



Evolving Form 1099-K Thresholds

By Martin Mueller and Kelli Wooten, [KPMG Information Reporting & Withholding Services](#)

March 25, 2022 | On March 15th, a bipartisan bill was introduced which, if enacted, will increase the federal Form 1099-K reporting de minimis threshold for reporting transactions made by third party settlement organizations (TPSOs) from payments exceeding \$600 to those equal to or exceeding \$5,000. The Cut Red Tape for Online Sales Act (H.R. 7079), found [here](#), was introduced by House Representatives Chris Pappas and Cindy Axne in order to reduce the administrative burden encountered by small online sellers, particularly those merely reselling personal goods for less than they were originally purchased.

As noted in a November letter to the Speaker of the House, Rep. Pelosi, and the Chairman for the Committee on Ways and Means, Rep. Neal, [here](#), Rep. Pappas and 15 other members of Congress outlined the issues produced by the reduced threshold for Form 1099-K reporting. Notably, the letter states that the \$600 threshold will lead to overreporting of income and overpayment of taxes, potentially rendering some taxpayers ineligible for certain tax benefits. The concerned group also pointed out that the increased reporting will require additional collection of personal information, potentially leading to privacy concerns for online sellers. Thus, the bipartisan bill would increase the threshold to \$5,000, retroactive to the beginning of the 2022 calendar year. In addition, the bill would provide relief for payments made during 2022 by extending the de minimis number of transactions to 200 for one transitional year.

Background

The Housing and Economic Recovery Act of 2008 (HERA), found [here](#), was enacted to address the subprime mortgage crisis that began in 2007 as a result of the collapse of the housing bubble (aka the Great Recession). The legislation was originally introduced as a July 2007 House bill to further United States energy independence and security (see H.R. 3221, [here](#)), but quickly evolved with the onset of the Great Recession. By April 2008, the bill had been repurposed to address the foreclosure crisis of 2008. As the crisis deepened, and the need for economic assistance increased, the bill's revenue cost increased significantly.

In June 2008, H.R. 6275, [here](#), was introduced to amend the alternative minimum tax. The bill contained a provision that largely mirrored the current §6050W; however, the de minimis threshold was \$10,000, rather than \$20,000. The bill passed the House, but stalled as priorities shifted elsewhere. A month later, the Senate provided amendments to HERA, including a number of revenue offsets, notably the §6050W provision that was found in the unrelated bill (see the July 2008 Engrossed Amendment Senate version, [here](#)). In the subsequent House amendment, the threshold was raised to \$20,000, where it had been fixed until 2021.

The final version of §6050W was enacted in July 2010, effective for payments beginning on January 1, 2011. Form 1099-K was created for the newly introduced requirements, with the first year of reporting due in 2012. Despite the intent to reduce underreporting, the legislation effectively created a new non-reportable gap in nonemployee service transactions paid through a

TPSO. Prior to enactment of HERA, such transactions were reportable on Form 1099-MISC at the much lower de minimis threshold of \$600, with no exception for the number of transactions. Once §6050W and the corresponding regulations, went into effect, these transactions were no longer subject to the lower thresholds. Rather, transactions that would qualify for both types of reporting were excepted from §6041 reporting under the duplicate reporting rule. See Treas. Reg. §1.6041-(a)(1)(iv). Thus, a small landscaping company hired by local businesses and paid through a site like PayPal may have received a Form 1099-MISC for services performed in 2010. However, the company would no longer receive an information return going forward, unless it conducted over 200 transactions and the aggregate amount of payments exceeded \$20,000 in a calendar year. Although such income would still be subject to taxation, it is not a stretch to envision some individuals switching payment preferences to utilize a TPSO to avoid reporting.

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In March 2021, the American Rescue Plan Act of 2021, found [here](#), was enacted, providing funding for Covid-19 relief. However, the legislation also contained amendments to §6050W, dropping the de minimis threshold to \$600 without regard to the number of transactions, effectively aligning Form 1099-K reporting with Form 1099-NEC (which was detached from Form-MISC in the prior year). The legislation went into effect beginning with returns submitted after December 31, 2022, meaning all payments that occur throughout 2022 are subject to the lower requirement. A provision under the Build Back Better Act, found [here](#), would provide transitional relief for backup withholding in 2022, by maintaining the 200 transaction de minimis threshold. Unfortunately for taxpayers concerned about their reporting obligations, the bill has stalled in the Senate. Thus, as it stands, taxpayers should look to transition their due diligence processes in order to capture Form 1099-K reportable transactions under the lower thresholds for payments made in 2022.

The recently introduced bipartisan bill provides hope for taxpayers that some relief will be passed in time to avoid the expanded reporting requirements. As noted above, the bill is designed to alleviate overreporting and overpayment for taxpayers merely reselling personal goods online, potentially at lower than the original purchase price. In addition, passage of the bill would provide welcome relief to those that have solicited help through crowdfunding campaigns. As discussed in a recent IRS Newswire, seen [here](#), the IRS reminded taxpayers that distributions made through crowdfunding websites are potentially subject to reporting and taxation. Notably, the reduced thresholds for 2022 mean that reporting will likely occur for a much larger number of payments than in years past. However, as pointed out in the IRS Newswire, the American Rescue Plan Act specifically exempted reporting where crowdfunding contributors do not receive goods or services for their contributions. In addition, not all payments are subject to taxation, particularly those which should be treated as gifts.

Despite the advice from the IRS, the reduced threshold could lead to overreporting when the crowdfunding company is unclear whether the contributor has received goods or services for the contribution, leading to unnecessary and costly compliance measures. More importantly, the

overreporting will likely lead to overpayment of taxes amongst crowdfunding recipients, such as those receiving monetary gifts for medical services. Thus, the introduction of H.R. 7079, which would raise the de minimis threshold to \$5,000 and providing transitional relief for 2022, provides some hope for companies, online sellers, and crowdfunding recipients alike.

For more information, please contact:

Kelli Wooten

Managing Director, IRW

+1 404-739-5888

kwooten@kpmg.com

Martin Mueller

Senior Manager, IRW

+1 303-295-8848

martinmueller@kpmg.com

read.kpmg.us/irw

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