



# Form 1099-K Reporting Requirements – What’s New and Are We in Compliance with the Old Rules?

November 8, 2022

## 38<sup>th</sup> Annual TEI-SJSU High Tech Tax Institute

### With you Today

#### IRS Participants

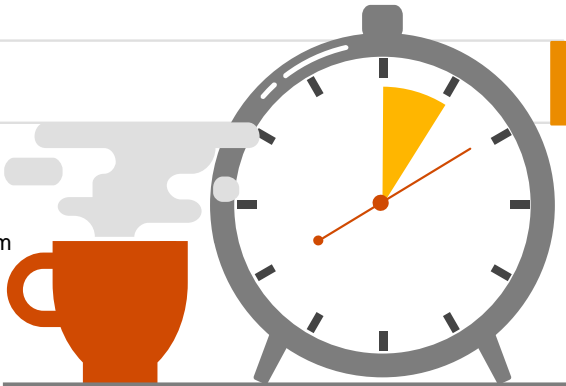
David M. Carl, Sr. Counsel  
IRS Office of Chief  
Counsel, Small Business /  
Self-Employed Division

Vivian Cheng, CPA  
Industry Subject Matter Expert for  
Telecommunications and High  
Technology Industries

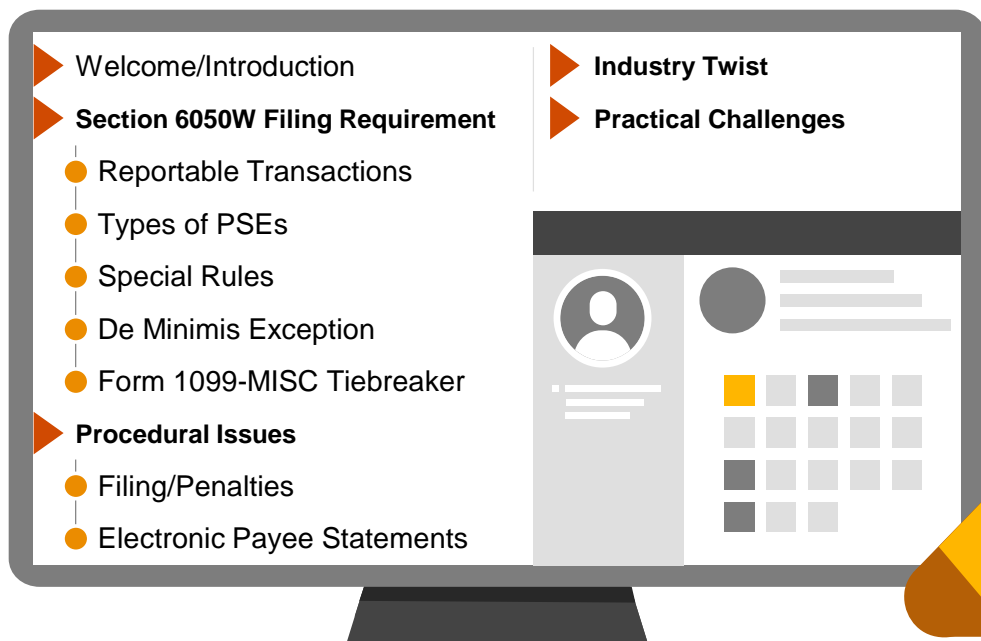
#### Advisor Participants

Aureon Herron-Hinds  
Principal, RSM US LLP  
aureon.herron-hinds@rsmus.com  
(212) 372 1006

Candace B. Ewell  
Principal, PwC  
candace.b.ewell@pwc.com  
(202) 280 9278



# Agenda



- ▶ Welcome/Introduction
- ▶ **Section 6050W Filing Requirement**
  - Reportable Transactions
  - Types of PSEs
  - Special Rules
  - De Minimis Exception
  - Form 1099-MISC Tiebreaker
- ▶ **Procedural Issues**
  - Filing/Penalties
  - Electronic Payee Statements
- ▶ **Industry Twist**
- ▶ **Practical Challenges**

TEI – SJSU High Tech Tax Institute 2022



## Section 6050W Requirements

| TEI-SJSU High Tech Tax Institute 2022

# IRC § 6050W

Section 6050W generally requires **payment settlement entities (“PSEs”)** to file information returns to report payments made to **participating payees** (“payees”) in settlement of **payment card transactions** and **third-party network transactions**.



