

Executive Summary of Issues

Burden Reduction:

A. Erroneous 1099-MISC Reporting

IRPAC recommends several items that will assist small businesses to better understand the requirements of Form 1099-MISC reporting and become more compliant. These recommendations will also reduce the burden on IRS of processing erroneous tax data reported on erroneous Forms 1099-MISC and by not having to devote resources to what are presumed to be underreporting recipients of income.

B. Form W-9 and Instructions – Revision

IRPAC recommends IRS make the Form W-9 easier to understand by referencing line numbers on the form and providing clearer form instructions. Many small businesses and individuals do not understand the importance of filling out Form W-9 correctly. This results in unnecessary correspondence between requestors of Form W-9 and the payees; and in some cases the IRS has required unnecessary back-up withholding.

C. Business Master File (BMF) – Additional Addresses

IRPAC recommends the IRS consider ways to improve the Business Master File to permit additional addresses. One option discussed was increasing the number of permissible business addresses from just one mailing and one legal address. The IRS is also looking at providing a notification letter to the last known address when there is an address change. Large businesses and financial institutions often have multiple business lines with different addresses for filing returns and making withholding deposits, such as for Forms 941, Employer's Quarterly Federal Tax Return, 945, Annual Return of Withheld Federal Income Tax and 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and those businesses would prefer notices be mailed to the address provided on each type of return. Also, small business owners sometimes prefer to have their Payroll and Corporate Income Tax correspondence mailed to different addresses.

D. *De minimis* Threshold for Form 1099 Corrections

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) 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.

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

IRPAC recommends the eligibility to use the online TIN Matching Program 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.

Emerging Compliance Issues:

A. IRC §6050W and Form 1099-K Reporting

IRPAC continues to advocate for more guidance from the IRS on the myriad of unresolved compliance issues associated with Form 1099-K, Payment Card and Third Party Network Transactions, reporting. In addition, IRPAC appreciates the fact the IRS issued Notice 2013-56 that granted additional relief for missing or mismatched TINs from being included on the 2013 B Notices and potentially subject to backup withholding.

B. Cost Basis Reporting

IRPAC continues to request more time, IRS guidance and communications related to cost basis reporting that now must also take into consideration various taxpayer elections. Final cost basis regulations and temporary/proposed regulations have addressed the strong connection between income earned on fixed income holdings and the ongoing adjustments to those amounts and the cost basis of the instruments. As a result, many changes must be made to existing information return forms and specific guidance must be provided.

C. Taxpayer Identification Number (TIN) Truncation

IRPAC recommends that the TIN truncation program be extended to EINs. For calendar years 2009-2012, many filers have taken advantage of the pilot program announced by the IRS in Notice 2009-93, as extended and modified in Notice 2011-38, to truncate individual identifying numbers on specified payee statements. This program has assisted in efforts to protect against payees' identity theft and misappropriation of sensitive personal information. IRPAC is encouraged by and supports the fact that the

proposed regulations make the program permanent and applicable to electronically delivered statements.

D. Stripped Tax Credits

IRPAC recommends that IRS Notice 2010-28 be revised to address the potential limitations related to the ability to report the original issue discount (OID) associated with the stripped components.

E. Form 1098-T

IRPAC recommends clarifying terms in “Instructions for Forms 1098-E, Student Loan Interest Statement and Form 1098-T, Tuition Statement,” with respect to information that should be reported by colleges and universities in box 5 of Form 1098-T.

F. Form 8300

IRPAC recommends the IRS clarify whether or not public universities that do not have “dual status” exemptions (recognized as both charitable organizations under IRC § 501(c)(3) as well as a college or university that is an agency or instrumentality of, or is owned or operated by a governmental entity) must file Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business.

G. Withholding and Reporting on Payments for Freight, Shipping and Other Transportation Expenses under IRC §1441 and §1442.

IRPAC recommends that the IRS issue guidance regarding the proper withholding and reporting treatment of U.S. sourced payments for freight, shipping and other transportation expenses. The interplay between the 4% excise tax payable by shippers on U.S. source Gross Transportation Income (USGTI) in lieu of the 30% NRA tax withholding that would be required under IRC §§871 and 881 by withholding agents creates confusion. In particular, the IRS should explain what documentation or certification is required from the payer regarding the payment of the excise tax that would prevent other withholding. In addition, IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, should be revised to be consistent with that guidance.

H. Revenue Procedure 95-48

IRPAC recommends that the IRS add Revenue Procedure 95-48 to the list of documents modified by Revenue Procedure 2011-15.

Employee Benefits & Payroll

A. Employer and Insurer Reporting Under the Patient Protection and Affordable Care Act

IRPAC provided numerous recommendations in the 2011 and 2012 IRPAC Public Reports on these ACA reporting requirements -- recommendations that are still relevant. We encourage IRS to review these recommendations.

