CALIFORNIA LAWYERS ASSOCIATION
TAXATION SECTION
2022 WASHINGTON D.C. DELEGATION

INCOME AND OTHER TAXES COMMITTEE

PROPOSAL FOR A TAX FORM FOR EASE AND TRANSPARENCY OF RECONCILING INFORMATION REPORTS ON FORM 1040

This proposal was prepared by Annette Nellen, of the Income and Other Taxes Committee and Taxation Section Executive Committee.[1] The author thanks reviewers Beth Hodess and Elisabeth Sperow for their helpful comments.[2]

Contact Information: Annette Nellen, CPA, Esq.
Professor, Accounting & Finance
College of Business
San José State University
One Washington Square
San José, CA 95192-0066
Telephone: (408) 924-3508
e-mail: annette.nellen@sjsu.edu

[1] The comments contained in this paper are the individual views of the author who prepared them, and do not represent the position of the California Lawyers Association or its Taxation Section.

[2] Although the participants on this project might have clients affected by the rules and tax forms applicable to the subject matter of this paper and have advised such clients on applicable law, no such participant has been specifically engaged by a client to participate on this project.

EXECUTIVE SUMMARY

Occasionally, individuals receive an information reporting form, such as 1099-MISC or 1099-K, that needs to be reconciled to the correct amount to be reported on their tax return. However, income tax forms do not provide a clear and simple technique for taxpayers to explain why an information return they received is not reflected in taxable income exactly as reported by the payor or issuer.

When the figures on reporting forms are not shown on the return as expected, the taxpayer is likely to receive a notice from the Internal Revenue Service ("IRS") about the discrepancy. If the taxpayer's explanation could easily be explained and found on the original return when filed, fewer CP2000 Notices would need to be issued by the IRS and addressed by taxpayers. In addition, such a reconciliation form would remove doubts from taxpayers and tax practitioners on how to report the amount stated in the information return and report its adjustment in a way that allows the IRS to confirm that proper reporting occurred.

This paper recommends creation of a new tax form to allow taxpayers to correct or reconcile information forms when needed. Benefits of such a form include:

1) Remind taxpayers that they should carefully review information returns for accuracy.
2) Provide a clear, standard method to allow taxpayers to timely inform and explain any error or discrepancy to the IRS when they file their Form 1040.
3) Reduce the need for some existing forms such as Forms 8915-F and 4852.
4) Reduce the number of notices the IRS sends to taxpayers reporting missing information that the IRS is aware of from a reporting form that appears to not have been considered on the Form 1040.

To explain the advantages of a new information reporting reconciliation form, examples are provided within these categories:

A. Information required to be reconciled.
B. Information presented for the wrong tax year.
C. Information relevant beyond the named recipient.
D. Information reported is incorrect.

DISCUSSION

I. INTRODUCTION: WHY A NEW FORM IS NEEDED

Sometimes an individual may receive a Form 1099 or similar information report that does not reflect what that taxpayer is required to report on their income tax return. There are numerous reasons for this including (1) an exclusion applies to the reported information, (2) the issuer made a mistake (and is unwilling or unable to fix it by time the recipient's return is due), (3) some information returns are not designed to match what is required to be reported on the return (for various reasons described in this paper), (4) the information applies to multiple taxpayers, or (5) the information doesn't match the recipient's fiscal year.

Internal Revenue Service ("IRS") information technology systems are designed to match information returns, such as Forms W-2 and 1099, to the recipient's tax return. If a match is not possible and it appears that income has been omitted from the return, the IRS is likely to send a notice[3] to the taxpayer proposing additional tax, interest and penalty or seeking an explanation.

When a notice is received, the taxpayer can provide an explanation by sending documents or calling the IRS. The IRS website with FAQs on the CP2000 notice provides that the IRS "can generally accept your information over the phone for incorrectly reported information."[4] The IRS does not have sufficient personnel to answer all phone calls though,[5] so a solution to reduce the need for thousands of phone calls should be pursued.

Income tax forms do not provide a clear and simple technique for taxpayers to explain why an information return they received is not reflected in taxable income exactly as issued.[6] Taxpayers and their tax advisers might attempt a solution such as reporting the figure and then subtracting an adjustment or attaching a statement of explanation. These approaches are awkward because the forms are not designed for such a presentation, incorrect forms may need to be used for the reconciliation, and the IRS may overlook the explanation.

