

## TEI Denver

### *State Tax Information Reporting and Disclosure Requirements*

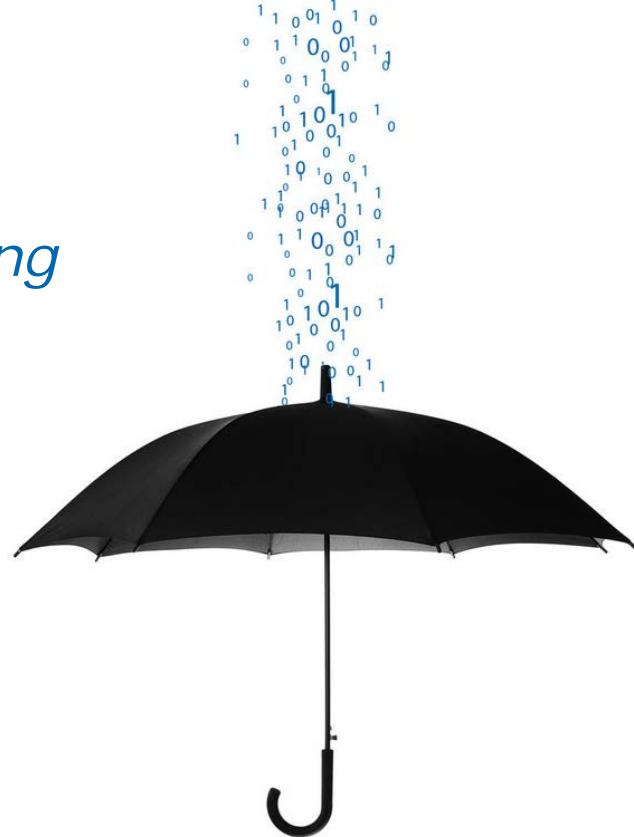
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Michele Borens

*Partner*

Jeffrey A. Friedman

*Partner*



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## Agenda

- Overview
- 1099 reporting requirements
  - Expansion of state 1099 reporting requirements
- Pending legislation
  - Seller disclosure requirements
- State income tax information requirements

# Learning Objectives

- Understand 1099 reporting requirements, including the expansion of state requirements.
- Review pending legislation involving seller disclosure requirements.
- Review state income tax disclosure requirements.

## Polling Question

What type of work from home person are you?

- A. More time to sleep
- B. Always working
- C. More time to snack
- D. More time with pet
- E. All of the above



# Overview



## Overview

- Information reporting requirements have increased significantly in recent years
- Information may be requested for approval for certain deductions, apportionment provisions and other benefits
- Information requested may be to evaluate the effectiveness of certain credit and incentive programs
- States have enacted separate 1099 reporting requirements
- Legislation is being proposed in numerous states which would require certain disclosures for consumer protection purposes

# 1099 Reporting Requirements





## 1099 Reporting - Generally

- Section 6041 of the Code generally imposes an information reporting requirement on any person engaged in a trade or business and pays \$600 or more in a single taxable year to a single payee
  - Payments required to be reported are fixed or determinable income or compensation
  - Under current law, payments to corporations, financial institutions and exempt organizations generally are not required to be reported





# 1099 Reporting

Different forms for different types of payments

- **1099-MISC:** Payments, in the course of your trade or business
- **1099-INT:** Interest on a business debt to someone (excluding interest on an obligation issued by an individual)
- **1099-DIV:** Dividends or other distributions to a company shareholder
- **1099-R:** Distribution from a retirement or profit plan or from an IRA or insurance contract
- **1099-K:** Payments to merchants or other entities in settlement of reportable payment transactions, that is, any payment card or third party network transaction

# State 1099 Reporting Requirements



# State 1099 Reporting

## Overview

- States generally require 1099 reporting if there is state tax withholding for residents or if the source of the 1099 transaction was in the state
- States may require various types of returns to be filed:
  - Form W-2, for employee wages
  - Form 1099-NEC, nonemployee compensation
  - Form 1099-MISC, miscellaneous information
  - Form 1095, health coverage
  - Form W-2G, gambling income

# State 1099 Reporting

## Overview

- Some states require separate filing of 1099s with the state
- Thus, any 1099s that have to be filed with the IRS may also be required to be separately filed with certain state taxing authorities
- State thresholds and due dates may be different
- Penalties may apply
- Other states participate in the Combined Federal/State Filing Program

