Part III - Administrative, Procedural, and Miscellaneous
Revised Timeline Regarding Implementation of Amended Section 6050W(e)

Notice 2023-74

SECTION 1. PURPOSE
This notice announces that calendar year 2023 will be regarded as a further transition period for purposes of Internal Revenue Service (IRS) enforcement and administration with respect to the implementation of the amendments made to the minimum threshold for reporting by third party settlement organizations (TPSO) under section 6050W(e) of the Internal Revenue Code (Code) 1 by the American Rescue Plan Act of 2021 (ARP), Public Law 117-2, 135 Stat. 4 (March 11, 2021). The transition period described in this notice is intended to facilitate an orderly transition for TPSO compliance with section 6050W(e) and participating payee compliance with income tax reporting.

SECTION 2. BACKGROUND
.01 Section 6050W, Returns relating to payments made in settlement of payment card and third party network transactions Section 6050W was added to the Code by section 3091 of the Housing Assistance

1. Unless otherwise specified, all “section” or “§” references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

2. Tax Act of 2008, Div. C of Public Law 110-289, 122 Stat. 2654, 2908, and requires payment settlement entities to file an information return for each calendar year with respect to payments made in settlement of certain reportable payment transactions.

Under section 6050W(a), the annual information return must set forth (1) the name, address, and taxpayer identification number (TIN) of the participating payee to whom payments were made and (2) the gross amount of the reportable payment transactions with respect to that payee in that calendar year. Section 1.6050W-1(a)(6) defines “gross amount” to mean the total dollar amount of the aggregate reportable payment transactions for each participating payee, without regard to any adjustments for credits, cash equivalents, discount amounts, fees, refunded amounts, or any other amounts.

Payment settlement entities required to make annual information returns under section 6050W do so by filing Form 1099-K, Payment Card and Third Party Network Transactions with the IRS. They are also required to furnish Form 1099-K to the participating payee. Forms 1099-K must be furnished to the participating payees on or before January 31st of the year following the calendar year for which the return was made. Forms 1099-K must be filed with the IRS on or before February 28th (March 31st if filed electronically) of the year following the calendar year for which the return was made. See § 6050W(f); § 1.6050W-1(g).

Pursuant to section 6050W(c), section 6050W covers two types of reportable payment transactions: (1) payment card transactions and (2) third party network transactions. Section 6050W(c)(3) states that a third party network transaction is any transaction for the provision of goods or services that is settled through a third party payment network. Under section 6050W(b) and § 1.6050W-1(c)(2), a TPSO is the payment settlement entity that must report third party network transactions – that is, the transactions for goods or services that are settled through the TPSO’s third party payment network – on Form 1099-K.

Section 6050W(b)(3) defines a TPSO as the central organization that has the contractual obligation to make payment to the participating payees of third party network transactions. Pursuant to section 6050W(d)(3), a third party payment network is any agreement or arrangement that (i) involves the establishment of accounts with a central organization by a substantial number of providers of goods or services who are unrelated to the central organization and who have agreed to settle transactions for the provision of goods and services with purchasers according to the terms of agreements; (ii) provides standards and mechanisms for settling such transactions; and (iii) guarantees payments to the providers of goods and services in settlement of transactions with the purchasers.

Under section 6050W(d)(1)(A)(ii), a participating payee, in the case of a third party network transaction, is any person who accepts payment from a TPSO in settlement of such transaction.

As originally enacted in 2008, section 6050W(e) provided that a TPSO is not required to report third party network transactions with respect to a participating payee unless the gross amount that would otherwise be reported exceeds $20,000 and the number of such transactions with that participating payee exceeds 200.

