erroneous 1099-MISCs from small businesses. The following are some real life examples of the incorrect use of box 7, non-employee compensation. The amounts in these examples may be reportable but not in box 7, as reporting in box 7 indicates that these payments will be subject to Self-Employment Tax.

- A company had a construction project next door to a private home. The company paid the homeowner \$2,000 for the week they had to live in a hotel because their driveway entrance was obstructed. The reimbursement was reported in box 7 rather than as a rental in box 1.
- A Chamber of Commerce used box 7 on a 1099-MISC for a prize they gave, rather than in box 3.
- A taxpayer passed away and the following calendar year the employer paid his survivors his accumulated sick pay and reported it in box 7 instead of in box 3.
- A taxpayer sold a large piece of land to a developer on a contract. The developer reported the interest he paid on the contract on 1099-MISC. When

Burden Reduction Subgroup Report

asked to correctly report the amount on Form 1099-INT, he sent another 1099-MISC with a zero in box 7 but with the void box marked instead of the corrected box.

- A Taxpayer does volunteer work for a non-profit organization. He turns the expenses in to the organization and receives reimbursement only for out of pocket expenses. He received a 1099-MISC, reporting in box 7, for the reimbursement.

Forms 1099-MISC are also issued to corporations and should not have been issued:

- A property management company who files a Form 1120, U.S. Corporation Income Tax Return received a 1099-MISC for rent on one of the properties they manage from the Veterans Administration. The property management company does not own the property but only manages the property for a landlord.

Entities that incorrectly prepare Forms 1099-MISC are often reluctant to file corrections and uninformed about how to properly do so. This issue is even more evident with small issuers who have neither the knowledge nor resources to interpret 1099 filing instructions. If they fail to correct erroneous 1099 filings, or make the corrections improperly, the problems become worse for the taxpayer and the IRS. Tax practitioners are left to try to explain the error on a client's tax return; or the taxpayer remains vulnerable to IRS systems identifying erroneously reported amounts as taxable income. The resulting correspondence absorbs resources on both sides.

The current method of issuing corrected 1099 forms is time consuming and confusing. Paper Form 1099-MISC filing requires issuers to file a "red ink" paper copy of the Forms 1099 and Form 1096 with their IRS Campus if they are not electronically filing the forms. A small business has four options for compliance:

1. order the "red ink" copies of the Forms 1099 and 1096, Annual Summary and Transmittal of U.S. Information Returns, from the IRS well in advance;
2. purchase a packet of at least 25 forms from a retailer (when they may need only a few 1099s);
3. purchase a program that will electronically prepare and file the forms; or
4. pay a tax professional to prepare the 1099s.

If taxpayers or their representatives could file original and corrected 1099-MISC forms via a free on-line service, the process would be easier and increase accuracy as well as reduce costs for IRS and 1099 issuers.

IRPAC recommends a secure system that allows a payer/filer to register and enter information into a form on the IRS website. An IRS efile feature for 1099-MISC will give small-business Form 1099-MISC filers a service similar to the SSA free filing of W-2s and W-2cs on the ssa.gov website. If supported by public education efforts, a 1099-MISC small-business free efile system will give the IRS a greater amount of usable information, make data available to IRS sooner for matching (compared to hand-written or typed paper forms that must be scanned), increase the number of 1099 efilers, and

Burden Reduction Subgroup Report

improve the accuracy of 1099-MISC filings by reducing scanning input errors and linking to FAQs and TIN Matching. This concept may also be scaled up to increase the number of free efile of forms 1099-MISC and to include other 1099 forms in the future.

Accurate information reporting is essential to assist taxpayers in filing correct tax returns, it encourages a greater level of compliance, allows the IRS to more economically and efficiently detect and pursue noncompliant taxpayers who underreport income or do not file tax returns. Incorrect filings of Form 1099-MISC are a burden to taxpayers, the IRS, and the recipients of payments.