B. Missing TINs for Employer and Insurer Reporting

IRPAC recommends that the IRS issue TIN solicitation requirements and procedures for purposes of satisfying reporting under IRC §§6055 and 6056 and that the IRS explain these rules in plain language on the IRS website pages designed for individuals. IRPAC also recommends that reporting entities should be deemed to have acted reasonably if their conduct conforms to the standard for acting in a reasonable manner under Treas. Reg. §301.6724-1(d) and the solicitation rules for missing TINs under Treas. Reg. §301.6724-1(e).

C. Minimum Essential Coverage

IRPAC recommends the IRS develop examples of limited benefit plans that would constitute minimum essential coverage to assist individuals in understanding the types of coverage that will preclude the availability of premium tax credits.

D. Premium Tax Credit Educational Materials

IRPAC recommends that IRS rework the premium tax credit educational materials to be understandable by non-tax professionals.

E. Third-Party Sick Pay Reporting

Based on ongoing discussions with the IRS, IRPAC recommends that the IRS continue its pursuit of assuming the responsibility of receiving and processing the third-party sick pay filings.

International Reporting & Withholding

A. Notice 2013-43

IRPAC recommends that the IRS continue to take into account the time needed by withholding agents and their customers to implement FATCA in an orderly manner. Notice 2013-43 provides for a postponement in the imposition of FATCA withholding until July 1, 2014. IRPAC recommends that the IRS provide for an additional

postponement until January 1, 2015, in order for withholding agents to complete the steps necessary to fulfill their obligations under FATCA.

B. Treatment of Expiring Chapter 3 Documentation

IRPAC recommends that withholding certificates (Forms W-8) and documentary evidence that would otherwise expire on December 31, 2013, should be considered valid until December 31, 2014.

C. Electronic Transmission of Tax Documentation

IRPAC recommends that the electronic transmission provisions of Chapters 3 and 4 be modified to provide that a withholding agent may accept tax documentation (withholding certificates, written statements, withholding statements, documentary evidence) that has been transmitted via e-mail or facsimile, except in the case the withholding agent knows such documentation has been transmitted by a person who does not have the authority to transmit such documentation and, in the case of documentary evidence, the documentary evidence appears to have been altered from its original form. We recommend that all the other authentication requirements with respect to faxed and e-mailed documentation be eliminated.

D. Presumption Rules for Certain Exempt Recipients

IRPAC recommends that an entity that may be treated as an exempt recipient without the need for furnishing a Form W-9, Request for Taxpayer Identification Number and Certification (an “eyeball exempt recipient”) should not be presumed foreign unless there are indicia of foreign status associated with the entity’s account.

E. Treatment of Foreign Branches Located in IGA Countries

IRPAC recommends that foreign branches of U.S. financial institutions (USFIs) and controlled foreign corporations of USFIs located in an IGA (Intergovernmental Agreement) country should be subject only to the IGA with respect to documentation standards and Chapter 4 withholding and reporting requirements.

F. Reason to Know Standards Under Chapters 3 and 4

IRPAC recommends that the “reason to know” standard provided in Chapter 4 (and Chapter 3) be modified to permit additional time to review documentation obtained at the time the account is opened and the results of a know-your-customer review conducted at or following the opening of the account. Additionally, corresponding regulations should be issued to provide that if the result of such review indicates that the tax documentation is unreliable or incorrect, the withholding agent is not obligated to impose withholding tax with respect to payments that occurred during the review period.

G. Coordinated Account System Rules

IRPAC recommends that the final regulations under Chapter 4 be modified to more clearly define, and expand, the circumstances under which a withholding agent, or members of its expanded affiliated group, may rely on shared tax-related documentation furnished by an accountholder or customer for multiple obligations or accounts. IRPAC also recommends that the corresponding regulations under Chapter 3 be similarly modified so that documentation requirements for both purposes are coordinated as closely as possible.

H. New Forms W-8, W-9, 1042 and 1042-S

IRPAC reviewed and discussed with the IRS the May 2013 draft version of the new Form W-8BEN-E. IRPAC recommends that the IRS make modifications to terminology and formatting on the face of the form in order to prevent a high level of errors by those completing the form and, therefore, decrease the number of invalid Forms W-8BEN-E submitted to withholding agents. IRPAC also recommends that the IRS publish instructions to Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting—as well as the forms and instructions for other forms in the W-8 series—as soon as possible in order to provide withholding agents with the necessary time to update their documentation, withholding and reporting systems, and that the instructions provide withholding agents with explicit guidance on how to validate the new Forms W-8 for purposes of both Chapter 3 and Chapter 4 requirements.

I. Reporting Obligations With Respect to Foreign Investment Funds

IRPAC recommends that the Chapter 61 obligations of a “U.S. payer” of distributions and redemptions made by a foreign investment fund which is either classified as a partnership for U.S. federal income tax purposes or treated as a passive foreign investment company under IRC § 1297 be eliminated in the case the FATCA reporting requirements of such investment fund are satisfied.