A new form (or schedule) designed to allow for reconciliation of any information report to what is required to be reported on the return would add simplicity and certainty to the tax compliance and administration system. It would also improve transparency by making taxpayers

---

[3] For example, a CP2000 notice may be issued which presents a tax adjustment proposal. *See* IRS Topic No. 652, Notice of Underreported income – CP2000; https://www.irs.gov/taxtopics/tc652.

[4] IR, Understanding Your CP2000 Notice; https://www.irs.gov/individuals/understanding-your-cp2000-notice.

[5] National Taxpayer Advocate, Annual Report to Congress 2021, Most Serious Problem #3: Telephone and In-Person Service notes that for FY2021, only 11 percent of calls to an IRS customer service representative were answered, page 66; https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_03_Telephone.pdf.

[6] Generally, the only information the IRS provides taxpayers about what to do with an erroneous information return is to ask the issuer for a corrected one. *See e.g.*, Form 1099-K FAQ on "What do I do if I think my Form 1099-K is incorrect?" at https://www.irs.gov/payments/general-faqs-on-new-payment-card-reporting-requirements. The issuer might believe the return is correct or there might not be time to receive a corrected form before the return is due. Greater assistance is needed such as with the reconciliation form suggested in this paper.

aware that some forms might contain information that is not included in taxable income[7] and encourage them to devote necessary time to understanding their tax information.

For Fiscal Year 2020, 942,155 Automated Underreporter Program cases were closed (involving underreporter notices such as CP2000). This involved almost 1,600 full-time equivalent positions at the IRS.[8] While much of this work likely involved failure to report information returns, some amount of these notices and IRS employee time was used to send notices and then review information from taxpayers that could have instead been resolved with a new reconciliation form included with the original return and no need to send a notice or further interact with the taxpayer.

This paper provides examples of information reporting problems and how a reconciliation form can reduce the need for many IRS notices and help taxpayers and tax advisers in providing an acceptable and convenient solution to a longstanding reporting need. Suggestions are also offered on how the information reporting error can be avoided in the first place as prevention is a better approach than a workaround remedy.

Examples of common information reporting problems that can be explained with a new tax form are presented within the following categories:

A. Information required to be reconciled.
B. Information presented for the wrong tax year.
C. Information relevant beyond the named recipient.
D. Information reported is incorrect.

II. EXAMPLES OF COMMON INFORMATION REPORTING PROBLEMS TO RECONCILE WITH A NEW TAX FORM

A. Information Required to be Reconciled

Reporting of Non-taxable Income: It is possible that all or a portion of income reported on Forms 1099-MISC or 1099-G is not taxable. For example, a non-profit organization or government agency might issue payments to disaster victims that are excluded under IRC § 139 as disaster relief payments. A tax form to allow the recipient to report the 1099 and state why it is not taxable or only partially taxable would remove uncertainty on the reporting and ideally prevent the IRS from sending a notice inquiring about a seemingly overlooked information return.

Form 1099-K, Payment Card and Third-Party Network Transactions: This form is required per IRC § 6050W, Returns relating to payments made in settlement of payment card and third party network transactions. It was added to the law in 2008 effective for calendar years beginning after December 31, 2010 (P.L. 110-289, 7/30/08). Basically, this provision requires

[7] Examples of situations where an information reporting form includes non-taxable income include a qualified charitable distribution included in a Form 1099-R distribution or a payment excluded under IRC section 139 because it was received for a Federally declared disaster but reported on a Form 1099-G or other form. These and other examples are explained in this paper.

[8] IRS, 2022 Data Book, Table 22; https://www.irs.gov/pub/irs-pdf/p55b.pdf

companies that process credit and debit cards to report the gross amount[9] processed, to both the merchant and the IRS.

Section 6050W also requires reporting by third party settlement organizations. A de minimis rule was provided though where Form 1099-K is only required if the organization processed over $20,000 of payments during the calendar year and over 200 transactions. The American Rescue Plan Act (P.L. 117-2, 3/11/21) lowered this de minimis reporting threshold to require reporting if aggregate payments to a payee exceed $600 for the calendar year, effective for 2022 (forms due in 2023).

