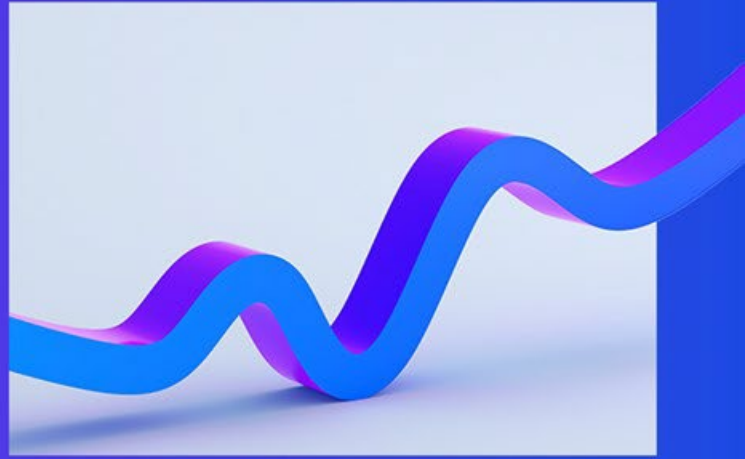




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Déjà vu, Holidays Bring Form 1099-K Relief Once More

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On November 21, the IRS once again announced transitory relief for Forms 1099-K, raising the de minimis threshold for Third Party Settlement Organizations (TPSOs) back to \$20,000 and 200 transactions for payments made in 2023. Last year's relief caused significant confusion for taxpayers and state agencies. In *Déjà vu, Holidays Bring Form 1099-K Relief Once More*, we discuss the recent relief, issues that taxpayers will likely encounter in the upcoming filing season, and additional changes announced for 2024.

Background

On December 23, 2022, the IRS announced that it would provide a year of transitory relief¹ for provisions under the American Rescue Plan Act of 2021 (ARPA)² that lowered the de minimis threshold for third party service organizations (TPSOs). Specifically, the IRS announced that it would not enforce the lower \$600 threshold for payments made in 2022. Rather, taxpayers could rely on the pre-ARPA thresholds of \$20,000 and 200 transactions.³ However, payors that performed backup withholding on 2022 payments at the lower threshold amount would still be required to file Form 945 for the amounts withheld and issue Forms 1099-K.

¹ Notice 2023-10 can be found at <https://www.irs.gov/pub/irs-drop/n-2023-10.pdf>.

² The American Rescue Plan Act of 2021 can be found at <https://www.congress.gov/bill/117th-congress/house-bill/1319/text>.

³ For a detailed background of Form 1099-K reporting and changes implemented under the American Rescue Plan Act of 2021, see *Delayed Thresholds, Immediate Confusion: Form 1099-K Reporting Thresholds* at <https://kpmg.com/kpmg-us/content/dam/kpmg/pdf/2023/012323-irw-qt-delayed-thresholds-form-1099K.pdf>.

As industry participants had spent significant time and effort in 2022 requesting relief, the IRS announcement was welcome news. However, the late relief and subsequent confusion provided very little time for companies to assess the situation, make necessary changes to their processes, and inform their payees. Many payors had already incorporated the lower threshold into their software systems and, finding it challenging to make last minute changes, proceeded with reporting at the lower thresholds. Complicating the situation further, state revenue agencies returning from holiday shutdowns were slow to issue official communications on their requirements for 2022. As deadlines quickly approached, payors were still unclear whether separate state reporting would be required to meet the lower thresholds, even when federal reporting was not required. Most states eventually issued some sort of guidance, whether formally or otherwise.⁴

Industry participants continued to plead for permanent relief and Congress took notice. In 2023, four bills were introduced, a couple with bipartisan support, seeking to re-establish the pre-ARPA thresholds,⁵ increase the threshold to \$5,000,⁶ or increase the thresholds to \$10,000 and 50 transactions.⁷ One bill proposed restoring pre-ARPA thresholds, increasing thresholds for Forms 1099-MISC and 1099-NEC to \$5,000, and indexing future threshold amounts for inflation.⁸ However, amid competing Congressional priorities in 2023, none of the bills moved past the initial introductory phase.

2023 and 2024 Form 1099-K Reporting Changes

On November 21, 2023, the IRS issued Notice 2023-74,⁹ announcing that calendar year 2023 would be regarded as a further transition period for the purpose of enforcing the reduced ARPA threshold. Thus, similar to reporting for the 2022 calendar year, the IRS will not require TPSOs to submit Forms 1099-K unless the payments meet the higher thresholds of \$20,000 and 200 transactions. However, similar to the relief provided in 2022, payors that have backup withheld will be required to file Form 945 and report to both the IRS and the participating payee if the total of the reportable payments exceeded \$600 for the calendar year.

