

# **Appendix E**

## **Notice 2016-26 Recommendations for items that should be Included on the 2016-2017 Priority Guidance Plan**



## INFORMATION REPORTING PROGRAM ADVISORY COMMITTEE (IRPAC)

---

1111 Constitution Avenue, NW, Room 7563, Washington, D.C. 20224

Michael Gangwer,  
Chairperson

**Emerging Compliance  
Issues**

**Sub-Group:**

Beatriz Castaneda, Chair  
Terry Edwards  
Darrell Granahan  
Keith King  
Joel Levenson  
Nina Tross

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2016-26)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

May 16, 2016

**Employee Information  
Reporting/ Burden  
Reduction**

**Sub-Group:**

Emily Rook, Chair  
Bob Birch  
Laura Burke  
Ernesto Castro  
Alan Ellenby  
Marcia Miller

RE: Notice 2016-26  
Recommendations for items that should be included on the 2016-2017  
Priority Guidance Plan

Dear Commissioner Koskinen:

**International Reporting &  
Withholding**

**Sub-Group:**

Frederic Bousquet, Chair  
Roseann Cutrone  
Carolyn Diehl  
Dana Flynn  
Robert Limerick  
Kevin Sullivan

The Information Reporting Program Advisory Committee (IRPAC) appreciates the opportunity to respond to Notice 2016-26 and recommend matters that should be included in the 2016-2017 Priority Guidance Plan. Our recommendations for guidance are focused primarily on information reporting topics and may be adopted through new or enhanced regulations, revenue rulings, revenue procedures, notices or other appropriate guidance methods. The aim of these recommendations is to improve tax administration and reduce the growing burdens placed on payors, taxpayers, and the Internal Revenue Service.

IRPAC was established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989. IRPAC members are drawn from and represent a broad sample of the payer community, including major professional and trade associations, colleges and universities. Since its inception, IRPAC has worked closely with the IRS on a wide range of issues to improve the information reporting process and reduce the burden on taxpayers and filers.

Information returns play a vital role in ensuring taxpayers have the fundamental building blocks they need to comply with their tax filing obligations and that the IRS receives the information it needs to enforce compliance and collect the right tax. Providing information returns, instructions, and guidance that are clear, complete, and easy for stakeholders to understand should be a top priority for the Treasury and the IRS. It is also critical that the IRS and Treasury provide guidance for new information reporting requirements in a timely manner. In several annual Public Reports, IRPAC has advised that a withholding agent typically needs 18 months to 24 months to update its

systems for new reporting requirements, including time to study the requirements, plan and obtain a budget for the project, develop business requirements and systems logic, code, and test, then implement. Accordingly, it is essential that ambiguities in the law be clarified in a manner that provides information return preparers/withholding agents sufficient time to implement new and clarified reporting requirements.

Below please find IRPAC's specific recommendations for priority guidance.

### Fast Track Guidance Requests

1) Tip Withholding Sequence – Payors need basic guidance regarding the order that the various payroll taxes and deductions should be taken from the wages of employees that are tipped. Assuming an employee's wages for a given payroll period are not large enough to support all taxes and deductions, IRPAC recommends that guidance be issued detailing which taxes and deductions should be taken first.

2) IRA escheatment to states – IRPAC recommends that guidance be issued to help IRA custodians to determine the reportability of IRA assets that are escheated to state abandoned property departments. Today the rules are unclear as to whether or not Forms 1099-R are required. For detailed information, please refer to the 2015 IRPAC Public Report.

### Core Guidance Requests

#### 1) Electronic delivery to U.S. Treasury of monies withheld pursuant to an IRS levy.

IRPAC recommends the adoption of guidance that would allow employers to transmit federal tax levy proceeds electronically to the U.S. Treasury. The current procedure, as instructed by Form 668-W, is to mail a check payable to the U.S. Treasury on the employee's payday and on the face of the check show the taxpayer's name, taxpayer's SSN, tax type and the words "proceeds of levy." The 668-W directs where the check is to be sent and many times this is to a local IRS office.

The current paper check and mail procedure creates delay and confusion because payroll departments receive the levy deduction amount only a day or two prior to the employee's pay date and then must forward the information to an accounts payable department where the check will be prepared. Due to the typical differences between payroll and accounts payable departments, several types of errors can occur. Here are two examples:

- Accounts payable departments typically cut checks on a weekly, biweekly or semimonthly processing cycle but not every day creating timing issues.
- Accounts payable systems typically do not have the functionality to show the required notations on the face of the check (so detail is on an attachment which often is separated from the check before it is processed by the IRS). We find that without the detail from the face of the check, the amount is often misapplied to the employer's account (creating an inaccurate overpayment) and not to the taxpayer's account (subjecting the taxpayer to levy deductions continuing longer than necessary)

We have also found that some of the IRS offices to which checks are to be mailed have closed and employers receive telephone calls from the IRS directing them to start mailing to a different office. As a result checks already mailed to the closed office are delayed. Enabling the electronic deposit of levy proceeds will enable timely deposits to the correct taxpayer accounts and eliminate much time-consuming reconciliation and correction work for the IRS and employers.

