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NEAA Workshop: New IRS Compliance for The Acquiring Community

**An Overview of Final Regulations Under IRC
Section 6050W**

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The purpose of this presentation is to alert you to the requirements of federal tax law and regulations regarding IRC section 6050W. It reflects the best information available as of the time presented. Over the next few months, the final form and instructions and other additional guidance may be released. Such developments may affect the information provided herein. Be sure to check for the most recent guidance. In addition, how to implement a compliance program is up to each company, working with its tax advisers.

P.L. 110-289



- Enacted July 30, 2008
- Effective January 1, 2011 for reporting
- Effective January 1, 2012 for backup withholding
- Effective immediately for access to TIN Matching
- Proposed Regulations November 24, 2009
- Hearing March 15, 2010
- Final Regulations August 16, 2010
- Applies to “Payment Settlement Entities” (PSEs), “Electronic Payment Facilitators” (EPFs), “Third Party Networks” (3PNs) and Aggregated Payees

Who Must Report?



- Payment Settlement Entities (PSE), Electronic Payment Facilitators (EPF), Aggregated Payees, and 3PNs
- A PSE is the party with the contract to pay the merchant
 - Generally this will be the acquirer, but it could be another party
 - The PSE is relieved of duty to report if payment to the merchant is actually made by the EPF
- EPF is the party (other than a PSE) that actually makes the payment to the merchant
- Aggregated Payees (intermediaries) are treated as PSEs
- 3PNs are those like PayPal, but also include AP share services networks and others

Payment Settlement Entities



- For payments cards = merchant acquiring entity
 - Entity with contract to pay merchant
 - If multiple parties sign, the one that makes the payment is the PSE
 - If multiple parties sign and a 3P is the EPF, then it is not clear who is the PSE
- For 3PN = 3P settlement organization
- PSE can designate someone else to do the reporting, but remains liable for penalties if the designee makes mistakes
 - See later slide for designee rules

Electronic Payment Facilitators



- Person who makes payments to merchants on behalf of a PSE
 - See slide on making payment
- If EPF does not know the transaction amounts, must get the information from the PSE

Designation Agreements



- The person responsible for reporting may designate “any other person” to do the reporting
 - Examples only show situation when EPF kicks reporting back to the PSE, but the actual rule is not limited to that
- The designation agreement must be in writing
- If the designated party fails to properly report, the PSE/EPF is on the hook for penalties

Aggregated Payees



- In some cases (e.g., oil companies), the PSE pays an aggregate amount to a single entity which in turns pays to the next level, which in turns pays to the next level, etc.
- Each party in the chain must report on payments to the next level down the chain
- These intermediaries are treated as PSEs with respect to the payments they make to the next link in the chain and must report

Third Party Networks



- Alternative payment services where multiple **unrelated** sellers of goods and services have agreements with a central organization that sets the rules and processes the transactions and guarantees payment to the merchants
 - No agreements with buyers is needed
 - Related includes 50% owners, members of controlled group
- Must report all transactions, not just card transactions
- De minimis: 200 transactions/\$20,000 aggregate annually

Reach of Third Party Network Rules



- ACH Processors may be 3PN even though ACH itself is not covered by this statute
- AP Shared Services Networks
 - Currently do §6041 (Form 1099-MISC) reporting for their clients
 - They are covered by §6050W (Form 1099-K) reporting as well
 - IRS said to do 1099-K only
- Health care networks are not subject to these rules
- Toll collection networks and hotel kiosk arrangements included
- Self-insurance arrangements may meet definition of 3PN
- Bill Pay facilitators may be 3PN

Making Payment



- The person making payment must report
- Making payment means **submitting** the funds transfer instructions
 - If merely prepare instructions and hand over to another party who submits them, the other party is making the payment
- Money does not need to come from EPF's account
- EPF does not need to have any agreement with merchant