| TEI-SJSU High Tech Tax Institute 2022

## Reportable Transactions – Payment Card Transactions



**Payment Card Transactions:** Any transaction in which a payment card is accepted as payment.

- **Payment Card:** Issued pursuant to an agreement that provides for a network of unrelated persons who agree to accept such cards as payment.
  - Includes stored value cards (e.g., certain gift cards).
- Payment Card Transactions exclude ATM withdrawals, cash advances, convenience checks



| TEI-SJSU High Tech Tax Institute 2022

# Reportable Transactions – Third Party Network Transactions

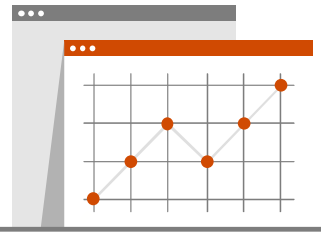


**Third Party Network Transaction:** any transaction settled through a third-party network

- **Third Party Network:** any agreement or arrangement that involves
  - The establishment of accounts with a central organization
    - By a substantial number of providers of goods or services who are unrelated to the organization
    - Who have agreed to settle transactions for the provision of goods and services in accordance with agreement/arrangement
  - **Standards and mechanisms** for settling the transactions; and
  - Agreement/Arrangement **guarantees** payment to the provider of the goods or services



**Third Party Settlement Organization:** provides the third-party network that enables purchasers to transfer funds to merchants.



| TEI-SJSU High Tech Tax Institute 2022

## Who must file? Payment Settlement Entities (PSE)s



**PSE for Payment Card Transactions:**

- **Merchant Acquiring Entity:** Defined as the bank or other organization that is **contractually obligated** to pay a merchant to settle the transaction



**PSE for Third Party Network Transactions:**

- **Third Party Settlement Organization:** Defined as the central organization that has the **contractual obligation** to make payments to participating payees of third-party network transactions



**What does it mean to “make a payment”?**

- Submit instructions to transfer funds to the account of the participating payee in settlement of the reportable payment transaction



| TEI-SJSU High Tech Tax Institute 2022

# Intermediaries



- **Aggregated Payee:** a person who receives payments from a PSE on behalf of one or more participating payees to be distributed to such participating payees
  - **Two Filing Requirements:**
    - PSE required to report the payment to the aggregated payee
    - Aggregated payee required to report the payment(s) to the participating payee(s)
- **Electronic Payment Facilitators (EPFs):** PSE contracts with a third party to make payments in settlement of reportable transactions. EPF makes payments on behalf of a PSE.
  - Example: ISO
  - **Shifts Filing Requirement:** EPF is required to file, not the PSE
    - Even if EPF does not have an agreement/arrangement with the participating payee
    - Even if payment does not come from EPF's account
    - Only requirement is that the EPF is the one **submitting the instructions** to transfer the funds in settlement of the transaction

| TEI-SJSU High Tech Tax Institute 2022

# Special Rules

- If two or more persons qualify as the PSE (contractually obligated to make payment), only the PSE that in fact makes payment in settlement of the reportable transaction is required to file
- Person with filing requirement can enter into an agreement designating another person to file.
  - **But** person with filing requirement is still liable for penalties if the designee fails to file.
- **Example – Payment Processors**
  - PSE can include in contract with an EPF, that the PSE will be required to file the Form 1099-K.
  - However, the EPF will retain potential penalty liability for non-filing.



| TEI-SJSU High Tech Tax Institute 2022

# De Minimis Exception for TPNTs



## Old Threshold

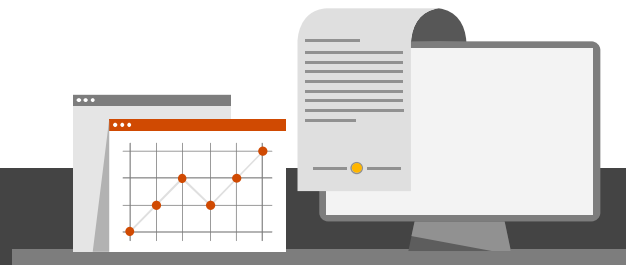
- Only required to file with respect to a participating payee if:
    - Gross transaction amount is greater than \$20,000
- AND**
- More than 200 transactions

\*\*\*\*Backup withholding applies if no TIN and more than 200 transactions



## New Threshold, Effective TY 2022

- Must file if:
  - Amount reported with respect to participating payee exceeds \$600
  - No minimum amount of transactions



