December 16, 2022

The Honorable Ron Wyden
Chairman
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard Neal
Chairman
U.S. House Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Mike Crapo
Ranking Member
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Kevin Brady
Ranking Member
U.S. House Committee on Ways and Means
1139 Longworth House Office Building
Washington, DC 20515

Re: Form 1099-K Reporting Threshold

Dear Chairmen Wyden and Neal, and Ranking Members Crapo and Brady:

The American Institute of CPAs (AICPA) is a long-time advocate for a tax system based on principles of good tax policy.[1] In this regard, we have deep concerns regarding the Form 1099-K, Payment Card and Third Party Network Transactions, reporting threshold that was lowered to $600 for 2022 and will lead to significant confusion in the tax system in the next several months. We are also concerned about the possibility of Internal Revenue Service (IRS) instituting a matching program for 2022 Forms 1099-K that could result in significant taxpayer misunderstanding, and also lead to a growth in the IRS correspondence and processing backlog that still haunts the tax system.

Overview

The American Rescue Plan Act of 2021 (ARPA), P.L. 117-2, which was enacted on March 11, 2021, lowered the de minimis threshold for information reporting on third-party network transactions. This change will substantially increase the number of Forms 1099-K, required to be filed with the IRS and furnished to recipients by third-party settlement organizations (TPSO) and their electronic payment facilitators.

Prior to the 2022 tax year, a TPSO was not required to report third-party network transactions for a participating payee unless the amount to be reported exceeded $20,000 and the aggregate number of transactions with that participating payee exceeded 200. Under Section 9674(a) of ARPA,

[1] *See* AICPA Principles of Good Tax Policy (12 principles providing objective framework to evaluate policy proposals).

however, the $20,000/200 transaction threshold decreased to $600 (for any number of transactions) effective for 2022 Forms 1099-K (due to be filed in 2023).

In addition to the reduced threshold for Form 1099-K reporting, the updated statute and guidance makes it clear that reportable third-party network transactions only include transactions for goods and services.[2] Transactions for personal gifts, charitable contributions, and reimbursements are specifically excluded from Form 1099-K reporting.

Recommendation

Congress should raise the de minimis threshold for the required filing of Form 1099-K effective for tax year 2022. The $600 threshold that was contained in ARPA is based on a threshold established by Internal Revenue Code[3] section 6041 established in 1954. AICPA recommends that the section 6050W(e) de minimis exception for reporting be cost-of-living adjusted[4] (COLA). The base period for the $600 COLA should be 1954.

The National Taxpayers Union Foundation (NTUF) has suggested that "The simplest, though not necessarily best, solution would be to revert the change to Form 1099-K thresholds to the pre-ARPA level of $20,000 and 200 transactions." NTUF also states: "Likewise, the threshold could simply be raised to a level sufficient to exempt casual or low-level online activity. Setting the level at, say, $5,000 would not eliminate the entirety of the paperwork challenges associated with a new 1099-K standard, but it would make significant progress toward that goal while shielding taxpayers, platforms, and the IRS from some of the worst administrative fallout."[5] AICPA supports the NTUF $5,000 threshold as an alternative to a section 6050W(e) COLA.

Analysis

As a matter of policy, AICPA understands and generally supports the information reporting benefits to a voluntary compliance system. However, the reporting changes should be administrable, equitable, and meet the needs of taxpayers, the Internal Revenue Service and tax practitioners.

[2] Section 6050W(c)(3), as amended by ARPA §9674(b). See also IRS instructions to the Form 1099-K, Payment Card and Third Party Network Transactions (Rev. Jan. 2022), IRS webpage Understanding Your Form 1099-K, and IRS webpage Form 1099-K Frequently Asked Questions.
[3] All references herein to "section" or "§" are to the IRC of 1986, as amended, or the Treasury Regulations promulgated thereunder, unless otherwise noted.
[4] Similar to section 415(d) that provides: "The Secretary shall adjust annually. . . for increases in the cost-of-living in accordance with regulations prescribed by the Secretary."
[5] NTUF Issue Brief, March 8, 2022.

The excessive reduction in the de minimis reporting threshold for third-party network transactions has created a significantly large reporting burden. Unlike Form 1099-MISC, Miscellaneous Income or Form 1099-NEC, Nonemployee Compensation, that report gross proceeds that would generally be reported on a tax schedule in the aggregate, aggregate reporting on a Form 1099-K will create confusion for the many taxpayers who will have to report each sale or transaction independent of others to correctly calculate gain or loss. Again, the elimination of the transaction de minimis in this circumstance, at such a reduced reporting threshold, will magnify the burden and confusion.

And although ARPA also clarified that reportable third-party network transactions are only those involving the provision of goods and services,[6] and that they do not include noncommercial transactions, such as reimbursements and personal gifts, there is significant concern about the mistaken issuance of Forms 1099-K at such low de minimis thresholds.

Finally, there are many obstacles and issues the IRS would face if it attempted to match third-party receipts to 1099-K reports, particularly at the reduced thresholds. When the potential for matching is overlayed with IRS's continuing processing backlog, more needs to be done to ensure that taxpayers and practitioners are not faced in 2023 with yet another tax filing season with unprecedented backlog levels leading to additional delays in processing returns and correspondence, historically low levels of telephone service, and incorrect notices and penalties being assessed and sent to taxpayers. Indeed, the IRS National Taxpayer Advocate recently reported:

> The IRS had its calendar year (CY) 2022 inventory backlog down to under eight million individual and business paper returns in need of processing as of October 21, whereas it had about seven million CY 2021 individual and business paper tax returns in its inventory around this same time last year. However, with around six million CY 2022 tax returns held in suspension in need of error correction or employee involvement before processing can be finalized, the IRS finds itself with about 400,000 more tax returns held in suspension for special processing in comparison to this time last year.[7]

Instituting an Automated Under Reporter Program (CP 2000 series) regarding mismatches of Form 1099-K information has the potential to disastrously add to the confusion and processing backlog as taxpayers seek to resolve their tax situations through correspondence. (One type of notice, centered around outreach and education, but not requiring response, might help alleviate confusion.) A higher reporting threshold will mitigate concerns surrounding a Form 1099-K Automated Under Reporter Program.

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[6] Section 6050W(c)(3), as amended by ARPA Section 9674(b).
[7] NTA Blog: Update on IRS Progress in Working Through Its Backlog of Paper-Filed Tax Returns and Correspondence; Nov. 10, 2022.

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The AICPA is the world's largest member association representing the accounting profession, with more than 421,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state, and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We welcome the opportunity to discuss these comments on the Form 1099-K thresholds or to answer any questions that you may have. If you have any questions, please contact; Edward Karl, AICPA Vice President - Tax Policy and Advocacy, at (202) 355-4892, or edward.karl@aicpa-cima.com; Rachel Dresen, Senior Director - AICPA Congressional or Political Affairs, at (202) 256-3399, or rachel.dresen@aicpa-cima.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Sincerely,

Jan Lewis, CPA
Chair, AICPA Tax Executive Committee

cc: Members of the Senate Committee on Finance
Members of the House Committee on Ways and Means
Mr. Thomas Barthold, Chief of Staff, Joint Committee on Taxation
The Honorable Lily Batchelder, Assistant Secretary for Tax Policy, Department of the Treasury
Mr. Douglas W. O'Donnell, Acting Commissioner, Internal Revenue Service
Mr. William M. Paul, Principal Deputy Chief Counsel, Internal Revenue Service