ELECTRONIC TRANSACTIONS ASSOCIATION
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February 25, 2021

The Honorable John Yarmuth
Chairman
House Committee on the Budget
204-E Cannon House Office Building
Washington, DC 20515

The Honorable Jason Smith
Ranking Member
House Committee on the Budget
204-E Cannon House Office Building
Washington, DC 20515

Dear Chairman Yarmuth and Ranking Member Smith:

The Electronic Transactions Association (ETA) submits these comments in response to manager amendment offered by the Chairman Yarmuth that would lower the Form 1099-K reporting thresholds for "third party settlement organizations" under I.R.C. § 6050W.

ETA is the leading trade association for the payments technology industry, representing over 500 companies that offer electronic transaction processing products and services. ETA's members include financial institutions, mobile payment service providers, payment processors, mobile wallet providers, and non-bank online lenders that make commercial loans, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with secure, convenient, and rewarding payment solutions and lending alternatives – employing millions of Americans and enabling over $22 trillion in payments in 2019.

ETA has serious reservations about the proposed changes to the reporting requirements which would significantly lower the threshold for Form 1099-K reporting. This proposal would dramatically expand the scope of those who receive Form 1099-K and sweep in casual participants in the marketplace. These changes would increase compliance costs for Third Party Settlement Organizations (TPSO) and small businesses. Additionally, the effective date makes compliance extremely difficult for all companies. Furthermore, the proposal introduces a new payment settlement entity category, the Specified Electronic Payment Processor, that is unclearly defined and creates further ambiguity in Section 6050W compliance, which is already challenging for ETA members to comply with given the current law's lack of guidance.

Effective date

This amendment would significantly lower the reporting requirement threshold for TPSO to file 1099-K forms reporting the gross amount paid in settlement by a TPSO to a payee from the uniform federal standard of $20,000 and 200 transactions to $600 regardless of the number of transactions.

We strongly recommend that the Committee refrain from changing the reporting requirements, however if it were to move forward, the effective date would need to be moved to tax year 2023 in order for TPSOs to be able to fully comply. Alternatively, a waiver of penalties and fines for the first two years could be provided if companies demonstrate good faith attempts to comply.

This proposal will drive small and micro businesses to cash payments

This proposal would very likely raise the cost for access to electronic payments for small and micro merchants in the United States. This would incentivize small and micro merchants to move away from cards and toward greater acceptance of cash payments and other alternative forms of payment. Given that electronic transactions offer a more visible audit trail, even for small merchants, the most likely companies that could commit tax fraud are small retailers with mostly cash sales. Having more small and micro businesses relying solely on cash increases the risk of tax fraud and underreporting of sales tax. In addition, incentivizing the use of cash as payment would put some businesses at a disadvantage. For example, drivers with transportation network companies (TNC's) are not allowed to take cash. In addition, some small businesses like cab drivers would be required to have more cash on hand in their daily operations increasing the possibility of their being victims of robbery and other crime. Finally, it is possible the government could receive less in tax than it anticipates due to a move away from electronic payments.

Casual sellers and micro merchants would be affected disproportionally

This proposal would not only lower the threshold for the gross reportable amount a TPSO pays in its settlement to a payee, but it also removes the very important threshold of 200 transactions. The original purpose of the $20,000/200 transactions threshold under Section 6050W is to protect casual sellers and micro businesses having only small sales or a small number of transactions from the administrative burden, compliance challenges, and increased tax return preparation costs connected with receiving a Form 1099-K. Ultimately, we believe that Form 1099-K reporting in these cases under the proposed flat $600 threshold (or $0 in the case of specified electronic payment processors) imposes substantial administrative costs to our businesses and customers without clear value to the IRS.

In addition, casual sellers and micro merchants would be required to provide significantly more information and ultimately bare increased onboarding costs associated with access to electronic payments. Many TPSOs validate identities of their customers as part of the Know Your Customer (KYC) requirements, but the information used to pass a KYC check is frequently not the correct information to report to the IRS. As such, TPSOs spend a considerable amount of time and resources ensuring that they get the correct reporting information. Expanding this as the proposal does, will certainly include a considerable cost impact – a cost that will be passed along to the merchant. Any additional costs are amplified in impact at this scale (i.e., micro-merchants) and would significantly impact the business model and cost structure of providing access to electronic payments.

Pushing the marginal cost even a bit higher will force small merchants to move away from electronic payments and toward greater acceptance of cash payments and other alternative forms of payment, which defeats the very purpose of this amendment.

Benefits of electronic payments for law enforcement

Federal and state law provide an extensive regulatory framework designed to stop money laundering and ensure those records are preserved for use by law enforcement as necessary. The Bank Secrecy Act, 31 U.S.C. § 5311 *et seq.* and its implementing regulations 31 C.F.R. Chapter X, requires TPSOs that are money transmitters to register with the Financial Crimes Enforcement Network (FinCEN), and have effective anti-money laundering compliance programs in place including maintaining records of customer identity for certain funds transfers of $3,000 or more.

Additionally, TPSOs who are money transmitters must also file Suspicious Activity Reports with FinCEN for transactions which are conducted or attempted, at or through the TPSO, and which involves or aggregates funds or assets of $2,000 or more and the TPSO knows, suspects, or has reason to suspect that the transaction is suspicious and file Currency Transaction Reports (CTR) for transactions involving more than $10,000 in cash.

If this proposal were to be enacted as is, many small businesses could turn to cash which is less transparent and thereby hampering the efforts of law enforcement to detect and prevent money laundering and terrorist financing.

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ETA recommends harmonizing the reporting threshold between Form 1099-K and FinCEN's CTRs. Standardizing both thresholds at $10,000 would provide certainty and consistency to financial institutions and TPSOs without hampering small and micro businesses or law enforcement in the United States.

Specified electronic payment processors

ETA is also concerned with the language of "specified electronic payment processor." Under the de minimis threshold, TPSOs are only required to report where payees have more than 200 transactions and settlement amounts exceeding $20,000 annually. In comparison, the current language would lower the annual reporting thresholds for TPSOs to $0 for those who are "specific electronic payment processors."

The impact of a non-existent Form 1099-K reporting threshold would be significant as it would create new reporting responsibilities for every transaction. This section should be clarified to keep the reporting threshold consistent among TPSOs.

* * *

ETA appreciates the opportunity to provide input on this important issue. If you have any questions, please contact me or ETA's Senior Vice President of Government Affairs, Scott Talbott at stalbott@electran.org.

Sincerely,

Jeff Patchen
Manager of Government Affairs
Electronic Transactions Association