\*\*SALT - State reporting standards can vary (\$600, \$1200, old standard)

| TEI-SJSU High Tech Tax Institute 2022

# What is reported?



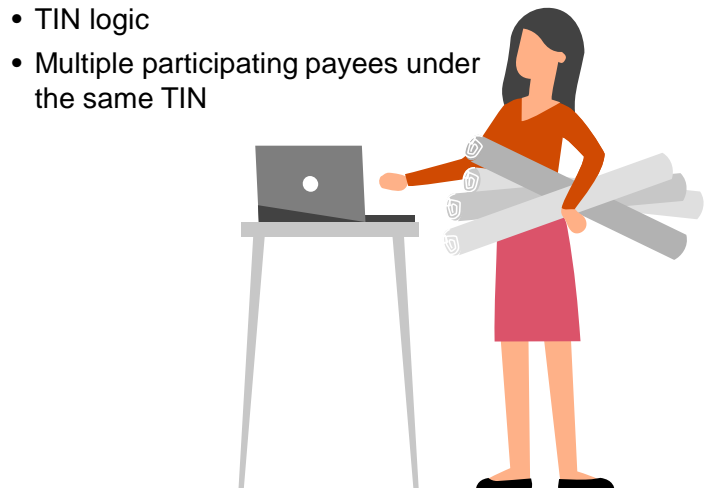
## Gross amount of reportable payment transactions for each participating payee

- **Participating Payee:** any person, including government entities, who accept payment card payments or payments in settlement of a transaction through a third-party network.
- **Gross Amount Reported**
  - Determined as of date of transaction
  - No adjustment for:
    - credits,
    - cash back,
    - discounts,
    - fees,
    - refunds, or
    - any other amounts (including sales tax).



## Data Quality Issues

- Gross amount
- TIN logic
- Multiple participating payees under the same TIN



| TEI-SJSU High Tech Tax Institute 2022

# Which Form do I file?

## Form 1099-Misc or NEC Tiebreaker

- If a payor makes a payment through a PSE that is subject to reporting on either Form 1099-MISC or Form 1099-NEC then no Form 1099-MISC or Form 1099-NEC is required.
- The PSE is viewed as the payor and files a Form 1099-K based on its status. The original payor is not obligated to consider the PSE de minimis standards.
- What happens to:
  - Royalty payments
  - Rental payments



| TEI-SJSU High Tech Tax Institute 2022



Procedural Issues



| TEI-SJSU High Tech Tax Institute 2022

# Filing/Penalties

- Required to file Form 1099-K with IRS
  - Due Feb. 28 or Mar. 31, if filed electronically
  - 30 days extension - Form 8809 and IRS letter (payee statement)
  - SALT deadlines vary by state even if CF/SF participation
- Must furnish the participating payee with a payee statement
- Penalties for
  - IRC 6721 – failing to timely file a correct information return;
    - Name/TIN mismatch
    - Missing TIN
  - IRC 6722 – failure to furnish a timely correct payee statement
- Penalties can be
  - Reduced by correcting errors within 30 days of the due date
  - Abated based on reasonable cause
  - Increased in instances of intentional disregard



| TEI-SJSU High Tech Tax Institute 2022

## Electronic Payee Statements

See Treas. Reg. § 1.6050W-2 (General Instructions to Forms 1099)



**Can furnish the statement to the participating payee electronically if:**

- **Payee consents** to receive 1099-K statement (or all federal tax statements) electronically
- Payee does not withdraw consent effective before statement is furnished
- Furnisher notifies payee of any material changes in hardware or software required to access the statement
- Furnisher makes certain disclosures regarding the furnisher's procedures for consent, withdrawal of consent, updating contact information, and hardware/software requirements



**If the payee is going to be required to access the statement on a website,**

- Furnisher must notify the payee by mail, email, or in person that the document is available for access online

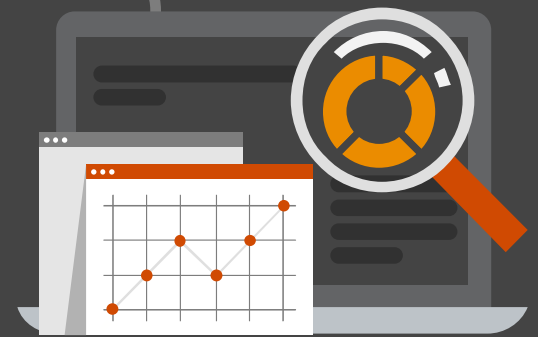


| TEI-SJSU High Tech Tax Institute 2022





## Industry Twist & Practical Challenges



| TEI-SJSU High Tech Tax Institute 2022

# Industry Twist & Practical Challenges



## Internet Payment Service Providers

- Card payments
- ACH Transactions
- Purchase lenders



## Platforms

- Pet walkers
- Technology support
- Hosts
- Drivers and Delivery Services
- Marketplaces and sellers of goods
- Auctions



