CCH Tax Briefing

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1099 Taxpayer Protection Act of 2011

April 14, 2011

Special Report

HIGHLIGHTS

- Repeal Of Expanded Business Information Reporting On Vendors
- Repeal Of Rental Property Expense Reporting
- Fully Offset Through Greater Health Insurance Premium Assistance Credit Recapture
- Reinstatement Of Reporting Exception For Corporations

INSIDE

Obama Signs 1099 Repeal Bill

President Obama signed on April 14 a bill (H.R. 4) to repeal controversial expanded information reporting on Form 1099 for certain business payments and rental property expense payments. The Senate passed H.R. 4 on April 5, the House had approved the bill on March 3, 2011. To offset cost of repeal, H.R. 4 increases the amount of the overpayment of the health insurance premium assistance credit that is subject to recapture. Since both the House and Senate passed identical bills, H.R. 4 — also known as the "Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011" — did not have to go to a conference committee.

IMPACT. *Repeal of expanded business information reporting (and to a lesser extent, repeal of rental property expense payment reporting) is certain to reduce the burden on taxpayers, especially on small businesses. The mechanics of expanded reporting would have required taxpayers to capture significantly more information for reporting.*

The votes in the House (314 to 112) and in the Senate (87 to 12) signaled strong support for repeal of the 1099 provisions that crossed party lines. Although some Democrats opposed the offset, momentum for repeal was too strong to prevent passage by Congress.

COMMENT. *The new law does not repeal other recently enacted information reporting mandates, such as Code Sec. 6050W, which generally requires information reporting on payment card transactions occurring after December 31, 2010, and Code Sec. 6045A, which generally requires reporting of basis and other information by stock brokers and mutual fund companies for most stock purchased in 2011 and all stock purchased in 2012 and later years.*

BUSINESS REPORTING

PPACA. In March 2010, Congress approved the Patient Protection and Affordable Care Act (PPACA) (P.L. 111-148), which included among its revenue raisers an expansion of business information reporting. Section 9006 of the PPACA required businesses, charities and government entities to file a Form 1099 when they make annual purchases aggregating $600 or more to a single vendor, other than to a vendor that is a tax-exempt organization, for payments made after December 31, 2011 and reported in 2013 and thereafter. The PPACA also repealed the long-standing reporting exception for payments made to corporations.

COMMENT. *Almost immediately after passage of the PPACA, businesses voiced concerns about the burden of reporting. National Taxpayer Advocate Nina Olson also warned about the burdens of reporting, especially on small businesses.*

Repeal. H.R. 4 repeals the expanded information reporting requirements for business payments as if Section 9006 of the PPACA had not been enacted.

IMPACT. *Repeal means that the pre-PPACA 1099 reporting rules for business payments continue unchanged. In particular, businesses must continue to issue Form 1099s for payments of $600 or more to service providers. Additionally, repeal means that the long-standing exception to required information report-*

ing for payments made to corporations remains intact.

COMMENT. *The exception for payments to a corporation is not universal. The exception does not apply to payments made for attorney's fees, and amounts paid to a corporation that provides medical or health care services (subject to certain exceptions). Payments to certain tax-exempt organizations, government entities, international organizations, and retirement plans continue to be excepted from reporting under IRS regulations.*

RENTAL EXPENSE REPORTING

2010 Small Business Jobs Act. In September, 2010, Congress approved the Small Business Jobs Act of 2010 (2010 Small Business Jobs Act) (P.L. 111-240). Section 2101 of the 2010 Small Business Jobs Act required information reporting by landlords on Form 1099 of certain rental property expense payments of $600 or more in conjunction with their rental properties made after December 31, 2010 and reported in 2012 and thereafter. Under the 2010 Small Business Jobs Act, information reporting was not specifically limited to landlords whose rental operations amounted to a trade or business.

COMMENT. *The types of expenses contemplated by the 2010 Small Business Jobs Act for reporting would have been, for example, payments made to craftspersons, such as plumbers and roofers. Payments for professional services, such as payments to accountants, also would have been covered by the 2010 Small Business Jobs Act.*

COMMENT. *The 2010 Small Business Jobs Act exempted some taxpayers from the rental expense reporting requirement. Among the taxpayers exempted were individuals who received rental income of not more than a nominal amount. Congress instructed the IRS to issue regulations on the exemptions. Passage of H.R. 4 makes the IRS guidance, which was not issued, unnecessary.*

Repeal. H.R. 4 repeals the rental property expense payment reporting requirements as if Section 2101 of the 2010 Small Business Jobs Act had not been enacted.

IMPACT. *Repeal of Sec. 2101 of the 2010 Small Business Jobs Act means that landlords need not identify specific expenses for rental property expense reporting. However, some expenses may be reportable under other information reporting requirements of the Tax Code. Further, landlords with activities that amount to a trade or business continue to be required to report payments of $600 or more to service providers.*

> "Repeal of expanded business information reporting (and to a lesser extent, repeal of rental property expense payment reporting) is certain to reduce the burden on taxpayers, especially on small businesses."

OFFSET

To pay for the cost of repeal, estimated at approximately $25 billion over 10 years, H.R. 4 amends another provision of the PPACA. Beginning in 2014, taxpayers who purchase qualified health care coverage through an American Health Benefit Exchange are entitled to a refundable income tax credit equal to the health insurance premium assistance credit (new Code Sec. 36B). Generally, the credit is available to taxpayers (individuals or families) with household income between 100 percent and 400 percent of the federal poverty level (FPL).

COMMENT. *PPACA provides for Treasury to make an advance payment of the premium assistance credit, based on the taxpayer's income for the prior year. The advance credit can be paid directly for the cost of health insurance, thus relieving the taxpayer of a portion (if not most) of the out-of-pocket cost of the insurance.*

If the advance payments exceed the allowable credit, the excess is an increase to the taxpayer's taxes for the year. However, PPACA limits the increase in taxes to a maximum $400 (or $250 for unmarried taxpayers) for individuals with family income below 400 percent of the FPL for the family size involved.

H.R. 4 increases the amount of the excess credit that has to be repaid by the taxpayer, by providing an increasing cap based on household income. The increase will be capped at:

- $600 for taxpayers whose household income is less than 200 percent of the FPL;
- $1,500 if household income is at least 200 percent but less than 300 percent; and
- $2,500 if household income is at least 300 percent but less than 400 percent.

For unmarried taxpayers, the caps would be 50 percent of the specified amounts: $300, $750, and $1,250.

COMMENT. *The Obama administration hopes to revisit the operation of recapture within the health insurance premium assistance credit well before its 2014 effective date. A rollback of this recapture provision, however, must now be off set elsewhere.*