

**TECHNICAL EXPLANATION OF THE MODIFICATION OF
EXCEPTIONS OF REPORTING THIRD PARTY NETWORK
TRANSACTIONS IN NEW SECTION 9674 OF SUBTITLE IX OF
THE AMERICAN RESCUE PLAN ACT OF 2021, AS AMENDED
BY THE PROPOSED MANAGER'S AMENDMENT**

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MODIFICATIONS OF EXCEPTIONS FOR REPORTING THIRD PARTY NETWORK TRANSACTIONS

Present Law

Present law requires persons to file an information return concerning certain transactions with other persons.¹ The person filing an information return is also required to provide the recipient of the payment with a written statement showing the aggregate payments made and the contact information for the payor.² These returns are intended to assist taxpayers in preparing their income tax returns and to help the IRS determine whether such income tax returns are correct and complete.

Returns relating to payments made in settlement of payment card and third party network transactions

Starting in 2012 (for payments received in 2011), payment settlement entities are required to report the gross amount of payments made in settlement of payment card transactions and third party network transactions to the IRS and to businesses that receive these payments.³

Specifically, the statute requires any payment settlement entity making a payment to a participating payee in settlement of reportable payment transactions to report annually to the IRS and to the participating payee the gross amount of such reportable payment transactions, as well as the name, address, and TIN of the participating payees. A “reportable payment transaction” means any payment card transaction and any third party network transaction.

A “payment settlement entity” means, in the case of a payment card transaction, a merchant acquiring entity and, in the case of a third party network transaction, a third party settlement organization. A “participating payee” means, in the case of a payment card transaction, any person who accepts a payment card as payment and, in the case of a third party network transaction, any person who accepts payment from a third party settlement organization in settlement of such transaction.

For purposes of the reporting requirement, the term “merchant acquiring entity” means a bank or other organization with the contractual obligation to make payment to participating payees in settlement of payment card transactions. A “payment card transaction” means any transaction in which a payment card is accepted as payment.⁴ A “payment card” is defined as any card (*e.g.*, a credit card or debit card) which is issued pursuant to an agreement or arrangement which provides for: (1) one or more issuers of such cards; (2) a network of persons

¹ Secs. 6031 through 6060.

² Sec. 6041(d).

³ Sec. 6050W; Pub. L. No. 110-289 (2008), sec. 3091(a) added sec. 6050W, effective generally for returns for calendar years beginning after December 31, 2010.

⁴ For this purpose, the acceptance as payment of any account number or other indicia associated with a payment card also qualifies a payment card transaction.

unrelated to each other, and to the issuer, who agree to accept such cards as payment; and (3) standards and mechanisms for settling the transactions between the merchant acquiring entities and the persons who agree to accept such cards as payment. Thus, under the provision, a bank that enrolls a business to accept credit cards and contracts with the business to make payment on credit card transactions is required to report to the IRS the business's gross credit card transactions for each calendar year on a Form 1099-K, Payment Card and Third Party Network Transactions. The bank also is required to provide a copy of the information report to the business.

The statute also requires reporting on a third party network transaction. The term "third party network transaction" means any transaction which is settled through a third party payment network. A "third party payment network" is defined as any agreement or arrangement: (1) that involves the establishment of accounts with a central organization by a substantial number of persons (*e.g.*, more than 50) who are unrelated to such organization, provide goods or services, and have agreed to settle transactions for the provision of such goods or services pursuant to such agreement or arrangement; (2) that provides for standards and mechanisms for settling such transactions; and (3) that guarantees persons providing goods or services pursuant to such agreement or arrangement that such persons will be paid for providing such goods or services. In the case of a third party network transaction, the payment settlement entity is the third party settlement organization, which is defined as the central organization which has the contractual obligation to make payment to participating payees of third party network transactions. Thus, an organization generally is required to report if it provides a network enabling buyers to transfer funds to sellers who have established accounts with the organization and have a contractual obligation to accept payment through the network. However, an organization operating a network which merely processes electronic payments (such as wire transfers, electronic checks, and direct deposit payments) between buyers and sellers, but does not have contractual agreements with sellers to use such network, is not required to report. Similarly, an agreement to transfer funds between two demand deposit accounts will not, by itself, constitute a third party network transaction.

A third party payment network does not include any agreement or arrangement that provides for the issuance of payment cards as defined by the provision. In addition, there is an exception for *de minimis* payments that applies to payments made by third party settlement organizations but not to payments made by merchant acquiring entities. A third party settlement organization is not required to report unless the aggregate value of third party network transactions with respect to a taxpayer for the year exceeds \$20,000 and the aggregate number of such transactions with respect to a taxpayer exceeds 200.⁵ If a payment of funds is made to a third party settlement organization by means of a payment card (*i.e.*, as part of a payment card transaction), the \$20,000 and 200 transaction *de minimis* rule continues to apply to any reporting obligation with respect to payment of such funds to a participating payee by the third party settlement organization made as part of a third party network transaction.

