

Part III - Administrative, Procedural, and Miscellaneous

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

Notice 2023-10

SECTION 1. PURPOSE

This notice announces that calendar year 2022 will be regarded as a transition period for purposes of Internal Revenue Service (IRS) enforcement and administration with respect to the implementation of the amendments made to the de minimis exception for third party settlement organizations (TPSO) under section 6050W(e) of the Internal Revenue Code (Code) by the American Rescue Plan Act of 2021 (ARP), Pub. L. 117-2, 135 Stat. 4 (March 11, 2021), for returns for calendar years beginning after December 31, 2021.¹ The transition period described in this notice is intended to facilitate an orderly transition for TPSO compliance with section 6050W and participating payee compliance with income tax reporting.

SECTION 2. BACKGROUND

.01 Section 6050W

Section 6050W, added to the Code by § 3091 of the Housing Assistance Tax Act of 2008, Div. C of Pub. L. 110-289, 122 Stat. 2654, 2908, requires payment settlement entities to file an information return for each calendar year with respect to payments

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

made in settlement of certain reportable payment transactions. Under § 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. 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. Taxpayers required to make returns under section 6050W do so by filing Form 1099-K, Payment Card and Third Party Network Transactions. Returns 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 and must be filed with the IRS on or before February 28th (March 31st if filing electronically) of the year following the calendar year for which the return was made. See § 6050W(f); § 1.6050W-1(g).

Section 6050W covers two types of reportable payment transactions: (1) payment card transactions and (2) third party network transactions. See § 6050W(c). A payment settlement entity in the payment card context is a merchant acquiring entity; in the third party network context, it is a TPSO. § 6050W(b)(1).

A TPSO is the central organization that has the contractual obligation to make payment to the participating payees of third party network transactions.

Section 6050W(b)(3). A third party network transaction is any transaction that is settled through a third party payment network. Section 6050W(c)(3). A central organization has a reporting obligation as a TPSO if it provides a third party payment network that

allows purchasers to transfer funds to providers of goods and services.

Section 1.6050W-1(c)(2).

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.

Section 6050W(d)(3).

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.

Section 6050W(d)(1)(A)(ii).

As originally enacted, 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

Section 3406(a) requires certain payers to perform backup withholding by deducting and withholding income tax from a reportable payment when, among other circumstances, the payee fails to furnish his TIN to the payer or the IRS has notified the payer that the TIN furnished by the payee is incorrect. A reportable payment includes payments made by a TPSO that are required to be shown on a return under § 6050W.

Section 3406(b)(3)(F). A payer is required to report the amount of deducted and withheld Federal income tax amounts 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.

.03 Sections 6721 and 6722

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 American Rescue Plan Act of 2021

Section 9674(a) of the ARP amended section 6050W(e) to provide that, for returns 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 aggregate number of such transactions.

SECTION 3. TRANSITION PERIOD FOR ENFORCEMENT AND ADMINISTRATION OF COMPLIANCE

Calendar year 2022 will be regarded as a transition period for purposes of IRS enforcement and administration of the modified de minimis exception for TPSOs and third party network transactions as provided in this section. With respect to returns for

calendar years beginning before January 1, 2023, 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 \$20,000 and the number of such transactions with that participating payee exceeds 200. The IRS will not assert penalties under § 6721 or § 6722 for TPSOs failing to file or failing to furnish Forms 1099-K unless the gross amount of aggregate payments to be reported exceeds \$20,000 and the number of transactions exceeds 200. For returns for calendar years beginning after December 31, 2022, a TPSO is required to report payments in settlement of third party network transactions with 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 2022 as a transition period with respect to the requirements of section 6050W that were not modified by § 9674(a) of the ARP. In addition, those payers that have performed backup withholding under § 3406(a) during calendar year 2022 must file a Form 1099-K with the IRS and furnish a copy to the payee if total payments to and withholding from the payee exceeded \$600 for the calendar year.

SECTION 4. EFFECTIVE DATE

This notice is effective for returns for calendar years beginning before January 1, 2023.

SECTION 5. DRAFTING INFORMATION

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