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Sent via email: pra.comments@irs.gov

Andres Garcia
Internal Revenue Service
Room 6526
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Form 1098-F
OMB Control No. 1545-1276
Notice and Request for Comment on Form 1098-F, appearing in Federal Register, Vol. 87, No. 221 (Nov. 17, 2022).

Dear Andres Garcia:

The Missouri Department of Revenue ("MO DOR") appreciates the willingness of the IRS to provide comments concerning the proposed Form 1098-F. Below, please find MO DOR's responses to the specific questions posed in the "Notice and Request for Comment on Form 1098-F" appearing in Federal Register, Vol. 87, No. 221 (Nov. 17, 2022). Answering in the order of appearance:

A. 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?

In significant part, no, the information to be collected is not necessary for the proper performance of functions of the IRS, including IRS administration of IRC § 6050X and 26 C.F.R. § 1.6050X-1, insofar as the information is to be collected from MO DOR concerning state tax. Such information will also have limited practical utility, and poses the threat of disutility.

IRC § 6050X limits the information to be collected to certain amounts required to be paid as a result of a suit or agreement, if the suit is one “with respect to which there has been a court order” and if the agreement is one “entered into with respect to a violation of any law over which the government or entity has authority, or with respect to an investigation or inquiry by the government or entity into the potential violation of any law over which such government or entity has authority[.]” See IRC § 6050X(a)-(b). Similarly, 26 C.F.R. § 1.6050X-1(a)(1) clarifies that the determination of whether a Form 1098-F must be filed is made with reference to “all *court orders* (orders) and *settlement agreements* (agreements), relating to the violation of any law, or the investigation or inquiry into the potential violation of any law[.]” (Emphasis added).

The statutory and regulatory provisions tend to show that the only orders required to be reported on are court orders. 26 C.F.R. § 1.6050X-1(a)(1) also tends to give a limited reading of the agreements to be reported on. However, the Form 1098-F Instructions state the Form 1098-F “must be filed with respect to each payer that is a party to the suit, order, or agreement.” MO DOR understands that the IRS considers even a notice of state tax assessment issued by MO DOR, with respect to a violation of state tax law, to be a “suit, order, or agreement.”

At the same time, 26 C.F.R. § 1.6050X-1(b)(3) provides that only one Form 1098-F must be filed for amounts required to be paid as a result of multiple orders and/or agreements with respect to a violation, investigation, or inquiry. MO DOR is under the impression that no additional Forms 1098-F must be furnished or filed if the amount at issue reported in a previously furnished and filed Form 1098-F is later changed by order or agreement.

It is fair to say that the majority of court orders received by, and settlement agreements entered into with, MO DOR concerning state taxes originate from notices of assessment issued to Missouri taxpayers. If MO DOR has already filed a Form 1098-F with respect to a notice of tax assessment, MO DOR is not required to file a further Form 1098-F if a court order is later issued or an agreement is entered regarding that same tax assessment, even if the amount at issue is changed. It follows that, while the IRS will end up collecting information about the *tax assessment notices* issued to Missouri’s taxpayers, the Forms 1098-F will – in large part – eventually not report to the IRS information concerning *court orders and settlement agreements*. This is despite the apparent directive from IRC § 6050X and 26 C.F.R. § 1.6050X-1(a)(1) that such information concerning court orders and settlement agreements be collected by the IRS.

The information required to be reported on these Forms 1098-F has limited practical utility, and poses the threat of disutility, because the IRS unfortunately cannot consistently reference Form 1098-F as a reliable source from which to determine a taxpayer’s compliance with IRC § 162(f), where the tax-related amounts to be reported on Form 1098-F have been subsequently altered pursuant to an agreement or court order. For example, if a notice of tax assessment was issued by MO DOR requiring a taxpayer to pay \$60,000 in state tax, \$6,000 in tax-related penalties, and

\$4,000 in interest upon tax, and the amount due was later altered by a court to be \$50,000 in state tax, \$15,000 in tax-related penalties, and \$5,000 in interest upon tax, the IRS will likely be unable to reliably reference the Form 1098-F issued in connection with the notice of assessment to assist in determining whether the taxpayer has properly deducted state tax, but not penalties, on its federal return. In fact, the information reported on Form 1098-F might be used to support a taxpayer deducting an erroneously high amount of state tax on its federal return.

Under the current Form 1098-F Instructions, the Forms 1098-F concerning state tax administered by MO DOR, in significant part, will have minimal utility, questionable reliability, and eventually will give diminished assistance to the IRS in satisfying the statutory and regulatory directive of obtaining information about court orders or settlement agreements. A proposal to help address these concerns is presented in Part C of this response.

