

AVAILABLE.” If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address.* If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher’s records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statements.* If the furnisher has corrected a recipient’s statement that was furnished electronically, the furnisher must furnish the corrected statement to the recipient electronically. If the recipient’s statement was furnished through a Web site posting and the furnisher has corrected the statement, the furnisher must notify the recipient that it has posted the corrected statement on the Web site within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the Web site posting of an original statement or the corrected statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) *Access period.* Statements furnished on a Web site must be retained on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later.

(b) *Effective date.* This section applies to statements required to be furnished after February 13, 2004. Paragraph (a)(6) of this section also applies to

statements required to be furnished after December 31, 2003.

[T.D. 9114, 69 FR 7570, Feb. 18, 2004]

§ 1.6050W-1 Information reporting for payments made in settlement of payment card and third party network transactions.

(a) *In general—(1) General rule.* Every payment settlement entity, as defined in paragraph (a)(4) of this section, must file an information return for each calendar year with respect to payments made in settlement of reportable payment transactions, as defined in paragraph (a)(3) of this section, setting forth the following information:

(i) The name, address, and taxpayer identification number (TIN) of each participating payee, as defined in paragraph (a)(5) of this section, to whom one or more payments in settlement of reportable payment transactions are made.

(ii) With respect to each participating payee, the gross amount, as defined in paragraph (a)(6) of this section, of—

(A) The aggregate reportable payment transactions for the calendar year; and

(B) The aggregate reportable payment transactions for each month of the calendar year.

(iii) Any other information required by the form, instructions or current revenue procedures.

(2) *Payments in settlement of reportable payment transactions.* A payment settlement entity, as defined in paragraph (a)(4) of this section (or an electronic payment facilitator, as defined in paragraph (d)(2) of this section), makes a payment in settlement of a reportable payment transaction if the payment settlement entity (or electronic payment facilitator) submits the instruction to transfer funds to the account of the participating payee for purposes of settling the reportable payment transaction.

(3) *Reportable payment transaction.* The term *reportable payment transaction* means any payment card transaction (as defined in paragraph (b)(1) of this section) and any third party network transaction (as defined in paragraph (c)(1) of this section).

(4) *Payment settlement entity*—(i) *Definition*. The term *payment settlement entity* means a domestic or foreign entity that is—

(A) In the case of a payment card transaction, a merchant acquiring entity (as defined in paragraph (b)(2) of this section); and

(B) In the case of a third party network transaction, a third party settlement organization (as defined in paragraph (c)(2) of this section).

(ii) *Multiple payment settlement entities*. If two or more persons qualify as payment settlement entities (as defined in paragraph (a)(4)(i) of this section) with respect to a reportable payment transaction, then only the payment settlement entity that in fact makes payment in settlement of the reportable payment transaction must file the information return required by paragraph (a)(1) of this section.

(5) *Participating payee*—(i) *Definition*. In general, the term *participating payee* means any person, including any governmental unit (and any agency or instrumentality thereof), who:

(A) In the case of a payment card transaction, accepts a payment card (as defined in paragraph (b)(3) of this section) as payment; and

(B) In the case of a third party network transaction, accepts payment from a third party settlement organization (as defined in paragraph (c)(2) of this section) in settlement of such transaction.

(ii) *Foreign payees*—(A) *In general*. For payments pursuant to contractual obligations entered into after December 31, 2010, a payment settlement entity that is a person described as a U.S. payor or U.S. middleman in §1.6049-5(c)(5) is not required to make a return of information for payments to a participating payee with a foreign address as long as, prior to payment, the payment settlement entity has in its files documentation upon which the payment settlement entity may rely to treat the payment as made to a foreign person in accordance with §1.1441-1(e)(1)(ii). For purposes of this paragraph (a)(5)(ii), the provisions of §1.1441-1 shall apply by substituting the term payor for the term withholding agent and without regard to the limitation to amounts subject to withholding under chapter 3

of the Internal Revenue Code and the regulations under that chapter. Such a payment settlement entity need not make a return of information for payments made outside the United States (within the meaning of §1.6049-5(e)) to an offshore account (as defined in §1.6049-5(c)(1)) to a participating payee with only a foreign address if the name of the participating payee indicates that it is an entity listed as a per se corporation under §301.7701-2(b)(8)(i) and the payment settlement entity does not know or have reason to know that the participating payee is a United States person. A payment settlement entity may apply the grace period rules of §1.6049-5(d)(2)(ii) of the regulations for payments to a participating payee with only a foreign address, without regard to whether the amounts paid are described in §1.1441-6(c)(2) or are reportable under section 6042, 6045, 6049, or 6050N. For payments pursuant to contractual obligations entered into before January 1, 2011, a payment settlement entity that is a person described as a U.S. payor or U.S. middleman in §1.6049-5(c)(5) is not required to make a return of information for payments to a participating payee with a foreign address as long as the payment settlement entity neither knows nor has reason to know that the participating payee is a United States person. For this purpose, a renewal of such a contractual obligation will not result in a new contractual obligation unless there is a material modification to the contractual obligation.

(B) *Non-U.S. payor or middleman*. A payment settlement entity that is not a person described as a U.S. payor or U.S. middleman in §1.6049-5(c)(5) is not required to make a return of information for a payment to a participating payee that does not have a United States address as long as the payment settlement entity neither knows nor has reason to know that the participating payee is a United States person. If the participating payee has any United States address, the payment settlement entity may treat the participating payee as a foreign person only if the payment settlement entity has in its files documentation upon which the payment settlement entity may rely to treat the payment as made

to a foreign person in accordance with § 1.1441-1(e)(1)(ii).