Unlike most information reporting forms, the amount reported on Form 1099-K is not reported directly on the recipient's tax return and most likely will not tie to the amount required to be reported as gross receipts. The reasons for the differences: (1) gross amounts processed are reported on Form 1099-K and the recipient might have adjustments for returns, fees, cash back arrangements to card users or other reasons,[10] and (2) the recipient might not have received all revenues from debit and credit cards and third-party settlement organization transactions (there might also be cash and check transactions).

The IRS reviews Forms 1099-K and apparently may compare them to a taxpayer's reported business revenue. For example, in *Legoski*, T.C. Summary Opinion 2021-15, the taxpayer only reported wage income despite receiving a Form 1099-K showing gross payments of $29,501. Per the court: "The IRS Automated Underreporter (AUR) program flagged petitioner's 2017 Form 1040A because of the mismatch between his reported income and the $29,501 shown on the Form 1099-K from Amazon Payments. Respondent issued petitioner a notice of deficiency determining that he had understated his gross income by the unreported $29,501 and was liable for the section 6662(a) penalty. Petitioner reported $2,275 of tax on his 2017 Form 1040A and the notice of deficiency adjusted that amount to $11,526, resulting in the deficiency of $9,251."[11]

In Fact Sheet (FS) 2022-20 (March 2022) on taxability of crowdfunding money, the IRS states:

> If the distributions reported on a Form 1099-K are not reported on the tax return of the recipient of the form, the IRS may contact the recipient for more information. The recipient will have the opportunity to explain why the crowdfunding distributions were not reported on the recipient's tax return.

---

[9] Treas. Reg. § 1.6050W-1(a)(6) ("gross amount means the total dollar amount of aggregate reportable payment transactions for each participating payee without regard to any adjustments for credits, cash equivalents, discount amounts, fees, refunded amounts or any other amounts. The dollar amount of each transaction is determined on the date of the transaction.").

[10] The IRS provides an example of a situation where the amount reported on Form 1099-K may not be 100 percent taxable. *See* FS-2022-20 (March 2020) on crowdfunding which states: "Box 1 on the Form 1099-K will show the gross amount of the distributions made to a person during the calendar year, but issuance of a Form 1099-K doesn't automatically mean the amount reported on the form is taxable to the person receiving the form. As discussed below, the income tax consequences depend on all the facts and circumstances."

[11] Similarly, see *Lakew*, T.C. Summary Op. 2020-27, and *Kahmann*, T.C. Summary Op. 2017-35.

Because there is no line on the tax forms specifically asking taxpayers to report the Form 1099-K information, some taxpayers might not review them and reconcile the amounts to their reported receipts. Or a taxpayer's reaction to the statement above from FS 2022-20 might be to wait for contact from the IRS to offer an explanation. If there were a form for reconciling the Form 1099-K to the business receipts, many more taxpayers are likely to give more consideration to the Form 1099-K. Also, offering the explanation on the original tax return rather than waiting for the IRS to send a notice to reply to is a more efficient use of taxpayer and IRS time and resources.

With the significant drop in the de minimis threshold for filing of Form 1099-K by third party settlement organizations, more taxpayers will receive these forms for 2022 and beyond. While payment transfers not made for goods or services do not get reported on Form 1099-K,[12] mistakes might easily occur such as when a taxpayer (payee) uses their PayPal account for multiple purposes including selling personal use items.[13] Also, when a business payor uses a third-party settlement organization to pay a contractor, the same income is likely to be reported on both Form 1099-K and Form 1099-NEC.

While for an incorrect Form 1099-K, the recipient could try to reconcile the form with the issuer and request a corrected one, the parties might not agree on the correct amount or there might not be enough time. Where a contractor's income is reported on two different forms, the recipient will need to find a way to show that the proper amount of receipts was reported on their return.

A form to show any necessary reconciliation of Forms 1099-K to the true reportable amount would provide taxpayers an opportunity to explain the discrepancies to the IRS at the time of filing, thus providing useful information on the original return without having to issue notices and engage in what can easily be an expensive and time-consuming exchange of letters and phone calls.