# State 1099 Reporting

## The Combined Federal/State Filing (CF/SF) Program

- Established to simplify information returns filing for payers.
- Through CF/SF, the IRS electronically forwards information returns (original and corrected) to the 30 participating states.
- The following information returns may be filed under the CF/SF:
  - Form 1099-B, Proceeds from Broker and Barter Exchange Transactions
  - Form 1099-DIV, Dividends and Distributions
  - Form 1099-G, Certain Government Payments
  - Form 1099-INT, Interest Income
  - Form 1099-K, Payment Card and Third Party Network Transactions
  - Form 1099-MISC, Miscellaneous Income
  - Form 1099-OID, Original Issue Discount
  - Form 1099-PATR, Taxable Distributions Received From Cooperatives
  - Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
  - Form 5498, IRA Contribution Information
  - Note: Form 1099-NEC, Nonemployee Compensation is not part of the Combined Federal/State Filing (CF/SF) Program

# State 1099 Reporting

## CF/SF Program Participating States

1. Alabama
2. Arizona
3. Arkansas
4. California
5. Colorado
6. Connecticut
7. Delaware
8. Georgia
9. Hawaii
10. Idaho
11. Indiana
12. Kansas
13. Louisiana
14. Maine
15. Maryland
16. Massachusetts
17. Michigan
18. Minnesota
19. Mississippi
20. Missouri
21. Montana
22. Nebraska
23. New Jersey
24. New Mexico
25. North Carolina
26. North Dakota
27. Ohio
28. Oklahoma
29. South Carolina
30. Wisconsin

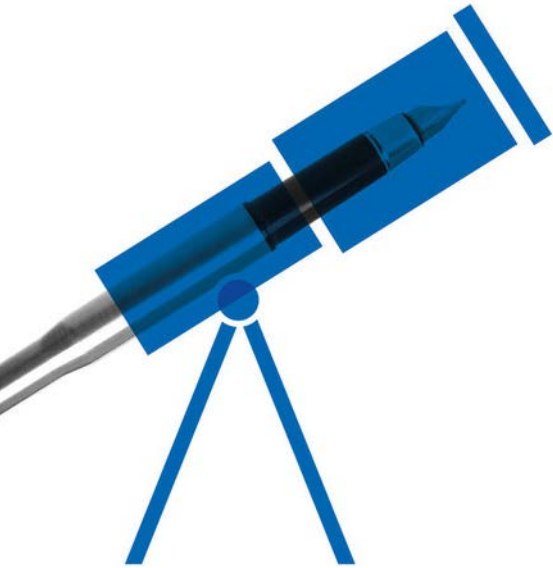
# Expansion of State 1099-K Reporting Requirements

## Form 1099-K, Payment Card and Third Party Network Transactions

- This is an IRS information return used to report certain payment transactions “to improve voluntary tax compliance”
- Form 1099-K is issued:
  - for payment card transactions (e.g., debit, credit or stored-value cards), and/or
  - in settlement of third-party payment network transactions above the minimum reporting thresholds of
    - gross payments that exceed **\$20,000**, AND
    - more than **200** such transactions

# 1099-K Reporting Requirements

- In the last 2-3 years states have enacted legislation to require separate 1099-K reporting requirements
- Even states that participate in the combined federal/state filing program are requiring separate 1099-K reporting





# 1099-K Reporting Requirements

- Currently, about 15 states have separate 1099-K reporting requirements:
  - States are seeking 1099-Ks more quickly and do not want to wait for the IRS to provide them
    - Requirements to file 1099-Ks within 30 days of federal filing
  - Lower thresholds from federal requirements (typically \$600 instead of \$20,000)
  - Penalties associated with noncompliance



# 1099-K Reporting Requirements

MD Code, Tax-Gen, § 10-825(b)

- Maryland requires third-party settlement organizations to report the gross amount of reportable payment transactions made to the participating payee if the amount of reportable payment transactions meets or exceeds \$600
  - Similar rules in D.C., Illinois, and Vermont
- Much lower than the federal threshold of \$20,000
- Report due to Comptroller at least 30 days before the federal filing deadlines for the information
  - Failure to file penalty is \$50 per violation
- Effective June 1, 2020