Gross Amounts



- Aggregate of transactions by the merchant
 - Definition creates numerous timing, knowledge and backup withholding (BW) problems
 - BW applies when transaction occurs but no cash available then; see other slide for BW rules
 - EPF knows only payments and not transactions, EPF must get transaction data from the party who has it
- Reportable as of transaction date, not payment date.
- Not adjusted for anything including fees, refunds, cashback, etc.
- Monthly totals and calendar year total required
- Report in U.S. dollars
 - Convert foreign currency at spot rate on day of transaction or use conversion convention

Transactions not Included



- ACH
 - But ACH processors may be 3PN
- ATM Transactions
- Loans/Cash Advances
- Convenience Checks
- Health Care Networks
 - Self-insurance arrangements may be 3PN
- Electronic checks, bill paying services, etc, MAY be 3PN and reportable depending on particular facts

What to Report



- Filer's name, address, TIN and either phone number (for paper statements) or email address (for electronic statements)
- IF EPF is reporting, also include PSE information
- Merchant's Legal Name, full mailing address, and Taxpayer Identification Number (TIN)
- Account Number (optional)
- Gross amount
 - Problem between “transactions” and “payments”
- Monthly totals, as well as annual total
- Amounts withheld (beginning 2012)
- Use Form 1099-K, Merchant Card and Third Party Payments

Which Merchants



- Generally, all of them
 - No exception for corporations, governments or tax-exempt organizations
- Only one exemption for foreign merchants with a foreign address

Merchant Names and Addresses



- Payee's legal name--not DBA name-- is the one IRS wants
- Sole Proprietor = individual's name (1040)
- Name as shown on SS4 when applied for EIN
- IRS wants the legal address (one shown on taxpayer's tax return)

Foreign Address



- For U.S. payors, current merchants not reportable if they have only a foreign address and no U.S. address, and PSE has no knowledge that the merchant is in the U.S., then can treat as foreign.
- After 2010, U.S. payors in the U.S. must get Form W-8 to treat newly added merchants as foreign
- Payments outside the U.S., U.S. payors use documentary evidence unless per se foreign corporation under §7701
- For non-U.S. payors, no reporting if payee has a foreign address and payor has no knowledge that payee is a U.S. person
- Foreign subs of U.S. PSEs are treated as U.S.
- U.S. = 50 states and D.C. only

Which Cards



- Generally, all of them
- Defined as card issued in arrangement with issuer(s), network of unrelated merchants, with standards for settlement
 - Do not actually need a card
- No exception for consumer cards or debit cards
- No exception for FSA/HRA or government benefits cards
- Stored value cards included, including gift cards, if involve unrelated parties
 - Single-store gift cards not included
 - Cards that can be used at unrelated places are included
 - If card is usable at both related and unrelated parties, it is reportable for unrelated parties only

- For each merchant, the filer must provide the appropriate TIN
 - Social Security Number (SSN) or Employer Identification Number (EIN) for sole proprietors
 - Formatted xxx-xx-xxxx
 - EIN for all others
 - Formatted xx-xxxxxxx
 - Hyphens not used when reporting
- Nine numerics, no alpha characters
- TIN Matching is not required, but highly recommended to ensure accuracy
- TIN does not need to be certified on Form W-9

TIN Solicitations



- To avoid penalty, payor must ask for TIN when account is opened
- Solicitation may be oral or in writing
- Oral
 - In person--ask account holder
 - Phone--ask officer of entity
 - Advise them need to get TIN, IRS requires it, \$50 penalty on payee may apply if do not comply
 - Keep documentation with date, time, person with whom you spoke and their answers
- Written
 - Form W-9 not required
 - Letter should say need to get TIN, required by IRS, \$50 penalty may apply if payee does not comply
 - Instructions on how to respond, avoid B/W

