



January 2016

New Tennessee Reporting Requirements for Banks and Online Payment Networks

With the start of the 2016 tax reporting season, taxpayers making certain payments to a person or entity with a Tennessee address may find that Tennessee has added to the number of information returns they need to file.

Section 67-6-411 was added to the Tennessee Code on May 4, 2015, and requires "reporting entities" to file a duplicate Form 1099-K with the Tennessee Department of Revenue where the payee listed on the Form 1099-K has a Tennessee address. The statute defines a "reporting entity" as a "payment settlement entity," incorporating the definition of that term found in Section 6050W of the Internal Revenue Code (which is effectively any entity that makes a payment to a payee in a payment card transaction), or any other third party acting on behalf of a payment settlement entity. Said just a little differently, any entity which submits instructions to transfer funds to a payee or has the contractual obligation to make sure such payments are made to the vendor in a credit card transaction (these entities are often referred to in the industry as "acquiring" or "merchant banks") is responsible for filing Form 1099-K, Merchants Card and Third-Party Payments, to the IRS and is now also responsible for submitting that IRS form to the Tennessee Department of Revenue.

Section 67-6-411 contains language prohibiting the Department of Revenue from using any information received with or gleaned from the duplicate Form 1099-K against a person or entity not otherwise subject to tax in Tennessee, but all such forms sent to a Tennessee address are to be filed with Tennessee. The statute also establishes penalties for a taxpayer's failure to comply with the new filing requirement. Like the federal penalties regarding failures to file information returns, the penalty under Section 67-6-411 is assessed for each failure to file. Where the period that the return is late does not exceed one month, the amount of the penalty is \$1,000 per late filing. An additional \$1,000 is added to the penalty for each additional month or fraction thereof during which the failure continues. The total penalty that can be assessed against any single reporting entity may not exceed \$10,000 annually, and the Commissioner of Revenue may waive some of or all of the penalty for good and reasonable cause.

The due date for filing the duplicate Form 1099-K with Tennessee is 30 days after the filing date of those forms with the IRS. So, Tennessee filings for payments made during tax year 2015 are due on or before April 30, 2016.

If you would like more information on the impact of this new Tennessee filing imposed by T.C.A. §67-6-411 on both in-state and out-of-state taxpayers, please contact:

Ed Brown, Jim McCarten or Reid Barrineau in Atlanta at (404) 815-3000;

Jim McCarten or Josh Ehrenfeld in Nashville at (615) 724-3200;

Allen Sullivan or Bruce Rawls in Birmingham at (205) 251-3000; or

Warren Matthews in Montgomery at (334) 241-7000.

No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.