Quickfinder®

Individuals—Special Tax Situations Quickfinder® Handbook (2024 Tax Year)

Post-publication Updates

Instructions: This packet contains "marked up" changes to the pages in the *Individuals—Special Tax Situations Quickfinder® Handbook* that were affected by developments after the *Handbook* was published. To update your *Handbook*, you can make the same changes in your *Handbook* or print the revised page and paste over the original page.

- The location of:
  1) The taxpayer's permanent home;
  2) His family;
  3) His personal belongings, such as cars, furniture, clothing, and jewelry;
  4) His current social, political, cultural, professional, or religious affiliations;
  5) His business activities;
  6) The jurisdiction in which the taxpayer holds a driver's license;
  7) The jurisdiction where the taxpayer votes; and
  8) Charitable organizations to which the taxpayer contributes.

Individuals who personally applied or took other steps to change their status to that of a permanent resident or who had an application pending for adjustment of status cannot claim a closer connection to a foreign country.

Tax treaty exception. Tax treaty provisions can override the IRC Sec. 7701(b) definition of residency. The income tax treaty must contain a provision that provides for resolution of conflicting claims of residence (tie-breaker rule). If the taxpayer is treated as a resident of a foreign country under a tax treaty, he is treated as a nonresident alien for purposes of computing his U.S. income tax.

List of U.S. Income Tax Treaties
Source: IRS website

Armenia[1]	Finland	Latvia	Slovenia
Australia	France	Lithuania	South Africa
Austria	Georgia[1]	Luxembourg	Spain
Azerbaijan[1]	Germany	Malta	Sri Lanka
Bangladesh	Greece	Mexico	Sweden
Barbados	Iceland	Moldova[1]	Switzerland
Belarus[1,4]	India	Morocco	Tajikistan[1]
Belgium	Indonesia	Netherlands	Thailand
Bulgaria	Ireland	New Zealand	Trinidad and Tobago
Canada	Israel	Norway	Tunisia
Chile	Italy	Pakistan	Turkey
China[2]	Jamaica	Philippines	Turkmenistan[1]
Cyprus	Japan	Poland	Ukraine
Czech Republic	Kazakhstan	Portugal	United Kingdom
Denmark	Korea, Rep. of (South)	Romania	Uzbekistan[1]
Egypt	Kyrgyzstan[1]	Russia[3]	Venezuela
Estonia		Slovak Republic	

[1] This country is included in the treaty with the Commonwealth of Independent States, formerly known as the Union of Soviet Socialist Republics (USSR).
[2] Does not apply to Hong Kong, Macau or Taiwan.
[3] Suspended for taxes withheld and other taxes as of July 16, 2024.
[4] Tax conventions have been suspended effective December 17, 2024 until December 31, 2026.

Dual-Status Aliens

A taxpayer can be both a nonresident alien and a resident alien during the same tax year. This usually occurs in the year the taxpayer arrives in or departs from the U.S. If the taxpayer is a U.S. resident for the current calendar year, but was a nonresident alien during the preceding calendar year, he will be a resident only for the part of the calendar year that begins with his residency starting date. He will be a nonresident alien for the part of the year before that date. However, certain married couples may qualify to elect to be treated as full-year residents. See *Choosing Resident Alien Status*.

Note: If treating a dual-status alien spouse as a U.S. resident for the entire tax year, check the box and enter their name in the Filing Status section on page 1 of Form 1040/1040-SR.

Residency Starting Date

A taxpayer who is a resident under the green card test begins his residency no later than the first day in the calendar year on which he is present in the U.S. as a lawful permanent resident. However, if his presence in the U.S. causes him to meet the substantial presence test as well, the residency start date may be earlier.

If the taxpayer meets the substantial presence test for the calendar year, the residency starting date is generally the first day the taxpayer was present in the U.S. during that calendar year. However, the taxpayer may exclude up to 10 days of actual presence in the U.S. if he can establish that:

- The taxpayer had a closer connection to a foreign country than to the U.S. during those 10 days and
- The taxpayer had a tax home in that foreign country.