TIN Matching



- Pub 2108a for details
- Not required to anything with the results
- If do TIN matching and get match, provides defense to any TIN penalty later
- Online Interactive Service
 - Up to 25 name/TIN combinations at a time
 - Real time response
- Bulk Service
 - Up to 100,000 uploaded
 - Response to secure mailbox within 24 hours
 - User gets email stating result are available
 - Responses remain at mailbox for up to 30 days
 - Once access, responses are deleted after 3 days

TIN Matching--Registration



- Each person (user) must register online
- Necessary information includes
 - name
 - address
 - SSN
 - adjusted gross income from last year's return
- IRS sends confirmation (USPS) w/password
- User then logs on to complete registration; can change password

TIN Matching--Application



- Each Payor must apply to use system
- Person doing this is know as the Principal
- Necessary information:
 - Principal's name and role
 - Principal's telephone number and email address
 - Organization's legal name and EIN
 - Organization's address, city, state, zip, country
 - Organization's telephone number
 - Location information (multiple permitted)

TIN Matching-Users



- Principal lists all users by role
 - Responsible officials-- supervise the process
 - Designated Users-employees who do matching
 - Authorized Agents --outside 3P hired to do match
- Must have user's information
 - first, middle, last names
 - SSN
 - telephone number and email address
 - location
 - role

TIN Matching-MOU



- IRS matches applicant's info against payor Authorization File of 4.1 million filers of the six forms
- Each time access system must agree to terms and conditions in the Memorandum of Understanding
- Individual suspended 96 hours if go "fishing"

TIN Matching--Request



- To request TIN match, send IRS the following info:
 - TIN type (1 = EIN, 2 = SSN, 3 = Unknown)
 - TIN
 - Name (up to 40 characters)
 - Account number (optional)
- TXT file
- Semi-colon separates data
- Carriage return for new data set

Matching Process



- IRS matches first four letters of individual's last name, or first four letters of first significant word of entity's name
- Words such as "the", "a", "trust" are not significant unless it is a two-word name
- No punctuation; characters are acceptable
- No imbedded spaces
- Hispanic surnames--use first of last names

TIN Matching--IRS Response



- Get back what you sent + results indicator

0 = Match

1 = TIN missing or not 9-digit numeric

2 = TIN not currently issued

3 = No match

4 = Invalid Request

5 = Duplicate Request

6 = SSN Match

7 = EIN Match

8 = SSN and EIN match

Confidentiality



- Cannot use TIN information for any other purpose
- Cannot penalize merchant for failure to provide TIN

Backup Withholding Part 1



- Effective 2012 for card transactions
- Must withhold 28% of any payment if TIN not in hand at time of transaction
- Also must withhold if receive B Notice
 - Payor gets if name/TIN on info return does not match IRS master file
 - Mailings difficult for card clients.
 - If you get one, must get merchant to sign a Form W-9 or backup withhold on future transactions.

Backup Withholding Part 2



- Obligation to BW arises as of the date of the transaction if either no TIN on file or have received a “B Notice
- Do not have to satisfy BW obligation until payment is made
 - Watch out for problems at end of 2011
 - 2011 transactions not subject to BW even if not paid until 2012
- Depositing rules usually require deposits within certain time after liability arises. Unless the IRS changes this rule, there may be problems on Form 945--all deposits will look late
- Even with change, will need to coordinate payments with transactions to determine which WH obligations are being settled, especially for cross-year transactions/payments

Backup Withholding Part 3



- No withholding on payments to governments (Federal, State, local, foreign, and their agencies and instrumentalities), TEOs, and international organizations
- May withhold from “alternative source” if no other funds available
 - Other account is payable to merchant
 - If other parties on the account, need written approval from them
 - Must track for up to 4 years

Backup Withholding Liability



- If B/W required, you owe the money even if you do not B/W-- bank must pay out of own funds
- Avoid liability if fail to B/W if get affidavit (Form 4669) from customer
- May also owe late deposit penalties

