



IRS provides guidance on de minimis error safe harbor in Notice 2017-09

Closing the distance

Notice 2017-09 provides guidance on the de minimis error safe harbor from information reporting penalties under Internal Revenue Code sections 6721 and 6722

In January 2017, the IRS released [Notice 2017-09](#), which clarifies the requirements surrounding the de minimis error safe harbor rule established by section 202 of the Protecting Americans from Tax Hikes Act of 2015 (“PATH Act”). This safe harbor provides that no penalty is imposed and no correction of the error is required where an error on an information return or payee statement relates to an incorrect dollar amount that differs from the correct amount by \$100 or less (or \$25 if the error relates to the amount of tax withheld). The safe harbor does not apply for a failure to timely file an information return or furnish a payee statement, failure to include all information required, or the inclusion of incorrect information.

First, the notice expounds on the election a payee may make to have the safe harbor not apply. When this election has been made, penalties for failure to correct a de minimis error are applicable. However, such errors will be considered as due to reasonable cause and not subject to penalties if the payor furnishes a corrected payee statement to the payee and files a corrected information return with the IRS within 30 days of the date of the election. The notice also provides that the payor may prescribe any reasonable manner for making the election and describes additional requirements with respect to this, including timing, duration, and information required to be included in the election. Further, with respect to elections, the notice imposes a recordkeeping requirement whereby payors must retain records of any election or revocation of an election.

The notice also places important limitations on the safe harbor. Specifically, the safe harbor only applies to inadvertent errors on a filed information return or furnished payee statement. Intentional misreporting of information will continue to fall under the intentional disregard provisions. Additionally, the safe harbor does not apply to failure to file or furnish an information return or payee statement, even where the amount would otherwise qualify.

Finally, the IRS announced that regulations under sections 6721 and 6722 with respect to the safe harbor will be issued and effective for returns required to be filed and payee statements required to be furnished after December 31, 2016.

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