

Part III - Administrative, Procedural, and Miscellaneous

Revised Timeline Regarding Implementation of Amended Section 6050W(e)

Notice 2024-85

SECTION 1. PURPOSE

This notice announces that calendar years 2024 and 2025 will be regarded as the final transition period for purposes of Internal Revenue Service (IRS) enforcement and administration with respect to the implementation of the amendments made to the minimum threshold for reporting by third party settlement organizations (TPSO) under section 6050W(e) of the Internal Revenue Code (Code)¹ by the American Rescue Plan Act of 2021 (ARP), Public Law 117-2, 135 Stat. 4 (March 11, 2021). In addition, this notice provides transitional relief from certain penalties for a TPSO making payments to a participating payee in settlement of third party network transactions who fails to pay backup withholding tax required to be withheld under section 3406 and its accompanying regulations during calendar year 2024. The transition period described in this notice is intended to facilitate an orderly transition for TPSO compliance with section 6050W(e) and participating payee compliance with income tax reporting.

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Code or the Income Tax Regulations (26 CFR part 1), or to the Employment Taxes and Collection of Income Tax at Source Regulations (26 CFR part 31).

SECTION 2. BACKGROUND

.01 Section 6050W, Returns relating to payments made in settlement of payment card and third party network transactions

Section 6050W was added to the Code by section 3091 of the Housing Assistance Tax Act of 2008, Div. C of Public Law 110-289, 122 Stat. 2654, 2908, and requires payment settlement entities to file an information return for each calendar year with respect to payments made in settlement of certain reportable payment transactions. Under section 6050W(a), the annual information return must set forth (1) the name, address, and taxpayer identification number (TIN) of the participating payee to whom payments were made and (2) the gross amount of the reportable payment transactions with respect to that payee in that calendar year. Section 1.6050W-1(a)(6) defines “gross amount” to mean the total dollar amount of the aggregate reportable payment transactions for each participating payee, without regard to any adjustments for credits, cash equivalents, discount amounts, fees, refunded amounts, or any other amounts.

Payment settlement entities required to make annual information returns under section 6050W do so by filing Form 1099-K, *Payment Card and Third Party Network Transactions* with the IRS. They are also required to furnish Form 1099-K to the participating payee. Forms 1099-K must be furnished to the participating payees on or before January 31st of the year following the calendar year for which the return was made. Forms 1099-K must be filed with the IRS on or before February 28th (March 31st if filed electronically) of the year following the calendar year for which the return was made. See § 6050W(f); § 1.6050W-1(g).

Pursuant to section 6050W(c), section 6050W covers two types of reportable

payment transactions: (1) payment card transactions and (2) third party network transactions. Section 6050W(c)(3) states that a third party network transaction is any transaction for the provision of goods or services that is settled through a third party payment network. Under section 6050W(b) and § 1.6050W-1(c)(2), a TPSO is the payment settlement entity that must report third party network transactions – that is, the transactions for goods or services that are settled through the TPSO’s third party payment network – on Form 1099-K.

Section 6050W(b)(3) defines a TPSO as the central organization that has the contractual obligation to make payment to the participating payees of third party network transactions. Pursuant to section 6050W(d)(3), a third party payment network is any agreement or arrangement that (i) involves the establishment of accounts with a central organization by a substantial number of providers of goods or services who are unrelated to the central organization and who have agreed to settle transactions for the provision of goods and services with purchasers according to the terms of agreements; (ii) provides standards and mechanisms for settling such transactions; and (iii) guarantees payments to the providers of goods and services in settlement of transactions with the purchasers.

Under section 6050W(d)(1)(A)(ii), a participating payee, in the case of a third party network transaction, is any person who accepts payment from a TPSO in settlement of such transaction.

As originally enacted in 2008, section 6050W(e) provided that a TPSO is not required to report third party network transactions with respect to a participating payee unless the gross amount that would otherwise be reported exceeds \$20,000 and the

number of such transactions with that participating payee exceeds 200.

.02 Section 3406, Backup withholding

Section 3406(a) requires certain payors to perform backup withholding by deducting and withholding income tax from a reportable payment when, among other circumstances, the payee fails to furnish the payee's TIN to the payor or the IRS has notified the payor that the TIN furnished by the payee is incorrect. Pursuant to section 3406(b)(3)(F), a reportable payment includes payments made by a TPSO that are required to be shown under section 6050W on a Form 1099-K. Section 31.3406(b)(3)-5 provides that whether payments made in settlement of third party network transactions are subject to withholding under section 3406 is determined without regard to the statutory monetary or transactional thresholds found in section 6050W. Those monetary and transactional thresholds are considered solely for determining whether a TPSO has an information reporting obligation under section 6050W for payments made to a payee. Accordingly, under the regulations, TPSOs are required to obtain a TIN from every payee in a third party payment network, even the occasional small volume seller, to avoid backup withholding.

A payor is required to report the amount of deducted and withheld Federal income tax amounts on Form 945, *Annual Return of Withheld Federal Income Tax*, and on the information return filed with the IRS and furnished to the payee. In the case of the Form 1099-K, withheld income tax is reported in box 4. The payee may then claim credit for the amount of income tax withheld on the payee's Federal income tax return.