The taxpayer may exclude days from more than one trip, as long as the total days present in the U.S. during all the trips is not more than 10. Once the taxpayer passes the 10-day mark during a trip, the entire trip may not be excluded. Finally, even if these days may be excluded from the residency period, they must still be counted in determining whether the substantial presence test is met.

Example: Eduardo is a citizen of Bolivia and has never visited the U.S. before the current tax year, in which he had business trips to the U.S. from February 6–February 10 and from April 4–April 10. On July 12, he moved to the U.S. and resided there for the rest of the year, with no trips outside the U.S. Eduardo is able to establish a closer connection to Bolivia for the period prior to July 12.

Eduardo meets the substantial presence test since he was in the U.S. more than 183 days as follows:

Dates	# of Days
February 6–February 10	5
April 4–April 10	7
July 12–December 31	173
Total	185

Eduardo may exclude his February trip from his U.S. residency period because it is less than 10 days and he can establish a closer connection to Bolivia. He cannot exclude any of his April trip since his total time in the U.S. exceeds 10 days (5 + 7 = 12) by the end of the trip. Eduardo's residency starting date will be April 4.

Note: If Eduardo were a citizen of a country with which the U.S. had a tax treaty, he may have been able to delay his U.S. residency starting date until July 12 by use of a treaty tie-breaker provision.

To exclude any dates from the residency period, the taxpayer must attach a statement to the return. A sample statement can be found under *Election Statements* on Page 1-12. The statement should be attached to the taxpayer's return or, if the taxpayer is not required to file a return, submitted separately to the Internal Revenue Service Center, Austin, TX 73301-0215.

If the taxpayer was a U.S. resident during any part of the preceding calendar year and is also a U.S. resident for any part of the current year, he will be considered a U.S. resident at the beginning of the current year [IRC Sec. 7701(b)(10)]. This applies whether the taxpayer is a resident under the substantial presence test or the green card test.

Choosing Resident Alien Status

A nonresident alien may elect to be treated as a resident alien in any one of the following three circumstances:

- The taxpayer will meet the substantial presence test in the following year, was present in the U.S. for at least 31 days in the current year and was present in the U.S. for at least 75% of the number of days beginning with the first day of the 31-day period and ending with the last day of the current tax year [IRC Sec. 7701(b)(4)]. This election may also be made for any accompanying dependents, thereby allowing additional credits for other dependents.
- The taxpayer is a nonresident alien and married to a U.S. citizen or resident alien at the end of the tax year and elects to be treated as a full-year resident alien. This election remains in effect for all future years unless revoked by the taxpayer, the taxpayer's marital status changes due to death or divorce, or both spouses become nonresident aliens [IRC Sec. 6013(g)].
- The taxpayer was a nonresident alien at the beginning of the tax year, became a U.S. citizen or resident alien during the tax year and is married to a person who is also a U.S. citizen or resident alien at the end of the tax year. This election is possible in the year both spouses become U.S. citizens or resident aliens. This election may not be made more than once by any individual [IRC Sec. 6013(h)].

Each of the above choices requires an election statement to be attached to the return. The taxpayer may use the first election in conjunction with either of the other two elections. Sample statements can be found under *Election Statements* on Page 1-12. For more information on these situations, see IRS Pub. 519.

Note: This requirement is separate from filing FinCEN Form 114. In some cases, both forms must be filed. Accounts reported with Forms 3520, 3520-A, 5471, 8621, 8865, and 8891 are exempt from detailed reporting but must still be included in determining if the value of all accounts exceeds $50,000.

Note: Resident aliens who elect under a treaty to be treated as nonresident aliens must still file Form 8938 as if a resident. Nonresident aliens who elect to be treated as residents and residents of U.S. possessions are also required to file Form 8938. Special rules apply to dual resident taxpayers [Reg. 1.6038D-2(e)]:

- A nonresident alien at the end of the tax year is not required to report specified foreign financial assets on Form 8938 for the portion of the individual's tax year covered by Form 1040-NR.
- A resident alien at the end of the year is not required to report specified foreign financial assets on Form 8938 for the portion of the individual's tax year reflected on the schedule to Form 1040 required by Reg. 1.6012-1(b)(2).