For taxpayers who do reconcile their Forms 1099-K to their business receipts, there is no easy way to report this on their original return to readily allow the IRS to match the information. Also, some Forms 1099-K might include non-business items. A special reconciliation form can clarify why the Form 1099-K is higher than the reported business receipts as well as provide a method for doing so that can avoid issues with other taxes. For example, a sole proprietor or their tax adviser might report the total amount on Schedule C as gross receipts and then back out the non-business amount on Schedule C as an expense. However, if a state or local government uses

[12] For additional information, see regulations under section 6050W; Form 1099-K and instructions; IRS website, Understanding Your Form 1099-K at https://www.irs.gov/businesses/understanding-your-form-1099-k; IRS General FAQs on Payment Card and Third Party Network Transactions at https://www.irs.gov/payments/general-faqs-on-new-payment-card-reporting-requirements; and Joint Committee on Taxation, Technical Explanation Of The Modification Of Exceptions Of Reporting Third Party Network Transactions In New Section 9674 Of Subtitle IX Of The America Rescue Plan Act Of 2021, As Amended By The Proposed Manager's Amendment, March 1, 2021, https://www.jct.gov/publications/2021/technical-explanation-of-section-9674-of-hr-1319/.

[13] The IRS Taxpayer Advocate Service cautions individuals to be sure their payment resources such as PayPal and Venmo, are properly set up to "minimize the chance of an error" that might cause a payment to reimburse a friend for a restaurant charge from receiving a Form 1099-K. See TAS Tax Tip: Use caution when paying or receiving payments from friends or family members using cash payment apps, March 8, 2022; https://www.taxpayeradvocate.irs.gov/news/tas-tax-tip-use-caution-when-paying-or-receiving-payments-from-friends-or-family-members-using-cash-payment-apps/.

the gross receipts line for other taxes such as a gross receipts tax or business license tax, it is incorrect and then causes the taxpayer to have to explain the issue to another tax authority.

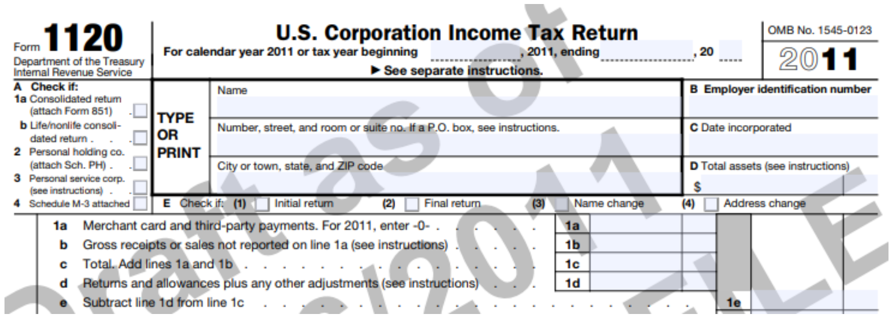
Business returns for 2011 were the first ones for which taxpayers would have received a Form 1099-K. The draft business forms for 2011 included a line for reporting "merchant card and third-party payments" (line 1a) along with a line for gross receipts not reported on line 1a and then a total reported on line 1c.[14] The final forms for 2011 and all subsequent years omitted the proposed line 1a (which also eliminated the need for a total line 1c and likely discouraged many taxpayers from reconciling Form 1099-K which is not directly reported on their tax return).

A line for including the Form 1099-K amounts in gross receipts is not needed because the lines on the business return should be from the taxpayer's records showing the correct figures for business receipts and expenses.[15] A form to reconcile Form 1099-K when it does not tie to reported gross receipts would be a better approach because the reporting of gross amounts is not necessarily the gross receipts of the business (such as when the vendor allows customers to get cash back on credit or debit card purchases). Such reconciliation should allow the taxpayer to provide either a narrative explanation for the differences (such as Form 1099-K includes processing fees retained by the payment processor) or provide a numerical explanation.

