



April 24, 2017

Internal Revenue Service
CC:PA:LPD:PR (Notice 2017-09)
Room 5205
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Mark A. Bond:

On behalf of the National Association of State Comptrollers, we appreciate the opportunity to respond to the Internal Revenue Service's notice regarding De Minimis Error Safe Harbor.

As requested, we offer the following feedback and comments in response to the notice:

Section 3.01

Paragraph 2, the first sentence states: "A payor may prescribe any reasonable manner for making the election, including in writing, on-line (electronic), or by telephone, provided that the payor furnishes the payee written notification of the reasonable manner before the date the payee makes the election."

We believe requiring that a payor provide each payee with written notification of the safe harbor and opt-out provisions would be unduly burdensome to payors. We recommend including a general disclosure in the Information Return Instruction publication to meet the intent of this provision. Requiring the payor to provide the payee with written notification of the safe harbor and opt-out provisions shifts the administrative burden from processing corrected W-2s to the notification process.

Paragraph 4 states: "This notice does not prohibit a payor from filing corrected information returns and furnishing corrected payee statements if the payee does not make an election."

The mitigation of the administrative burden of processing corrected W-2s is realized not only by the payor, but the payee as well. Therefore, we recommend rewording the guidance to discourage corrected statements for de minimis amounts to eliminate the downstream burden of submitting amended returns for amounts that will likely not affect the payee's tax liability.

Section 4

The third sentence states: "The regulations are also expected to include a requirement for payors to notify payees regarding the de Minimis error safe harbor and the election for the safe harbor not to apply."

We believe that the notification requirement should be included in the appropriate IRS Instructions Publication based on our discussion in Section 3.01.



Other Comments

- We would like clarification regarding if the safe harbor is for the cumulative total of multiple errors, or just one particular error (if multiple errors are found for a single individual over time). It would be easier to apply if it is on an error by error basis.
- If the error is discovered by the payor, then we believe that the election process for the payee should not be required.
 - Instead, the payor could make the determination on whether a corrected form is needed since the IRS has provided a threshold (\$100/\$25 withholding).
 - The point of a threshold is to reduce the administrative burden related to de minimis amounts. There is not a reduction in the administrative burden by having the election process.
- Errors may be identified by the payee and communicated to the payor. At that point in time, if the dollar amount of the error is below the thresholds, we believe the payor should inform the payee of the safe harbor and of the payee's right to opt-out. This should be included in the guidance.
- The notice provides the ability for a payee to make an election for the safe harbor with respect to an individual's payee statement. This election would be in place for the year furnished and any subsequent calendar years, unless revoked. Additionally, if the payee does not identify the type of payment/account number or calendar year to which the revocation applies, the payor must treat the election to apply to any and all payments to the payee. This appears to be an administrative burden for a central processor to implement. We believe that additional consideration should be given to allow the individual election to expire.
- Since this notice applies with respect to information returns required to be filed, and payee statements required to be furnished, after December 31, 2016, will we be required to notify payees that received their statements for 2016, and if so, how much time after the final regulations are in place will we have?
- We request that the IRS include examples as to what a de minimis correction would look like, as well as what de minimis is not.
- Development and inclusion of an opt-out provision for information return filers, that if selected, clearly removes all responsibility for collection of information and recordkeeping under Notice 2017-09.

We appreciate the opportunity to provide our comments. Should you have any questions or need additional information regarding our response, please contact Kim O'Ryan at (859) 276-1147, or me at (307) 777-7831.

Sincerely,

Cynthia Cloud
NASC President
Wyoming State Auditor