Deposit Rules--When



- **Basic Rule--Semi-Weekly**
 - if you w/h on W, TH, F, deposit following W
 - if you w/h on S, S, M or T, deposit following F
 - no de minimis
- **Small Depositor Rules**
 - deposit monthly by 15th of following month
 - qualify based on base period (2010 for 2012)
- **Accelerated Depositor Rules**
 - if have w/h \$100,000, deposit next day

Deposit Rules--Other



- If you withhold, you must deposit according to same rules used for wage withholding (but done separately); electronic deposits may be required
 - If withhold less than \$2,500, deposit annually
 - If withhold less than \$50,000 in base year, deposit monthly by 15th of following month
 - If more, deposit semi-weekly (Wed and Fri)
 - If more than \$100,000 at any time, deposit next day
- File Form 945/Schedule A annually
- Penalties
 - 2, 5, 10 or 15 percent depending on how late the deposit is (most are 10)
 - Penalty is in addition to the liability for the backup withholding itself
 - Penalty may be assessed for timely deposits not done according to proper procedure (e.g. not using electronic deposits when required)

Backup Withholding



- Type A
 - B/W if you do not get TIN “in the manner required”
 - The manner for merchant reporting is orally or in writing but does not require certification unless a “B Notice” is received
 - Stop when get a TIN
- Type B
 - Receive a “B Notice from IRS that name/TIN combinations submitted on a Form 1099 does not match IRS files
 - TIN now must be certified on a Form W-9 or start BW
 - Stop BW after 1st notice when get Form W-9
 - Stop BW after 2nd notice when get stop letter from IRS/SSA

Accurate TINs



- IRS matches Name / TIN combination on info return with master file
- The IRS issues B Notice for a invalid Name / TIN combination
- TIN Matching not required but highly recommended
- Frequent cause for a mismatch
 - DBA name used instead of sole proprietor name
 - Name misspelled or abbreviated
 - Missing TIN
 - TIN not 9 digits long
 - TIN contains alpha characters or hyphens
 - Paper reporting IRS scanning errors

B Notices--Overview



- IRS matches name/TIN combinations on forms filed with the data on IRS master files
- If no match, “B” Notice generated to payor (CP2100)
- Payor must identify accounts affected and contact payees within 15 business days
- B/W within 30 business days --first notices
- Second Notices--start B/W, send different letter

B Notices--The Notice



- B Notice to payor is CP2100; legend on envelope
- Accompanied by listing of accounts with no TIN or mismatched TIN
 - These accounts NOT sent B Notice
 - Should be B/W already
 - Merely a reminder
- Paper listings-up to 250 accounts; CD if over
- Also get Publication 1281 or 1679
- Staggered mailing over 8 weeks in September and October

B Notices--Basic Steps



- Alert mail room
- Appoint B Notice coordinator
- Review notice upon arrival
- Review no-TIN listing for B/W
- Identify 1st notice and 2nd notice accounts
- Send letters within 15 business days
- Begin B/W no later than 30 business days
- Stop B/W when required
- Track 2-in-3 rule accounts

Identifying the Accounts



- If no account number—make reasonable search for accounts held by the customer (look by name and TIN)
- If account number provided—see if that account still have same name and TIN on it
- If account no longer has same TIN, then is not a B notice

B Notices



- IRS matches name/TIN on 1099 with their master files
- If no match, send “B Notice” to filer
 - Letters sent over 8-week period each Fall
 - May be sent on paper or on DVD depending on number of accounts
 - Also includes list of accounts with no TIN--should already be withholding on these accounts
- Filer must send prescribed letter and Form W-9 to merchant to obtain correct info
- Must track for “2-in-3” rule
 - If get second B Notice for same account in 3 year period, then must send different letter to merchant and begin backup withholding within 30 days.
 - Cannot stop BW unless get official stop notice from government (NOT Form W-9)

B Notices--First Notices



- Accounts receiving first B Notices: review to see if same TIN, if not, not a B Notice
- If same TIN, eliminate the following:
 - Transpositions and other Input errors
 - Garbled notices