Beneficial Ownership Information (BOI) Reporting

Beginning January 1, 2024, the Corporate Transparency Act of 2021 requires certain types of U.S. and foreign entities to report information about their beneficial owners to FinCEN. This applies to corporations, limited liability companies (including single-member), and any other entity created by filing a document with a secretary or state or similar office. Entities formed after December 31, 2023, and before January 1, 2025, have 90 days to complete this requirement. Entities formed after December 31, 2024, will have only 30 days. If the entity existed prior to January 1, 2024, it has until December 31, 2024, to file the BOI report.

~~**Caution:** A district court in Alabama has found this provision to be unconstitutional and will not apply to the plaintiffs *[National Small Business United, et al.,* 133 AFTR 2d 2024-885 (DC AL 2024)]. The government is currently appealing this case and states that all entities not specifically covered by this case must comply with the reporting requirements.~~

Caution: Due to recent litigation, BOI reports are not currently required to be filed and are not subject to penalties for failure to file. However, reporting companies may continue to voluntarily submit BOI reports. Practitioners should continue to monitor the situation.

Foreign entities must comply if they are registered to do business in any U.S. state or tribal jurisdiction. Certain types of entities are exempt. A *beneficial owner* is any individual who directly or indirectly exercises substantial control over the company or who directly or indirectly owns or controls 25% or more of the company's ownership interests. See **www.fincen.gov/boi/small-business-resources** for more information, including a link to the FAQs and a list of exempt entities. **https://www.fincen.gov/boi** contains instructions on how to file and a link to the filing software.

International Transportation of Monetary Instruments

FinCEN Form 105 (Report of International Transportation of Currency or Monetary Instruments) must be filed by each person who physically transports, mails or ships (or causes to be physically transported, mailed or shipped) currency or other monetary instruments in a total amount of more than $10,000 at one time from the U.S. to any place outside the U.S., or into the U.S. from any place outside the U.S. The filing requirement also applies to each person who receives in the U.S. currency or monetary instruments totaling more than $10,000 at one time from any place outside of the U.S.

The term *monetary instruments* means the following:

1) Coin and currency of the U.S. or of any other country.
2) Travelers' checks in any form.
3) Investment securities or stock in bearer form or otherwise in such form that title to them passes upon delivery.
4) Negotiable instruments (including checks, promissory notes and money orders) in bearer form, endorsed without restriction, made out to a fictitious payee or otherwise in such form that title to them passes upon delivery.
5) Checks, promissory notes and money orders which are signed but on which the name of the payee has been omitted.

However, the term does not include:

1) Checks or money orders made payable to the order of a named person which have not been endorsed or which contain restrictive endorsements.
2) Warehouse receipts.
3) Bills of lading.

A transfer of funds through normal banking procedures (wire transfer) that does not involve the physical transportation of currency or monetary instruments is not required to be reported on FinCEN Form 105.

The FinCEN Form 105 filing requirements are as follows:

1) *Recipients.* Each person who receives currency or other monetary instruments in the U.S. must file FinCEN Form 105 within 15 days after receipt, with the Customs officer in charge at any port of entry or departure, or by mail at the following address: Attn: CMIR, Passenger Systems Directorate #1256, CBP, 7375 Boston Blvd., DHS, VA 20598-1256.
2) *Shippers or mailers.* If the currency or other monetary instrument does not accompany the person entering or departing the U.S., FinCEN Form 105 can be filed by mail at the above address on or before the date of entry, departure, mailing or shipping.
3) *Travelers.* Travelers must file FinCEN Form 105 with the Customs officer in charge at any Customs port of entry or departure, when entering or departing the U.S.

Note: Financial institutions must electronically file FinCEN Form 112, rather than filing FinCEN Form 105.

Civil and criminal penalties are provided for failing to file a report, filing a report containing material omissions or misstatements or filing a false or fraudulent report. Also, the entire amount of the currency or monetary instrument may be subject to seizure and forfeiture.

Individual Taxpayer Identification Numbers (ITINs)

Aliens who have received permission to work in the U.S. are eligible for social security numbers (SSNs). Other aliens may have to request an ITIN.

