



DAVE YOST

OHIO ATTORNEY GENERAL

Collections Enforcement
Office 614-644-9548
Cory.steinmetz@ohioattorneygeneral.gov

Andres Garcia
Internal Revenue Service
Room 6526
1111 Constitution Avenue NW
Washington, DC 20224
pra.comments@irs.gov

RE: Comment on Form 1098-F, OMB Control No. 1545-1276

The Ohio Attorney General's Office (OAG) presents the below comments in regards to form 1098-F, and the related processes. Our office has been working towards compliance with these new regulations, while attempting to integrate them into our business practices.

Overall, the goals of this requirement could be achieved by shifting the burden of filing back to the payor. The identification requirement, in 26 USC 162(f), could remain implemented, which would provide the IRS with supporting documentation in connection with the 1098-F. While the identification requirement does cause some administrative burden and adjustment to business practices to the various governmental entities to which it would apply, it's far less than the reporting requirement.

(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:

- From a taxability perspective, it's difficult to fully comprehend the practical utility of these reports. Primarily due to the fact that between 26 CFR 1.162-21(a) stating "any amount paid or incurred", 26 USC 6050X(a)(3) stating returns should be filed "at the time the agreement is entered into", and finally 26 CFR 6050X-1(b)(4) states returns to be submitted "the calendar year in which the orders... become binding." While similar, these sections are somewhat incongruous. Until money is actually paid, it's unclear how beneficial these reports can be. While a claim for payment may be legally required, there is no guarantee it will actually be paid.
- It may be more beneficial to draw a distinction between paid or incurred, and require reporting upon the receipt of actual funds. A further distinction would be necessary for those agreements that are paid over time, where those could be reported in the year the terms were met, or when the agreement or order was fully paid.

(b) The accuracy of the agency's estimate of the burden of the collection of information:

- The estimated burden appears to be much lower than what will actually be required, when aggregate from all applicable government entities. The effort needed to implement this process has been extensive. Between initial review and discovery, to building and testing a system for tracking and reporting, this has imposed a significant burden on government agencies. Guidance has not been as detailed as we would have desired, especially considering the rules and guidance provided do not take into account the unique and factually complex government orders and agreements, which often have multiple payors and payees with payments over time. The “one size fits all” type of reporting rules have been difficult to match the complexities of our cases.
- We estimate on the programming and technology side that it took approximately 2,900 hours to scope and build a system to report and track the return information. Overall, the effort took approximately a year to fully prepare, train, and review these new requirements and implement them with our agency – and discussions and review continue regarding exactly what needs to be reported and how.
- We know many State Attorneys General offices are facing similar circumstances. Our agencies had little to no reporting requirements previously, so the infrastructure needed to perform these tasks did not previously exist. Not only are we required to report per the rule under 6050X, we also had to become familiar with and utilize the IRS FIRE system for electronic reporting. Obtaining this access was difficult to say the least. Additional support for state governments in obtaining this access would have eased this burden.
- It's difficult to estimate the annual burden that will be required, as it would be impossible to know what any certain year may bring in terms of litigation and settlements. The amount of time needed for each response likely nears a half hour, between collecting necessary information, inputting that information into a return, then the eventual filing of that return and providing statements to the taxpayer. Assuming we need to annually file 100-200 returns, this is an effort of 50-100 hours per year.

(c) Ways to enhance the quality, utility, and clarity of the information to be collected:

- Bringing the applicable law and regulations into agreement, selecting a specific moment in time to report would assist in the effort.
- Publication 1220, along with the General Instructions for Certain Information Returns, needs some additional editing to be applicable to the 1098-F process. Mostly, the confusion lies in the unique nature of this reporting requirement, that the payee is reporting, rather than the payor; the issuer is the same as the payee.
 - Also, the general instructions still refer to Form 4419 which appears to have been deprecated.

(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:

- As noted above, additional and dedicated support with the IRS FIRE system would be beneficial to the ongoing burden.
- Having the penalty rates, outlined in 26 USC 6721 & 6722 suspended in relation to form 1098-F compliance would also be appreciated. Our agency, and other state agencies, are doing their best to comply under the current guidance that again, isn't an exact fit with how our orders and settlements are structured. No matter how comprehensive guidance currently is or may become, the reality is that there are many special and fact-specific circumstances that require at least some additional analysis. Consultation with various government agencies that are actually doing this reporting would be useful to all.

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

- Being a governmental entity, it is difficult to estimate a cost amount to the effort needed. Work was done in house, as that was more cost effective than bringing in outside resources. As the overall burden to come into compliance likely exceeded the 2,900 hours our IT staff logged, when considering the number of legal and administrative hours generated by those who also had to become involved in this project, the financial burden likely exceeded \$150,000.00.

No public hearing is requested.

Respectfully submitted,

Cory Steinmetz
Assistant Attorney General
Collections Enforcement
Office of the Ohio Attorney General, Dave Yost
Office number: 614-644-9548
Fax number: (877) 584-2045
Cory.Steinmetz@OhioAttorneyGeneral.gov