.02 Section 3406, Backup withholding

Section 3406(a) requires certain payers to perform backup withholding by deducting and withholding income tax from a reportable payment when, among other circumstances, the payee fails to furnish the payee's TIN to the payer or the IRS has notified the payer that the TIN furnished by the payee is incorrect. Pursuant to section 3406(b)(3)(F), a reportable payment includes payments made by a TPSO that are required to be shown under section 6050W on a Form 1099-K. A payer is required to report the amount of deducted and withheld Federal income tax amounts on Form 945, Annual Return of Withheld Federal Income Tax, and on the information return filed with the IRS and furnished to the payee. In the case of the Form 1099-K, withheld income tax is reported in box 4. The payee may then claim credit for the amount of income tax withheld on the payee's Federal income tax return.

.03 Section 6721, Failure to file correct information returns, and section 6722, Failure to furnish correct payee statements, Section 6721 imposes a penalty for any failure to file an information return on or before the required filing date, and for any failure to include all of the information required to be shown on the return or the inclusion of incorrect information.

Section 6722 imposes a penalty for failure to furnish a payee statement on or before the required furnishing date to the person to whom such statement is required to be furnished, and for any failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information.

.04 American Rescue Plan Act of 2021

Section 9674 of the ARP amended section 6050W(e) to provide that, for Forms 1099-K for calendar years beginning after December 31, 2021, a TPSO is required to report payments in settlement of third party network transactions with respect to any participating payee that exceed a minimum threshold of $600 in aggregate payments, regardless of the aggregate number of such transactions.

Notice 2023-10, 2023-3 I.R.B. 403 (January 17, 2023), delayed implementation of the reporting threshold for TPSOs in section 9674(a) of the ARP for Forms 1099-K for calendar years beginning before January 1, 2023. Notice 2023-10 also provided that the IRS would not assert penalties under section 6721 or section 6722 for TPSOs failing to file or failing to furnish Forms 1099-K unless the gross amount of aggregate payments required to be reported exceeded $20,000 and the number of transactions exceeded 200.

SECTION 3. TRANSITION PERIOD FOR ENFORCEMENT AND ADMINISTRATION WITH RESPECT TO CALENDAR YEAR 2023

Calendar year 2023 will be regarded as a further transition period for purposes of IRS enforcement and administration of the information reporting requirements under section 6050W(e), as amended by the ARP.

For calendar year 2023, a TPSO is not required to report payments in settlement of third party network transactions with respect to a participating payee unless (1) the gross amount of aggregate payments to be reported exceeds $20,000 and (2) the number of such transactions with that participating payee exceeds 200.

The IRS will not assert penalties under section 6721 or section 6722 for a TPSO for failing to file or failing to furnish Forms 1099-K with respect to a payee unless the gross amount of aggregate payments to be reported exceeds $20,000 and the number of such transactions with that participating payee exceed 200.

The IRS will not regard calendar year 2023 as a transition period with respect to the requirements of section 6050W that were not modified by section 9674(a) of the ARP, such as provisions relating to payment card transactions. In addition, TPSOs that have performed backup withholding under section 3406(a) for a payee during calendar year 2023 must file a Form 945 and a Form 1099-K with the IRS and furnish a copy to the payee if total reportable payments to the payee exceeded $600 for the calendar year.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Procedure and Administration)

IRS announces 2023 Form 1099-K reporting threshold delay for third party platform payments; plans for a $5,000 threshold in 2024 to phase in implementation

Following feedback from taxpayers, tax professionals, and payment processors and to reduce taxpayer confusion, the Internal Revenue Service delayed the new $600 Form 1099-K reporting threshold requirement for third party payment organizations for tax year 2023 and is planning a threshold of $5,000 for 2024 to phase in the new law.

Third party payment organizations include many popular payment apps and online marketplaces.

The agency is making 2023 another transition year to implement the new requirements under the American Rescue Plan that changed the Form 1099-K reporting threshold for payments taxpayers get selling goods or providing a service over $600. The previous reporting thresholds will remain in place for 2023.