Form 14420, Verification of Reported Income (October 2012), is a two-page form to reconcile amounts reported on Form 1099-K with what is reported on the recipient's tax return.[16] It is not clear if this form is still used by the IRS and when it would be used (apparently for examination purposes or in responding to a notice about unreported income related to Form 1099-K[17]). The form requires the taxpayer to list all Forms 1099-K, the filer's name, and the reported gross receipts and to indicate if the information is correct (yes and no boxes). Additional lines are used to add explanations and to estimate the receipts from various types of sales. Elements of this form might be appropriate for a new information return reconciliation form while other portions are not such as the estimates of revenue (actual amounts are already on the taxpayer's business return).

---

[14] See excerpt here obtained from https://web.archive.org/web/20111027164631/https://www.irs.gov/pub/irs-dft/f1120--dft.pdf.



Form 1120 — Department of the Treasury, Internal Revenue Service
U.S. Corporation Income Tax Return
For calendar year 2011 or tax year beginning ...., 2011, ending ...., 20 ....
▶ See separate instructions.
OMB No. 1545-0123 — 2011

A Check if:
1a Consolidated return (attach Form 851)
b Life/nonlife consolidated return
2 Personal holding co. (attach Sch. PH)
3 Personal service corp. (see instructions)
4 Schedule M-3 attached

TYPE OR PRINT — Name; Number, street, and room or suite no. If a P.O. box, see instructions.; City or town, state, and ZIP code

B Employer identification number
C Date incorporated
D Total assets (see instructions) $

E Check if: (1) Initial return (2) Final return (3) Name change (4) Address change

1a	Merchant card and third-party payments. For 2011, enter -0-	1a
b	Gross receipts or sales not reported on line 1a (see instructions)	1b
c	Total. Add lines 1a and 1b	1c
d	Returns and allowances plus any other adjustments (see instructions)	1d
e	Subtract line 1d from line 1c	1e

[15] Taxpayers need to maintain their own proper tax records for many reasons including that not all income is required to be reported on information returns by payors. Also, taxpayers need to maintain records of their business expenses.

[16] *See* Form 14420 instructions at https://www.irs.gov/pub/irs-utl/i14420.pdf.

[17] In 2016, the IRS issued a request for comments on Form 14420 and determining the best use of Form 1099-K information. Federal Register, page 23551 (April 21, 2016) at https://www.govinfo.gov/content/pkg/FR-2016-04-21/pdf/2016-09295.pdf.

Subsequent to the lowering of the filing threshold for Form 1099-K for third party settlement organizations, there have been proposals to return to the higher threshold[18] or raise the $600 threshold.[19] Form 1099-K is designed for reporting of certain business receipts and to lower the tax gap. But as described above, errors may occur in reporting or a reconciliation is needed. A new form to allow Form 1099-K recipients to reconcile this form (as well as other information returns) on their original tax return is a better alternative to reducing information reporting and allowing a higher tax gap.

Form 1099-NEC, Nonemployee Compensation: Generally, Form 1099-NEC is issued by businesses who pay a contractor $600 or more during the calendar year. Taxpayers should reconcile information on Form 1099-NEC with their records. A form to remind them of this and to explain discrepancies would be helpful. Differences may be due to reporting of expense reimbursements included in the Form 1099 or reporting errors due to a refund or discount given or the same revenue reported on both Form 1099-NEC and Form 1099-K.

Form 8915-F, Qualified Disaster Retirement Plan Distributions and Repayments: Form 8915-F is a "forever form" first issued for 2021.[20] It is used to report certain qualified disaster distributions as well as any repayment (recontribution) of these distributions. Form 8915-F is three pages long with 13 pages of instructions. The key purpose of this form appears to be proper reporting of qualified disaster distributions such as allowed by the CARES Act (P.L. 116-136, 3/27/20) where the distribution was reportable ratably over three years (unless the taxpayer chose to report it all in 2020) and to report any repayment (recontribution) of the qualified distribution.

The reconciliation form suggested in this paper should be capable of replacing Form 8915-F. A few lines on the new form could specifically address this topic by directing the taxpayer to list the amount reported on Form 1099-R and, for example, providing instructions to divide that amount by three to report the proper amount with clear directions on the form and instructions that the remaining two-thirds are to be reported over the next two years.[21] An additional line could be added to adjust the reportable amount and reconcile the Form 1099-R where there has been a recontribution in the same year as the distribution.[22]

Likely, Form 8915-F is not needed to report recontributions (which reduce reportable distributions either for the year the repayment is made or an earlier year or later year).[23] If the

[18] *See e.g.*, H.R. 3425, H.R. 3546 and S. 948 of the 117th Congress.

