

MP&S NONPROFIT ALERT:

AUGUST 2010

FORM 1099 REPORTING AND TAX LEGISLATION: SUMMARY OF CHANGES

INTRODUCTION

Section 6041 of the Internal Revenue Code lays out the basic requirements for Form 1099 reporting. *The Patient Protection and Affordable Care Act of 2010* includes a significant amendment to Section 6041, which now requires 1099 reporting for any payments aggregating \$600 to a supplier per year. The new amendment will now create filing and reporting requirements for **all for-profit** corporations. The definition of a corporation that is contained in the amendment includes an exclusion or modification for tax-exempt corporations.

Payments made for goods; merchandise, supplies, raw materials, equipment, etc are covered transactions under the amendment. In addition, companies will be required to submit accurate TIN information or face substantial penalties. As noted in a recent article in *The Wall Street Journal*, Congress expects that the new Form 1099 provisions will result in the collection of \$17 billion more in federal taxes and fees. This would equate to approximately \$51 billion in additional revenues being reported currently being overlooked.

PRIOR LAW

Most payments to corporations were exempt from prior Form 1099 reporting requirements. These exemptions included providers of goods, corporations, tax-exempt organizations, internal organizations and retirement plans. Form 1099s are only required to be issued for a small subset of the suppliers where payments were made and many were overlooked altogether. The most significant change is that corporations have now been added to the entity types requiring reporting. Penalties for failure to obtain the appropriate information have been increased to \$50 per each supplier not properly reported with a maximum potential risk of \$250,000 per company.

EFFECT OF THE LAW

The change in the law requires some preplanning on the part of corporations. The new legislation poses a significant burden on corporations. Corporations need to begin the process of collecting the appropriate data. If they do not get the appropriate TIN information or fail to report properly, then backup withholding is required on payments to suppliers. Penalties have been increased to \$250 for each supplier who is not properly reported — with a maximum of \$1.5 million of potential risk per company.

In addition to the provisions under *The Patient Protection and Affordable Care Act of 2010*, Section 9006 of the *2010 Health Care Act* also includes “gross proceeds” paid for “property” or “services” if the \$600 minimum is met. This will also exclude tax-exempt corporations under Section 501(a) of the Internal Revenue Code.

The following list is an example and by no means all-inclusive of the types of issues reported under the new legislation:

- Some travel expenses such as gasoline and automobiles

- Computers and hardware purchases
- Software
- Rental and leases
- Office supplies and expenses
- Janitorial services
- Some mail delivery services.

APPLICATION TO EXEMPT ORGANIZATIONS

In the discussion of corporations, Section 6041(h) of the Internal Revenue Code states that “notwithstanding any regulation . . . for purposes of this section the term ‘person’ includes any corporation that is not an organization exempt from tax under Section 501(a).” This would, at this point, exempt not-for-profits as far as receiving Form 1099s as a corporation. However, it would not appear to exempt such organizations from having to furnish such 1099s except to other exempt organizations.

EFFECTIVE DATE

The new law becomes effective for all payments made after December 31, 2011. Companies should plan now to start collecting and validating W-9s and TINs for each supplier with whom they expect to spend more than \$600 in 2012. Companies will need to issue and submit 1099s to both the supplier and the IRS early in 2013 for the year ended December 31, 2012.

TIP

For organizations that have manually prepared fewer than 250 forms, the increased filing requirements may require the organization to submit the forms electronically for the first time. Rev. Proc. 2009-30 requires that if more than 250 information returns are required to be filed, then this must be done electronically. A penalty is assessed of \$50 for every Form 1099 filed over 250 for failure to comply with the limit requirement.

FOR FURTHER INFORMATION

If you have any questions concerning this memorandum, please contact your MP&S advisor. Or, you can contact Michael L. McNee, Partner-in-Charge, Nonprofit and Government Services Group and the Westchester Office, at 212.503.8954 or mmcnee@markspaneth.com or Robert Lyons, Managing Tax Director, at 212.710.1736 or rlyons@markspaneth.com.

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