B Notices--First Notice Action



- For identified accounts, send required first B Notice letter within 15 business days of day on notice
- Include W-9, return envelope
- Pre-paid postage not mandatory
- If no response within 30 business days, must begin B/W--can begin sooner if want

B Notices--Second Notices



- If have received 2 notices IN or FOR one year, is only one notice
- If is second notice in 3 years, send second letter, no Form W-9 and no return envelope
- Start B/W within 30 days and do not stop until get government OK
- Customer must get stop notice from IRS (Letter 147C for entities) or SSA Number Printout

B Notices--Days



- 15 business days from date on notice until send letter to payee
- 30 business days from date on notice until B/W required
- Business days = any day other than Saturday, Sunday, or Federal Holiday

Valid Form W-9



- Certify TIN for accounts
- Certify US status
- Properly executed form must include:
 - name
 - address
 - date
 - TIN
 - signature

Substitute Form W-9



- May be used alone or in combination with new accounts documentation if meets requirements
- Payor may not B/W, nor threaten to do so to force customer to agree to other terms and conditions. Civil/criminal penalties apply.
- May refuse official and insist on own substitute if provide it within 5 business days & instruct payee about required form.
- Requirements include:
 - Must have same information elements as official form
 - Can delete extraneous material
 - Instructions orally or in writing
 - if combine with signature card clearly set forth the certifications
 - See regulations for details

Form W-9 Retention Rules



- Pre-84 accounts: retention not required
- Post-83 accounts:
 - 3 years from date account opened
 - 4 years if BW is done on the account
- Electronic storage methods OK (e.g. microfilm, microfiche, data imaging)

Year End Checklist



- To meet current IRS requirements, you need:
 - merchant's legal name
 - merchant's full mailing address
 - merchant's TIN
 - monthly and annual totals
- Questions for payor to ask:
 - Who made the payment?
 - When was payment?
 - Use transaction date not post date
 - For how much?
 - Which transactions should be included?
 - Monthly amounts
 - Is backup withholding required?

Year End Filing Rules



- To merchant by January 31st
 - Last known address
 - See electronic payee statement rules
 - Extension of time (EOT) available
 - May use official form or qualified substitute
- To IRS by March 31st (February 28th if on paper)
 - 30-day EOT by filing Form 8809
- Publication 1220 for filing specifications
- Publication 1179 for substitute forms specifications
- Electronic filing required if more than 250 filed (also applies to corrections); limited waiver available--file Form 8508

Payee Statements



- Use IRS form or qualified substitute
- Specifications for substitutes--Pub. 1179
- Must number and title boxes the way IRS does but may alter format
- Logos OK, but not advertising

Electronic Payee Statements



- Modified existing rules to permit obtaining consent by “reasonable” electronic means rather than having to do paper mailings
- This is an opt-in approach not an opt-out
- The merchant may opt-out at any time after opting in
- The merchant may request a paper statement at any time

Electronic Payee Statements



- Merchant must affirmatively consent to receiving 1099 electronically
 - Either previously consented to receiving tax statements electronically, or
 - Makes affirmative consent now
- Make affirmative consent electronically in any manner that shows ability to receive the 1099 electronically
- Can do it on paper if confirm electronically
- Required disclosures (see next slide)
- Consents must be kept and provided to IRS upon request
- May withdraw consent or request paper document at any time
- Must notify merchant of any material change in systems/process
 - Requires new consent from merchant

To Get Payee Consent



- To obtain consent from merchant, the payor must provide disclosure statement with the following:
 - Paper will be sent unless affirmative consent is received
 - Duration of the consent (1-year? Indefinitely?)
 - May be withdrawn prospectively at any time by contacting payor in writing (including electronic) at the address provided
 - Payor will confirm withdrawal of consent in writing and the effective date
 - Paper may be requested at any time
 - Whether request for paper will be considered withdrawal of consent
 - Conditions upon which payor will terminate electronic provision
 - Procedures for updating merchant contact information and how payor will inform merchant of change in payor contact information
 - Hardware and software requirements and date when the 1099 information will no longer be available online

