



Re: Information Reporting Under the Amendments to Section 6041 for Payments to Corporations and Payments of Gross Proceeds and With Respect to Property

These comments are submitted to the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) on behalf of the Small Business Coalition for Affordable Healthcare (The Coalition) in response to Notice 2010-51, regarding the implementation of the expanded information reporting requirements included in the Patient Protection and Affordable Care Act of 2010, Pub.L.No. 111-148, 124 Stat. 119 (PPACA).

Representing the country's largest, oldest and most respected small business associations, the Small Business Coalition for Affordable Healthcare has spent more than a decade working to increase access and affordability of private health insurance. The coalition's membership includes small business organizations in the agricultural, construction, food service, floral, manufacturing, wholesaler, retail, rental, entertainment and houseware communities. As the nation's leading small business coalition, our members actively participated in the healthcare debate and advocated for solutions that would increase choice, enhance competition for private insurance and increase the overall affordability of health insurance for America's job creators: small business.

The Coalition is concerned about the increased complexity and costs the expanded information reporting requirement will place on small business. Small businesses already struggle with a complicated tax code.¹ In fact, a National Federation of Independent Business (NFIB) Small Business Poll found that tax-related paperwork is the most expensive paperwork burden placed on small business² and according to a Small Business Administration (SBA) study, the cost of complying with the tax code is 66 percent higher for small businesses compared to large businesses.³ The potential reach of the new reporting requirement is vast, requiring small businesses to report almost every business-to-business transaction on a Form 1099 and spend more time collecting the information needed to properly complete these forms.

In addition, our members are concerned about how this new requirement will change their tax filings and the questions they will receive from the IRS. With this new information, small businesses will face a heightened level of scrutiny by IRS examiners.

¹ Tax complexity was ranked fifth by small business owners on a list of 75 problems and priorities. William J. Dennis, *Small Business Problems and Priorities*, NFIB Research Foundation, Washington, DC series.

² *Paperwork and Record Keeping – NFIB Small Business Poll*, NFIB Research Foundation, Washington, DC, Volume 3; Issue 5; 2003.

³ Crain, W. Mark; *The Impact of Regulatory Costs on Small Firm*, Small Business Research Summary, SBA Office of Advocacy; September 2005.

Most troubling is that these inquiries are likely to fall on already compliant small business taxpayers, forcing them to defend more of their tax filings.

While Treasury and the IRS have specifically requested suggestions to minimize the expanded burden on businesses, we believe that the only solution is to repeal this requirement before it goes into effect. The more specific comments below highlight some of the challenges small businesses will face in meeting this new tax filing obligation.

Duplicative Reporting

In addition to the expanded information reporting included in the PPACA, a new payment card reporting requirement was established in the Housing Assistance Tax Act of 2008, Div. C of Public Law No. 110-289, 122 Stat. 2654. This new reporting requirement will begin in January of 2011, requiring the payment card company to report to the IRS the amount of business transacted through credit and debit cards.

The final regulations exempt transactions paid for with a payment card from PPACA's expanded 1099 reporting requirements. By moving more purchases to either credit or debit cards, a small business can attempt to reduce its 1099 reporting burden, since the payment card company would be responsible for reporting. This will provide minimal relief from the new reporting requirements since businesses will not have to report transactions paid with a credit or debit card. Ultimately, however, this will place small businesses at a competitive disadvantage since only about half of all small businesses currently accept payment cards.⁴

Businesses will also have to begin tracking the method of payment to determine if they or the payment card company is responsible for reporting. This could also create some confusion as to which party is responsible for reporting. For example, in some circumstances a business may pay the same vendor with both a credit card and another form of payment, like cash or a check. Presumably this means part of the transaction is the reporting responsibility of the business and part is the responsibility of the payment card company. Clarity as to how such transactions are to be reported would provide some helpful guidance to many small businesses.

With the exception of the new payment card reporting requirements, very few duplicative reporting exists for most business transactions. This means that almost any other transaction in excess of \$600 will have to be reported. Such an expansion is a major new burden on small business and the tax administration system.

Burdens Differ Based on Different Taxpayers

Because the scope of the new reporting requirement is so broad, small businesses will have to spend a considerable amount of time determining their reporting responsibility

⁴ Credit Cards – NFIB Small Business Poll, NFIB Research Foundation, Washington, DC, Volume 8; Issue 3; 2008.

for various transactions. As a result, who the business should report to or what they are supposed to report may raise particularly difficult questions. It would benefit many small businesses if Treasury and the IRS provided explanations and examples for some of these more complicated transactions. Below are a few areas where questions are likely to arise and more clarity would be helpful.

Home-based Businesses

An increasing number of small businesses operate exclusively out of the home. A home-based business shares many expenses with the home owner, such as utilities. How does a home-based business determine how much of these costs are reported as a business expense? Determining the amount of such expenses has created great confusion under the home office deduction and the same confusion is now added to reporting shared expenses on the Form 1099.

Franchises

Small businesses that utilize franchising as a business model could create confusion for other businesses that purchase goods or services from a franchised business. For a large percentage of the public, they see a national brand or chain and do not make the connection that there is a local, independent business owner that owns and operates the location. While each franchise business owner will have a unique TIN, the business or corporate consumer may list the franchisor instead of the franchisee. This reporting requirement has the potential to generate numerous incorrect filings attributed to the wrong vendor. For example, the IRS could receive numerous Form 1099s that list a franchisor headquartered in Illinois even though the actual vendors were the franchisees in other states.

