

**DESCRIPTION OF H.R. 190, THE
“SAVING GIG ECONOMY TAXPAYERS ACT”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on September 11, 2024

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup for September 11, 2024, of H.R. 190, the “Saving Gig Economy Taxpayers Act.” This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of this bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 190, the “Saving Gig Economy Taxpayers Act”* (JCX-39-24), September 9, 2024. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references in the document are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

**A. Reinstatement of Exception for *De Minimis* Payments as in Effect
Prior to Enactment of American Rescue Plan Act**

Present Law

Present law requires persons to file an information return concerning certain transactions with other persons.² The person filing an information return is also required to provide the person for whom the information return is being filed with a written statement showing the information that was reported to the IRS, which generally includes aggregate payments made, and the contact information for the payor.³ These returns are intended to assist taxpayers in preparing their income tax returns and to help the IRS determine whether such income tax returns are correct and complete.

Returns relating to payments made in settlement of payment card and third party network transactions

Since 2012 (for payments received in 2011), payment settlement entities are required to report to the IRS and to businesses that receive these payments the gross amount of payments made in settlement of payment card transactions and third party network transactions.⁴

Specifically, any payment settlement entity making a payment to a participating payee in settlement of reportable payment transactions must report annually to the IRS and to the participating payee the gross amount of such reportable payment transactions, as well as the name, address, and TIN of the participating payee.⁵ A “reportable payment transaction” means any payment card transaction and any third party network transaction.⁶

A “payment settlement entity” means, in the case of a payment card transaction, a merchant acquiring entity (defined below) and, in the case of a third party network transaction, the third party settlement organization.⁷ A “participating payee” means, in the case of a payment card transaction, any person who accepts a payment card as payment and, in the case of a third party network transaction, any person who accepts payment from a third party settlement

² Secs. 6041 through 6050Y.

³ See, e.g., sec. 6041(d).

⁴ Sec. 6050W; Pub. L. No. 110-289 (2008), sec. 3091(a) enacted sec. 6050W, effective generally for returns for calendar years beginning after December 31, 2010.

⁵ Sec. 6050W(a).

⁶ Sec. 6050W(c)(1).

⁷ Sec. 6050W(b).

organization in settlement of such transaction.⁸ A “person” includes a governmental unit. A “person” generally does not include someone with a foreign address.⁹

Returns relating to payments made in settlement of payment card transactions

For purposes of the reporting requirement, the term “merchant acquiring entity” means a bank or other organization with the contractual obligation to make payments to participating payees in settlement of payment card transactions.¹⁰ A “payment card transaction” means any transaction in which a payment card is accepted as payment.¹¹ A “payment card” is defined as any card (*e.g.*, a credit card or debit card) which is issued pursuant to an agreement or arrangement which provides for: (1) one or more issuers of such cards; (2) a network of persons unrelated to each other, and to the issuer, who agree to accept such cards as payment; and (3) standards and mechanisms for settling the transactions between the merchant acquiring entities and the persons who agree to accept such cards as payment.¹² Thus, a bank that enrolls a business to accept credit cards and contracts with the business to make payment on credit card transactions must report to the IRS the business’s gross credit card transactions for each calendar year on a Form 1099-K, *Payment Card and Third Party Network Transactions*. The bank also must provide a copy of the information return to the business.

Returns relating to payments made in settlement of third party network transactions

The statute also requires reporting on a third party network transaction. The term “third party network transaction” means any transaction which is settled through a third party payment network.¹³ A “third party payment network” is defined as any agreement or arrangement: (1) that involves the establishment of accounts with a central organization by a substantial number of persons (generally considered to be more than 50) who are unrelated to such organization, provide goods or services, and agree to settle transactions for the provision of such goods or services pursuant to such agreement or arrangement; (2) that provides for standards and mechanisms for settling such transactions; and (3) that guarantees persons providing goods or services pursuant to such agreement or arrangement will be paid for providing such goods or services.¹⁴

In the case of a third party network transaction, the payment settlement entity is the third party settlement organization, which is defined as the central organization which has the

⁸ Sec. 6050W(d)(1).