Examples of individuals needing an ITIN include:

- A nonresident alien individual eligible to obtain the benefit of reduced withholding under an income tax treaty.
- A nonresident alien individual not eligible for an SSN who is required to file a U.S. tax return or who is filing a U.S. tax return only to claim a refund.
- A nonresident alien individual not eligible for an SSN who elects to file a joint U.S. tax return with a spouse who is a U.S. citizen or resident alien.
- A U.S. resident alien (based on the substantial presence test) who files a U.S. tax return but who is not eligible for an SSN. See *Substantial presence test* on Page 1-2.

Continued on the next page

Example: In 2024, Tom's income subject to SE tax is $300,000. Tom's wife Faye is involved in his direct selling business, but Tom has always filed his tax returns showing all the income on his Schedule C, along with a single Schedule SE for himself. The IRS examines their return and determines that Faye is actually Tom's equal partner. Thus, each of them will report half of the SE earnings on their own Schedule SE. The effect of this adjustment is as follows:

	All Income Reported by Tom	*Half Reported by Tom*	*Half Reported by Faye*
Income	$ 300,000	$ 150,000	$ 150,000
Tax on $182,566 at 15.3% after multiplying income by 92.35% (A)	$ 25,796	$ 21,194	$ 21,194
Income over $182,566	$ 117,434	$ 0	$ 0
Tax at 2.9% after multiplying income by 92.35% (B)	$ 3,145	$ 0	$ 0
Total Tax (A + B)	$ 28,941	$ 21,194	$ 21,194

The total SE tax under the IRS income allocation is $42,388 ($21,194 × 2). This is $13,447 ($42,388 – $28,941) more than if Tom reports all the SE income.

Formalizing the arrangement between the spouses can help prevent the IRS from successfully arguing that the business is a partnership and splitting the income between the spouses. For example, the less-involved spouse could sign an employment agreement as an employee of the more-involved spouse's business. It may also be advisable to ensure that the more-involved spouse is solely responsible for major business decisions.

Community Property States

If the spouses live in a community property state and any income derived from a trade or business is community income (under that state's community property laws), the SE income (or loss) from that business is treated as income of the spouse carrying on business. If only one spouse participates in the business, all of the income from that business is treated as that spouse's SE earnings. If both spouses operate the business, the SE income is allocated based on each spouse's participation in the business [IRC Sec. 1402(a)(5)(A)]. If the business is operated as a partnership, each partner reports his distributive share of income as SE income.

Determining whether a partnership exists is different for taxpayers in community property states than in separate property states. In community property states, the IRS will respect whichever treatment (sole proprietorship or partnership) the taxpayers use (as indicated by how they file their tax return) (Rev. Proc. 2002-69). Thus, the taxpayers can select the treatment they prefer. In separate property states, this determination is based on the facts and circumstances.

However, as is the case in separate property states, these rules for reporting trade or business income either as a partnership between the spouses or as a proprietorship do not apply if one spouse is a genuine employee of the other spouse's sole proprietorship.

Reporting Requirements

Form 1099

1099s issued. Direct sellers must file an information return if they make direct sales of at least $5,000 of consumer products to a buyer for resale anywhere other than a permanent retail establishment. The information return, Form 1099-MISC or Form 1099-NEC, must show the name, address, and identification number of the buyer (recipient). Check box 7 of Form 1099-MISC and box 2 of Form 1099-NEC to show these sales. Do not enter a dollar amount.

The direct seller must also provide a statement to the buyer by January 31 of the year following the calendar year for which the information return is filed, showing his name, address, phone number and identifying number. The statement given to the buyer for these direct sales may be in the form of a letter showing this information along with commissions, prizes, awards, etc.

Note: A Form 1099-NEC must also be issued to any noncorporate service providers to whom the direct seller pays $600 or more during the year.

1099s received. Direct sellers who purchase at least $5,000 of consumer products for resale during the year may receive a Form 1099-MISC or a Form 1099-NEC from the person who sold them the goods (often the company whose products they sell). They may also receive Form 1099-NEC if they are the recipients of commissions, prizes, awards, etc.

Direct sellers may also receive Form 1099-K if they use a payment settlement entity (PSE) to process credit card sales. The Form 1099-K will include the gross amount of the payment, including sales tax. The direct seller will need to maintain good records to determine what amounts may reduce gross sales. See *Form 1099-K Reporting* on Page 9-23 for additional information.