[19] H.R. 7079 (117th Congress) would increase the $600 threshold to $5,000.

[20] The term "forever form" is used in the instructions (page 1) of Form 8915-F. The IRS also notes: "Beginning in 2021, additional alphabetical Forms 8915 (that is, Form 8915-G, Form 8915-H, etc.) will not be issued."

[21] The IRS could use that information to send a reminder to the individual of the income to be reported over the subsequent two years and a reminder of the time frame for repaying it and the income tax consequences of doing so as well as the retirement savings benefit of doing so.

[22] While the issuer could also make this adjustment on Form 1099-R, a recontribution might have been made to a different IRA and the issuer would not be aware of that.

[23] Notice 2020-50 explains the procedures for reporting coronavirus-related distributions" allowed under the CARES Act. Also see the 2020 Form 8915-E (Qualified 2020 Disaster Retirement Plan Distributions and

repayment affects the one-third amount that should be reported in the filing year, that could be reported on a special line added to Schedule 1, *Additional Income and Adjustments to Income*. Instructions to Schedule 1 could explain the reporting and a complex three-page form can be eliminated.

Other: The examples provided above do not represent an exhaustive list. The reconciliation form suggested in this paper should include space to reconcile other forms where needed. This might include where the information was on the wrong form (such as payment to an attorney for services rendered reported on Form 1099-MISC Box 10 rather than on Form 1099-NEC), or gross reporting (such as Form 1099-MISC Box 10) that is greater than taxable receipts.

B. Information Presented for the Wrong Tax Year

Accounting Year and Method Differences: Information returns, such as Form 1099-MISC and Form 1099-NEC, are issued based on a calendar year and cash basis. If the recipient is a fiscal year taxpayer and/or does not use the cash method of accounting, it is likely that the reporting form will not match the income required to be reported on the taxpayer's return. The suggested reconciliation form could include a check box to confirm that the filer uses a fiscal year or an accounting method other than cash with a reminder that they should reconcile the information to ensure they have not overlooked any income or received an incorrect reporting form. There is no need to ask for a reconciliation by the taxpayer on the appropriate assumption that the taxpayer is maintaining proper business records (as required by IRC § 6001). The benefit of asking these questions on the reconciliation reporting form is to reduce or eliminate the need to send a notice about a reporting discrepancy.

Form 1099-C, Cancellation of Debt: The instructions for Form 1099-C provide that receipt of the form does not necessarily mean that the debtor (Form 1099-C recipient) has cancellation of debt income in that year. Per the IRS instructions to the recipient of Form 1099-C:

> If an identifiable event has occurred but the debt has not actually been discharged, then include any discharged debt in your income in the year that it is actually discharged, unless an exception or exclusion applies to you in that year.

There are no instructions on how to report a Form 1099-C when the cancellation of debt income does not pertain to the year for which issued. A tax form to allow a recipient of Form 1099-C to explain whether there was any cancelation of debt income in that year would be beneficial to the taxpayer and the IRS.[24] The instructions to this new form can also remind taxpayers when cancellation of debt income may be excluded under IRC § 108 and the likely need to report such exclusion on Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)*.

Repayments (Use for Coronavirus-Related and Other Qualified 2020 Disaster Distributions)) and Form 8915-F which is first usable for 2021 tax returns.

[24] The fact that a Form 1099-C is required to be issued even when there is no cancellation of debt income in that year is a significant flaw in IRC section 6050P and the regulations warranting a legislative correction as discussed later in this paper.

C. Information Relevant Beyond the Named Recipient

Form 1099-INT, Interest Income: A bank account might be owned by more than one taxpayer yet the bank issuing a Form 1099-INT will issue one form under one Taxpayer Identification Number ("TIN"). The parties owning the account should split the income reporting but then the Form 1099-INT does not tie to the recipient's tax return and an IRS Notice to that taxpayer will likely be issued. This issue can also arise when an account owner dies during the year and interest income is to be split between the decedent and resulting estate. While the recipient can explain the reporting difference on the return, having a recognized form for doing so will help filers know they can do this and provide a consistent reporting approach for the IRS to look for before sending an underreporting notice to the taxpayer.[25]

SMLLC and Similar Situations: Where a single member LLC has a TIN but the income is reported by the owner on Form 1040, the mismatch might result in IRS notices to the LLC. The reconciliation form should include a line to explain this situation.

