



SMALL BUSINESS
LEGISLATIVE
COUNCIL

SBLC WEEKLY

February 13, 2012

Volume XIV Issue 05

MORE SPECIAL K

Recently I reported on the new IRS Form 1099K that has been sent to those of you that ACCEPT credit and debit cards for payment. The Form 1099K comes from the card processing entity and it shows the gross receipts from the card transactions for the calendar year. The amounts are broken out by month. (For full details of the requirement and its status see the 01-23-12 Weekly)

This requirement was one of the tax gap closers we were not able to stop or reverse.

There is a long history behind this proposal and it "morphed" on the fly over the course of the debate as the IRS and others reacted to our concerns.

One thing the IRS and others repeatedly promised us is that small business taxpayers would not have to do anything with the Forms 1099K when they received them. For many reasons, we knew reconciliation would be very difficult. For those of you not familiar with the back and forth between a small business and a credit/debit card processor, I describe the relationship as a dynamic one. The Form 1099K is a random static snapshot. A simple example is, say you sell big ticket

items. You take a deposit. It is processed. Two months later the potential purchaser changes his/her mind. That refund of a deposit is processed. Eventually, if the small business is diligent, it all nets out with the processor. But the transactions are not relevant to gross receipts.

As SBLC members know we have been talking about these tax gap issues since 2007. SBLC had/has been outspoken from the "get-go" about the fact this Form 1099K requirement will not do anything to improve tax compliance except for identifying some non-filers. We made that point during the pre-legislative process when the tax gap concerns first emerged, during congressional deliberations, and during IRS development of the Form 1099K.

This is what we said to Congress in April 2008 about this specific proposal (and about that other more infamous one☺): "With 30 years of experience working with small businesses, we have a 'gut feeling' about what will happen if this [credit/debit card reporting] proposal is enacted – there are going to be a lot of small business folks very upset with all of us. There is only one other proposal among the many tax gap proposals that can rival this one in terms of significant, after-the-fact reaction –

expanding the Form 1099 requirement to service providers." (Our crystal ball was working pretty good - unfortunately, not enough folks listened to us.)

Fast forward. You may be hearing some buzz about the Form 1099K and reconciling it. This is because the IRS put a line on the 2011 business tax returns (e.g. the Form 1120S for S Corporations, the Schedule C for sole proprietors) that required a business to report the Form 1099K amounts on its tax return.

The IRS has already acknowledged this is not what it promised. There is a 2011 fix (since the return forms were being printed) that says just put a zero on the line. If you want the official peace of mind from the IRS website (<http://www.irs.gov/newsroom/article/0,,id=253979,00.html>):

"I received Form 1099-K for 2011. How do I report it on my tax return this year and what are the plans for reporting in 2012?"

IRS announced in October that separate reporting of these transactions for other business receipts or income payments is not required for 2011. Taxpayers should follow the form instructions

for reporting their gross receipts or sales. Report items that qualify as a trade or business expense on the appropriate line item of Schedules C, E and F. There will be no reconciliation required on the 2012 Form 1099-K, nor do we intend to require reconciliation in future years.”

Now for some more confusion. There are recently-introduced bills (H.R. 3877 and S.2083) that say the IRS shall not require reconciliation. The bills do NOT repeal the Form 1099K issuance requirement itself. So if the bills are passed, small businesses that accept credit and debit cards for payment will still get Forms 1099K in the future. And yes, it is a good question to ask, “So what’s the point of issuing them?”

As to the need for these bills, it becomes a debate on how firmly one wants to drive a stake in the reconciliation issue. As a practical matter, the IRS has retreated. So it is a matter of peace of mind.

BUDGET REQUEST

The President releases his proposed budget today. If there is one thing that has been increasingly true over the years, whether there is a Democrat or Republican in the White House, it is that the President’s proposed budget has a shelf life measured in nanoseconds.

I guess it is one of Washington’s ironies. The President is required to submit a budget request by law but Congress is not bound to consider it and even when Congress is controlled by the same party as the President, they tend to go their own way. If you ask the question, “so why is the budget request document so lengthy?” The answer is the controlling statute requires the President to provide that level of detail.

Generally, everybody just picks what they like or dislike and uses it as fodder for the public relations mill.