Taxpayers who receive 1099-MISCs reporting amounts that are not reportable or 1099-MISCs that report amounts in the wrong field are burdened with time-consuming communications with the issuers of erroneous 1099s attempting to have corrected forms filed. Payers who erroneously file 1099-MISCs often fail to file corrections with the IRS or file on forms marked "VOID" that are never scanned into IRS files. An additional burden falls on the taxpayers and their tax preparers if they are contacted by the IRS about box 7 amounts, assumed by the IRS to be taxable income and subject to self-employment tax, but may be erroneously reported because they were either not a reportable type of payment or a different type of reportable payment.

The IRS is also burdened by erroneous 1099-MISC reporting, both by taking in erroneous tax data and by having to devote resources to what are presumed to be underreporting recipients of income. IRPAC recommends the changes listed above to improve instructions for 1099 issuers.

The recommendations above are intended to help small businesses become compliant with the 1099-MISC requirements. The 1099-MISC can be a confusing form as it serves as a catch-all for a diverse range of payment types. The recommendations above are intended to make it easier for small businesses to find information on what is reportable, what box of the form to use, what is not reportable, and how to report and correct forms.

B. W-9 Revision

Recommendation

1. The subgroup recommends the following revisions to the information area of Form W-9, Request for Taxpayer Identification Number and Certification, to clarify to the small businesses or individual taxpayers what is needed on the form:
 - a. add line numbers on the Form W-9;
 - b. add corresponding instructions for each numbered line under *Specific Instructions*;

Burden Reduction Subgroup Report

- c. add to the caption within the Name line so the caption reads, “(as shown on your tax return) Name is required on this line; do not leave this line blank;”
 - d. add to the caption for Check appropriate box for federal tax classification so the caption reads, “Check appropriate box for federal tax classification; check only one of the following seven boxes;”
 - e. add “I =Sole Member” in the options for filling in the dotted line in the Limited liability Company (LLC) line;
 - f. add “Exemption codes apply only to entities not individuals” in the Exemptions box.
2. The subgroup recommends changing the wording of the first paragraph in *Purpose of Form* at the bottom of the Form W-9 (page 1) to the following:
- a. A person or business (requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN), which may be your social security number (SSN) or employer identification number (EIN), to report on an information return form the amount paid to you. Some examples of these information returns are Form 1099-INT, Interest Income 1099-DIV, Dividends and Distributions 1099-MISC, 1099-B, Proceeds From Broker and Barter Exchange Transactions, 1099-S, Proceeds From Real Estate Transactions, 1099-K, or those that report the amount you paid for home mortgage interest or tuition, or reporting the acquisition or abandonment of secured property, or cancellation of debt, or contributions you made to an IRA.
3. The subgroup may make additional recommendations related to the Form W-9 and the “Instructions for the Requestor of Form W-9” that were released at the end of August 2013 during the writing of this report, based on additional input from IRPAC members.

Discussion

The Form W-9 will be clearer to the person filling out the form, and the information return data filed to the IRS will be more accurate, if the recommended enhanced language is incorporated into the Form W-9. At present, taxpayers or businesses do not always furnish the requested information to the payers or do not fill out Form W-9 properly. Taxpayers all too often look at the first page and decide that they are not required to fill out the Form W-9, and do not read beyond the first page. The results are that the requesters are required to do backup withholding after they receive a “B” notice from Internal Revenue Service because the name or identifying number that the taxpayers have provided do not match the Social Security Administration (SSA) or IRS’s Master File.