D. Information Reported is Incorrect

Complex reporting forms: For some information reporting forms with multiple boxes, it is possible the wrong box is used by the issuer.[26] For example, an issuer of a prize might incorrectly report it in a Form 1099-MISC box other than 3 (other income) or issue Form 1099-NEC. Also, use of Form 1099-NEC for non-business income (including "hobby" income) should be noted on the return so the IRS does not expect inclusion of self-employment tax (Schedule SE) on the Form 1040.

While the recipient should request a corrected form from the issuer, there is no guarantee they will receive one or receive it by the return due date or the issuer will agree with the recipient. The ability to clarify the proper type of income on a reconciliation form would be helpful to the taxpayer and the IRS.

Digital assets and new broker reporting starting for 2023: The Infrastructure Investment and Jobs Act (P.L. 117-58) expands broker reporting under IRC section 6045 for "digital assets." This change also requires the broker to report basis. An example of a digital asset is cryptocurrency. Given basis identification information provided in IRS FAQs,[27] it is possible that the reported basis will not tie to what the FAQs allow the cryptocurrency holder to use. A

---

[25] Another consideration for a situation where the named recipient knows in advance that the reported income belongs to additional taxpayers is to expand the use of Form 5754, Statement by Person(s) Receiving Gambling Winnings. This form could be provided to the issuer of Form 1099-INT, such as the bank. The bank would use that information to issue Forms 1099-INT to the appropriate individuals. The Form 5754 is signed by the taxpayer under penalties of perjury which reduces (and ideally eliminates) reporting errors.

[26] The 2013 Report from the Information Reporting Program Advisory Committee (IRPAC) noted several examples of Form 1099-MISC information being reported in the incorrect box. Some of this is eliminated with the creation of Form 1099-NEC but the numerous boxes on Form 1099-MISC and possibly other information reporting forms invites possible misreporting by the issuer. See pages 17 to 20 of the 2013 annual report available at https://www.irs.gov/pub/irs-utl/2013%20IRPAC%20Public%20Report.pdf.

[27] *See* IRS, Frequently Asked Questions on Virtual Currency Transactions, Numbers 39 to 41 (at March 10, 2022) at https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions.

reconciliation form would be one place the recipient could clarify the differences. Form 8949, *Sales and other Dispositions of Capital Assets*, is another place for such clarification.

III. New Tax Form Should Not Distract from Needed Law Changes

The need for a recipient to reconcile or correct an information return might be due to a flaw in the tax law governing the issuance of the particular return. Such flaws should be corrected rather than patched with the reconciliation form recommended in this paper (although the form should cover these flaws pending a law change).

A tax rule with a notable flaw is IRC § 6050P on information reporting for cancellation of debt. The general rule is that for a discharge of debt of $600 or more, certain entities must issue a return per IRS regulations stating the debtor's name, address, TIN, discharge date and amount and other information the IRS may require. Treasury Regulation § 1.6050P-1(a)(1) states though that "a discharge of indebtedness is deemed to have occurred … if and only if there has occurred an identifiable event … whether or not an actual discharge of indebtedness has occurred."

Courts have described the issue as caused by "varying degrees" of discharge such as in whole or part and discharge versus actual discharge. The seven identifiable events listed in the regulations requiring the creditor to issue Form 1099-C include situations where there has been no actual discharge.[28] Several courts have noted: "The issuance of a Form 1099-C is an identifiable event, but it is not dispositive on an intent to cancel indebtedness."[29]

As explained earlier (II.B.) the 1099-C instructions state that despite receiving a Form 1099-C, the cancellation of debt income might not belong in the year for which the form was received. This poses the following problems for both the debtor and the IRS:

1) Uncertainty: The debtor may not know or realize when the debt is truly cancelled. For example, assume the debtor received Form 1099-C for 2021. However, the creditor or successor continued to issue letters or call about debt payment in 2021 and 2022. Thus, the debt was apparently not cancelled in 2021. Will the debtor know what future year is the proper one when the creditor might no longer reach out for collection? Or the debtor might forget about the debt and reporting of the cancellation of debt income. At some point, the statute of limitations will close, and this income will never be reported.

