

Tax information reporting and withholding evaluations for IRC Section 6050W

Your challenge

Internal Revenue Code (IRC) Section 6050W requires certain companies to file information returns, Form 1099-K, and report payment card transactions, including debit, credit, gift cards, flexible spending account cards, as well as third-party network transactions on a gross payment basis. Given the narrow time frame to evaluate processes, procedures, and system capabilities — regulations affect transactions beginning on January 1, 2011 — Section 6050W compliance has become an increasingly urgent issue.

for payments made after December 31, 2011. Internal Revenue Service (IRS) Notice 2011-88 postpones for one year the requirement to apply backup withholding on Section 6050W payments; the backup withholding requirements of Section 3406 will apply only to Section 6050W payments made after December 31, 2012.

How will your organization be affected by Section 6050W? The answer depends on two key dimensions: an organization's internal structure and its role in the payment transaction stream. Companies that accept or process payment card transactions for unrelated parties, as well as payors in third-party networks could be required to provide additional reporting. Additionally, entities considered to be electronic facilitators or aggregated payees under the Section 6050W regulations may find that they have reporting responsibilities.

Company executives benefit from a sound, proactive approach to analyzing the impact and planning for these new regulations and reporting requirements — and, more importantly, to shape internal processes and systems to achieve compliance.

Key dates

2011 — Information should have been captured beginning January 1, 2011.

2012 — The first returns due under this section, returns for calendar year 2011, were due in 2012.

2013 — Calendar year 2012 transactions should be reported to payees by January 31, 2013, and to the IRS by April 1, 2013 (if reporting electronically), using Form 1099-K. Backup withholding for amounts reportable under Section 6050W applies to amounts paid after December 31, 2012.

Be prepared for closer scrutiny of reporting and withholding requirements by the IRS.

Navigating the new tax compliance landscape

Two types of payment settlement entities are identified in the final regulations, merchant acquiring entities — a bank or other organization, which has the contractual obligation to make payment to participating payees in settlement of payment card transactions, and third-party settlement organizations — a central organization that has the contractual obligation to make payment to participating payees of third-party network transactions.

Reportable payment transactions include transactions in which a payment card is accepted as payment and transactions settled through a third-party payment network. IRC Section 6050W changes how banks, financial institutions, and third-party settlement organizations must report these transactions.

The Housing Assistance Tax Act also amended IRC Section 3406 backup withholding rules, requiring a payment settlement entity to perform backup withholding

Major concepts and doctrines

Generally, the definitions and identification of reportable payment transactions covered by Section 6050W by payment settlement entities and the reporting responsibilities outlined in the proposed regulations have been retained in the final regulations.

The following are three examples of how a payment settlement entity may be impacted by Section 6050W:

Credit and debit card transactions — Merchant acquiring banks and other institutions that process credit and debit card transactions may have a federal reporting obligation to report payments. The monthly gross payments would be reportable on an annual Form 1099-K.

Gift or stored-value cards — U.S. companies that issue gift cards or stored-value cards that can be used at unrelated third-party locations, for example, at a franchisee location, may have a reporting responsibility. Conversely, transactions are not reportable if the card is accepted by an entity related to the issuer.

Third-party payments — Companies that process transactions involving payments to unrelated third parties may have a reporting responsibility. Applicability of reporting responsibility will vary based on third-party network structures and transaction flows.

In any scenario involving a reporting responsibility, Section 6050W requires that all transactions be captured on a gross basis and accumulated monthly for each payee.

The regulations provide guidance for taxpayer concerns regarding issues, such as: duplicative reporting, multiple payment entities, documentation of foreign payees, and amounts to be reported. Complexity of the rules applicable to certain areas, for example, electronic recipient statements and withholding tax scenarios, require analysis of the taxpayer's facts and circumstances. The rules may require assessment and update of current Information Technology (IT) systems in order for companies to be able to comply with the requirements as well as assessment and changes to current company policies and procedures.