1. The Form W-9 would be improved if the above recommendations are considered, for the following reasons:

Burden Reduction Subgroup Report

- a. Adding numbers to the lines will assist the taxpayers in finding the information needed under the specific instruction for that numbered line
 - b. The current instructions under Specific Instructions are not detailed enough to assist the average taxpayer in filling out the form.
 - c. Adding “do not leave this line blank” in the caption for the Name line will reduce the number of forms on which the LLC name of a single-member LLC, or a doing business as (dba) name of a sole proprietor, is written in the second name line, but the first name line, which is the name of the taxpaying individual or entity, is left blank.
 - d. Adding “check only one of the following seven boxes” to the third line will reduce the number of forms on which a single-member LLC checks two boxes (Individual/sole proprietor and or other LLC checks two boxes (C Corporation and LLC). There is no discussion in the current instructions that the tax classification is related to the taxpayer named in the first line, and that only one box should be checked.
 - e. The line for the LLC tax classification list creates confusion for taxpayers who are the sole member of a single member LLC that is a disregarded entity. The form should include a line with this box that states the following: *For a single-member LLC that is disregarded, check the appropriate box in the line above for the tax classification of the single member owner.*
 - f. For the “exempt payee code” information, adding the statement “Exemption codes apply only to certain entities and not to individuals” makes it clear to the individuals they can ignore this box and the Form W-9 will remain valid.
 - g. For the “exempt from FATCA reporting code” information, adding the statement “This only applies to financial accounts maintained outside the United States” makes it clear that this information is not applicable to most taxpayers who provide this form to payers and withholding agents located inside the United States, and that the form will remain valid for the vast majority of persons who will complete the Form W-9 without providing a FATCA reporting code.
2. The instructions under “Purpose of Form” appear to apply only to businesses and not to individuals. IRPAC recommends changing the wording to make it clear that the Form W-9 applies to both businesses and individual taxpayers.

C. Business Master File – Additional Addresses

Recommendations

Burden Reduction Subgroup Report

IRPAC recommends that the IRS create additional mailing address fields on the Business Master File (BMF) so that a Payer/Filer that files various types of returns will receive IRS notices in a timely manner to the person or group within the company that works directly with that type of return or withholding, and to prevent notices (such as B-notice CDs that include TIN and customer name and account information) from being delivered to an incorrect address that can create privacy issues. Large businesses and financial institutions often have multiple business lines filing different returns and making different types of withholding deposits, such as for Forms 941, 945 and 1042. Small business owners would prefer to have their Payroll and Corporate Income Tax correspondence mailed to different addresses.

As an alternative, IRPAC recommends that the IRS give strong consideration to reinstating the process of issuing a change of address notification letter mailed to the last address when a mailing address on the BMF is updated based on the requirements in Revenue Procedure 2010-16. We understand the IRS is currently analyzing the legal aspects and the mailing costs related to this recommendation.

As a final alternative, the IRS should revise Revenue Procedure 2010-16 to state that an address related to an EIN will only occur after receipt of IRS Form 8822-B (“Change of Address – Business”).

Discussion

Pursuant to Reg. §301.6212-2(a) that states a “taxpayer’s last known address is the address that appears on the taxpayer’s most recently filed and properly processed Federal tax return,” the IRS has issued revenue procedures to determine which returns will result in the IRS changing the address based on the address included on the most recently filed return, as well as which notices must be mailed to that “last known address.” The current guidance is found in Revenue Procedure 2010-16 (2010-19 IRB 664, dated 04/16/2010). The list of returns that can trigger a change in address includes, but is not limited to, the Form 1040 return series filed by individuals, trust returns, gift tax returns, estate tax returns, and multiple business and withholding tax returns (e.g., Forms 940, 941, 945 and 1120).

As a result of this revenue procedure, filers of information returns have had their address changed when a customer filed an annual return and incorrectly used the TIN (usually an EIN) of the filer or payer that appeared on a Form 1099 provided to the customer. Since no notice of the change of address is mailed by the IRS to the payer/filer, the company or business owner has no knowledge the mailing address has been changed. The result is that subsequent IRS notices are mailed to an incorrect address, increasing the risk of stolen identity in some cases, or penalties and interest being assessed against the information return filer for failure to respond in a timely manner.

Having the ability to include multiple mailing addresses on the BMF could also prevent recent problems created by withholding agents, acting on behalf of a company but not making payroll deposits with the IRS, being the only recipient of inquiries from the IRS about failure to make deposits or file returns.

In addition, many smaller corporate businesses would prefer to have notices and inquiries related to their corporate tax returns mailed to the shareholder's address rather than to the business address where they can be received by an employee. Unlike with the change of address problems discussed above, this problem can be resolved only by additional enhancements of the BMF that will permit multiple mailing addresses based on each type of return filed by the company.

We believe these recommendations would help prevent identity theft, allow companies to be forewarned if their withholding agent is not making payroll deposits, permit businesses to have specific tax correspondence directed to the appropriate group or person, and increase efficiencies by having the IRS receive timely responses to its inquiries and notices without repeated mailings.