Observation: The de minimis exception for Third Party Settlement Organizations (TPSO) was significantly reduced to $600 per year with no minimum transaction requirement. As a result, more taxpayers can anticipate receiving a Form 1099-K since a single transaction for $600 or more settled through a TPSO is now considered to be reportable.These new requirements are currently expected to apply to payments made beginning in 2026, which will be reported on 2026 Form 1099-K issued in January 2027 (Notice 2024-85).

The reduced 1099-K filing threshold was supposed to take effect beginning in 2022. However, the IRS provided relief for TPSOs by declaring 2022 and 2023 transition periods for implementation of the lowered minimum reporting requirements and allowed the TPSOs to use the threshold in place prior to the changes brought about by the American Rescue Plan Act of 2021 (ARPA) (Notices 2023-10, 2023-74, and 2024-85). In addition, the IRS is planning to phase in the $600 threshold, using $5,000 as the threshold for tax year 2024 (IR 2023-221). Practitioners should continue to monitor IRS guidance for when and how the new requirements will be implemented.

Schedule C

Unless the business is a partnership, income and expenses from direct selling are reported on Schedule C. The *Tax Organizer—Direct Sellers* on Page 3-25 can be used to gather the pertinent information.

When filing Schedule C, the direct seller should input a six-digit NAICS code. While there are several codes that relate to nonstore retailers, NAICS #454390 is generally the most appropriate code for direct selling businesses.

Qualified Business Income Deduction

From 2018 through 2025, direct sellers are eligible for the Section 199A deduction for qualified business income. The deduction is equal to 20% of the taxpayer's qualified business income but is subject to limits and phase-out when the taxpayer's taxable income exceeds certain thresholds, and different rules apply to service and non-service businesses. See *Qualified Business Income (QBI) Deduction* on Page 10-5 for coverage of the deduction.

or shipped) currency or other monetary instruments totaling more than $10,000 at one time into or out of the U.S. Certain recipients of currency or monetary instruments must also file Form 105. See the instructions for more information about the filing of Form 105.

Form 8938

Form 8938 (Statement of Specified Foreign Financial Assets) must be filed to report the ownership of specified foreign financial assets if the total value of those assets exceeds an applicable threshold amount. The reporting threshold varies depending on whether a taxpayer lives in the U.S., is married or files a joint income tax return with their spouse. Specified foreign financial assets include any financial account maintained by a foreign financial institution and, to the extent held for investment, any stock, securities, or any other interest in a foreign entity and any financial instrument or contract with an issuer or counterparty that is not a U.S. person. Penalties apply to taxpayers who are required to file Form 8938 and fail to do so. Penalties also apply to an understatement of tax due to any transaction involving an undisclosed foreign financial asset. For more information about the filing of Form 8938, see the instructions.

Beneficial Ownership Information Reporting

The Financial Crimes Enforcement Network (FinCEN) issued a final rule implementing the bipartisan Corporate Transparency Act's (CTA) beneficial ownership information (BOI) reporting provisions. The rule describes who must file a BOI report, what information must be reported, and when a report is due. Specifically, the rule requires reporting companies to file reports with FinCEN that identify two categories of individuals: (1) the beneficial owners of the entity; and (2) the company applicants of the entity.

Reporting companies. The rule identifies two types of reporting companies: foreign and domestic. A foreign reporting company is a corporation, LLC, or other entity formed under the law of a foreign country that is registered to do business in any state or tribal jurisdiction by the filing of a document with a secretary of state or any similar office. A domestic reporting company is a corporation, limited liability company (LLC), or any entity created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe.

Beneficial owners. Under the rule, a beneficial owner includes any individual who, directly or indirectly, either (1) exercises substantial control over a reporting company, or (2) owns or controls at least 25 percent of the ownership interests of a reporting company.

Company applicant. The rule defines a company applicant to be only two persons: the individual who directly files the document that creates the entity, or in the case of a foreign reporting company, the document that first registers the entity to do business in the United States and the individual who is primarily responsible for directing or controlling the filing of the relevant document by another.

Timing. The effective date for the rule is January 1, 2024. Entities existing at December 31, 2023, have until the end of 2024 to make the report. Entities formed January 1, 2024, through December 31, 2024, have 90 days from formation to complete the report. Entities formed after December 31, 2024, have 30 days from formation in which to make the report.

