



Mr. Charles P. Rettig
Commissioner
Internal Revenue Service
U.S. Department of the Treasury
1111 Constitution Ave. NW
Washington, D.C. 20224

October 3, 2019

RE: Concerns with 26 U.S.C. 6050X: Information with respect to certain fines, penalties, and other amounts

Commissioner Rettig:

On behalf of the National Association of State Auditors, Comptrollers and Treasurers and its Payroll Information Sharing Group, we are writing to express our deep concerns regarding a little-known provision of the *Tax Cuts and Jobs Act (TCJA) of 2017*. Specifically, we are referring to Section 13306 which amends the deductibility of certain fines and fees (26 U.S.C. 162), and also places an onerous reporting requirement (26 U.S.C. 6050X) on federal, state and local governments.

Under section 162(f), taxpayers cannot deduct amounts paid or incurred to a government or governmental entity in response to a violation of law or potential violation of law. An exception exists if a taxpayer can show that the amount (i) constitutes restitution for damage or harm that may have been caused by the violation of or potential violation of law, or (ii) is paid to come into compliance with any law that was violated. Additionally, the court or settlement agreement must identify the amount as restitution or as paid to come into compliance with the law.

The TCJA also added section 6050X which requires governments and governmental entities to report amounts received from taxpayers under section 162(f). Section 6050X requires governments to report the amount of the nondeductible payment, any amount that constitutes restitution or remediation of property, and any amount paid for coming into compliance with any law that was violated or part of the investigation.

While we appreciate that the IRS issued transitional guidance delaying the § 6050X reporting requirement, we have growing concerns about the burden associated with its ultimate implementation. Therefore, we would like to address a few items which relay the magnitude of this change.

- The new provision will require reporting on something that is not a payment, but receipt of payment, making it extremely challenging to obtain tax (W-9) information from individuals who are paying the government.



- It will be very difficult for entities to determine what is and what is not reportable under this requirement and to properly report the information in the applicable 1098-F boxes on the form. Settlement agreements could cover a broad range of payments made to governments (tax audit findings, environmental fines, agreement costs to come into legal compliance, etc.).
- It will be extremely challenging to educate the individuals responsible for these types of agreements to understand the tax reporting implications and ensure proper reporting. These individuals' area of expertise is often not tax compliance.
- In most government entities collections and receivables are maintained by the agencies. The decentralization of these processes will provide complexities with non-tax staff understanding the proper classification of receivables in regard to 1098-F reporting.
- System setup and configuration for receivables will add a burden to current systems and transaction entries. The new reporting will also significantly increase the workload during a tax reporting season, which in turn could increase the risk of late filings and inaccurate data.
- There are codes on form 1098-F that will be very challenging to systematically derive and define (box 8).
- The accumulation of data across multiple agencies for the same payee on one tax form will prove challenging.

Thank you for your ongoing consideration of the burdens associated with this new reporting requirement. Should you have any questions or desire any additional information, please feel free to reach out to our representative in Washington, Cornelia Chebinou, at (202) 624-5451 or cchebinou@nasact.org.

Sincerely,

Jeremy Pigott, Co-Chair
NASACT Payroll Information Sharing Group

Steve Nielson, Co-Chair
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