## 2) Additional FATCA guidance

IRPAC urges the IRS and Treasury to continue to issue guidance on FATCA, the qualified intermediary program (including qualified securities dealer rules), section 871(m) withholding, and section 305(c) withholding. Clarifying guidance in these complex and evolving areas would mitigate inconsistent and inaccurate treatments by withholding agents.

## 3) Reasonable Cause Abatement Issues

As IRPAC has highlighted in its last three public reports, there continue to be problems with the administration of the penalty abatement process. Penalties have significantly increased and the IRS continues to disregard reasonable cause claims and assess penalties. This is particularly troubling in cases where a payor is denied a reasonable cause waiver request when they provided the same or similar explanation in the prior three years even though the reasonable cause claim is valid and appropriate under the current regulations and instructions. IRPAC recommends that Treasury issue guidance regarding the appropriate administration of the penalty regime.

## 4) Guidance under §6050W

This is a Tax Administration project that was previously included in the 2014-2015 and 2015-2016 Priority Guidance Plan and IRPAC recommends that it remain in the 2016-2017 plan as a high-priority guidance issue for clarification

of essential terms in amended regulations to be issued in the very near term. It has been projected that 9.4 million Forms 1099-K will be filed for 2015 [IRS Publication 6961]. The lack of essential definitions is an impediment to accurate reporting.

Key terms integral to the meaning of “third party payment network” must be defined in official guidance in order for reporting organizations to reasonably apply the rules. The unclear terms include “central organization,” “guarantee,” and “substantial number of providers of goods or services.” IRPAC’s detailed recommendations relating to the definition of these terms can be found in the March 28, 2011, comment letter which is included as Appendix D of the IRPAC 2011 Public Report, and in the 2014 and 2015 IRPAC Public Reports. Guidance should be issued that allows a reasonably informed reader to understand when IRC § 6050W reporting is required and delineate between three-party arrangements that are subject to reporting under IRC § 6050W and ones that involve three parties but are not subject to reporting under IRC §6050W.

In addition, guidance is needed to identify the entity deemed to be the payment settlement entity when there are multiple payment settlement entities. Clarification of the scope and application of rules related to “aggregated payees” and “third party payment networks” is also needed. In current guidance these rules appear to overlap; a “third party settlement organization” (TPSO) is not required to report transactions for a payee whose aggregate transactions do not exceed \$20,000 and 200 transactions, whereas the aggregated payee rules do not include a de minimis rule. IRPAC has recommended clarification that the de minimis rules applicable to TPSOs also apply to an aggregated payee that also meets the definition of a TPSO.

#### 5) Withholding and reporting guidance for pension payments made to Nonresident aliens (NRAs)

In the 2015 IRPAC Public Report, IRPAC pointed out the need for clarity when applying withholding and reporting rules for certain taxable transactions processed within U.S. pension plans for NRA plan participants. IRPAC requests guidance regarding the proper tax treatment in this and other similar situations where the existing law and regulations overlap but leave a great deal of uncertainty.

#### 6) Qualified Tuition Plans (529 plans) distributions aggregation

The PATH act contained a provision that repealed the rule requiring that all Qualified Tuition Plans (529 plans) with the same designated beneficiary be

aggregated for purposes of calculating the amount of a nonqualified distribution that is included in income. Code section 72 proration must now be calculated on an account by account basis. This creates a few immediate problems. For example, firms with systems designed to aggregate across plans/providers must now make changes so that the IRC 72 proration rules only apply to the account from which the distribution was taken. Therefore the current basis reflected on systems for each of the impacted accounts are incorrect, and such basis would need to be reallocated among remaining accounts with a positive current balance. This may require that payors look back at the life to date contributions and distributions, subtracting any gains to derive a basis for each account. Given the need for payors' systems to be programed, IRPAC requests that guidance be issued clarifying how to reapply remaining basis shown in closed accounts to the open accounts.

### Additional Requests

In addition to the above described areas for priority guidance, IRPAC wishes to highlight two other important priorities that do not require guidance, but instead require other action. Specifically, IRPAC urges the Treasury Department to pursue strongly the Administration's fiscal year 2016 recommendation for legislation amending IRC § 6103(k) "to permit the IRS to disclose to any person required to provide the TIN of another person to the Secretary whether the information matches the records maintained by the Secretary." [Treasury "Green Book" Fiscal Year 2016] This expanded use of TIN Matching will not only reduce administrative costs of the IRS and payor community, it will help reduce fraud and the size of the so called tax gap.

In addition, as part of a continuing effort to combat tax fraud, the IRS has indicated plans to reduce theft from various tax account returns. The IRS's order of priority to implement this effort was indicated to be as follows:

- 1120 – this year
- 1120S – next year
- 1040
- 1065
- 941/940

IRPAC urges the IRS to reprioritize its efforts so as to address the 941/940 return next because those forms have been targeted by fraudsters for business identity theft now that payors are required to transmit Form W-2s and Form 1099-MISCs for non-employee compensation earlier.

Again, IRPAC looks forward to partnering with the IRS to improve tax administration and reducing the growing burdens placed on payors, taxpayers and the IRS.

Page6

Respectfully submitted,



Michael Gangwer

2016 IRPAC Chairperson