What this means

This means that for 2023 and prior years, payment apps and online marketplaces are only required to send out Forms 1099-K to taxpayers who receive over $20,000 and have over 200 transactions. For tax year 2024, the IRS plans for a threshold of $5,000 to phase in reporting requirements.

This phased-in approach will allow the agency to review its operational processes to better address taxpayer and stakeholder concerns.

Taxpayers should be aware that while the reporting threshold remains over $20,000 and 200 transactions for 2023, companies could still issue the form for any amount.

It's important to note that the higher threshold does not affect the actual tax law to report income on your tax return. All income, no matter the amount, is taxable unless it's excluded by law whether a Form 1099-K is sent or not.

Who gets the form

The Form 1099-K could be sent to anyone who's using payment apps or online marketplaces to accept payments for selling goods or providing services. This includes people with side hustles, small businesses, crafters and other sole proprietors.

However, it could also include casual sellers who sold personal stuff like clothing, furniture and other household items that they paid more than they sold it for. Selling items at a loss is not actually taxable income but would have generated many Forms 1099-K for many people with the $600 threshold.

This complexity contributed to the IRS decision to delay the additional year to provide the agency time to update its operations to make it easier for taxpayers to report the amounts on their forms.

What to do

The IRS Understanding your Form 1099-K webpage provides resources for taxpayers who receive a 1099-K, including what to do with a Form 1099-K and what to do if you get a Form 1099-K in error.

Taxpayers who receive a Form 1099-K should review the forms, determine if the amount is correct, and determine any deductible expenses associated with the payment they may be able to claim when they file their taxes.

The payment on a Form 1099-K may be reported in different places on your tax return depending on what kind of payment it is. For example, someone who is getting paid as a ride share driver could report it on a Schedule C.

People who sold personal items must determine if the amounts on their forms were losses or gains. If taxpayers are unsure of the original price, they can learn more on how to figure out the items worth and how to establish basisPDF.

Selling personal items at a loss

If taxpayers sold at a loss, which means they paid more for the items than they sold them for, they'll be able to zero out the payment on their tax return by reporting both the payment and an offsetting adjustment on a Form 1040, Schedule 1. This will ensure people who unnecessarily get these forms don't have to pay taxes they don't owe.

Specifically:

If you sold personal items at a loss, you have 2 options to report the loss:

Report on Schedule 1 (Form 1040)

You can report and then zero out the Form 1099-K gross payment amount on Schedule 1 (Form 1040), Additional Income and Adjustments to IncomePDF.

Example: You receive a Form 1099-K that includes the sale of your car online for $21,000, which is less than you paid for it.

On Schedule 1 (Form 1040):

Enter the Form 1099-K gross payment amount (Box 1a) on Part I – Line 8z – Other Income: "Form 1099-K Personal Item Sold at a Loss, $21,000"

Offset the Form 1099-K gross payment amount (Box 1a) on Part II – Line 24z – Other Adjustments: "Form 1099-K Personal Item Sold at a Loss $21,000"

These 2 entries result in a $0 net effect on your adjusted gross income (AGI).

Report on Form 8949

You can also report the loss on Form 8949, Sales and Other Dispositions of Capital Assets, which carries to Schedule D, Capital Gains and Losses.

Selling personal items at a gain

If they were sold at a gain, which means they paid less than they sold it for, they will have to report that gain as income, and it's taxable.

If you receive a Form 1099-K for a personal item sold at a gain, report it on both:

Form 8949, Sales and other Dispositions of Capital Assets
Schedule D (Form 1040), Capital Gains and Losses

What should not be reported

Reporting is not required for personal transactions such as birthday or holiday gifts, sharing the cost of a car ride or meal, or paying a family member or another for a household bill. These payments are not taxable and should not be reported on Form 1099-K.

Additional information and resources

The IRS provides comprehensive information on the Understanding your Form 1099-K webpage that includes more details on receiving and reporting Forms 1099-K to help taxpayers navigate this complicated issue. In addition, the IRS will continue to update its communications, providing additional details soon.