SMALL BUSINESS LEGISLATIVE COUNCIL

CREDIT CARD RECEIPTS REPORTING

STATUS

President Bush signed a housing stimulus bill into law as Public Law 110-289 on July 30, 2008. The law included a revenue offset to require credit and debit payment settlement entities to report the gross receipts of the transactions they process each year for "participating payees." The effective date for the reporting is for years beginning after December 31, 2010.

Final regulations were issued by the IRS on August 16, 2010.

This is one of the few tax gap closers that we were not able to overturn.

There is a new Form 1099-K that will be issued to "payee" (e.g. retailers). The first ones will be issued by January 31, 2012.

BACKGROUND

This requirement traces its roots back to the "tax gap" report the IRS issued several years ago. Suggested remedies to help close the tax gap first surfaced in the President's Fiscal Year 2007 proposed budget and new ones were added in a subsequent proposed budget.

The ostensible purpose is for the IRS to profile industries for what should be the appropriate amount of overall gross receipts, credit/debit card receipts, and then back out an estimate of the appropriate amount of cash transactions that businesses should be reporting on their tax returns. The proponents claim the new information reporting form will not be used for audits, but they do note that anytime there is third-party reporting of income, compliance improves.

THE LAW AND RULE

The law requires "payment settlement entities" to report to the IRS an annual dollar figure of the credit/debit receipts they process for any and each "participating payee." VISA and MasterCard are payment settlement entities but it appears the elaborate definitions of the new law cover just about every type of electronic payment system in existence.

Basically, a "participating payee" is anyone who accepts credit or debit cards for payment such a retailers and service providers. There is a de minimis threshold. The payment settlement entity must issue a report only if the participating payee has more than $20,000 in processed receipts and more than 200 transactions.

The report will be issued in January for the previous calendar year transactions. To deal with the fact a payee may be on a different tax year, the new Form 1099-K requires the amounts to be reported for each month.

The "gross amount" of reportable transactions means the total dollar amount of aggregate transactions without regard to any credits, charge-backs, fees, cash equivalents, discounts, refunds or any other amounts. The “gross amount” does not include fees, charge-back or other costs and refunded amounts.

A copy of the report by the payment settlement entities will also be sent to the participating payee by January 31st. The obligation for the participating payee is the same as with other Form 1099s, to reconcile the taxpayer’s records with the information report. As a result, generally, there is no immediate tax penalty consequence for the taxpayer. If the taxpayer is later audited and the amounts do not match, then the problems begin.

Before the payment settlement entities can report gross receipts they need the Tax Identification Numbers (TINs) of their “participating payees.” Employer Identification Numbers and Social Security Numbers serve as TINs. In order to “facilitate” the collection of TINs, the new law invokes an existing tax provision that require the payment settlement entities to withhold 28 percent of the gross receipts until they have obtained an accurate TIN. Needless to say, if a payment settlement entity with whom you do business asks for your TIN, you will want to provide it.

The program takes effect for calendar year 2011 transactions. The backup withholding requirement takes effect for receipts received in 2013.