D. *De minimis* Threshold for Form 1099 Corrections

Recommendation

IRPAC recommends again this year that the IRS adopt a *de minimis* dollar threshold for corrections to original information returns in an effort to reduce overall burden to information return filers, taxpayers, and the IRS.

IRPAC recommends a threshold of \$50 be adopted so that net changes of \$50 or less (up or down) do not require the mailing or filing of a corrected information return.

Therefore, changes to the regulatory definitions under IRC §§ 6721 and 6722 should be considered so that filers of Forms 1099 have clear authority for suppressing these immaterial corrections, if they elect to do so. Specifically, a failure to correct a *de minimis* amount of \$50 from any previously reported amount should be defined as an "inconsequential error" in Reg. §301.6721-1(c)(2) and Reg. §301.6722-1(b)(2) that is not subject to the penalty provisions of IRC §§ 6721 and 6722. The regulations currently require a payer to issue a correction if the reported amount is incorrect in "any monetary amount" or "any dollar amount," depending on the regulatory language used. Minor changes to the language in these regulations to incorporate this recommendation would be extremely beneficial for all parties involved.

Discussion

Payers and filers of information returns are often notified by mutual funds, companies and others of changes in reportable information well after the due dates of January 31 or February 15 to provide Forms 1099 to recipients – generally because those entities did not have the information they needed by those dates, or their fiscal

Burden Reduction Subgroup Report

year that ended later revealed they did not have sufficient accumulated earnings and profits for the entire distribution to be treated as a dividend.

In addition, as information reporting has become more complex and comprehensive, the volume of corrected returns has increased significantly due to wash sales, changes to issuer returns (Form 8937, Report of Organizational Actions Affecting Basis of Securities) and so on. The amount of the changes is often immaterial and has no impact to the recipient's tax liability, and for the later announcements of reclassifying dividend distributions to return of capital reduces the recipient's taxable income.

Currently, in instances where information returns and payee statements are found to contain an error, substantial resources are being expended by withholding agents, including financial institutions (for printing, mailing, reputation, etc.), taxpayers (for filing amended returns), and the IRS (for processing and data matching, etc.) to correct and process corrected statements that, in many cases, have no impact on tax liability. This burden on resources is unnecessary when the correction is for an inconsequential sum that changes neither the taxpayer's liability nor the Government's revenues.

One member of IRPAC provided data for Tax Year 2012 corrections to date for its retail brokerage customers impacted by dividend reclassification announcements received by the payer after February 8, 2013 (when the original returns were created). Of the 456,559 corrected forms issued where the previously reported ordinary dividend amount was changed (usually, as a reduction) in Box 1a of the Form 1099-DIV, over 59% (270,275) were for changes less than \$50. The volumes of amended returns for amounts less than \$30 (49%) and \$10 (27%) were very similar to the statistics provided in Appendix G of the 2012 IRPAC report that included a similar recommendation regarding *de minimis* corrections.

Each correction cost the payer \$1.53 to print and mail, and each recipient – in addition to becoming annoyed – very likely incurred significant costs in terms of time and money filing a corrected return, or in consulting with their tax advisors to determine if a return needed to be filed. Finally, the IRS had its limited resources expended on processing amended returns that generally had no impact or reduced the taxpayer's taxable income.

While other proposals have been made to avoid amended returns, such as the payer entering into a closing agreement in lieu of issuing corrections, the payer is not guaranteed the IRS will accept the settlement offer and the process takes many months to complete. That proposed process provides no certainty to the payer or the recipient that an amended return is not required. In addition, as discussed above, most of the corrections reduce the amount of reported income instead of the failure to report an additional amount of income that is the primary basis of determining a settlement amount with the IRS. Finally, it is important to realize that the vast majority of information return corrections are related to announcements made by third parties after the current mailing and filing dates, and are not the result of payer errors. Therefore, it

would be unfair for the payer to be forced to enter into a closing agreement for events outside its control.

The increasing costs and inefficiencies for everyone related to issuing amended information returns are why IRPAC requested the Chief Counsel to include it in the Priority Guidance Plan in each of the past two years. As more reporting requirements become effective, such as cost basis reporting, the volume of amendments for *de minimis* amounts will increase further.