B. The accuracy of the agency's estimate of the burden of the collection of information.

The time estimated for MO DOR to gather information for and prepare Form 1098-F will be significantly more than the 7 minute estimate stated in the Notice and Request for Comments to which this comment responds.

Information must be gathered from different divisions within MO DOR, and, in some situations, from other entities. MO DOR will also need to determine whether, in a given calendar year, suits, orders, and agreements became "binding under applicable law, determined without regard to whether all appeals have been exhausted or the time for filing an appeal has expired[.]" See 26 C.F.R. § 1.6050X-1(b)(4). MO DOR must ascertain whether a suit, order, or agreement results in individual liability or joint and several liability, and the amount(s) of those liabilities, pursuant to 26 C.F.R. § 1.6050X-1(d)(1)-(2). MO DOR must also ascertain the appropriate figures to be reported on the Form 1098-F, as well as in which box of the Form 1098-F to enter these figures. These will not always be simple bureaucratic functions, nor functions which can be programmed into an automated system, but will sometimes call for a nuanced understanding of the suit, order, or agreement itself as well as the applicable law. This can require referral to MO DOR's legal counsel, increasing the burden of providing this information.

The information to be reported on Form 1098-F cannot always be derived from a review of the contents of an order or agreement. Under the Form 1098-F Instructions, Code A must be entered "if the payer *has made* or is obligated to make multiple payments to satisfy the total payment required by the suit, order, or agreement." (Emphasis added). Therefore, for each suit, order, or agreement where the payer is not obligated to make multiple payments, MO DOR appears to be required to undertake a level of review to determine whether the payer's payment history included only one payment or multiple payments. The inclusion of the two words "has made" in

the Form 1098-F Instructions significantly increases the burden of review required to prepare Form 1098-F.

Some proposals to help address these concerns are presented in Part D of this response.

C. Ways to enhance the quality, utility, and clarity of the information to be collected.

To enhance the quality, utility, and clarity of the information to be collected, MO DOR proposes that the phrase “suit, order, or agreement[.]” in the Form 1098-F Instructions be replaced with the phrase “court order or settlement agreement.” MO DOR further proposes that the instructions expressly specify that the Form 1098-F filing and furnishing requirement is limited only to orders issued by a court or settlement agreements. The phrase “suit, order, or agreement” does not occur within IRC § 6050X nor within 26 C.F.R. § 1.6050X-1. 26 C.F.R. § 1.6050X-1(a)(1) clarifies that the information return filing requirement applies to “court orders (orders) and settlement agreements (agreements)[.]”

MO DOR also supports the recommendations made by the Federation of Tax Administrators (FTA) in response to this same Notice and Request for Comments.

D. Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

MO DOR proposes the following means of reducing the burden of collection of information on respondents:

- The removal of the phrase “has made or” from the Form 1098-F Instructions regarding Form 1098-F, Box 9, Code A. For further discussion, see Part B of this response.
- The replacement of the phrase “suit, order, or agreement[.]” in the Form 1098-F Instructions with the phrase “court order or settlement agreement” and the specification that the Form 1098-F filing and furnishing requirement is limited only to orders issued by a court or settlement agreements.
- The clarification, by regulation or instruction, that state taxes and interest on state taxes (as opposed to penalties and interest on such penalties) not be taken into consideration for purposes of determining whether the threshold amount has been met triggering the Form 1098-F reporting requirement.
- MO DOR anticipates that it will receive a number of inquiries from tax practitioners and taxpayers asking what is to be done with the Form 1098-F. The burden of increased

inquiries occasioned by this collection of information could be reduced if the IRS were to display information in the instructions and on its website providing more direction for taxpayers and tax practitioners who receive the Form 1098-F, and notifying taxpayers and tax practitioners whom they can contact within the IRS to answer such questions.

- The increase of the threshold amount in 26 C.F.R. § 1.6050X-1(f)(6) to \$500,000 or higher, with annual increases for inflation to be made.

MO DOR also supports the recommendations made by the Federation of Tax Administrators (FTA) in response to this same Notice and Request for Comments.

E. Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

MO DOR is unable to provide a precise estimate at this time.

MO DOR is grateful for this opportunity to provide comments on the Form 1098-F, and hopes that its comments and recommendations have been useful. Should you have any questions or require additional information please contact:

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Sincerely,



Wayne Wallingford
Director
Missouri Department of Revenue