~~**Caution:** A district court in Alabama has found this provision to be unconstitutional and will not apply to the plaintiffs *[National Small Business United, et al.,* 133 AFTR 2d 2024-885 (DC AL 2024)]. The government is currently appealing this case and states that all entities not specifically covered by this case must comply with the reporting requirements.~~

Caution: Due to recent litigation, BOI reports are not currently required to be filed and are not subject to penalties for failure to file. However, reporting companies may continue to voluntarily submit BOI reports. Practitioners should continue to monitor the situation.

Notes

Client Expense Advances By Attorneys

Attorneys often pay litigation expenses on behalf of their clients. These costs are typically recovered when the settlement or court award is received. This practice is often used by lawyers that accept cases on a contingency basis.

Loan or Expense?

Whether these advances are currently deductible depends on if the advance is a loan to the client. If the attorney expects that the client will repay the amounts advanced, they are not deductible when advanced.

Net fee billing. Under this arrangement, the proceeds of a lawsuit are first applied to reimburse the lawyer for any expenses advanced. The firm then receives a percentage of the remaining proceeds.

Court Case: The lawyer represented clients in personal injury lawsuits on a contingent fee basis. The lawyer paid many of the expenses of the litigation, which would be reimbursed out of any settlement or award. The lawyer then received a percentage of the remaining settlement (net fee billing). However, if nothing was recovered, the lawyer would receive nothing. The lawyer screened prospective clients and accepted cases only when there was a good prospect of recovery. The court found that the expenses that the lawyer paid on the clients' behalf were loans because the lawyer expected that they would be reimbursed, even though there was a possibility that the lawyer could receive nothing [*Canelo*, 53 TC 217 (1969)].

Lawyers using a net fee arrangement should treat the client expense advances as loans until the costs are recovered. If the law firm is not eventually reimbursed by the client, or the amount reimbursed is less than the amount advanced, the lawyer can deduct the unreimbursed expenses as a bad debt. The bad debt deduction is claimed in the year the taxpayer determines that the loan has become worthless [Reg. 1.166-2(b)].

Hourly billing. Client expense advances are nondeductible when the lawyer bills the clients for the costs advanced on their behalf.

Court Case: A law firm billed its clients based on a standard hourly rate. In addition, the firm billed clients (sometimes on a separate bill and sometimes along with the bill for services rendered) for the litigation costs it incurred on the case. The expense advances were loans to the client, not deductible expenses, because the firm was reimbursed dollar-for-dollar (*Pelton & Gunther, P.C.*, TC Memo 1999-339).

Gross fee billing. Under this contractual arrangement, the lawyer receives a flat percentage of the settlement or award. Expenses are not specifically repaid before the percentage is applied.

Court Case: The lawyer represented clients in personal injury lawsuits on a contingent fee basis. The lawyer paid many of the expenses of the litigation. If the case was successful, the lawyer received a percentage of the proceeds, before any repayment of expenses (gross fee billing). If there was no recovery, the lawyer received nothing. The court found that since the expenses were not specifically reimbursed out of the settlement, they were more like the normal overhead any business incurs to make a profit. Therefore, even though the lawyer recovered approximately 90% of the expenses advanced, the court found that the advances were not loans to clients. The lawyer could deduct them in the year paid [*Boccardo*, 75 AFTR 2d 95-2244 (9th Cir. 1995)].

Reporting Payments to Attorneys

Anyone engaged in a trade or business who, in the course of that activity, makes payments totaling at least $600 for legal services to attorneys must report the amount paid on Form 1099-NEC or Form 1099-MISC unless payment was made by credit card, in which case, Form 1099-K may be issued by the payment settlement entity [IRC Sec. 6045(f)]. Reporting is required regardless of whether the legal practice operates as a proprietorship, partnership, LLC or corporation.

Observation: The de minimis exception for Third Party Settlement Organizations (TPSO) was significantly reduced to $600 per year with no minimum transaction requirement. As a result, more taxpayers can anticipate receiving a Form 1099-K since a single transaction for $600 or more settled through a TPSO is now considered to be reportable. These new requirements are currently expected to apply to payments made beginning in 2026 which will be reported on 2026 Form 1099-K issued in January 2027.

