



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

January 26, 2011

Mr. Jeffrey Van Hove
Acting Tax Legislative Counsel
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Mr. Van Hove:

The American Institute of Certified Public Accountants (“AICPA”) strongly urges you to issue guidance as soon as possible regarding amendments to Internal Revenue Code section 6041 made by the *Small Business Jobs Act of 2010* (P.L. 111-240) (“SBJA”). Specifically, taxpayers need guidance on exceptions from the Form 1099 reporting requirements on rental property expense payments.

The AICPA is the national professional organization of certified public accountants comprised of approximately 360,000 members. 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, tax-exempt organizations, small and medium-sized businesses, as well as America’s largest businesses.

Recommendation for Legislative Repeal

The AICPA reiterates our position that repeal of section 9006 of the *Patient Protection and Affordable Care Act* (“PPACA”) and section 2101 of the SBJA is the best solution for both taxpayers and the government. As stated in our letters to the members of the U.S. House of Representatives and U.S. Senate on November 16, 2010, the imposition of these burdensome information reporting requirements on businesses and individual taxpayers cannot be justified in terms of the limited utility such information reports will provide to the government.

Form 1099 Reporting Requirements

Section 6041 currently requires “persons engaged in a trade or business” to satisfy reporting requirements (i.e., provide the vendor and the Internal Revenue Service (“IRS”) with a Form 1099-MISC Information Return) upon the purchase of \$600 or more in services in a year from another entity.

The PPACA expands information reporting requirements to business payments for goods (which is in addition to business payments for services, as required by current law) and removes the long-standing exception for payments to corporations. These changes to the reporting requirements will apply to payments made after December 31, 2011.

The SBJA expands the information reporting requirements to payments for rental property expenses paid by all persons receiving rental income, whether or not they were previously considered engaged in a trade or business, providing only limited exceptions. The provision applicable to rental property expense payments applies to payments made after December 31, 2010.

As a result, taxpayers owning rental property will be subject to increased reporting requirements over the next couple of years. Beginning this year (returns due in 2012), taxpayers generally must report payments of \$600 or more to an unincorporated service provider (such as a plumber, painter or accountant) in the course of earning rental income. Beginning in 2012, taxpayers owning rental property must report the payment of \$600 or more for goods or services to another individual or entity (including corporations).

Exceptions (under SBJA)

Under section 2101 of the SBJA, the exceptions to the reporting requirements for rental property expense payments include:

- (A) any individual, including any individual who is an active member of the uniformed services or an employee of the intelligence community (as defined in section 121 (d)(9)(C)(iv)), if substantially all rental income is derived from renting the principal residence (within the meaning of section 121) of such individual on a temporary basis,
- (B) any individual who receives rental income of not more than the minimal amount, as determined under regulations prescribed by the Secretary, and
- (C) any other individual for whom the requirements of this section would cause hardship, as determined under regulations prescribed by the Secretary.

Request for Immediate Guidance

The AICPA appreciates that the Treasury Department and the IRS identified this issue as a priority in the 2010-2011 Priority Guidance Plan released on December 7, 2010. However, we realize that the IRS and Treasury Department have a number of priorities and, therefore, want to stress the urgency of issuing guidance on the reporting requirements that apply to rental property expense payments made starting January 1, 2011. In order to avoid an unnecessary burden on taxpayers who will qualify under an exception once regulations are issued, and to provide certainty for all taxpayers with rental property, we recommend that the Treasury Department issue guidance on the above exceptions as soon as possible.

This is the first time that most individual taxpayers owning rental property are required to provide Forms 1099-MISC. As a result, many individuals who own a vacation home that is rented part of the year, rent out a portion of their home, or receive other rental income, will need to become aware of the changes to the law. These individuals need to begin keeping more specific records with regard to their payments and begin obtaining detailed information on vendors. However, some of these individuals may only receive a “minimal amount” of rental income this year or otherwise qualify for one of the reporting

exceptions. Before incurring the administrative burden and increased costs from accumulation of relevant information, taxpayers should know whether they will, in fact, be subject to these new reporting requirements.

In addition, we would appreciate guidance on any other exceptions that might be provided beyond section 6041(h)(2), such as where the payee will receive other information reporting (e.g., payment card transactions required to be reported under section 6050W).

Although on the surface the statute is clear that payments made to service providers only in the course of renting property are included in determining whether the \$600 threshold has been met, there are situations where taxpayers would benefit from specific examples. Due to the potential complexity of having to prorate payments and take into consideration the various scenarios that could occur while renting out all or a portion of a taxpayer's primary residence during the year or part of the year, we suggest you issue guidance to address specific issues related to the rental of a taxpayer's primary residence. For example, a taxpayer who pays a service provider \$1,000 during the year will not be subject to the reporting requirements of section 6041 if only 50% of the taxpayer's home is rented since only \$500 (50% x \$1,000) would typically be attributable to rental activities. Similarly, a taxpayer that pays a service provider \$2,000 in January and does not decide to rent out property until March, would not be subject to the reporting requirements as the payment in January did not occur while the taxpayer was in the trade or business of renting property. We also suggest that you confirm that any Form 1099 required by a taxpayer should only report the amount paid to the service provider in connection with the rental activity. Taxpayers should exclude any payment or portion of a payment made in connection with a taxpayer's personal-use property.

The AICPA also recommends that the IRS defer for at least one year any requirement to e-file information returns relating to rental property expense payments. Currently, taxpayers can electronically file through the Filing Information Returns Electronically ("FIRE") System only if they use software that can produce a file in the proper scannable format. In addition, the FIRE system does not currently provide a fill-in form option for information return reporting. We suggest that the IRS replace the scannable Form 1099 format with a more compatible format for standard Form 1040 software preparation packages. We also suggest that the IRS provide a method of allowing taxpayers to directly file the information returns on its website. Until taxpayers have a convenient method for electronically filing information returns, we think the electronic filing requirement should not apply.

Finally, the AICPA recommends a grace period (or "first-year extension") of not less than six months before taxpayers, who have not been subject to the Form 1099 reporting requirements in the past, are subject to any penalties. Such a grace period for the first reporting year would allow taxpayers sufficient time to consult with a tax practitioner or prepare their own individual income tax returns. This period is the time when we anticipate that most taxpayers receiving rental income will become aware of the new filing requirements and the deadlines of January 31st and February 28th for providing information to service providers and the IRS, respectively.

If a grace period is permitted for the first year, service providers may receive information returns after they have filed their income tax returns. However, if the service providers have properly reported all of their income, they will not need to file an amended return and/or pay any additional taxes, interest or

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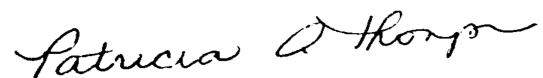
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penalties. The AICPA thinks the penalties, if any, should be imposed on service providers who have failed to properly report all of their income as opposed to good faith taxpayers receiving rental income who were unaware of the new filing requirements and early deadlines.

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If you have any questions regarding this letter, please contact me at (401) 831-0200 or patt@pgco.com; Benson S. Goldstein, Senior Technical Manager, at (202) 434-9279, or bgoldstein@aicpa.org; or Melissa M. Labant, Technical Manager at (202) 434-9234, or mlabant@aicpa.org.

Sincerely,



Patricia A. Thompson, CPA
Chair, Tax Executive Committee

cc: Ms. Jeanne Ross, U.S. Department of the Treasury