



IRS 6050W REGULATIONS – ETA ISSUES SUMMARY

On August 16, 2010, the Internal Revenue Service released 6050W Final Regulations to implement tax code Section 6050W and related statutory changes enacted by the Housing Assistance Tax Act of 2008 (Pub. L. No. 110-289) that require payment settlement organizations to report payments in settlement of payment card and third-party network transactions for each calendar year. The Electronic Transactions Association submitted comments to the IRS earlier this year on the proposed regulations; this is a summary of how the final regulations address ETA's previously articulated concerns.

- 1. Verification of foreign participating payees.** ETA requested (i) the same foreign address presumption rule (that relies on the existence of a foreign address) that applies to non-U.S. payors should apply to U.S. payors. In other words, if a PSE – whether a U.S. owned or foreign – has a non-U.S address on file for a merchant, then the PSE – U.S. or foreign – can presume that the merchant is foreign without the need to obtain additional documentation substantiating foreign status (W-8BEN); or (ii) an alternative foreign address verification method that is consistent with the customer identification rules required for banks and other financial institutions under the Patriot Act.

► **Final Regulations did not adopt these recommendations, BUT transition relief and an offshore account presumption has been provided.** The final regulations did not adopt the Patriot Act customer identification requirements because the Patriot Act rules are not intended to identify U.S. taxpayers and do not adequately address the tax administration concerns of section 6050W. The final regulations did not extend the foreign address presumption to U.S. payors. Treasury and the IRS understand from meeting with affected parties that payment settlement entities do not currently rely solely on an address to identify a participating payee because payment settlement entities have a business interest in verifying the identity of the participating payee due to the credit and reputational risks inherent in payment card transactions. The Treasury/IRS have a similar compliance interest in ensuring that the participating payee's identity is verified and applying the address rule generally to U.S. payors does not adequately address those concerns. Treasury/IRS believes it's appropriate to require the participating payee to complete a W-8BEN (or other appropriate certification) certifying its foreign status.

- **Transition Relief:** For payments made pursuant to contractual obligations entered into before January 1, 2011, a payment settlement entity that is a U.S. payor or middleman **may rely on a foreign address as long as the U.S. payor or middleman neither knows nor has reason to know that the payee is a U.S. person.** For this limited purpose, a renewal of such a contractual obligation will not result in a new contractual obligation unless there is a material modification of the contractual obligation.
 - **Foreign per se corporation:** A U.S. payor making a payment outside the United States to an offshore account need not report payments to a participating payee with only a foreign address if the name of the participating payee indicates it is a foreign *per se* corporation listed in § 301.7701-2(b)(8)(i).
- 2. Foreign Currency Conversion:** ETA requested guidance on converting the amounts for withholding and reporting purposes from the functional currency used exclusively by many foreign merchants to U.S. dollars for backup withholding and reporting purposes.
- **Final Regulations did adopt this recommendation.** The Final Regulations provides a rule that when a payment is made or received in a foreign currency, the U.S. dollar amount is determined by converting such foreign currency into U.S. dollars on the date of the transaction at the spot rate or pursuant to a reasonable spot rate convention, such as a month-end spot rate or a mostly average spot rate.
- 3. Electronic Consent Procedures:** ETA requested that the Service modify the affirmative consent requirement to receive statements electronically by providing for (i) an “opt out” process for merchants who have already consented to receiving information electronically (in other words, a merchant that has previously consented to receive merchants statements electronically should not be subject to an additional consent requirement to receive the 1099K electronically); (ii) stating that merchants not currently receiving any business communications electronically should not be required to receive a unique communication to inform them of their option to receive payee statements electronically; but rather, such notice should be includible with another business mailing; and (iii) merchants receiving paper communications desiring an electronic payee statement, should be able to log onto the PSE/EPF website and consent to electronic communications; no other written consent should be required.
- **Final Regulations did adopt these recommendations and simplified existing electronic consent procedures.** Section 1.6050W-2 provides that a recipient consents to receive the required 6050W statement in an electronic form either by making an affirmative consent or, in the alternative, by previously having consented to receiving from the furnisher other federal tax statements in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

- 4. Electronic Payment Facilitator:** ETA requested clarification of Proposed Regulation Example 14 and to provide “real world” examples on who has the reporting obligation under different EPF scenarios.

► **Final Regulations did adopt this recommendation.** The final regulations provide that a payment settlement entity (or an electronic payment facilitator acting on behalf of a payment settlement entity) makes a payment in settlement of a reportable payment transaction if the PSE (or its facilitator) submits the instructions to transfer funds to the account of the participating payee to settle the reportable payment transaction. The final regulations include additional examples applying the electronic payment facilitator rule (See Example 22).

- 5. Penalty Relief:** ETA requested an initial waiver of penalties for failure to comply under reasonable circumstances with the new 6050W reporting and related backup withholding.

► **Final Regulations did not adopt this recommendation** because the existing regulations under section 6724 provide extensive guidance for waiver of penalties due to reasonable cause for failure to file correct information returns and failure to furnish correct payee statements. The IRS will continue to work closely with stakeholder to ensure the smooth implementation of the provisions of these regulations, including, in general, the mitigation of penalties in the early stages of implementation, except for particularly egregious cases.

- 6. De Minimus Threshold:** ETA requested that the IRS set a de minimus annual reporting threshold for all payment card transactions.

► **Final Regulations did not adopt this recommendation.** The final regulations did not adopt a de minimus threshold for all payment card transactions. Third party network transactions are not subject to reporting under section 6050W unless the de minimus threshold (more than 200 transactions aggregating more than \$20,000 per calendar year for a given payee) is met. The final regulations did extend duplicate reporting relief under sections 6050W and 6041 to include third party network transactions. Accordingly, the final regulations provide that payment card and third party network transactions that otherwise would be reportable under both 6041 and 6050W must be reported under section 6050W and not section 6041.

- 7. Timing of “Gross Amount” determination:** ETA requested that the final regulations clarify that payment settlement entities are required to report gross amounts that *were submitted for payment (as opposed to the settlement date)* by participating payees during the calendar year.

► **Final Regulations did adopt this recommendation.** The final regulations provide that the dollar amount of each reportable payment transaction is determined on the date of the transaction. (See Example 5)

8. Treatment of Aggregated Payments: ETA requested that the final regulations address the issue of reporting payments in the aggregate made to merchants that have the same name and TIN but multiple locations, or reporting the payments individually.

▶ **Final Regulations do not appear to address this issue specifically; however, see Example 21 regarding “aggregated payee” reporting.**