E. Expand Eligibility to Use the Taxpayer Identification Number (TIN) Matching Program to Improve the Accuracy of Information Reporting

Recommendation

Eligibility to use the on-line TIN Matching Program should be expanded to include the many information return types currently barred from performing TIN validation prior to information return filing. This will improve the accuracy of non-wage information reporting, and increase the amount of usable valid data for IRS computer matching compliance activity. It will also reduce burdens of cost, staff time, and systems for payers and the IRS in administering the “incorrect TIN” penalty process for payee name-TIN mismatches. Expanded utilization of the TIN Matching Program will result in more accurate Form 1099 reporting and will reduce IRS administrative costs.

The current scope of the TIN Matching Program relates only to backup withholding under IRC § 3406. Therefore, taxpayers who file multiple information return types that are not subject to backup withholding bear a substantial burden due to being excluded from this means of early identification of payee name TIN mismatches, which otherwise are not known to these payers until they receive IRS Notice 972CG showing penalties under IRC §§ 6721 and 6722 for having filed incorrect TINs.

Legislation may be needed to support expanding eligibility for the on-line TIN Matching Program. IRPAC recommended expanding eligibility in 2002, but the recommendation was not acted upon. Legislation to expand eligibility was introduced in Congress, but was not enacted. The IRS should re-examine whether a statutory amendment is needed, or sufficient authority to the Secretary of the Treasury already exists, to enable the TIN Matching Program to be opened to payers that file additional types of information returns. If legislation is needed, the IRS and Treasury should actively pursue it.

Discussion

The current TIN Matching Program falls within the context of information returns that report income to which backup withholding could apply. IRC § 3406 which covers backup withholding establishes at § 3406(i), “The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.” Regulations § 31.3406(j) – 1(a) provides, “The matching program. Under

Burden Reduction Subgroup Report

§3406(i), the Commissioner has the authority to establish Taxpayer Identification Number (TIN) matching programs. The Commissioner may prescribe in a revenue procedure (see § 601.601(d)(2) of this chapter) or other appropriate guidance the scope and the terms and conditions of participating in any TIN matching program.”

In accordance with this authority, the current Interactive and Bulk TIN Matching Program operates under Revenue Procedure 2003-9. Rev. Proc. 2003-9 and IRC §6050W expanded the original TIN Matching Program created under Revenue Procedure 97-31, so that payers of income reportable on Forms 1099-B, 1099-DIV, 1099-INT, 1099-K, 1099-MISC, 1099-OID and 1099-PATR can verify the payee TINs required to be reported on these information returns and related payee statements. Through on-line TIN matching in IRS e-services, these payers may check the TIN furnished by the payee against the name-TIN combination contained in the IRS database for TIN matching. The TIN matching result returned to the payer by the IRS informs the payer whether the name-TIN combination payee furnished to the payer matches a name-TIN combination in the database. If it does not match, the result returned by the IRS can show additional information such as whether the TIN has been issued. Payers re-contact these name-TIN mismatch payees who have been identified through the use of TIN matching and solicit a new Form W-9 with correct TIN information prior to filing with the IRS. Payers, the IRS, and income recipients all benefit when accurate TINs are reported on the initial information return filing.

For 2013, IRS projections of information return filing for forms included in the TIN Matching Program are:

- over 91 million Forms 1099-MISC;
- over 180 million Forms 1099-INT;
- over 89 million Forms 1099-DIV;
- over 3 million Forms 1099-OID;
- over 1 billion Forms 1099-B;
- over 9 million Forms 1099-K;
- over 1 million Forms 1099-PATR.

Payers filing these forms can use TIN matching because these forms report income that could be subject to backup withholding.

