



IRS Compliance Rules for Card Clients:

Update for 2010

Paula Porpilia
TIN Compliance Consultants
July 2010

Legal Disclaimer



Visa does not make any warranty or representation as to the completeness or accuracy of this information, nor assume any liability or responsibility that may result from reliance on such information. The information contained herein is not intended as legal or tax advice, and readers are encouraged to seek the advice of a competent tax professional where such advice is required. Even though the information contained herein does not address any significant federal tax issue, is not intended as tax advice, and Visa does not know or have reason to know that any of the information will be used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, in order to comply with certain U.S. treasury regulations, we inform you that any U.S. federal tax advice contained in this communication, including attachments, was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding any penalties that may be imposed on such taxpayer by the Internal Revenue Service. In addition, if any such tax advice is used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (i) the advice should be construed as written in connection with the promotion or marketing by others of the transaction(s) or matter(s) addressed in this communication and (ii) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

- The purpose of this presentation is to alert you to the requirements of federal tax law and regulations regarding IRC section 6050W. It reflects the best information available as of the time presented. Over the next few months, additional guidance is expected to be released. Such developments may change the information provided herein. Be sure to check for the most recent guidance. In addition, how to implement a compliance program is up to each company, working with its tax advisers

- Card client responsibilities are governed by three sections of the Internal Revenue Code:
 - Section 6041
 - Since 1942
 - Major exceptions for payments to corporations and for merchandise
 - These exceptions ending in 2012
 - Section 3402(t)
 - Applies to Federal, State, and large local governments beginning in 2012
 - Will require reporting most transactions AND withholding 3% on them
 - Section 6050W
 - Does not apply to card clients but the regs provide major relief for them
- We will be looking at how these sections overlap each other and what that means for the card clients for the next few years.

Today's Reporting Process and Challenges

6041 Basic Concepts



- Statute: Report when you pay anyone or anything for any purpose unless you know an exception applies
- Regulations provide some exceptions
 - for merchandise
 - Use MCC codes to ID which transactions are for merchandise
 - expires 2012
 - for freight, telephone
 - for corporations
 - --unless payor is a federal agency
 - Expires 2012

Basic Concepts (cont.)



- If part of a payment is reportable and part is not, report everything
- When in doubt, report
- You must file returns for all reportable payments made in a calendar year if total is at least \$600
 - Use transaction date not posting date
 - Aggregate all reportable transactions--check, cash and card-- to see if \$600 or more for same supplier

Health Care Legislation



- Recently passed health care legislation repeals the long-time exceptions under section 6041 for payments to corporations and payments for merchandise
- Effective 2012, these additional payments will need to be reported increasing the number of returns filed several fold
 - This also means that payors will need TINs for all these previously non-reportable merchants
 - Backup withholding will apply if no valid TIN or after B Notices

Payees



- Report payments to all types of payees unless you know an exception applies
 - Exceptions include payments to tax-exempt organizations and government entities
- Visa reporting provides the incorporation status of the supplier
 - 1= Sole proprietor (be sure to use the individual's name; EIN or SSN OK)
 - 2= Partnership
 - 3= Corporation
 - 4= Medical or Legal Corporation (reportable by all)
 - 5= Associations/Estates/Trusts
 - 6= Tax Exempt Organizations (TEOs)
 - 7= Governments (Fed/State/Local/Foreign)
 - 8= Int'l Orgs
 - 9= LLC

Supplier Names and Addresses



- Payee's legal name--not DBA name-- is the one IRS wants
- Sole Proprietor = individual's name (1040)
- Name as shown on SS4 when applied for EIN
- IRS wants the legal address (one shown on taxpayer's tax return)

Accurate TINs



- IRS matches Name / TIN combination on info return with master file
- The IRS issues B Notice for a invalid Name / TIN combination
- TIN Matching not required but highly recommended
- Frequent cause for a mismatch
 - DBA name used instead of sole proprietor name
 - Name misspelled or abbreviated
 - Missing TIN
 - TIN not 9 digits long
 - TIN contains alpha characters or hyphens
 - Paper reporting IRS scanning errors

Backup Withholding



- Must withhold 28% of any payment if TIN not in hand at time of payment
- Also must withhold if receive B Notice
 - Payor gets if name/TIN on info return does not match IRS master file
 - Mailings difficult for card clients.
 - If you get one, must get merchant to sign a Form W-9 or backup withhold on future transactions.
- In the card system, there is currently no capability to withhold funds, therefore, card clients must perform this step manually

Deposit Rules



- If you withhold, you must deposit according to same rules used for wage withholding (but done separately); electronic deposits may be required
 - If withhold less than \$2,500, deposit annually
 - If withhold less than \$50,000 in base year, deposit monthly by 15th of following month
 - If more, deposit semi-weekly (Wed and Fri)
 - If more than \$100,000 at any time, deposit next day
- File Form 945/Schedule A annually
- Penalties
 - 2, 5, 10 or 15 percent depending on how late the deposit is (most are 10)
 - Penalty is in addition to the liability for the backup withholding itself
 - Penalty may be assessed for timely deposits not done according to proper procedure (e.g. not using electronic deposits when required)

