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# Tax Alert

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## Are You Ready?

### Why Businesses Need to Prepare for 2011's Increased Tax Information Reporting Penalties

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Businesses that are required to file federal tax information returns and payee statements (i.e., Forms W-2, 1099 and 1098) will be subject to significantly increased penalties for all information returns filed after January 1, 2011. As the 2010 information reporting season nears, and as the IRS becomes increasingly strict with compliance issues as a means to generate additional revenue for the federal government, businesses should be aware of what lies ahead and what must be done to ensure compliance and be in a position to successfully challenge penalty assessments.

#### *à Who must file and when are the returns due?*

Generally, taxpayers who make certain payments (or, in the case of mortgage lenders and servicers, receive certain payments) are required to report such payments (1) to the IRS, and (2) to the person to whom the payments are made (or, in some cases, from whom the payments are received).

The following chart outlines the general information reporting requirements for the most common types of payments:

Form	Type	Amounts to Report	Due to IRS	Due to Taxpayer
1098	Mortgage Interest	\$600 or more	Feb. 28 <sup>th</sup> *	Jan. 31 <sup>st</sup>
1099-B	Broker Transactions	All amounts	Feb. 28 <sup>th</sup> *	Feb. 15 <sup>th</sup>
1099-DIV	Dividends	\$10 or more	Feb. 28 <sup>th</sup> *	Jan. 31 <sup>st</sup>
1099-INT	Interest	\$10 or more	Feb. 28 <sup>th</sup> *	Jan. 31 <sup>st</sup>
1099-MISC	Miscellaneous Income	\$600 or more	Feb. 28 <sup>th</sup> *	Jan. 31 <sup>st</sup>
W-2	Wages	Case-by-Case	Feb. 28 <sup>th</sup> *	Jan. 31 <sup>st</sup>

\* March 31<sup>st</sup> if filed electronically



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## à *What information must be gathered?*

- Information returns must identify the payor and payee and the total amount paid.
- Payees must provide their names, addresses and taxpayer IDs.
- Payors must request the information from payees (typically on Form W-9).

## à *What are the penalties for non-compliance?*

Failing to file accurate information returns with the IRS and failing to provide copies to the payees triggers civil penalties. Recent legislation changed the applicable penalty framework, as shown in the following charts:

<b>PENALTIES FOR FAILURE TO FILE CORRECT/COMPLETE INFO. RETURNS WITH THE IRS</b>		
	<b>OLD LAW</b>	<b>NEW LAW</b>
Applies to Returns Filed...	Through Dec. 31, 2010	Jan. 1, 2011 – on
Base Penalty (Each)	\$50	\$100
Annual Cap (Aggregate)	\$250,000*	\$1,500,000*
Corrected Within 30 Days of Filing Deadline (Each)	\$15	\$30
Annual Cap (Aggregate)	\$75,000*	\$250,000*
Corrected Within 31 Days after Filing Through August 1 <sup>st</sup> (Each)	\$30	\$60
Annual Cap (Aggregate)	\$150,000*	\$500,000*
Due to Intentional Disregard (Each)	\$100	\$250
Annual Cap (Aggregate)	No Limit	No Limit

\* Reduced ceilings apply to small businesses with gross receipts of less than \$5 million.



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PENALTIES FOR FAILURE TO PROVIDE CORRECT/COMPLETE INFO. RETURNS TO PAYEES		
	OLD LAW	NEW LAW
Applies to Copies Sent...	Through Dec. 31, 2010	Jan. 1, 2011 – on
Base Penalty (Each)	\$50	\$100
Annual Cap (Aggregate)	\$100,000	\$1,500,000*
Corrected Within 30 Days of Filing Deadline (Each)	\$50	\$30
Annual Cap (Aggregate)	\$100,000	\$250,000*
Corrected Within 31 Days after Filing Through August 1 <sup>st</sup> (Each)	\$50	\$60
Annual Cap (Aggregate)	\$100,000	\$500,000*
Due to Intentional Disregard (Each)	\$100	\$250
Annual Cap (Aggregate)	No Limit	No Limit

\* Reduced ceilings apply to small businesses with gross receipts of less than \$5 million.

## à *How can businesses defend against penalty assessments?*

Under current law, the IRS must waive penalties if the responsible party proves that its failures were due to reasonable cause and not willful neglect. Accordingly, businesses must be in a position to explain to the IRS in detail their information reporting practices and why those practices comply with the various requirements prescribed by law.

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