

SUPPORTING STATEMENT

Internal Revenue Service

Information Reporting for Payments Made in Settlement of Payment Card
and Third-Party Network Transactions

OMB# 1545-2205

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This information collection covers final regulations implementing amendments to the Income Tax Regulations (26 CFR part 1) relating to information reporting under sections 6041, 6041A, 6050W, and 6051 of the Internal Revenue Code (Code).

TD 9496 (75 FR 49821), published August 16, 2010, contains final regulations implementing amendments to the Regulations on Employment Tax and Collection of Income Tax at the Source (26 CFR part 31) relating to backup withholding under section 3406, and to the Regulations on Procedure and Administration (26 CFR part 301) relating to information reporting penalties under sections 6721 and 6722.

Notice 2011-71 (2011-37 I.R.B. 233), published September 12, 2011, provided interim guidance to payment settlement entities (as defined in section 1.6050W-1(a)(4)(i)) (PSEs) that are United States payors or United States middlemen (each as defined in section 1.6049-5(c)(5)) (U.S. payors) regarding the circumstances under which such a PSE must obtain, review, and maintain documentation to establish that a participating payee is a foreign person for purposes of section 6050W.

Form 1099-K, *Payment Card and Third Party Network Transactions*, is used to report the proceeds of payment card and third-party network transactions made to the taxpayer.

2. USE OF DATA

Form 1099-K will allow the capture of data that reports payments made in settlement of payment card and third-party network transactions to be used to compare taxpayer-reported income on individual and corporate tax return forms with data submitted by payment settlement entities.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We are currently offering electronic filing for Form 1099-K.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible. Payments that are reportable under sections 6050W, 6041, and 6041A, are now reportable solely under section 6050W if they meet 6050W threshold reporting requirements. If settlement payments do not meet the threshold for reporting under section 6050W, they will continue to be reported under sections 6041 and 6041A, as

appropriate.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities.

This certification is based on the fact that the persons required to report under section 6050W, payment settlement entities, will generally not be small businesses. Merchant acquiring entities, the payment settlement entities required to report payment card transactions, will primarily be banks with over \$175 million in assets. Third party-settlement organizations, the payment settlement entities required to report third party network transactions, will generally not be small entities by virtue of the definition of a third-party payment network, which requires the establishment of accounts with a central organization (the third-party settlement organization) by a substantial number of persons.

Further, section 6050W(e) provides a de minimis exception that exempts third party settlement organizations from reporting transactions with respect to a payee if the aggregate amount of such transactions does not exceed \$20,000 or the aggregate number of such transactions does not exceed 200. The Treasury Department and the IRS certify that the regulations in this document will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

If the IRS did not collect this information, the IRS would not be able to capture the data that reports payments made in settlement of payment card and third-party network transactions. Therefore, the IRS will not be able to compare taxpayer-reported income on individual and corporate tax return forms with data submitted by payment settlement entities.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

On February 6, 2009, the IRS announced that persons who will be required to report under section 6050W may match Taxpayer Identification Numbers (TINs) under the procedures established by Rev. Proc. 2003–9. See Announcement 2009–6, “Taxpayer Identification Number (“TIN”) Matching Program is Available to Persons Required to Make Returns Under New Section 6050W of the Internal Revenue Code” (Announcement 2009–6, 2009–9 IRB 643 (March 2, 2009)). See § 601.601(d)(2)(ii)(b).

Notice 2009–19 invited public comments regarding guidance under section 6050W. See Notice 2009–19, “Information Reporting of Payments Made in Settlement of Payment Card and Third-Party Network Transactions” (Notice 2009–19, 2009–10 IRB 660 (March 9, 2009)).

On November 24, 2009, the Treasury Department and the IRS published in the Federal Register (74 FR 61294) proposed regulations (REG–139255–08) reflecting the new requirements of the Act. The comments received in response to Notice 2009–19 were considered in developing the proposed regulations. Written comments were also received in response to the proposed regulations, and a public hearing was held on March 15, 2010. A summary of the comments and explanation of revisions was provided to the public, in TD 9496.

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding Form 1099-K.

In response to the **Federal** register notice dated April 9, 2019 (84 FR 14195), we received one (1) comment during the comment period regarding this collection.

The comment was received via email, explaining that the Connecticut Department of Revenue Services “...provided the following commentary:

- 1) 1099K information is essential for auditing cash businesses
- 2) 1099K files provided by the IRS do not appear to be complete i.e. missing taxpayers
- 3) 1099K could be delivered to states in more timely manner.”

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Business Master File (BMF)” system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 24.046-CADE Business Master File. The Internal Revenue Service PIAs can be found at <http://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The final regulations implement section 6050W and related statutory changes enacted by the Housing Assistance Tax Act of 2008 that require payment settlement organizations to report payments in settlement of payment card and third-party network transactions for each calendar year. A payment settlement entity (PSE) must file Form 1099-K for payments made in settlement of reportable payment transactions for each calendar year. A PSE makes a payment in settlement of a reportable payment transaction, that is, any payment card or third-party network transaction, if the PSE submits the instruction to transfer funds to the account of the participating payee to settle the reportable payment transaction. The burden associated with this collection is reported as follows. It is anticipated that there will be 9,436,100 respondents annually and the per response time would be 29 minutes per respondent.

The burden estimate is as follows:

OMB Collection	Authority	Form	Annual Responses	Hours per Response	Total Burden
IRS 1545-2205	IRC 6050W	1099-K	9,436,100	29	4,529,328
	IRS TOTAL		9,436,100		4,529,328

The following regulations impose no additional burden. Please continue to assign OMB number 1545-2205 to these regulations.

1.6041-1

1.6041A-1

1.6050W-1

1.6050W-2

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated April 9, 2019, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any responses from taxpayers on this subject. As a result, estimates of these cost burdens are not available currently.

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

The Federal government cost estimate is based on a model that considers the following three cost factors for each information product: aggregate labor costs for development, including annualized start-up expenses, operating and maintenance expenses, and distribution of the product that collects the information.

The government computes cost using a multi-step process. First, the government creates a weighted factor for the level of effort to create each information collection product based on variables such as; complexity, number of pages, type of product and frequency of revision. Second, the total costs associated with developing the product such as labor cost, and operating expenses associated with the downstream impact such as support functions, are added together to obtain the aggregated total cost. Then, the aggregated total cost and factor are multiplied together to obtain the aggregated cost per product. Lastly, the aggregated cost per product is added to the cost of shipping and printing each product to IRS offices, National Distribution Center, libraries and other outlets. The result is the Government cost estimate per product.

The government cost estimate for this collection is summarized in the table below.

<u>Product</u>	<u>Aggregate Cost per Product (factor applied)</u>	<u>Printing and Distribution</u>	<u>Government Cost Estimate per Product</u>
Form 1099-K	\$ 73,925	\$ 6,551	\$ 80,476
F 1099-K Instructions	\$ 9,241	\$ 732-	\$ 9,973
Grand Total	\$ 83,166	\$ 7,283	\$ 90,449
Table costs are based on 2018 actuals obtained from IRS Chief Financial Office and Media and Publications			
* New product costs will be included in the next collection update.			

15. REASONS FOR CHANGE IN BURDEN

There are no changes to the burden.

We are submitting this request for renewal purposes only.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

Note: The following paragraph applies to all the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.