# 1099-K Reporting Requirements

Fla. Stat. § 212.134

- Florida requires third-party settlement organizations to report all information required for federal purposes to any participating payee and the Department of Revenue
  - Uses the federal threshold of \$20,000
  - Report due to the Department within 30 days of the federal deadlines
  - Failure to file penalty is \$1,000 for each failure under 30 days with an additional \$1,000 penalty for each subsequent month of noncompliance, up to \$10,000 annually
  - Effective Jan. 1, 2021

# 1099-K Reporting Requirements

VA Code Ann. § 58.1-356

- Virginia requires third-party settlement organizations to report all information required for federal purposes to any participating payee and the Department of Revenue if the amount of reportable payment transactions meets or exceeds \$600
  - Much lower than the federal threshold of \$20,000
- Report due to the Department within 30 days of the federal deadlines
- Department has discretion to waive electronic reporting obligation
- Effective Jan. 1, 2020

# Pending Legislation



## Seller Disclosure Bills

Targeting high-volume third-party sellers

- Model legislation was introduced in at least a dozen states to require disclosure of third-party seller information
- The bills would require online marketplaces to obtain and verify bank account and identity information for “high-volume third-party sellers”
  - Defined as 200 or more sales within a 24 month period or \$5,000 in gross revenues
  - Marketplace also required to disclose certain information to customers on product listings and provide mechanism for customers to report suspicious activity
  - Very quick deadlines

# Seller Disclosure Bills

Targeting high-volume third-party sellers

Arkansas SB 470	Florida HB 1223	Florida SB 1072	Georgia HB 327	Iowa SSB 1233
Kansas HB 2433	Massachusetts HD 3146	Nebraska LB 603	Nevada SB 314	Oklahoma HB 1627
Tennessee HB 709	Tennessee SB 528	Texas HB 3852	Washington HB 1543	West Virginia HB 2908

# Seller Disclosure Bills

Targeting high-volume third-party sellers

- The required information required to be collected:
  - Bank account information, or the name of the payee for payments issued by the online marketplace if the seller does not have a bank account;
  - Contact information, including a valid email address and working phone number;
  - A valid government issued photo ID, record, or tax document;
  - A business tax ID number or a taxpayer ID number; and
  - Notification to the online marketplace whether the seller is advertising or offering the products sold on the marketplace on other websites
- Information must be verified by online marketplace





# Seller Disclosure Bills

Targeting high-volume third-party sellers

- Online marketplace must send a notification to each high-volume third-party that requires the seller to notify the online marketplace of any changes in the information that it previously provided or certify that there are no changes
  - Must be done at least on an annual basis.
- If this does not occur within 3 days of the seller receiving this notification, the online marketplace must suspend the seller until the seller complies with this requirement



# Seller Disclosure Bills

Washington HB 1543

- Online marketplaces shall require that any high-volume third-party seller on the online marketplace provide the online marketplace within 24 hours of becoming a high-volume third-party seller.
- An online marketplace shall disclose to consumers, in a conspicuous manner on the product listing of any high-volume third-party seller, a reporting mechanism that allows for electronic and telephonic reporting of suspicious online marketplace activity to the online marketplace.



# Seller Disclosure Bills

Washington HB 1543

- "Online marketplace" means any electronically based or accessed platform that: (i) Includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in the United States; and (ii) hosts one or more third-party sellers.
- A violation constitutes an unfair or deceptive act or practice. The attorney general shall enforce this act.



## Polling Question

How do you feel about seller information disclosure bills?

- A. Great idea!
- B. Horrible idea
- C. Ambivalent



# Georgia

HB 428 (died in finance committee when legislature adjourned)

- This bill would add an information reporting requirement to the Georgia High Tech Exemption
- Each high-technology company that has been issued a certificate of exemption shall report annually to the commissioner a list of the facilities in which all exempt computer equipment is incorporated, as well as the amount of taxes exempted, during the preceding calendar year
  - The commissioner shall not reissue a certificate of exemption to any high-technology company that has failed to comply with this reporting requirement
  - Effective Jan. 1, 2022

## New York

SB 2139 (Filed Jan. 20, referred Investigations and Government Operations w/ no progression)

