

NON-PROFIT

POSSIBILITIES



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Congress Repeals Expanded 1099 Reporting Requirements

OVERVIEW

On April 14, 2011, President Obama signed into law the "Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011." This legislation repeals the burdensome expanded 1099 reporting requirements that were signed into law in March 2010 as part of the massive Health Care Reform legislation. However, increased information reporting penalties, introduced in the Small Business Jobs Act, were not repealed and became effective January 1, 2011.

Health Care Reform Legislation

Under Health Care Reform legislation, beginning in years after December 31, 2011:

- If a taxpayer made payments to a single vendor, during a single calendar year that totaled \$600 or more for goods or other property, in connection with a trade or business, they would be required to send a 1099 to that vendor, reporting the total amount of goods or other property purchased.
- Reportable 1099 payments to corporations, which before had been exempt from reporting, would require reporting.

Tracking these payments and obtaining the information required to comply with the reporting rules would have been an extremely burdensome process for non-profits.

Small Business Jobs Act of 2010

The Small Business Jobs Act of 2010 defined a person receiving income from rental real estate as being in a "trade or business" for 1099 reporting purposes. As a result, rental property expense payments made after December 31, 2010, require information reporting (Form 1099) if the payments are \$600 or more to a service provider, i.e., a plumber, painter or accountant, etc., in the course of earning rental income.

Exceptions were provided for military or intelligence personnel who rent their personal residence on a temporary basis, individuals with only minimal amounts as determined by the Treasury Secretary in regulations and hardship cases also determined by regulations.

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Best Practices for Audits of 403(b) Plans

OVERVIEW

The Internal Revenue Service (IRS) noted the filing of the 2009 Form 5500 for 403(b) plans was “excruciating.” Various issues experienced during the audits included lack of adequate records, conflicts between reporting for Department of Labor purposes and Generally Accepted Accounting Principles, and assets held in insurance and annuity contracts. These were universal issues among the 403(b) plans subject to audit. Additionally, many plans filed an incomplete filing due to the lack of an audit report.



Be well versed in the definition of eligible compensation. This is the number one issue we find, not only in 403(b) plan audits, but in other benefit plan audits.

As we completed the first year of audits for 403(b) plans, we noted some items that will aid plan sponsors in improving monitoring and compliance of their plans. These tips are helpful, whether the plan is subject to audit or not, given they are requirements under ERISA—something many 403(b) plans are subject to for the first time.

Tip 1: Be Well Versed in the Definition of Eligible Compensation.

This is the number one issue we find, not only in 403(b) plan audits, but in other benefit plan audits. It is important to ensure the plan document, which dictates the compensation items included for plan purposes, and operational procedures are in agreement. In some of the plan documents that we reviewed in connection with the audit, we noted the definition of compensation was vague. This is something you will want to work with your plan document specialist to clarify.

Another item to consider is a review of the various compensation codes set up in your payroll software. It is important to verify that the codes are set up in agreement with the above-mentioned definition of compensation. For example, if bonuses are to be included per the plan document, the payroll software should be set up to include this item of compensation in calculating the various contributions for plan purposes.

Tip 2: Watch the Definition of Eligibility.

Since 403(b) plans fall under the regulation for Universal Availability, they are not subject to certain compliance tests that non-403(b) plans may be subject to. In general, 403(b) plans may not exclude employees from participating in the employee deferral portion of a 403(b) plan.

One area plans may elect to adopt as an allowable exclusion from participation relates to a requirement of working 20 hours per week. This topic is too vast to explore in this article; however, if your plan has adopted an exclusion related to hours, it is important that an evaluation of the application of the rule be completed to ensure your plan is in compliance with the requirements for the exclusion. Due to the widespread issues noted with Universal

Availability, the IRS currently has an open project dealing specifically with this issue.

Tip 3: Review and Approve Distribution Processing.

Given the economic conditions of the past years, the level of distributions from plans has increased. As the sponsor of the plan, it is imperative to ensure proper review and approval of distributions, including whether the plan allows for in-service and hardship distributions. One item we noted during our audits is the lack of supporting documentation maintained when a hardship distribution is processed. It is important to have all required supporting documentation prior to distributing the assets. Also be sure appropriate signatures and approvals are obtained and retained.