## Digital Assets, Exchanges, NFTs etc.

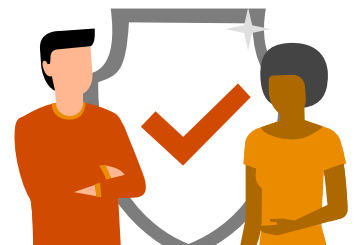


## Issues related to lower reporting threshold –

- Casual users
- Increased reporting costs 5-10X more information returns than in prior years
- Missing TINs



## Lack of standard policies, procedures and controls



| TEI-SJSU High Tech Tax Institute 2022

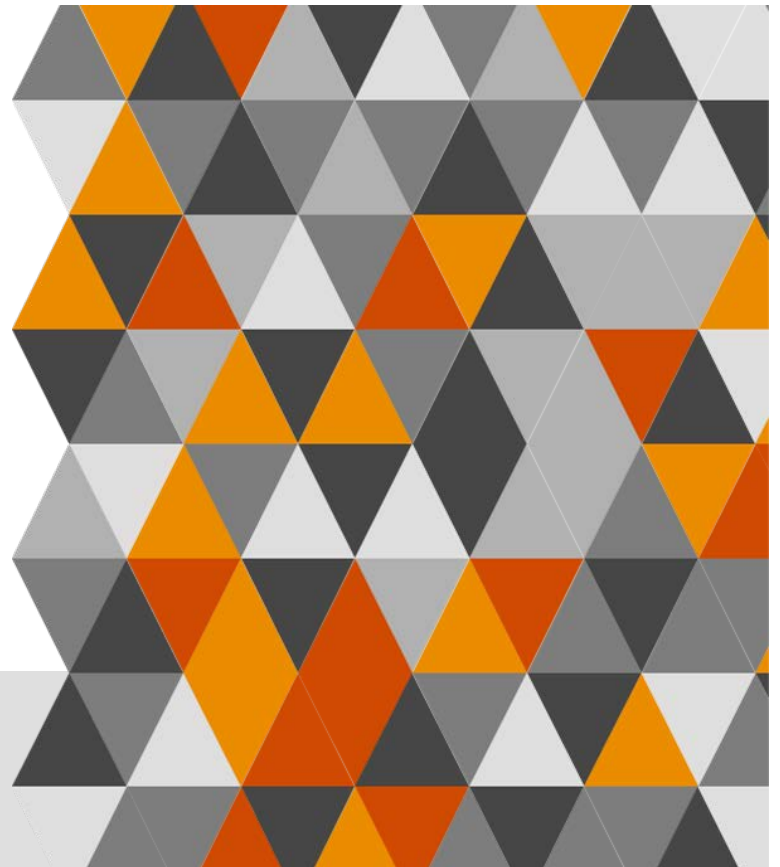


Questions



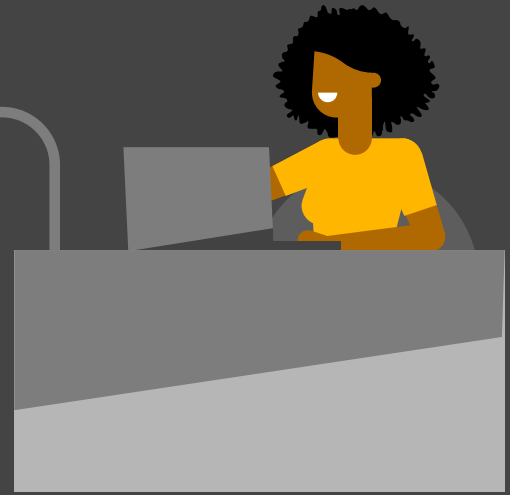
| TEI-SJSU High Tech Tax Institute 2022

**Thank you**





## Appendix



## What Does the IRS Have to Say?

PLR 202112002

PLR 201907006

PLR 201836008

PLR 201719009

PLR 201622011

PLR 201619006

PLR 201604003

PLR 201539025

PLR 201535008

PLR201413002

PLR 201240005

PLR 201219013

PLR 201201001