Notice 2011-42, 2011-23 I.R.B. 866 (June 6, 2011) provided interim guidance on backup withholding under section 3406 with respect to reportable payments made in

settlement of third party network transactions that are required to be shown under section 6050W on a Form 1099-K. Specifically, the notice established that the section 6050W statutory transactional threshold for determining information reporting obligations should be met before any section 3406 withholding obligations arise with respect to TPSOs. In other words, section 3406 withholding obligations did not begin with respect to a particular payee until that payee received payments from a TPSO in more than 200 transactions within a calendar year.

.03 Section 6721, Failure to file correct information returns, and section 6722, Failure to furnish correct payee statements

Section 6721 imposes a penalty for any failure to file an information return on or before the required filing date, and for any failure to include all of the information required to be shown on the return or the inclusion of incorrect information.

Section 6722 imposes a penalty for failure to furnish a payee statement on or before the required furnishing date to the person to whom such statement is required to be furnished, and for any failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information.

.04 Sections 6651 and 6656

A payor who fails to withhold and pay backup withholding tax when required may be subject to civil penalties under sections 6651 and 6656. Section 6651 generally imposes an addition to the tax owed by a taxpayer for the failure to pay the amount shown as tax, including backup withholding tax, on a return required to be filed by the taxpayer unless the failure is due to reasonable cause and not due to willful neglect. Section 6656 provides that in the case of any failure by any person to deposit taxes on the prescribed date in an authorized government depository, a penalty applies unless

the failure is due to reasonable cause and not due to willful neglect. A failure to deposit backup withholding tax as required under section 6302 would generally subject a payor to the section 6656 penalty.

.05 American Rescue Plan Act of 2021

Section 9674 of the ARP amended section 6050W(e) to provide that, for Forms 1099-K for calendar years beginning after December 31, 2021, a TPSO is required to report payments in settlement of third party network transactions with respect to any participating payee that exceed a minimum threshold of \$600 in aggregate payments, regardless of the number of such transactions.

Notice 2023-10, 2023-3 I.R.B. 403 (January 17, 2023), delayed implementation of the reporting threshold for TPSOs in section 9674(a) of the ARP for Forms 1099-K for calendar years beginning before January 1, 2023. Notice 2023-10 also provided that the IRS would not assert penalties under section 6721 or section 6722 for TPSOs failing to file or failing to furnish Forms 1099-K unless the gross amount of aggregate payments required to be reported exceeded \$20,000 and the number of transactions exceeded 200. Notice 2023-74, 2023-51 I.R.B. 1484 (December 18, 2023), further delayed implementation of the reporting threshold for TPSOs for calendar year 2023 and further provided that the IRS would not assert penalties under section 6721 or section 6722 for TPSOs failing to file or failing to furnish Forms 1099-K unless the gross amount of aggregate payments required to be reported exceeded \$20,000 and the number of transactions exceeded 200.

SECTION 3. TRANSITION PERIOD FOR ENFORCEMENT AND ADMINISTRATION WITH RESPECT TO CALENDAR YEARS 2024 and 2025

Calendar year 2024 will be regarded as a further transition period for purposes of IRS enforcement and administration of the information reporting requirements under section 6050W(e), as amended by the ARP. For calendar year 2024, a TPSO is not required to report payments in settlement of third party network transactions with respect to a participating payee unless the gross amount of aggregate payments to be reported exceeds \$5,000, regardless of the number of such transactions. The IRS will not assert penalties under section 6721 or section 6722 for a TPSO for failing to file or failing to furnish Forms 1099-K with respect to a payee unless the gross amount of aggregate payments to be reported exceeds \$5,000, regardless of the number of such transactions.

In addition, calendar year 2025 will be regarded as the final transition period for purposes of IRS enforcement and administration of the information reporting requirements under section 6050W(e). For calendar year 2025, a TPSO is not required to report payments in settlement of third party network transactions with respect to a participating payee unless the gross amount of aggregate payments to be reported exceeds \$2,500, regardless of the number of such transactions. The IRS will not assert penalties under section 6721 or section 6722 for a TPSO for failing to file or failing to furnish Forms 1099-K with respect to a payee unless the gross amount of aggregate payments to be reported exceeds \$2,500, regardless of the number of such transactions.

For Forms 1099-K for calendar years beginning after December 31, 2025, a TPSO is required to report payments in settlement of third party network transactions with respect to any participating payee that exceed a minimum threshold of \$600 in

aggregate payments, regardless of the number of such transactions.

The IRS will not regard calendar year 2024 or 2025 as a transition period with respect to the requirements of section 6050W that were not modified by section 9674(a) of the ARP, such as provisions relating to payment card transactions.

SECTION 4. TRANSITION PERIOD FOR ENFORCEMENT AND ADMINISTRATION OF BACKUP WITHHOLDING WITH RESPECT TO CALENDAR YEAR 2024

For calendar year 2024, the IRS will not assert penalties under section 6651 or 6656 with respect to a TPSO's failure to withhold and pay backup withholding tax during the calendar year.

TPSOs that have performed backup withholding under section 3406(a) for a payee during calendar year 2024 must file a Form 945 and a Form 1099-K with the IRS and furnish a copy to the payee.

For calendar year 2025 and after, the IRS will assert penalties under section 6651 or 6656 with respect to a TPSO's failure to withhold and pay backup withholding tax.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 2011-42 is obsoleted.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Procedure and Administration).