The IRS also issued IR-2023-221,¹⁰ announcing that it is planning to phase-in the lower ARPA threshold through a \$5,000 threshold for the 2024 calendar year. Per the news release, the IRS acknowledges that the lower \$600 threshold will impact a significant number of taxpayers and wants to provide payors with certainty and enough lead time to prepare accordingly. The IRS has requested feedback, and industry experts anticipate that the IRS will issue regulations in due time to implement the phased-in approach.

Taxpayers experiencing a sense of déjà vu this year can likely anticipate how the next few months will go, as states will slowly announce (hopefully) their positions on the recent relief. Once filing for the 2023 tax year has concluded, taxpayers can begin focusing on processes and software updates for the 2024 calendar year. Ideally, the IRS will make the \$5,000 phase-in official through regulations; however, the Notice should provide enough support for taxpayers to begin making updates with confidence.

⁴ In many cases, KPMG was able to get state agencies to confirm unofficially via email. However, this was clearly not ideal for the broader industry.

⁵ H.R. 190, *Saving Gig Economy Taxpayers Act*, can be found at <https://www.congress.gov/bill/118th-congress/house-bill/190?q=%7B%22search%22%3A%22H.R.+190%22%7D&s=5&r=5>.

⁶ H.R. 3530, *Cut Red Tape for Online Sales Act*, can be found at <https://www.congress.gov/bill/118th-congress/house-bill/3530?s=6&r=2&q=%7B%22search%22%3A%22H.R.+3530%22%7D>.

⁷ S. 1725, *Red Tape Reduction Act of 2023*, can be found at <https://www.congress.gov/bill/118th-congress/senate-bill/1725?s=8&r=3&q=%7B%22search%22%3A%22S.+1725%22%7D>.

⁸ H.R. 3937, *Small Business Tax Act*, can be found at <https://www.congress.gov/bill/118th-congress/house-bill/3937?q=%7B%22search%22%3A%22H.R.+3937%22%7D&s=9&r=8>.

⁹ Notice 2023-74 can be found at <https://www.irs.gov/pub/irs-drop/n-23-74.pdf>.

¹⁰ IR-2023-221 can be found at <https://www.irs.gov/newsroom/irs-announces-delay-in-form-1099-k-reporting-threshold-for-third-party-platform-payments-in-2023-plans-for-a-threshold-of-5000-for-2024-to-phase-in-implementation>.

State Form 1099-K Reporting

In a prior KPMG IRW article,¹¹ we discussed nuances in Form 1099-K state reporting following the 2022 announcement. As a recap, we noted that there are a handful of states which had either tied their threshold to section 6041(a) (i.e., \$600) or set their own threshold (e.g., New Jersey's threshold is \$1,000) through statutory or regulatory provisions. This trend to set lower state thresholds appears to be increasing, as states are proactively seeking new revenue streams. As an example, Illinois previously required reporting for payees with four or more transactions exceeding \$1,000. Following ARPA, the state issued guidance indicating that it would follow federal treatment. Once the 2022 IRS relief was announced, Illinois issued an update stating that it would require reporting at the lower of the federal threshold or its own state thresholds for 2022.¹² Thus, it was clear that Illinois intended to piggyback off the lower threshold, but still wanted to capture information at the lower threshold once the transitory relief was announced. Perhaps a silver lining, this group of states is easy to predict, albeit at the cost of more compliance, as reporting will be required at the lower thresholds regardless of any relief at the federal level.

We also noted that many states follow federal treatment, and would likely permit the 2022 IRS transitory relief, but that there were some issues left to consider. In particular, we noted how some state statutes are specifically tied to section 6050W, making it unclear whether the state would adopt the IRS relief. It seemed unlikely that many of these states would enforce the lower threshold, as even the IRS had declared it too burdensome for taxpayers, but the lack of formal communications midway through filing season provided little assurance. KPMG conducted a round of state outreach to solicit informal confirmations, with mixed results. For example, representatives at the Montana Department of Revenue stated that Montana generally follows federal treatment, and expected their guidance to be updated accordingly, but it wasn't. In one case, Missouri, the representative noted that it was a federal form, not required by the state, though the Department of Revenue had just recently issued guidance listing permissible filing methods for Form 1099-K.¹³

Luckily, many states followed through, and updated online guidance where possible. For example, California included a prominent alert at the top of its webpage clarifying that it requires payors to file Forms 1099-K "that they are required to file with the IRS." The alert noted that the transitory relief would carry over to the state level.¹⁴ As 2023 winds down, we expect to see states recover from the turkey week announcement and begin issuing their own guidance. What is less clear, is what they will do about reporting for 2024 and beyond, as discussed below.

