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On Thursday, President Barack Obama signed into law the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (HR 4; 1099 Act), which repeals both the expanded Form 1099 information reporting requirements mandated by last year's health care legislation and also the 1099 reporting requirements imposed on taxpayers who receive rental income enacted as part of last year's Small Business Jobs Act (PL 111-240). The Senate approved the bill on April 5, and the House voted in favor of it on March 3.

In March 2010, the Patient Protection and Affordable Care Act (PL 111-148) (part of the health care reform legislation) expanded the 1099 reporting requirements to include all payments from businesses aggregating \$600 or more in a calendar year to a single payee, including corporations (other than a payee that is a tax-exempt corporation), and to include payments made for property, starting with payments in 2012. The 1099 Act repeals the expansion to payees that include corporations by removing IRC § 6041(i). It repeals the expansion to cover payments for property by removing the language "amounts in consideration for property," and "gross proceeds" from section 6041(a). The act also removes IRC § 6041(j), which granted the Treasury secretary authority to issue regulations under section 6041, including "rules to prevent duplicative reporting of transactions." These changes are effective for payments made after Dec. 31, 2011 (when the new rules were to take effect), and they revert those portions of section 6041 to how they were before the Patient Protection and Affordable Care Act.

The Small Business Jobs Act enacted a requirement that individuals who receive rental income issue Forms 1099 to service providers for payments of \$600 or more. It did this by specifying that "a person receiving rental income from real estate shall be considered to be engaged in a trade or business of renting property." The 1099 Act strikes IRC § 6041(h) in its entirety, effective for payments made after Dec. 31, 2010 (the original effective date of section 6041(h)), placing individuals who receive rental income in the same position as if the expanded information reporting requirements had never been enacted.

As a result of the repeal, the 1099 reporting rules continue unchanged: Namely, under IRC § 6041(a), "All persons engaged in a trade or business and making payment in the course of such trade or business to another person" of \$600 or more must report the amount and the name and address of the recipient to the IRS and to the recipient. The Code applies this requirement to payments of "rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income," and the Treasury regulations add, "commissions, fees, and other forms of compensation for services rendered aggregating \$600 or more" as well as interest (including original issue discount), royalties and pensions (Treas. Reg. § 1.6041-1(a)(1)(i)).

This required information must be reported each calendar year for payments made during that calendar year.

The AICPA had advocated strongly for repeal of both provisions and as one of the only organizations advocating against the rental property requirement was a driving force in its repeal. When the Senate passed the bill on April 5 and sent it to President Obama for his signature, AICPA President and CEO Barry Melancon described the repeal as "a victory for taxpayers."

Increased Penalties Not Repealed




The 1099 Act did not repeal the increase in the information reporting penalties that were mandated by the Small Business Jobs Act. The first-tier penalty under IRC § 6721 for failure to timely file an information return was increased from \$15 to \$30, and the calendar-year maximum from \$75,000 to \$250,000. The second-tier penalty was increased from \$30 to \$60, and the calendar-year maximum from \$150,000 to \$500,000. The third-tier penalty was increased from \$50 to \$100, and the calendar-year maximum from \$250,000 to \$1,500,000. For small business filers, the calendar-year maximum increased from \$25,000 to \$75,000 for the first-tier penalty; from \$50,000 to \$200,000 for the second-tier penalty; and from \$100,000 to \$500,000 for the third-tier penalty. The minimum penalty for each failure due to intentional disregard increased from \$100 to \$250.

The increased penalties will be adjusted for inflation every five years.

The Small Business Jobs Act also similarly increased the penalties for failure to provide correct payee statements in addition to the information reporting penalties (IRC § 6722).

The increased penalty amounts were effective Jan. 1, 2011, and remain in effect after the repeal of the expanded 1099 reporting requirements.

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