The reduced 1099-K filing threshold was supposed to take effect beginning in 2022. However, the IRS provided relief for TPSOs by declaring 2022 and 2023 transition periods for implementation of the lowered minimum reporting requirements and allowed the TPSOs to use the threshold in place prior to the changes brought about by the American Rescue Plan Act of 2021 (ARPA) (Notices 2023-10, 2023-74, and 2024-85). In addition, the IRS is planning to phase in the $600 threshold, using $5,000 as the threshold for tax year 2024 (IR 2023-221). Practitioners should continue to monitor IRS guidance for when and how the new requirements will be implemented.

Note: Non-employee compensation is reported on Form 1099-NEC.

Observation: Form 1099-MISC is generally not required when the payee is a corporation. However, payments to attorneys is an exception to this general rule, therefore, Form 1099-MISC must be filed even if the legal practice operates as a corporation.

Gross proceeds of $600 or more paid to an attorney in connection with legal services (regardless of whether the services are performed for the payer), but not for the lawyer's services, are reported on Form 1099-MISC, box 10. Attorneys' fees of $600 or more paid in the course of trade or business are reportable in box 1 of Form 1099-NEC.

Caution: A payer must report payments to an attorney even if the services are not performed for the payer. Thus, insurance companies paying a settlement on behalf of an insured are required to report the payment.

Often, an attorney will receive a check, some of which will be paid to other attorneys or to the attorney's client. The payer reports the entire amount to the first attorney listed on the check. If that attorney then makes a payment of $600 or more to another attorney, he must report that payment to the second attorney on Form 1099-NEC, under the same rules for payments to attorneys discussed in this section.

Example: Fellows Corporation settles a suit brought by Matt Grayson by paying a check for $1 million to Matt's three attorneys, Adam, Zeke and Charles. (Zeke and Charles worked for Adam as outside legal consultants.) The check is delivered to Adam, who deposits it into a trust account and writes separate checks to Zeke for $100,000 and to Charles for $50,000 for their share of the attorney fees. Adam also makes a payment of $550,000 to his client, Matt.

Because it does not know how much of the $1 million represents attorney's fees, Fellows reports the $1 million paid to Adam in box 10 of Form 1099-MISC. Adam then files Form 1099-NECs reporting $100,000 paid to Zeke and $50,000 paid to Charles. Adam reports the amounts paid to Adam and Charles in box 1 of Form 1099-NEC (since he knows that is the amount of their fees).

Planning Tip: In many cases, attorneys will receive Forms 1099 and 1099-NEC reporting gross payments, not all of which are taxable to them. These attorneys should be able to document the difference between the amounts reported to them on Form 1099 and the fees they report as income. Generally, the difference will consist of amounts paid to other attorneys, amounts paid to clients and amounts used to reimburse the attorney for advanced expenses (see *Attorney's Trust Accounts* on Page 8-20).

Employment Eligibility Verification

All employees must complete Form I-9 (Employment Eligibility Verification). The employer is responsible for ensuring that this form is filled out completely and in a timely manner. The employee completes section 1. This section discloses personal information on the new hire and must be completed upon the commencement of employment. It also provides for certification of the information if it is completed by someone other than the employee, such as a translator.

The employer completes sections 2 and 3. Section 2 is the employer review and verification section. The employer must review acceptable documents for employment verification. These documents must meet the identity and employment eligibility requirement as modified and defined by the IRA. This review must be performed within three business days of the date of commencement of work. For employees who are hired for fewer than three days, this section must be completed on the first day of employment.

A copy of the most recent version of Form I-9 is the only version of the form that is valid for current use. Form I-9 is available at **www.uscis.gov/sites/default/files/document/forms/i-9-paper-version.pdf**. Employers only need to complete the latest version for new employees and not for existing employees. However, employers must use the most current version of Form I-9 when existing employees require reverification.

Record-keeping requirements. Employers should make copies of the documents presented and retain such copies with the Form I-9 (to demonstrate compliance with the law). However, copies should not be maintained in the employee's personnel file (use a separate file instead) to avoid giving the U.S. Citizenship and Immigration Services access to information it is not legally entitled to see. The employer should retain any completed Form I-9 (and any copies of relevant documents) for the period ending three years after the hire date or one year after employment is terminated.

