



National Association of State
**Auditors, Comptrollers
and Treasurers**

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Andres Garcia
Internal Revenue Service
Room 6526
1111 Constitution Ave. NW
Washington, D.C. 20224

December 15, 2022

RE: Comments on Form 1098-F (Fines, Penalties, and Other Amounts)

Dear Mr. Garcia:

On behalf of the National Association of State Auditors, Comptrollers and Treasurers and its Payroll Information Sharing Group, we are writing to reiterate our concerns with a specific provision of the Tax Cuts and Jobs Act (TCJA) of 2017. We are referring to Section 13306 which amends the deductibility of certain fines and fees (26 U.S.C. 162) and places an onerous reporting requirement (26 U.S.C. 6050X) on federal, state, and local governments.

Under section 162(f), taxpayers cannot deduct amounts paid or incurred to a government or governmental entity in response to a violation of law or potential violation of law. An exception exists if a taxpayer can show that the amount (i) constitutes restitution for damage or harm that may have been caused by the violation of or potential violation of law, or (ii) is paid to come into compliance with any law that was violated. Additionally, the court or settlement agreement must identify the amount as restitution or as paid to come into compliance with the law.

The TCJA also added section 6050X which requires governments and governmental entities to report amounts received from taxpayers under section 162(f). Section 6050X requires governments to report the amount of the nondeductible payment, any amount that constitutes restitution or remediation of property, and any amount paid for coming into compliance with any law that was violated or part of the investigation. Form 1098-F is used to report the amounts paid as required by IRC Section 6050X.

With this correspondence we are addressing the specific questions posed in your request for comment and reiterating a few items that we highlighted in a letter sent to Commissioner Rettig in 2019 regarding the burdens associated with 6050X reporting.

Request for Comment on whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.



We do not believe that collecting this information will be beneficial to the IRS. There will be inconsistent reporting across entities due to unclear guidelines and confusion. We believe there is no incentive to provide payer TIN numbers to the government to populate form 1098-F (like there is for form 1099 due to backup withholding). Therefore, there is a high potential that many forms will either have no payer's TIN or the wrong payer's TIN. Without a TIN, this form may prove to not provide the intended benefit to the IRS, as the TIN cannot be matched to a federal tax return.

The IRS should allow governments access to the TIN matching system, as this will enhance the quality of the information provided to the IRS and reduce TIN matching errors.

Additionally, what is being reported may not be the final settlement or what is ultimately paid. Unfortunately, there is no incentive for payers to provide accurate tax information. The IRS would be better suited by using their audit selection method to weight tax returns with large amount of deductions related to these types of fines or fees.

Form 1098-F requires governments to report information that must be obtained from the violating entity. Therefore, governments cannot reasonably attest to the accuracy, completeness, and reliability of the information presented on Form 1098-F.

- o In the example included in the instructions, Corporation A had to pay \$50,000 for remediation of contaminated sites and \$60,000 to conduct comprehensive upgrades to Corp. A's operations to come into compliance with the law. The example seems simple, but in order to obtain this information, the government must
- o Convince Corp. A to provide this information to the government so that it can be reported on 1098-F.
- o *Assume* that the dollar amount paid is accurate (accuracy).
- o *Assume* that the information provided is complete and the violating entity has not omitted information (completeness).
- o Obtain a Form W-9 from the violating entity.

- o When filing this information, the government will include the information above on Form 1098-F. However, the government cannot **attest** that the information is accurate, complete, and is something that the IRS can rely upon as the information obtained from a violating third party. Understand, the government did not pay or levy these amounts, but must report these amounts to the IRS? Therefore, we strongly believe reporting of this information to the IRS will not produce the intended result, as the **IRS, like the filer government, cannot place reliance on this information.** Does the IRS really want to obtain, store, and analyze potentially unreliable and/or incomplete data?



Request for comment on the accuracy of the agency's estimate of the burden of the collection of information.

We do not believe that seven minutes per respondent is accurate. It is necessary for the information to be gathered, analyzed, and vetted to determine if it will be reportable. This means that every settlement must be looked at, regardless of whether it is reportable. This also often means that each entity would need to conduct both a tax and legal analysis for thousands of settlements in addition to the staff time of the affected agency necessary to identify potential reporting needs. Because it is not clear what needs to be included, many different interpretations must be discussed to determine what is reportable. Therefore, the burden of reporting would include more than just the settlements that are reportable.

Request for comment on ways to enhance the quality, utility, and clarity of the information to be collected.

We are still unclear as to all the expected reporting to be added on form 1098-F. There are fines that come out of regular audits and investigations that are related to a violation of the law, are these to be reported? Are tax audit assessments and related settlements to be reported?

We believe if the IRS deems the 1098-F form is still necessary, it should either:

- Simply have governments check a box indicating if the circumstances more fully described in the instructions have exceeded the \$50k threshold; (again, this would assist the IRS in their audit selection method through this notification process) or
- Limit the reporting scope on the 1098-F Form to information directly under the control of the government (i.e., fines/fees). Requiring governments to report information that may not be accurate or complete is not a reasonable expectation and must be eliminated from the form.

Additionally, if the IRS continues to require this information, the IRS should specifically waive any potential penalties due to the accuracy or completeness of this information obtained from violating third parties.

Items noted in 2019 correspondence to Commissioner Rettig regarding 6050x reporting.

- The new provision will require reporting on something that is not a payment, but receipt of payment, making it extremely challenging to obtain tax (W-9) information from individuals who are paying the government.
- It will be exceedingly difficult for entities to determine what is and what is not reportable under this requirement and to properly report the information in the applicable 1098-F boxes on the form. Settlement agreements could cover a broad



range of payments made to governments (tax audit findings, environmental fines, agreement costs to come into legal compliance, etc.).

- It will be extremely challenging to educate the individuals responsible for these types of agreements to understand the tax reporting implications and ensure proper reporting. These individuals' area of expertise is often not tax compliance.
- In most government entities, collections and receivables are maintained by the agencies. The decentralization of these processes will provide complexities with non-tax staff understanding the proper classification of receivables regarding 1098-F reporting.
- System setup and configuration for receivables will add a burden to current systems and transaction entries. The new reporting will also significantly increase the workload during a tax reporting season, which in turn could increase the risk of late filings and inaccurate data.
- There are codes on form 1098-F that will be incredibly challenging to systematically derive and define (box 9).
- The accumulation of data across multiple agencies for the same payee on one tax form will prove challenging.

Thank you for your consideration of the burdens associated with this new reporting requirement. Should you have any questions or desire any additional information, please feel free to reach out to our representative in Washington, Cornelia Chebinou, at (202) 624-5451 or cchebinou@nasact.org

Respectfully,

Michael Frerichs
President, NASACT
State Treasurer, Illinois