Reporting



- **Payee Statements**
 - Must be sent to payee by January 31 or penalties apply
 - Extension of time (EOT) available
 - May use official form or qualified substitute
 - Separate penalties may apply
- **Information Returns to IRS**
 - Due by March 31 if filing electronically, Feb 28 on paper
 - Penalties apply for late or inaccurate filing
- **Questions can be addressed to:**
 - IRS Martinsburg West VA Payor Call Site
 - (866) 455-7438 or (304) 263-8700
 - 8:30 – 4:30pm EST
 - No Charge for Service
 - Anonymous

Confidentiality



- Cannot use TIN information for any other purpose
- Cannot penalize merchant for failure to provide TIN

Filing Penalties



- \$50 per error, maximum of \$250,000
- Reduced to \$30 per error, max of \$150,000 if corrected by August 1
- Reduced to \$15 per error, max. of \$75,000, if corrected within 30 days of due date
- \$100 per error, no max., if intentional disregard
- Separate \$50 penalty/\$100,000 maximum for errors associated with sending payee statements
- Legislation proposed to increase \$50 to \$100, and maximum to \$1.5 million

Year End Checklist



- To meet current IRS requirements, you need:
 - merchant's legal name
 - merchant's full mailing address
 - merchant's TIN
 - annual totals
- Questions for payor to ask:
 - When was payment?
 - Use transaction date not post date
 - For how much?
 - Aggregate supplier payments to reach \$600 threshold
 - File AP separately from card transactions?
 - Is the transaction for merchandise or services?
 - Use the IRS MCC list
 - Is the merchant a corporation (except federal agencies) or other exempt recipient?
 - Can use corporate status provided by Visa

Legislative and Regulatory Developments

Acquirer Reporting Statute - P.L. 110-289



- IRC section 6050W enacted July 30, 2008
- Effective 1/1/ 2011 for reporting, 1/1/2012 for backup withholding
- Effective immediately for access to TIN Matching
 - This will help improve quality of data shared with Issuers
- Proposed Regulations 11/24/2009; Hearing 3/15/2010
- Applies to “Payment Settlement Entities” (PSEs), “Electronic Payment Facilitators” (EPFs), “Third Party Networks” (3PNs) and Aggregated payees
- Duplicates reporting done by card clients

Duplication with 6041



- All the transactions reported under 6041 (Forms 1099-MISC filed by card clients and check writers) will be reported a second time under 6050W by the acquiring community.
- To eliminate this duplication, in the 6050W Proposed Regulations IRS provides that transactions reportable under both IRC section 6041 (by card clients) and 6050W (by PSE/EPFs) are reportable only under 6050W effective 2011.
- As result, paying by card just became very attractive as a way to avoid these IRS reporting requirements, and when the exceptions for payments to corporations and payments for merchandise sunset in 2012, this will be even more so. Those paying by check to anyone except TEOs and governments will have to report payments for either goods or services, but those using a card will be free from section 6041 IRS requirements.
- As a result, 2010 should be the last year of filing Forms 1099-MISC under 6041 for most card clients, but.....

But....



- 6050W also duplicates IRC section 3402(t) which in turn rides in tandem with 6041
 - Once effective, if subject to both 6041 and 3402(t), you follow 3402(t) unless you are backup withholding
- Who is subject?
 - Under 3402(t), federal, state, and large local governments are required to report all payments made (cash/check/card, corporate or not, goods and services) AND withhold 3% every time even if they have a good TIN
- All transactions reported under 3402(t) will be reported on a second time under 6050W.
- The 6050W proposed regulations do not eliminate this duplication.

So....



- Government entities subject to the reporting/withholding rules of IRC section 3402(t) are not relieved of their Form 1099-MISC reporting/withholding duties even though reporting will be done a second time under IRC 6050W on Form 1099-K.
- As a result, effective 2012, these government entities will have to File Forms 1099-MISC under section 3402(t) for their card transactions even though they are relieved of reporting on Form 1099-MISC under section 6041

Exceptions to 3402(t)



- Under Proposed Regulations, Governments will not have to report and withhold under 3402(t) for transactions:
 - Under \$10,000
 - Connected to a pre-2012 contract
 - Connected to classified contracts
 - Connected to certain welfare programs
 - Payments to government employees, Indian tribes or other governments
 - Connected to emergency or disaster situations
 - For services by non-US persons outside the US
 - That are rental payments for real property or interest
 - Payments where backup withholding is already being done under 6041

- The 3402(t) rules will be very difficult to administer
 - The statutory exceptions complicate matters tremendously
 - The regulatory exceptions, such as the \$10,000 threshold, provide some relief but create their own problems
- If allowed to go into effect in 2012, covered governments entities will have to report virtually all payments for goods and service to corporations and non-corporations and withhold 3%.
- Visa continues to work with others to have this provision repealed
- Stay tuned

- Report as in the past
 - Form 1099-MISC for payments to non-corporations (except medical and legal) for services
 - Need TINs or backup withhold
 - January 31 statement to merchant
 - March 31 return to IRS (Feb 28 for paper returns)
 - Specifications in Pub 1220 revised in the summer time

Note: legislation pending that would increase filing penalties effective for 2010 returns. Stay tuned.