- This bill would require qualified opportunity funds to report on the impact of their investments in different qualified opportunity zones, and require the comptroller to submit an annual report on the effectiveness of opportunity zones
  - Annual reporting requirement: taxpayer name, address, taxpayer ID, date and amount of qualified investment, date of the disposition of investment
  - Penalties associated with failure to comply

## New York

AB 6003 (Filed Mar. 4, referred to Housing w/ no progression)

- Requires short-term rental hosting platforms to develop and maintain a report related to short-term rental unit guest stays that the hosting platform has facilitated in the state for two years following the end of the calendar year in which an individual rental stay occurred
  - The report must include: the dates of each stay and the identity and number of guests, the cost for each stay, including relevant tax, the physical address, including any unit designation, of each short-term rental unit booked, the full legal name of each short-term rental unit's host, and each short-term rental unit's registration number

## Pennsylvania

HB 976 (Filed Mar. 19 and referred to Tourism Committee w/ no progression)

- This bill would require online home sharing and short-term rental companies doing business in Pennsylvania to register with the state and share information with taxing authorities to ensure “hosts” are collecting state and county hotel taxes
  - The bill requires hosting platforms to, on a quarterly basis, provide the Department with a list of hosts and hotels and will be subject to a penalty of \$1,000 per listing for failure to register or update the list



# State Income Tax Disclosure Requirements





## Overview of Income Tax Disclosures

- State income tax disclosure requirements can vary greatly
- States increasingly seeking more information regarding a taxpayer's multistate apportionment approaches, receipt of incentives, and intercompany transactions
- Information obtained by states often used to find new ways of increasing a taxpayer's liability

## 51-State Apportionment Schedule

- Auditors may ask a taxpayer to provide 51-state apportionment schedule to demonstrate that the taxpayer is sourcing 100% of its income.
- Rules in other states not relevant to audit state.
- Consider whether the risk of providing schedule outweighs the potential benefits.
- Consider state information sharing.





## Intangible Expense Disclosure

- States often require disclosure of certain information to deduct specific types of related party expenses.
- For example, Tennessee requires taxpayers to disclose intangible expenses paid to affiliates when reporting income.
- The reporting is required regardless of whether those expenses are deducted in arriving at income subject to excise tax.
- Payments must be reported even if the affiliate being paid is exempt from Tennessee excise tax or does not have substantial nexus with the state.

# Requests for Alternative Apportionment

- Requests for alternative apportionment may be made if a state's standard apportionment formula fails to represent a taxpayer's business activity in the state
- Party invoking alternative apportionment generally has the burden to show:
  - The approximation provided by the standard formula is not a fair representation, and
  - The proposed alternative is reasonable
    - See:
      - *General Mills, Inc. v. Franchise Tax Bd.*, 208 Cal.App.4th 1290 (2010)
      - *State Tax Assessor v. Kraft Foods Group, Inc.*, 2020 ME 81 (2020)

## Special Apportionment Rules

Maryland – MD Code, Tax - General, § 10-402(d)(1)(ii)

- Maryland allows a “manufacturing corporation” to use a single sales factor
  - State is moving toward single sales factor for all corporations in 2022
- For tax years 2006-2010, manufacturers were required to file an information report showing the difference in tax owed as the result of using the single sales factor apportionment method vs. the prior three-factor, double-weighted sales factor apportionment method

# Request to Change filing Method

VA Code Ann. § 58.1-442(C)

- Virginia requires taxpayers to compute difference between existing method and consolidated method when taxpayers want to change method
- Permission to change method will be granted if:
  - For the taxable year immediately preceding the taxable year for which the new election would be applicable, there would have been no decrease in tax liability computed under the proposed election as compared to the affiliated group's former filing method; and
  - The affiliated group agrees to file returns computing its Virginia income tax liability under both the new filing method and the former method and will pay the greater of the two amounts for the taxable year in which the new election is effective and for the immediately succeeding taxable year

## Polling Question

How concerned are you about information reporting/disclosures?

- A. Keeps me up at night
- B. Monitoring, but not worried
- C. Not at all







*Contact Us*

**Michele Borens**

*Partner*

Eversheds-Sutherland (US) LLP

202.383.0936

micheleborens@eversheds-sutherland.com

**Jeffrey A. Friedman**

*Partner*

Eversheds Sutherland (US) LLP

202.383.0718

jefffriedman@eversheds-sutherland.com

**eversheds-sutherland.com**

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