Impact of the Phase-in Approach

The IRS announcement will likely be welcome relief, once again, for many taxpayers anxiously anticipating a busy filing season. Interestingly, the phase-in approach announced by the IRS for 2024 brings more questions than answers. It is clear that the minimum threshold will be at least \$5,000, as the IRS has assured taxpayers of that much. However, the IRS is merely providing temporary relief while industry is demanding permanent relief. As noted above, several bills were introduced in 2023, proposing to restore pre-ARPA thresholds or enact new thresholds. Unfortunately for taxpayers, those bills failed to advance beyond the introductory phase. If the IRS had not stepped in at this late hour, and reporting had occurred at the lower threshold, it is less likely that reporting would have been re-established at higher thresholds in the future. But, thanks to the late relief, the IRS has essentially bought more time for stakeholders to lean on Congress once more. Thus, taxpayers can be confident in

¹¹ See *Delayed Thresholds, Immediate Confusion: Form 1099-K Reporting Thresholds* at <https://kpmg.com/kpmg-us/content/dam/kpmg/pdf/2023/012323-irw-qt-delayed-thresholds-form-1099K.pdf>.

¹² Although Illinois has not yet updated its guidance for the 2023 IRS relief, it almost certainly will retain the current state threshold. See Pub 110 at <https://tax.illinois.gov/content/dam/soi/en/web/tax/research/publications/pubs/documents/pub-110.pdf>.

¹³ Missouri guidance is broad, requiring payors to submit information returns for any payment over \$1,200 that was also required to be submitted for federal purposes. The Department of Revenue provides additional guidance for Forms 1099-MISC and 1099-NEC, but is silent on Form 1099-K. For further information, see the FAQs at <https://dor.mo.gov/faq/taxation/business/withholding.html#reporting>.

¹⁴ The FTB has not yet announced similar treatment for 2023, but we expect an update in due time. Note that California has a separate threshold for app-based drivers. Further information can be found at <https://www.ftb.ca.gov/file/business/information-returns.html#how-to-file>.

the \$5,000 threshold as a low bar for 2024 reporting, but will likely be attentively watching for legislative updates throughout the year.

Increased due diligence obligations, due to the volume of returns under the lower thresholds, will likely further complicate payor processes. Payors are required to collect certain information from payees, including tax identification numbers (TINs). Under current law, this information does not need to be certified under penalties of perjury for Form 1099-K payments.¹⁵ Rather, payors may collect TINs informally orally or via email. Under the rules, payors should validate the information that they receive; however, in practice it is likely that this requirement is not being met for payees that are unlikely to hit the higher \$20,000 and 200 transaction thresholds. Thus, it is reasonable to assume that there are significant numbers of payees that have submitted incorrect information. Increased reporting under the 2024 proposed \$5,000 threshold means that payors will be reporting many new payees for the first time. Payors that have relied on legacy information, that they have failed to verify, may also find themselves required to perform backup withholding for the first time.

Also, states are increasingly relying on information reporting to generate new revenue streams. Accordingly, states have recently turned to the gig economy to identify new income, particularly during budget shortfalls. Form 1099-K reporting opens a (literal) wealth of underreporting ripe for plucking, so long as the state receives this information. Continual IRS relief, and potential legislative action, makes it harder for states to identify any underreporting and enforce compliance. However, states can remedy this by simply instituting their own thresholds, as a number of states have already done. In addition, the up and down threshold rollercoaster the past few years has rendered state agencies reeling in the midst of filing season. States may opt to set their own thresholds merely to stem the confusion.

Going Forward – Reporting in 2023 and Beyond

In our January 2023 edition, we closed out the article noting that the late IRS relief provided industry additional time to lobby for legislative action. There were numerous attempts throughout the year, but the results did not pan out for taxpayers in 2023. However, thanks to the second round of relief, we may see another round of attempts in 2024. So, once again, taxpayers should keep an eye out for changes in the coming year, while keeping in mind that state reporting thresholds may differ in the future.

¹⁵ An ongoing Green Book proposal will require certified TINs for any payment subject to backup withholding. For the current version, see *General Explanations of the Administration's Fiscal Year 2024 Revenue Proposals* at <https://home.treasury.gov/system/files/131/General-Explanations-FY2024.pdf>.

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