

Guidance Under §§162(f) and 6050X Regarding
1098-F Filings with Multiple Payees

Sections Referenced Are to the Internal Revenue Code Unless Otherwise Noted.

Brief History

In 2017, the Tax Cuts and Jobs Act (TCJA) was enacted. TCJA §13306(b) amended the operation of §162(f) by adding §6050X, a procedural addition to the IRC. The new §6050X added the filing requirement for fines levied by government entities.

See Denial of Deduction for Certain Fines, Penalties, and Other Amounts, Related Info. Reporting Requirements, Federal Register 86/11 (January 19, 2021) p.4970

Summary

Deductions for fines, penalties, and other amounts owed to government entities are disallowed under §162(f)(1). This includes any amounts owed from the result of suits or agreements relating to the violation, potential violation, or investigation regarding the violation of any law. §162(f)(2) provides exceptions to the rule.

If no §162(f)(2) exceptions are applicable then §6050X reporting requirements must be applied. §6050X requires the filing of 1098-F forms with the IRS, and the furnishing of a written statement to the Payor detailing the same information listed on the 1098-F filing.

In the event, that there are multiple Payees, such as amounts owed arising from suits, settlements, or agreements, the filing government entity must enter the aggregate amount the Payor must pay pursuant to the suit, settlement, or agreement.

See Notice 2018-23 Transitional Guidance Under §§162(f) and 6050X with Respect to Certain Fines, Penalties, and Other Amounts.

See also Questions and Answers About the Reporting Requirement Under Section 6050X, IRS

Who Must File

An “appropriate official” is required to file a 1098-F on behalf of a government entity. Any employee of the filing government entity assigned the task of filing a 1098-F is an “appropriate official.”

See 26 CFR §1.6050X-1(f)(1)

When Must a 1098-F Be Filed

A government entity must file a 1098-F if:

- (1) It is a party to a suit with respect to which there has been a court order or an agreement with a payor;
- (2) On the date the suit or agreement became binding under applicable law, the suit or agreement requires the payor to pay the government entity an aggregate amount equal to or in excess of \$50,000; and
- (3) The payment is with respect to a violation of a law or an investigation or inquiry into the potential violation of law.

The amount required to be paid includes the cost to provide services or to provide property. The amount required to be paid does not include late payment penalties or interest.

A separate 1098-F must be filed with respect to each payor who is a party to a suit, order, or agreement.

NOTE 1

If the amount owed under a suit or agreement does not have a dollar amount for some or all the amounts owed, the government entity still must file a 1098-F if it reasonably believes that the aggregate amount owed will equal or exceed \$50,000.

NOTE 2

If the owed amount under a suit or agreement is amended, the filing government entity is NOT required to file a subsequent 1098-F with respect to that amendment.

NOTE 3

A 1098-F must be filed even if the Payor is a tax-exempt entity.

See Questions and Answers About the Reporting Requirement Under Section 6050X, IRS

Furnishing/Filing of 1098-F Forms

Filing with the IRS

MAIL: If the 1098-F form is filed via mail, then the IRS must receive the 1098-F on or before February 28 of the year following the calendar year the suit or agreement became binding under applicable law.

ELECTRONIC: If the 1098-F form is filed electronically, then the IRS must receive the 1098-F on or before March 31 of the year following the calendar year the suit or agreement became binding under applicable law.

Furnishing Written Statements to Payor(s)

The government entity must furnish a written statement with the same information provided to the IRS on the relevant 1098-F filing on or before January 31 of the year following the calendar year in which the suit or agreement became binding under applicable law.

See Instructions For 1098-F, IRS

Tax Identification Number (TIN)

A Taxpayer Identification Number (TIN) is a numerical code assigned to individuals or entities for the administration of tax laws. Foreign entities may have an Employer Identification Number (EIN) instead of a TIN.

Types of TINs Include:

- Social Security Number (SSN);
- Employer Identification Numbers (EIN);
- Individual Taxpayer Numbers (ITIN);
- Prepare Taxpayer ID Numbers (PTIN)

See Instructions for 1098-F, IRS.

Inability to Find Payor TIN

Under §1.6050X-1(a)(3), a Payor is required to furnish its TIN for inclusion on a 1098-F filing. The Payor may be subject to a fine for a failure to furnish its TIN under §§6723, 6724(d)(3), and 301.6723-1. The TIN may be requested in any manner, including orally, in writing, or electronically.

A W-9 Request for Taxpayer Identification Number and Certification form may be used. A government entity must still file a 1098-F even if it lacks knowledge of the Payor's TIN.

See §1.6050X-1(a)(3) & 26 CFR 301.6109-4.

See also §§6273, 6273(d)(3), & 301.6273-1;

Truncating Payors' TIN

- Truncation of a Payors' TIN is NOT allowed on 1098-F filings with the IRS.
- Truncation of a Payor's TIN is allowed in written statements provided to the Payor.

Once truncated, a Payor's TIN becomes a Truncated Taxpayer Identification Number (TTIN).

For example: In the case a Payor's SSN is being used to satisfy the TIN on a 1098-F, the government entity may truncate the Payor's TIN on the written statement provided to the Payor but may not truncate the Payor's TIN on the 1098-F filing.

See Instructions For 1098-F, IRS;

See also IRS Truncated Taxpayer Identification, Federal Register 79/135 (July 14, 2014) p. 41127

Multiple Payees

In amounts owed from suits, settlements, and agreements payable to multiple Payees, the filing government entity must enter the aggregate amount the Payor must pay pursuant to the suit, settlement, or agreement.

For Example: In a case where a Payor must pay \$100,000 to five government entities, and those government entities all are entitled to a 20% portion of the amount owed. Then each of those government entities shall file their own 1098-F reporting the \$100,000 amount owed, instead of the \$20,000 amount they will collect individually.

See also Questions and Answers About the Reporting Requirement Under Section 6050X, IRS