Other Electronic Payee Statement Rules



- Electronic version of 1099-K must contain all of the information of the paper form
- If disclosure is on a website, the merchant must be notified of this fact electronically, by mail, or in person
- Notice must include instructions on how to access and print disclosure statement
- Must include following in notice or in email reference line in capital letters: “IMPORTANT TAX RETURN DOCUMENT AVAILABLE”
- If undeliverable, must try to obtain correct address. If unsuccessful, must mail 1099 within 30 days after the electronic notice is returned

Filing Penalties



- Legislation Sept. 2010 changed the penalties effective for 2010
- Now is \$100 per error, maximum of \$1.5 million
- Reduced to \$60 per error, max of \$500,000 if corrected by August 1
- Reduced to \$30 per error, max. of \$250,000, if corrected within 30 days of due date
- \$250 per error, no max., if intentional disregard
- Separate \$100 penalty/\$1.5 million maximum for errors associated with sending payee statements
- No across-the-board relief provided in the final regulations although the IRS will consider relief in “egregious cases”
- Normal penalty relief (“reasonable cause”) rules include, among other things, a waiver based on late change in law or regulations

Waiver Request



- Form 972cg
- Respond to Penalty notice within 45 days
- Ask for waiver -- “reasonable cause”
- Cite statute/regulations
- Explain what happened
 - Which accounts you are talking about
 - What went wrong
 - What you did to correct it
- Give name/contact info for person who can provide more info
- Submit under penalty of perjury

Reporting Help



- Questions can be addressed to:
 - IRS Martinsburg West VA Payor Call Site
 - (866) 455-7438 or (304) 263-8700
 - 8:30 – 4:30pm EST
 - No Charge for Service
 - Anonymous

IRS Numbers



- Call Site: 866-455-7438
- Forms and Pubs: 800-777-4778
- Taxpayer Advocate: 877-777-4778, 202-622-3125, or systemic.advocacy@irs.gov
- EFTPS: 800-829-4933
- TeleTax: 800-829-4477
- E Help desk at 866-255-0654
- On-line at www.irs.gov/efile

Duplication



- Transactions reportable under both IRC sections 6041 or 6041A(a) (by cardholders) and 6050W (by PSE/EPFs) are reportable only under 6050W
 - Cardholders are relieved of filing Forms 1099-MISC and doing any backup withholding
 - Applies to both payment cards and 3PN transactions
 - For this rule only, the de minimis rule for 3PNs is disregarded

State Issues



- California has added piggyback 6050W provision
 - May require 7% CA backup withholding
- Hawaii has added piggyback 6050W provision
- Massachusetts expecting Forms 1099-K to be filed with them
- These states are part of the Federal/State filing program, but it does not include Form 1099-K
- New York has added its own 6050W version
 - Send New York your entire file, or
 - Use New York database to determine which are New York merchants
 - Not a part of the Federal/State program

Issues



- Who is the PSE? EPF
- Who has the TINs on file? How to get TINs to the PSE or EPF
- Updating file for legal name and full mailing address
- Identify new foreign merchants with Forms W-8
- Who will solicit TINs and do TIN Matching
- Track transactions and reconcile with payments
- Manage BW on transactions when payments are made
- Timely deposit and reconcile to Form 945
- Filing information returns: In-house or out-source
- Expand system to store 12+ months of data
- B Notices and Penalties

Visa Activities



- Working with the acquiring community on compliance activities for 6050W
- TIN Matching all merchant records with 2010 transactions, working with acquirers to resolve IRS TIN mismatches
- Webinars and other outreach activities being scheduled for 2011

QUESTIONS?