So, for example, if a business that provides a web-based rental platform for short-term travelers is considered a third party settlement organization, it does not have to provide a Form

⁵ Sec. 6050W(e).

1099-K to property owners participating on their web-based site who have received payments of \$20,000 or less. On the other hand, if that company is considered a merchant acquiring entity, it would have to issue a Form 1099-K to all payees participating on its platform who have received payments of any amount starting with the first dollar.

There are also reporting requirements on intermediaries who receive payments from a payment settlement entity and distribute such payments to one or more participating payees. Such intermediaries are treated as participating payees with respect to the payment settlement entity and as payment settlement entities with respect to the participating payees to whom the intermediary distributes payments. Thus, for example, in the case of a corporation that receives payment from a bank for credit card sales effectuated at the corporation's independently-owned franchise stores, the bank is required to report the gross amount of reportable payment transactions settled through the corporation (notwithstanding the fact that the corporation does not accept payment cards and would not otherwise be treated as a participating payee). In turn, the corporation, as an intermediary, would be required to report the gross amount of reportable payment transactions allocable to each franchise store. The bank would have no reporting obligation with respect to payments made by the corporation to its franchise stores.

Another rule provides that if a payment settlement entity contracts with a third party to settle reportable payment transactions on behalf of the payment settlement entity, the third party is required to file the annual information return in lieu of the payment settlement entity.

The payment settlement entity is required to file the information return to the IRS on or before February 28th (March 31st if filing electronically) of the year following the calendar year for which the return must be filed.⁶ The statements are required to be furnished to the participating payees on or before January 31st of the year following the calendar year for which the return was required to be made.⁷

The Secretary has exercised authority under these rules to issue guidance to implement the reporting requirement, including rules to prevent the reporting of the same transaction more than once.⁸

The reportable payment transactions subject to information reporting generally are subject to backup withholding requirements. In addition, the information reporting penalties apply for any failure to file a correct information return or furnish a correct payee statement with respect to the reportable payment transactions. Any person who is required to file an information return or furnish a payee statement but who fails to do so on or before the prescribed due date is subject to a penalty that varies based on when, if at all, the correct information return is filed or

⁶ Treas. Reg. sec. 1.6050W-1(g). Taxpayers that file these information returns that report reportable payment transactions are entitled to a 30-day automatic extension of time to file. Treas. Reg. sec. 1.6081-8(a) (effective for requests for extension of time to file certain information returns due after December 31, 2016).

⁷ Sec. 6050W(f); Treas. Reg. sec. 1.6050W-1(h).

⁸ Treas. Reg. sec. 1.6050W-1(a)(4)(ii).

furnished. There are penalties imposed for failure to file the information return,⁹ furnish payee statements,¹⁰ or comply with other various reporting requirements.¹¹ No penalty is imposed if the failure is due to reasonable cause.¹² Both the failure to file and failure to furnish penalties are adjusted annually to account for inflation.

Explanation of Provision

This provision lowers and modifies the threshold below which a third party settlement organization is not required to report payments to participants in its network. Under the provision, for any calendar year, a third party settlement organization is required to report third party network transactions with any participating payee that exceed a minimum threshold of \$600 in aggregate payments, regardless of the aggregate number of such transactions.

Third party network transactions include any commercial transactions settled through a third party payment network. The provision also clarifies that third party network transactions only include transactions for the provision of goods or services (*e.g.*, personal gifts, charitable contributions, and reimbursements are not included).

For example, an individual who has registered for a mobile payment service and uses such a service to reimburse friends or relatives for expenses, or on occasion sells a used item to another person, would not be engaging in transactions that are subject to reporting requirements.¹³ However, if that individual were to register with such mobile payment service for the purposes of engaging in commercial transactions, such as regularly carrying on a trade or business through use of that service, the mobile payment service would be required to report under the provision.

Effective Date

The part of the provision that lowers and modifies the reporting threshold is effective for returns for calendar years beginning after December 31, 2021.

The part of the provision that clarifies that reporting is not required on transactions which are not for goods or services is effective for transactions after the date of enactment.

⁹ Sec. 6721.

¹⁰ Sec. 6722.

¹¹ Sec. 6723. The penalty for failure to comply timely with a specified information reporting requirement is \$50 per failure, not to exceed \$100,000 per calendar year.

¹² Sec. 6724.

¹³ An individual who generally uses a mobile payment service for personal transactions such as those described has generally not entered an agreement with the third party payment network for the settlement of transactions for the provision of goods and services as described in section 6050W(d)(3)(A)(iii) and (C).