The regulations provide an expanded number of examples to guide taxpayers in determining applicability of the reporting rules for their businesses. However, many business transactions and relationships will need to be carefully analyzed in order to determine applicability of the rules.

Our approach

Effective tax planning is important to remaining competitive in the current business environment. Deloitte Tax [Global Information Reporting and Withholding \(GIR\)](#) professionals can assist you to analyze your finance systems, processes, and procedures for producing Forms 1099K and other information reporting documents. We can further assist you to analyze gaps that could hinder your ability to address Section 6050W requirements and avoid penalties. For example, as a withholding agent, failure to withhold may result in liability for the amount that should have been withheld. Our tax professionals can also consult with you about transforming your existing tax compliance policies, training, and relevant tax system, software, and reporting infrastructure. Specifically, Deloitte professionals can work with your team in the following areas:

Analysis — Assist companies in analyzing payment settlement entities, intermediaries, payees, taxpayer identification numbers (TINs), reportable transactions, amounts subject to backup withholding, and the steps necessary to achieve compliance with the reporting and withholding requirements.

Implementation — Analysis of systems, policies, and procedures to determine if these are sufficient to facilitate compliance and to determine impacts of necessary changes on corporate functions, such as accounts payable, treasury, IT, tax as well as business units.

Compliance — Preparation of annual information returns, backup withholding setup, and/or implementation of software for use in ensuring payee TIN compliance.

Training/guidance — Preparation of guidance materials, such as policy and procedures manuals, and/or presentation of initial and ongoing training courses to employees.



The Deloitte difference

Deloitte is especially qualified to help you address your issues in the areas of U.S. income tax withholding and information reporting and other tax controversy matters, given our combination of tax technical knowledge and advanced technology. We offer:

- One of the largest information reporting practices in the United States.
- Professionals with diverse backgrounds, including former senior IRS executives, chief counsel officials, IRS litigators, private industry executives, and technology specialists.
- Deloitte's Washington National Tax practice, a dedicated team of technical specialists who help our clients stay informed on tax legislation and regulations and the potential tax impact on their businesses.
- Specialists across numerous industries to bring industry-specific knowledge and experience.
- Access to the broader resources of the member firms of Deloitte Touche Tohmatsu Limited, including tax, financial advisory services, and consulting.

For more information

Contact Deloitte's [Global Information Reporting and Withholding \(GIR\)](#) group, which has specific and extensive experience regarding information reporting and withholding requirements, to discuss your company's readiness to meet such requirements.

Global Information Reporting and Withholding group leaders and local contacts:

Patty Florness

Tax Partner
Deloitte Tax LLP
+1 212 436 7413
pflorness@deloitte.com

Anthony Martirano

Tax Director
Deloitte Tax LLP
+1 973 602 6986
amartirano@deloitte.com

Faye Tannenbaum

Tax Partner
Deloitte Tax LLP
+1 212 436 2968
ftannenbaum@deloitte.com

Denise Hintzke

Director, Global FATCA
Tax Leader
Deloitte Tax LLP
+1 212 436 4792
dhintzke@deloitte.com

Terence Coppinger

Tax Director
Deloitte Tax LLP
+1 212 436 6412
tcoppinger@deloitte.com

Local contacts

Regina Aries

Boston
+1 617 437 2476
aries@deloitte.com

Peter Larsen

San Francisco
+1 415 783 4575
peterclarsen@deloitte.com

David Bolner

Stamford
+1 203 708 4803
dbolner@deloitte.com

Robert Schlock

New York
+1 212 436 3541
rschlock@deloitte.com

David Charlton

Boston
+1 617 437 2118
dcharlton@deloitte.com

Kristen Starling

New York
+1 212 436 4281
kstarling@deloitte.com

Libby Hamilton

Boston
+1 617 437 2267
lihamilton@deloitte.com

Allen Tobin

New York
+1 212 436 5479
altobin@deloitte.com

Marijo Lalley

Boston
+1 617 437 2578
mlalley@deloitte.com

Sagun Vijayananda

New York
+1 212 436 7329
svijayananda@deloitte.com