- 6050W effective
 - PSE/EPF, intermediaries and 3P Networks must file Form 1099-K
- No reporting for card transactions under section 6041
 - For certain government entities this is a one-year reprieve
 - For everyone else, this is the end of reporting card transactions on Form 1099-MISC under 6041
- B notices for 2010 transactions

- For Acquirers:
 - Backup withholding under 6050W kicks in
 - B Notices for 2011 Forms 1099-K begin
- For All Payors (Card Clients and Check Writers):
 - Penalty Notices for 2010 Forms 1099-MISC
 - Expanded reporting on payments to corporations and for merchandise under 6041 apply to payments by cash or check (not cards because of the regulation under 6050W)
- For Certain Government Payors (cards and checks)
 - Reporting and withholding 3% effective under 3402(t)
 - Certain governmental entities must file Forms 1099-MISC
 - Everyone else still does not have to file Forms 1099-MISC for card transactions

Information Reporting Landscape for Card Clients



- A look at the changes or proposed changes which will effect the card industry.

2010

- Report as in the past
- Form 1099-MISC for payments to non-corporations (except medical and legal) for services

2011

- IRC Section 6050W effective*
 - PSE/EPF and 3P Networks must file Form 1099-K
- No reporting on Form 1099-MISC for card transactions*
- B notices for 2010 transactions

2012

- Expanded reporting on payments to corporations and for merchandise for check writers
- Reporting/withholding on Form 1099-MISC under TIPRA (3%) effective for Federal, State and large local government entities
- Non-governments using cards have no IRS Form 1099-MISC filing requirements
- Penalty notices for 2010 Forms 1099-MISC

*proposed changes

Impact on Card Clients



- Once the dust settles,
 - non-government card clients are relieved of filing Forms 1099-MISC for all card transactions, and of doing any backup withholding for them.
 - These card clients will still need to deal with filing errors, B notices and Penalty notices for the 2010 filing season through 2012.
 - Many Government card clients will still have to file Forms 1099-MISC and withhold 3% starting 2012.
 - Payments by check subject to expanded reporting (goods and services, corporations or not) on Form 1099-MISC making using cards even more desirable.
- QPCA no longer necessary.

- Working with the acquiring community on compliance activities for 6050W
- TIN Matching all merchant records with 2010 transactions, working with acquirers to resolve IRS TIN mismatches
- IRS is soliciting input regarding issues for the new 6041 regulations. Visa will submit a letter on the interrelationship among 6041/6050W/3402(t) stressing the need to extend the anti-duplication provision for 6041/6050W to 3402(t).

Socio-Economic Reporting

Socio-Economic Reporting



- Socio-Economic classifications are collected primarily from third party data providers
- Other than SBA designated classifications the data should be considered “Self Certified”
- Currently, large/small indicators are not calculated we provide:
 - NAICS code
 - Annual Revenue
 - Number of Employees

Sources and Validations



- Third-party sources are selected and qualified before being matched against providers database —stringent match requirements are upheld and linkage is done where appropriate
- Sources are also qualified before being added to our Supplier Diversity database
- Minority-and women-owned suppliers must be self-identified or identified by a third-party as being at least 51% owned and controlled
- Filters eliminate foreign-owned, publicly held, and non-profit companies from the file and firms that don't meet the 51% “ownership” qualifier

Update Frequency



- **Daily** - monitor ownership changes, business moves, business failures, within the supplier diversity database
- **Monthly**-randomly selected data provided by third-party sources is confirmed for accuracy and all SBA data is updated monthly
- **Bi-annually**-diversity indicators are updated
- **Annually** -all third-party source files are refreshed

- **Certified** records are confirmed by government and third-party certification agencies, including (when available) certification source, source level code (federal, national, regional, county and local), certification effective date, expiration date, certification number, and date received
- **Collected** records are non-certified records collected from a variety of sources including membership organizations, directories and calls to provider
- **Verified** records are *certified* and *collected* records that have been confirmed through call center campaigns

Socio- Economic Indicators provided:



- Supplier Name
- Supplier Name
- Address
- Tax Identification Number
- NAICS Code
- Women Owned
- Veteran Owned
- Disabled Veteran Owned
- Viet Nam Era Veteran
- 8(a) classification
- 8(a) expiration date
- SBA registered
- SBA Small Disadvantaged Business
- Hub Zone Certified
- Minority Vendor Code
- Number of Employees
- Annual Revenue

What's new for 2011



- Addition of:
 - Certification indicators
 - Certification date
 - Certification expiration date
 - Certification number
 - Date Received
 - Source Name (maximum five sources)

QUESTIONS?