---

[28] For example, see *Gericke v. Truist*, No. 20-3053 (DC NJ, 2021). The court described the application of § 6050P and the regulations as requiring Truist (creditor) "to file the Form 1099-C to report the event, even though the debt was not discharged at that moment." The court suggests that the rationale for issuance of Form 1099-C despite no actual discharge is to provide "some sense of repose to debt disputes that otherwise, … , would persist for decades on end." "At oral argument, Counsel for [debtor] argued that, instead, [creditor] should be forced to wait the full twenty years before issuing the Form 1099-C, during which time [the creditor] would, Counsel conceded, continue to pursue [debtor] over a debt that all parties seem to recognize is unlikely to ever be repaid in full. The definition of discharge, a creature of the Tax Code, as the regulations explain, provides a semblance of repose and finality to such disputes as between debtors and creditors. [Debtor's] interpretation would lead to an absurd result."

[29] *Owens*, T.C. Memo. 2002-253; *Kleber*, T.C. Memo. 2011-233; *Bacon*, T.C. Summary Op. 2015-15; and others.

2) Statute of Limitations Issue: In a 2012 case, the Tax Court found that a debt was cancelled in 2001 rather than in 2008 when a successor creditor issued Form 1099-C to the debtor. Thus, the court found that the taxpayer had no cancellation of debt income in 2008 (and the statute of limitations prohibited a tax assessment for 2001).[30]

To simplify the law for both creditors and debtors, and reduce the tax gap, the tax law should be changed to only require issuance of Form 1099-C (and Form 1099-A), for the year in which the creditor has truly terminated collection activity and written off the debt. This may also require modification to non-tax laws such as those dealing with lending and consumer protection.

Another example of a law change (by statute or regulation) is to provide clarity on what should be reported on Form 1099-NEC for services rendered. For example, if the payor/service recipient also paid expenses of the service provider, should that be reported on Form 1099-NEC (or perhaps reported separately from pure service income)?

IV. Conclusion

A new tax form to allow taxpayers to reconcile information reports to tie to reportable amounts should provide the following benefits:

1) Remind taxpayers that they should carefully review information returns for accuracy.
2) Provide a clear, standard method to allow taxpayers to timely inform and explain any error or discrepancy to the IRS when they file their Form 1040.
3) Reduce the need for some existing forms such as Form 8915-F, *Qualified Disaster Retirement Plan Distributions and Repayments*; and Form 4852, *Substitute for Form W-2, Wage and Tax Statement*, or Form 1099R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's Insurance Contracts, Etc*.[31]
4) Reduce the number of notices the IRS sends to taxpayers reporting missing information that the IRS is aware of from a reporting form that appears to not have been considered on the Form 1040.

These benefits will help the federal income tax better meet the following principles of good tax policy.

- Certainty: Taxpayers will know how to report and reconcile/explain information reporting forms when necessary.
- Effective Tax Administration: Fewer notices will need to be sent by the IRS.
- Simplicity: A reconciliation form and its instructions will make it easy to report clarifications when needed.

[30] *Stewart*, T.C. Summary Op. 2012-46. Similarly, see *Bacon*, T.C. Summary Op. 2015-15.

[31] Form 4852 is used when an individual is unable to obtain Forms W-2 or 1099-R from the issuer or has received an incorrect one.

- Transparency: Taxpayers will gain insight as to how and why information reporting errors may occur and, hence, appreciate the necessity of reviewing information returns received for accuracy.[32]

No doubt, we already have numerous income tax forms and schedules. Yet, for the reasons explained in this paper and summarized above, an information reporting reconciliation form is worth adding to improve tax administration and compliance.

[32] The 2021 Schedules 1, 2 and 3 offer good examples of improved transparency. Several more lines were added to each form to list, for example, the numerous types of adjustments to income and for adjusted gross income were added to Schedule 1. When individuals see that detail, they have better insights as to what needs to be reported and where, and they also learn more about the design and operation of the Federal income tax.