⁹ Sec. 6050W(d)(1)(B) and (C).

¹⁰ Sec. 6050W(b)(2).

¹¹ For this purpose, the acceptance as payment of any account number or other indicia associated with a payment card also qualifies as a payment card transaction.

¹² Sec. 6050W(d)(2).

¹³ Sec. 6050W(c)(3).

¹⁴ Sec. 6050W(d)(3).

contractual obligation to make payment to participating payees of third party network transactions.¹⁵ Thus, an organization generally is required to report if it provides a network enabling buyers to transfer funds to sellers who have established accounts with the organization and have a contractual obligation to accept payment through the network. However, an organization operating a network which merely processes electronic payments (such as wire transfers, electronic checks, and direct deposit payments) between buyers and sellers, but does not have contractual agreements with sellers to use such network, is not required to report. Similarly, an agreement to transfer funds between two demand deposit accounts will not, by itself, constitute a third party network transaction.

De minimis payment exception

A third party payment network does not include any agreement or arrangement that provides for the issuance of payment cards as defined by the provision.¹⁶ In addition, there is an exception for *de minimis* payments that applies to payments made by third party settlement organizations but not to payments made by merchant acquiring entities. For calendar years beginning after December 31, 2021, a third party settlement organization is required to report third party network transactions with any participating payee that exceed a minimum threshold of \$600 in aggregate payments, regardless of the aggregate number of such transactions.¹⁷ In other words, there is not a threshold requirement for the number of transactions. In addition, third party network transactions only include transactions for the provision of goods or services. Reporting is not required for other transactions, including personal gifts, charitable contributions, and reimbursements.

The previous exception for *de minimis* payments for calendar years beginning prior to January 1, 2022, provided that a third party settlement organization was not required to report unless the aggregate value of third party network transactions with respect to a participating payee for the year exceeds \$20,000 and the aggregate number of such transactions with respect to a participating payee exceeds 200.

Notwithstanding the revisions to the *de minimis* payment exception, the IRS allowed third party settlement organizations to delay implementation of the \$600 aggregate payment threshold for calendar years 2022 and 2023.¹⁸ As a result, for these years, reporting was not required unless the third party settlement organization's receipts were over the prior threshold - \$20,000 and more than 200 transactions. The IRS stated that the reason for this delay was the complexity of the threshold change enacted under the American Rescue Plan Act.¹⁹ In addition,

¹⁵ Sec. 6050W(b)(3).

¹⁶ Sec. 6050W(d)(3).

¹⁷ Sec. 6050W(e); American Rescue Plan Act, Pub. L. No. 117-2, Title IX, sec. 9674, March 11, 2021, amending sec. 6050W(e), effective generally for returns for calendar years beginning after December 31, 2021.

¹⁸ Notice 2023-10, 2023-3 I.R.B. 403, January 17, 2023, and Notice 2023-74, 2023-51 I.R.B. 1484, December 18, 2023.

¹⁹ IR-2023-221, Nov. 21, 2023, available at <https://www.irs.gov/newsroom/irs-announces-delay-in-form->

the IRS has said that due to the large number of individual taxpayers affected by the new law, the IRS is planning for a threshold of \$5,000 for calendar year 2024 as part of a phase-in to implement the \$600 reporting threshold.²⁰

Rules regarding reporting requirements

There are also reporting requirements on intermediaries who receive payments from a payment settlement entity and distribute such payments to one or more participating payees.²¹ Such intermediaries are treated as participating payees with respect to the payment settlement entity and as payment settlement entities with respect to the participating payees to whom the intermediary distributes payments. Thus, for example, in the case of a corporation that receives payment from a bank for credit card sales conducted at the corporation's independently-owned franchise stores, the bank is required to report to the corporation and to the IRS the gross amount of reportable payment transactions settled with respect to the corporation (notwithstanding the fact that the corporation does not accept payment cards and would not otherwise be treated as a participating payee). In turn, the corporation, as an intermediary, is required to report the gross amount of reportable payment transactions allocable to each franchise store. The bank has no reporting obligation with respect to payments made by the corporation to its franchise stores.