However, payers that file other information return types which are subject to the same TIN penalties, but excluded from the TIN Matching Program, are at a significant disadvantage. They bear a serious burden because they do not have the opportunity to use the TIN Matching Program to identify incorrect payee TINs (name-TIN mismatches) prior to filing information returns which are subject to incorrect TIN penalties. They learn of incorrect TINs only when the IRS notifies these payers that incorrect TIN penalties are proposed to be assessed. For 2013, IRS projections of information return filing for some of the return types for which payers are currently prohibited from using TIN matching include:

Burden Reduction Subgroup Report

- over 80 million Forms 1098;
- over 30 million Forms 1098-T;
- over 86 million Forms 1099-R;
- over 3 million Forms 1042-S;
- over 2 million Forms 1099-S;
- over 84 million Forms 1099-G;
- over 117 million Forms 5498.

Additional payers excluded from TIN matching include those that file Forms 3921 and 3922 relating to incentive stock options and employee stock purchase plan options; and will include those required to file the new information returns under IRC §§ 6055 and 6056 relating to health insurance coverage as required under the Affordable Care Act.

If such payers currently excluded from the TIN Matching Program were included in the program, payers and the IRS would benefit:

- The number of incorrect-TIN penalty 972CG listings would be reduced, saving the IRS time and expense in processing and in the labor-intensive review and appeals processes;
- A greater amount of valid data from original information return filings would be available to the IRS for compliance activity and addressing the identity theft problem;
- Payers would save time and expense for processing 972CG incorrect-TIN listings, preparing 972CG response letters and corresponding with the IRS including follow-ups and appeals on reasonable cause grounds.

IRS denial of penalty waiver upon initial receipt of the waiver request letter is common, requiring the payer – even though actually having reasonable cause under current regulations for waiver of TIN penalties – to invest additional time and expense to restate its case to the IRS, particularly if the payer determines it is necessary to engage outside professional assistance to handle the abatement request through a resubmission and the appeal process.

Incorrect TIN penalties are the more complex penalty types which a payer must address upon receipt of a Notice 972CG. A detailed written response to the IRS is required within 45 days. Documenting a cause for waiver of these assessments is labor-intensive, generally requiring multiple rounds of communication with the IRS, but payers that have been in compliance with the applicable tax regulations undertake the waiver request and appeal because they should not pay penalties for their payees' errors.

Penalties were increased two years ago to the following amounts:

- \$30 per form, or per statement, if corrected within 30 days (maximum \$250,000 per year);
- \$60 per form, or per statement, if corrected more than 30 days after the filing due date by August 1 of the same year (maximum \$500,000 per year);
- \$100 per form, or per statement, if corrected later than August 1 of the same

Burden Reduction Subgroup Report

- year or if not corrected (maximum \$1,500,000 per year);
- \$250 per return, or per statement, or 10% of the total amount that should have been reported (5% if amounts should have been reported on Form 1099-B), whichever is greater with no maximum cap, where intentional disregard of the requirements is found.
- Payers with annual gross receipts of \$5 million or less may qualify as “small business” payers for which the penalties may be reduced by 30% to 44% for various types of failures.

The reasonable cause defense under IRC § 6724 and regulations there under (also explained in Publication 1586, Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs (including instructions for reading CD/DVDs and Magnetic Media)) is the guideline for payers to obtain a penalty waiver. To show that the failure was due to reasonable cause and not willful neglect, payers must establish that they acted in a responsible manner both before and after the failure occurred, and that there were significant mitigating factors (for example, an established history of filing information returns with correct TINs), or the failure was due to events beyond the payer’s control (for example, a payee did not provide the correct name-TIN). If reasonable cause is established, the IRS will issue a Letter 1948C stating that the explanation given was accepted. If the response letter does not establish, or only partially establishes, reasonable cause, or if the response is not submitted by the deadline, the incorrect TIN penalty will be assessed and a balance due notice is issued. If more time is needed, IRS instructions are to submit a written request to the IRS Service Center on the notice before the end of the 45-day period, but the IRS cannot always hold back an assessment. Many waiver requests are denied at the first IRS review despite showing of reasonable cause in the response letter. Therefore, the payer must follow up with a second review request, a letter to preserve the right to appeal the denial, and very often a full appeal.

To mitigate this burden on payers, and reduce costs and administrative burden on the IRS, IRPAC recommends that the TIN Matching Program be expanded to cover information returns that are subject to incorrect TIN penalties under IRC §§ 6721 and 6722.

Burden Reduction Subgroup Report