Industry

In addition, a business may be affected differently based on the type of business or the industry the business represents. The Coalition membership is diverse and as the examples below indicate, despite that diversity, the effect of the new 1099 reporting requirement for those businesses is similar – more time, more paperwork, greater cost and significant confusion.

Agriculture

Illinois Farm Bureau Vice President Richard Guebert Jr.'s operation currently issues 10 to 12 Form 1099s per year. He warned that number could exceed 100 if new requirements "come into play." Expanded compliance would entail securing business information and tax ID/Social Security numbers from each vendor.

Kankakee County grain and onion grower Bill Olthoff, who deals annually with 50 plus vendors, sees new requirements as "an added cost of doing business that isn't needed. The number of vendors we use is considerable -- to have to write a

1099 for each one is cost-prohibitive. This just isn't necessary. There are other ways to accomplish what (IRS) is trying to do in tracing income.”

Construction Industry

Recently, an Associated Builders and Contractors (ABC) member, who is the vice-president of a family-owned small business, indicated that the Form 1099 reporting requirements may force him to hire an additional full-time employee to work in his company's accounting department which already employs two full-time employees. Because the ABC member works with 1,200 vendors, of which only four or five presently issue a Form 1099, the accounting department will be required to spend countless hours on the increased paperwork and filing.

Two years ago, this ABC member employed 136 employees. Due to the current construction market, he was forced to lay off more than half of his employees, reducing his staff to 66. Instead of investing in equipment or hiring employees to actually perform work in the field, he may be faced with a huge overhead expense of hiring a full-time employee to solely work on this new burdensome mandate. In order to absorb this additional cost, he may have to increase production or pass these costs on to his customers. This is problematic as his company is production-related and production employees can only produce so many units per hour. Ultimately, the overhead expense resulting from this new paperwork requirement will have a dramatic effect on the ABC member's bottom line and how he conducts business.

Auto Repair

Pat Felder, owner of Felder's Collision Parts in Baton Rouge and a member of NFIB is especially concerned about this new 1099 tax reporting provision and supports efforts to repeal it. Felder said she would go from filling out four 1099 forms to several hundred forms because of this law.

Timing and Manner of Reporting

The Form 1099 is currently filed before January 31 in the year following the transaction. Most of the information being reported under the current rules relates to taxpayers filing on a calendar-year basis and using the cash method of accounting. The expansion of the new reporting requirements to more taxpayers and more transactions means that more information will be reported about business taxpayers filing on a fiscal year and using the accrual method of accounting. Since the Form 1099 is filed on an annual basis, how the information will be used relative to fiscal year or accrual method filers is unclear.

Withholding

If a business fails to either provide a Taxpayer Identification Number (TIN) or submits an inaccurate TIN, the service- or property-receiving business is required to withhold 28 percent of the value of the total contract. This requirement could be particularly difficult with certain contracts.

For example, withholding on certain long-term services, such as utilities, could lead to the services being suspended. These types of transactions do not lead to easy answers relative to the withholding requirement and additional guidance and clarity could be helpful.

Conclusion

We have attempted to address some areas where clarity could be provided to small business owners. Unfortunately, the expansion of the reporting requirements included in the PPACA places a major new burden on small businesses and clarity will only provide limited relief. Small businesses will face many new questions as they attempt to meet this new requirement. This means time and money spent on filling out forms, collecting information, and answering questions from the IRS rather than running their business.

In the end, this new requirement will do little to address the under-reported income the supporters hope to collect. Even more troubling is the fact that the burden of complying with the new requirements will fall disproportionately on already compliant small business taxpayers. Instead of making the tax code more complicated, the goal of tax administration and tax policy in general should be clarity and simplification. The new reporting requirement goes in the opposite direction, and we would encourage Treasury and the IRS to work towards repealing this new burden.

Sincerely,

Aeronautical Repair Station Association
Agricultural Retailers Association
American Farm Bureau Federation
American Hotel & Lodging Association
American Rental Association
American Road & Transportation Builders Association
American Veterinary Distributors Association
American Veterinary Medical Association
AMT - The Association For Manufacturing Technology
Associated Builders and Contractors
Associated Equipment Distributors
Bowling Proprietors Association of America
Commercial Photographers International
Evidence Photographers International Council
Hearth, Patio & Barbecue Association

International Franchise Association
International Housewares Association
International Sleep Products Association
Independent Community Bankers of America
Independent Electrical Contractors, Inc.
National Association for the Self-Employed
National Association for Printing Leadership
National Association of Manufacturers
National Association of Wholesaler-Distributors
National Automobile Dealers Association
National Federation of Independent Business
National Lumber and Building Material Dealers
National Newspaper Association
National Retail Federation
National Roofing Contractors Association
National Utility Contractors Association
Northeastern Retail Lumber Association
NPES The Association for Suppliers of Printing, Publishing and Converting Technologies
Outdoor Industry Association
Printing Industries of America
Professional Photographers of America
Safety Equipment Distributors Association
Secondary Materials and Recycled Textiles Association
Service Station Dealers of America
Small Business & Entrepreneurship Council
SMC Business Councils
Society of Sport & Event Photographers
Specialty Equipment Market Association
SPI: The Plastics Industry Trade Association
Stock Artists Alliance
Tire Industry Association
Turfgrass Producers International
Window and Door Manufacturers Association