For a participant to be eligible for a hardship distribution, the employee must show immediate and heavy need, and it must be necessary to satisfy the financial need with a distribution from the plan. The plan document will dictate what satisfies these conditions and the required documentation to support the distribution. For example, if a participant faces eviction or foreclosure, obtaining a copy of the notice may be required documentation. The distribution cannot exceed the amount of need and the participant cannot have other means available to meet the need, such as access to other assets or loans.

Tip 4: Monitor Your Third-party Administrator (TPA).

The roles and responsibilities of the TPA and the sponsor of the plan should be well understood. Certain functions of the plan may not be outsourced to the TPA or there may be a lack of clearly defined roles between the TPA and plan sponsor. Remember, ultimate responsibility for compliance and operation of the plan falls on the plan sponsor.

It is important for plan sponsors to review the work performed by the TPA for accuracy and completeness. A few items you will want to consider having in place include:

1. A complete list of eligible and ineligible employees

2. A well-documented distribution process
3. Documentation that appropriate compliance tests are performed and appropriate employees considered
4. Controls to ensure accuracy of the information contained in the TPA's reports
5. Management's understanding of the controls in place at the TPA
6. Adequate and appropriate records prepared by the TPA are maintained and reviewed by the plan sponsor

Tip 5: Be Aware of Your ERISA Responsibilities.

This tip ties in with Tip 4. Many of the requirements of ERISA are new to sponsors of 403(b) plans. It is important to know and understand the expectations and responsibilities of the sponsor and fiduciaries of the plan, and ensure monitoring of the plan's operations and investment performance are completed and

documented. Violations in this area can require the payment of penalties or a filing to make corrections.

Look for a future newsletter articles which will further discuss fiduciary responsibilities.

Pay close attention to these issues; failure may result in additional amounts required to be contributed to the plan by the plan sponsor, even if the original contribution was made by the affected employee. Additional checklists are available on several of the items discussed above; please contact your Eide Bailly representative. ■



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Eide Bailly Enhances Non-Profit Team with Two New Partners

We are pleased to announce that Rob Leslie, CPA, and Tim McCutcheon, CPA, have joined our non-profit team.



Rob, based in our Phoenix office, brings more than 25 years of experience working with non-profits to Eide Bailly, including work with a national CPA firm and five years as director of non-profit services for a bank.



Tim joins the Firm's Colorado office. He has 32 years of public accounting experience, including eight years as a CFO for a large Colorado non-profit. In his role at Eide Bailly, Tim is dedicated to working solely with non-profit organizations, focusing on audit and assurance, tax and advisory services.

Please join us in welcoming Rob and Tim! ■

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1099 Reporting Requirements—from page 1

What to Expect with the Repeal

With the signing of the legislation, the 1099 expanded reporting requirements under Health Care Reform Legislation and the Small Business Jobs Act of 2010, as described above, is repealed. That is good news for the non-profit sector and government, saving them both cost and time to deal with the multiple millions of additional Form 1099s that would have required compliance with both pieces of legislation.

Not all Expanded 1099 Reporting Repealed

It is important to point out, that while the repeal of 1099 expanded reporting for property purchases, rental property services and reporting to corporations is an extremely important event, and will save untold administrative time and cost, the 1099 reporting for payment card transactions (debit and credit), introduced in The Federal Housing Regulatory Reform Act of 2008, was not repealed.

Therefore, still effective for calendar years after December 31, 2010, processors of payment card transactions, such as merchant banks and similar organizations, will still

be required to provide a written statement Form 1099-K by January 31, 2012 to each business for which they process payment card transactions to use in reporting as a separate line on their income tax return. A copy must be provided to the IRS to allow the IRS to check that the amount has been reported.

The repeal of expanded 1099 reporting was accomplished due to the public outcry related to administrative costs and time burdens. However, it is evident from IRS policy information that information reporting and gathering will continue to increase, in allowable forms, as the IRS adapts and expands the availability and use of information reporting intelligence. ■



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