



Expanded Form 1099 information reporting requirements

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Deloitte Tax LLP

Summary

Generally, under Internal Revenue Code Section 6041(a), businesses, including certain governments, are required to issue informational reporting returns (Form 1099) for payments for services if the total payments to that person exceed \$600 a year. The Patient Protection and Affordable Care Act as modified by the Reconciliation Act of 2010 (collectively referred to as the “Act”) was enacted on March 30, 2010. Effective for payments made after December 31, 2011, the Act greatly expands the reporting requirement to include payments made to corporations (other than corporations exempt from income tax under IRC Section 501(a)). Furthermore, the Act significantly expands the types of payments subject to reporting to include gross proceeds as well as amounts paid in consideration for property.

The Act’s expansion of this information reporting requirement may also increase potential penalties and levy additional burdens on businesses. Accordingly, in order to comply with the Act, tax departments should proactively coordinate with accounts payable and procurement departments to ensure the necessary information is accumulated from vendors prior to the effective date. Additional business considerations include the evaluation of policies, procedures, and potential system limitations.

Penalties for noncompliance

Of particular concern, the IRS requires purchasers of goods and services under certain circumstances to withhold 28 percent from vendor payments as backup withholding taxes if they are required to file a Form 1099 under IRC Section 6041. In general, backup withholding is required when the payor requests a Taxpayer Identification Number (TIN) from a vendor and one is not provided prior to payment. If the payor fails to comply with the 28 percent backup withholding, the payor may be held liable for any amount that should have been withheld.

Additionally, the penalty for the failure to file an information return is \$50 for each return for which such failure occurs. The total penalty imposed on a person for all failures during a calendar year cannot exceed \$250,000. Similarly, the penalty for failure to provide a correct payee statement is \$50 for each statement with respect to which such failure occurs, with the total penalty for a calendar year not to exceed \$100,000. Special rules apply that increase the per statement and total penalties where there is intentional disregard of the requirements.

The penalties may be waived for reasonable cause, where a business can demonstrate that it acted in a responsible manner both before and after the failure occurred.

Why act now?

Although the new provision is effective for payments made after December 31, 2011, businesses have an opportunity to proactively evaluate day-one readiness. Deloitte recommends an evaluation of the current reporting processes with a view on compliance with the expanded reporting requirements. The outcome will assess mission critical steps, which may include, for example:

- Assessment and remediation of existing deficiencies
- Communication and implementation plans with vendors
- Protocols for vendor noncompliance and withholding
- Potential system limitations with respect to backup withholding
- Internal controls and Sarbanes-Oxley compliance considerations

Next steps

Contact Deloitte's national Tax Controversy Services group, which has specific experience regarding the information reporting requirements and appropriate company personnel, to discuss day-one readiness with the new provisions.

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