In addition, if a payment settlement entity contracts with a third party facilitator to settle reportable payment transactions on behalf of the payment settlement entity, the third party facilitator is required to file the annual information return in lieu of the payment settlement entity.²²

The payment settlement entity is required to file information returns to the IRS on or before February 28 (March 31 if filing electronically) of the year following the calendar year for which the returns must be filed.²³ Statements are required to be furnished to the participating payees on or before January 31 of the year following the calendar year for which the return was required to be made.²⁴

[1099-k-reporting-threshold-for-third-party-platform-payments-in-2023-plans-for-a-threshold-of-5000-for-2024-to-phase-in-implementation.](#)

²⁰ *Ibid.*

²¹ Sec. 6050W(b)(4).

²² Sec. 6050W(b)(4)(B); Treas. Reg. sec. 1.6050W-1(d)(2).

²³ Treas. Reg. sec. 1.6050W-1(g). Taxpayers that file these information returns that report reportable payment transactions are entitled to a 30-day automatic extension of time to file. Treas. Reg. sec. 1.6081-8(a) (effective for requests for extension of time to file certain information returns due after December 31, 2016).

²⁴ Sec. 6050W(f); Treas. Reg. sec. 1.6050W-1(h).

The Secretary has exercised authority under these rules to issue guidance to implement the reporting requirement, including rules to prevent the reporting of the same transaction more than once.²⁵

The reportable payment transactions subject to information reporting generally are subject to backup withholding requirements. In addition, the information reporting penalties apply for any failure to file a correct information return or furnish a correct payee statement with respect to the reportable payment transactions. Any person who is required to file an information return or furnish a payee statement but who fails to do so on or before the prescribed due date is subject to a penalty that varies based on when, if at all, the correct information return is filed or furnished. Penalties are imposed for failure to file the information return²⁶ or furnish payee statements.²⁷ No penalty is imposed if the failure is due to reasonable cause.²⁸ Both the failure to file and failure to furnish penalties are adjusted annually to account for inflation.

Description of Proposal

The proposal reverts to the previous *de minimis* reporting exception for third party settlement organizations, and the same threshold the IRS has followed for calendar years 2022 and 2023. A third party settlement organization is not required to report unless the aggregate value of third party network transactions with respect to a participating payee for the year exceeds \$20,000 and the aggregate number of such transactions with respect to a participating payee exceeds 200.

The proposal does not change the clarification that reporting is not required on transactions which are not for goods or services.

The obligations of a merchant acquiring entity are unchanged. For example, if a company is considered a merchant acquiring entity, it must issue a Form 1099-K to all participating payees who have received payments of any amount starting with the first dollar. On the other hand, if a business that provides an online marketplace for sales of goods such as clothing, cars, furniture, etc. is considered a third party settlement organization, under this proposal, it does not have to provide a Form 1099-K to sellers participating on its web-based platform who have received payments of \$20,000 or less or to sellers who have engaged in 200 or fewer transactions.

²⁵ Treas. Reg. sec. 1.6050W-1(a)(4)(ii).

²⁶ Sec. 6721.

²⁷ Sec. 6722. Section 6723 also imposes a penalty for failure to comply timely with a specified information reporting requirement. However, this penalty applies in narrow circumstances and is unlikely to apply to payment settlement entities under section 6050W. See Treas. Reg. sec. 301.6723-1(a)(4).

²⁸ Sec. 6724(a).

Effective Date

The proposal applies as if included in section 9674 of Public Law No. 117-2, the American Rescue Plan Act (enacted on March 11, 2021). Thus, the proposal applies to returns for calendar years beginning after December 31, 2021.

B. Estimated Revenue Effects of the Proposal

The proposal is estimated to have the following effect on Federal fiscal year budget receipts:

Fiscal Years											
[Billions of Dollars]											
<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>2032</u>	<u>2033</u>	<u>2034</u>	<u>2025-29</u>	<u>2025-34</u>
-1.0	-0.8	-0.9	-0.9	-0.9	-1.0	-1.0	-1.1	-1.2	-1.2	-4.5	-10.0