All documents presented to the employer must be originals. The employer should make a copy of these documents to be retained in its files with the completed Form I-9.

Affordable Care Act

Employers with at least 50 full-time equivalent employees are subject to employer shared responsibility provisions, under which employers who do not offer affordable health coverage that provides a minimum level of coverage to their full-time employees (and their dependents) may be subject to an employer shared responsibility payment. This could occur if at least one of their full-time employees receives a premium tax credit for purchasing individual coverage on one of the Affordable Insurance Exchanges (also called a Health Insurance Marketplace) (IRC Sec. 4980H).

Note: Employers with fewer than 50 full-time equivalent employees and who provide health insurance to their employees may qualify for a tax credit. See *Small Employer Health Insurance Credit* on Page 9-24.

Form 1099-K Reporting

Payment settlement entities must report debit and credit card sales to the IRS and merchants receiving payments. These payments are reported on Form 1099-K.

A payment settlement entity is a bank or other organization that has the contractual obligation to make payment to participating payees in settlement of payment card transactions or third party network transactions. A participating payee is anyone who accepts a payment card (or account number associated with a card) as payment or accepts payments from a Third Party Settlement Organization (TPSO) in settlement of a third party network transaction.

A TPSO is only required to issue a Form 1099-K to a payee when the total dollar amount of all transactions during the calendar year exceeds a de minimis threshold [IRC Sec. 6050W(e)]. This de minimis exception only applies to third party network transactions (not payment card transactions which have no reporting threshold).

The American Rescue Plan Act (ARPA) significantly reduced the de minimis threshold for TPSOs. Until passage of ARPA, the threshold was 200 or more transactions per year and the dollar amount of those transactions exceeded $20,000. ARPA reduced the dollar amount to $600 per year with no minimum transaction requirement. This means a single transaction for $600 or more settled through a TPSO is reportable.

Observation: The reduced 1099-K filing threshold was originally intended to take effect beginning in 2022 (for Forms 1099-K due in 2023). However, the IRS provided relief for TPSOs by declaring both 2022 and 2023 transition periods for implementation of the lowered minimum reporting requirements and allowed them to use the threshold in place prior to the changes brought about by ARPA (Notices 2023-10 and 2023-74).

Law Change Alert: The IRS's transition period continues in 2024 and 2025 (Notice 2024-85). Rather than the $600 threshold called for in IRC Sec. 6050W9(e), the reporting threshold for 2024 Forms 1099-K (due in 2025) is $5,000 with no minimum transaction requirement.

Observation: The reduction in in 1099-K reporting threshold has been controversial. Practitioners should monitor the situation to see what the IRS does for 2025.

Practice Tip: Because many restaurants accept debit and credit cards, it is likely that they will receive one or more Form 1099-K. The amount reported to the payee and the IRS is the total reportable payment card/third-party network transactions for the year, without any adjustments for credits, discounts, refunded amounts or any other amounts. It could also include tips added to the total by customers. The amount reported on Form 1099-K is not reported on a specific line on the restaurant's tax return. However, any taxable amount should be included in the proper line on the return. The IRS does not match amounts reported on the Form 1099-K to the taxpayer's return. However, it could use the information reported on the Form 1099-K to identify potential under-reported income. So, taxpayers who receive Form 1099-K reporting information they believe is incorrect should contact the issuer to obtain a corrected Form 1099-K.

Tax Credits

Work Opportunity Tax Credit (WOTC)

The WOTC is available through December 31, 2025.

To be eligible for the WOTC, a new employee must be certified as a member of a targeted group by a state workforce agency (SWA). An employee is a member of a targeted group if he began working for the employer before 2026 and is a (IRC Sec. 51):

- Long-term family assistance recipient,
- Qualified recipient of Temporary Assistance for Needy Families (TANF),
- Qualified veteran,
- Qualified ex-felon,
- Designated community resident,
- Vocational rehabilitation referral,
- Summer youth employee,
- Supplemental Nutrition Assistance Program (SNAP) benefits (food stamps) recipient,

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