

SUPPORTING STATEMENT

Internal Revenue Service
Transitional Guidance Under Sections 162(f) and 6050X with Respect
To Certain Fines, Penalties, and Other Amounts
REG-104591-18
OMB # 1545-2284

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The collection covers the new information reporting requirements under IRC 162(f) and new 6050X, which was added by the Tax Cuts and Jobs Act (TCJA).

Generally, no deduction is allowed for any amount paid to, or at the direction of, a government or specified nongovernmental entity for the violation of any law. The general rule does not apply to the following exceptions:

- Amounts that constitute restitution (including remediation of property);
- Amounts paid to come into compliance with the law;
- Amounts paid or incurred as the result of certain court orders in which no government or specified nongovernmental agency is a party; and
- Amounts paid or incurred for taxes due.

To be deductible under an exception, the Taxpayer must **establish** that an amount required to be paid is for restitution, remediation or to come into compliance with the law, AND the amount must be specifically identified in the settlement agreement or court order as restitution, remediation or to come into compliance with the law.

Any amount paid or incurred as reimbursement to the Government for the costs of any investigation or litigation are not deductible under one of the exceptions (under prior law, these amounts were often considered compensatory and deductible).

The 2017 Tax Cuts and Jobs Act also enacted IRC section 6050X, which requires government agencies or specified nongovernmental regulatory entities to file an information return which identifies:

1. The amount required to be paid as a result of the suit or agreement to which IRC section 162(f)(1) applies;
2. Any amount required to be paid as a result of the suit or agreement that constitutes restitution or remediation of property; and
3. Any amount required to be paid as a result of the suit or agreement for the purpose of coming into compliance with any law that was violated or involved in the investigation or inquiry.

These proposed regulations, REG-104591-18 (85 FR 28524), dated May 13, 2020, provides guidance on section 162(f) of the Internal Revenue Code (Code), as amended by legislation enacted in 2017, concerning the deduction of certain fines, penalties, and other amounts. This document also contains proposed regulations that provide guidance relating to the information

reporting requirements under new section 6050X of the Code with respect to those fines, penalties, and other amounts. The proposed regulations affect taxpayers that pay or incur amounts to, or at the direction of, governments, governmental entities or certain nongovernmental entities treated as governmental entities (nongovernmental entities) in relation to the violation of a law or investigations or inquiries by such governments, governmental entities, or nongovernmental entities into the potential violation of a law. The proposed regulations also affect governments, governmental entities, and nongovernmental entities subject to the related reporting requirement.

Notice 2018-23 provides information for section 6050X and transitional guidance under IRC § 162(f).

2. USE OF DATA

Section 13306 of “An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,” Pub. L. 115–97 (the “Act”), which was signed into law on December 22, 2017, amended section 162(f) of the Internal Revenue Code (“Code”) and added new section 6050X to the Code. The Department of the Treasury (“Treasury Department”) and the Internal Revenue Service (“IRS”) intend to publish proposed regulations under sections 162(f) and 6050X.

Following the enactment of the Act, officials of a number of governments and governmental entities contacted the Treasury Department and the IRS requesting additional time to make the necessary changes to their systems to comply with their new reporting responsibilities under section 6050X. In addition, the IRS needs additional time to make necessary programming and form changes to implement section 6050X. Accordingly, the Treasury Department and the IRS are providing transitional guidance with respect to reporting obligations under § 6050X.

Under this transitional guidance, to ensure efficient administration of this new provision, reporting will not be required under section 6050X until the date specified in the proposed regulations. The specified date will not be earlier than January 1, 2019 and will not be earlier than the date of publication of the proposed regulations. Reporting will not be required with respect to any amounts required to be paid or incurred under a binding court order or settlement agreement entered into before the specified date. For purposes of this notice, an agreement that requires court approval is binding when court approval is obtained. This transitional guidance will provide additional time for dialogue with stakeholders in an effort to clarify the reporting requirements consistent with effective implementation of the law.

Transitional guidance will also provide governmental and nongovernmental regulatory entities additional time to develop their systems for collecting and reporting the required information.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The Internal Revenue Service (IRS) will accept electronic reporting of this information. Filers transmitting these forms electronically would process through the Filing Information Returns Electronically (FIRE) System.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

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

There are no small entities affected by this collection.

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

If the Internal Revenue Service (IRS) did not collect this information, the IRS will not be able to verify compliance with the reporting rules and to verify that the recipient has included the proper amount of taxable income on the income tax return.

Failure to collect and retain the information outlined in the regulations will complicate the taxpayer's ability to receive the proper tax credit and the IRS's ability to verify its' accuracy.

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 April 9, 2018, the Internal Revenue Service requested public comment on intended proposed regulations related to the new information reporting requirements under IRC 162(f) new IRC 6050X (Notice 2018-23), which was added by the Tax Cuts and Jobs Act.

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 1098-F.

In response to the *Federal Register* notice dated May 13, 2020, (85 FR 28524), we received

several comment letter/emails during the comment period inquiring about the release of final regulations. These regulations are currently under development and review and comment letter/emails will be addressed upon release of the Treasury Decision.

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-Customer Account Data Engine 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

Several federal websites were used to review to determine whether there was a chance the agency could be involved with a settlement or case resulting in a penalty or fine. This analysis resulted in 139 government entities with potential filing requirements. Under IRC Section 162(f)(5), any nongovernmental which exercises self-regulatory powers in connections with a board or exchange is treated as a government entity. IRS also reviewed the SEC website to determine what self-regulatory agencies there were. There were 41 self-regulatory agencies listed on the SEC website. IRS estimates that approximately 180-200 government entities would be subject to reporting under 6050X.

OMB Collection	Authority	Annual Respondents	Form	Annual Responses	Hours per Response	Total Burden
IRS 1545-2284	IRC 6050X	90,100	1098-F	1	.537	48,384
	IRS TOTAL			1		48,384

Please continue to assign OMB number 1545-2284 to these regulations.

1.162-21

1.6050X -x

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our *Federal Register* notice dated May 13, 2020, 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, 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.

Product	Aggregate Cost per Product (factor applied)	Printing and Distribution	Government Cost Estimate per Product
Form	\$ 75,866	(\$0)	\$ 75,866
Grand Total	\$ 75,866	(\$0)	\$ 75,866
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

The Treasury Department and the IRS issued proposed regulations (1545-BO67), amending and adding sections to the Income Tax Regulations with respect to sections 162(f) and 6050X. The estimate of 90,100 is based on the estimated number of governments, governmental entities, and non-governmental entities that are treated as governmental entities under the reporting requirements set forth in the proposed regulations.

Updated filing figures indicate an increase in the estimated annual responses by 41,716. This increase will result in a total estimated annual burden increase of 42,720 hours. This submission is being made to revise and extend the current approval as required in the Paperwork Reduction Act.

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses for this IC	90,100	0	42,900	0	0	47,200
Annual IC Time Burden (Hours)	48,384	0	42,720	0	0	5,664

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 if 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.