(C) *Foreign address; United States address.* For purposes of this section, *foreign address* means any address that is not within the United States, as defined in section 7701(a)(9) of the Internal Revenue Code (the States and the District of Columbia). *United States address* means any address that is within the United States.

(6) *Gross amount.* For purposes of this section, *gross amount* means the total dollar amount of aggregate reportable payment transactions for each participating payee without regard to any adjustments for credits, cash equivalents, discount amounts, fees, refunded amounts or any other amounts. The dollar amount of each transaction is determined on the date of the transaction.

(b) *Payment card transactions—(1) Definition.* The term *payment card transaction* means any transaction in which a payment card, or any account number or other indicia associated with a payment card, is accepted as payment.

(2) *Merchant acquiring entity.* The term *merchant acquiring entity* means the bank or other organization that has the contractual obligation to make payment to participating payees (as defined in paragraph (a)(5)(i)(A) of this section) in settlement of payment card transactions.

(3) *Payment card—(i)* The term *payment card* means any card, including any stored-value card as defined in paragraph (b)(4) of this section, issued pursuant to an agreement or arrangement that provides for—

(A) One or more issuers of such cards;

(B) A network of persons unrelated to each other, and to the issuer, who agree to accept such cards as payment; and

(C) Standards and mechanisms for settling the transactions between the merchant acquiring entities and the persons who agree to accept the cards as payment.

(ii) Persons who agree to accept such cards as payment as described in this paragraph (b)(3) are participating payees within the meaning of paragraph (a)(5)(i)(A) of this section.

(4) *Stored-value cards.* The term *stored-value card* means any card with a prepaid value, including any gift card.

(5) *Transactions for which no return of information is required under section 6050W—(i) Withdrawals and cash advances.* The use of a “payment card” as defined in paragraph (b)(3) of this section by a cardholder to withdraw funds at an automated teller machine, or to obtain a cash advance or loan against the cardholder’s account, is not a payment card transaction under paragraph (b)(1) of this section because the card is not being accepted as payment by a merchant or other payee.

(ii) *Convenience checks.* The acceptance of a check issued in connection with a payment card account by a merchant or other payee is not a payment card transaction under paragraph (b)(1) of this section because the check is accepted and processed through the banking system in the same manner as a traditional check, not as a payment card.

(iii) *Payee related to issuer.* No return of information is required under this section for any transaction in which a payment card within the meaning of paragraph (b)(3) is accepted as payment by a merchant or other payee who is related to the issuer of the payment card.

(c) *Third party network transactions—(1) Definition.* The term *third party network transaction* means any transaction that is settled through a third party payment network.

(2) *Third party settlement organization.* The term *third party settlement organization* means the central organization that has the contractual obligation to make payments to participating payees (as defined in paragraph (a)(5)(i)(B) of this section) of third party network transactions. A central organization is a third party settlement organization if it provides a third party payment network (as defined in paragraph (c)(3)(i) of this section) that enables purchasers to transfer funds to providers of goods and services.

(3) *Third party payment network.* (i) The term *third party payment network* means any agreement or arrangement that—

(A) Involves the establishment of accounts with a central organization by a

substantial number of providers of goods or services who are unrelated to the organization and who have agreed to settle transactions for the provision of the goods or services to purchasers according to the terms of the agreement or arrangement;

(B) Provides standards and mechanisms for settling the transactions; and

(C) Guarantees payment to the persons providing goods or services in settlement of transactions with purchasers pursuant to the agreement or arrangement.

(ii) A third party payment network does not include any agreement or arrangement that provides for the issuance of payment cards.

(iii) Persons who are providers of goods and services as described in this paragraph (c)(3) are participating payees within the meaning of paragraph (a)(5)(i)(B) of this section.

(4) *Exception for de minimis payments.* A third party settlement organization is required to report any information under paragraph (a)(1) of this section with respect to third party network transactions of any participating payee only if—

(i) The amount that would otherwise be reported under paragraph (a)(1)(ii) of this section with respect to such transactions exceeds \$20,000; and

(ii) The aggregate number of such transactions exceeds 200.

(d) *Special rules—(1) Aggregated payees.* If a person receives payments from a payment settlement entity (as defined in paragraph (a)(4) of this section) on behalf of one or more participating payees and distributes such payments to one or more participating payees (as defined in paragraph (a)(5) of this section), the person is treated as:

(i) The participating payee with respect to the payment settlement entity; and

(ii) The payment settlement entity with respect to the participating payees to whom the person distributes payments.

(2) *Electronic payment facilitator.* If a payment settlement entity (as defined in paragraph (a)(4) of this section) contracts with an electronic payment facilitator or other third party to make payments in settlement of reportable payment transactions on be-

half of the payment settlement entity, the facilitator must file the annual information return under this section in lieu of the payment settlement entity. The facilitator need not have any agreement or arrangement with the participating payee. Also, the payment need not come from the facilitator's account. The facilitator need only submit instructions to transfer funds to the account of the participating payee in settlement of the reportable payment transaction. The facilitator is liable for any applicable penalties for failure to comply with the information reporting requirements of section 6050W.

(3) *Designations.* The party with the obligation to file the annual information return under this section may designate by written agreement any other person to satisfy the requirements of this section. Thus, notwithstanding the rule in paragraph (d)(2) of this section imposing the obligation to file the annual information return on the electronic payment facilitator in lieu of the payment settlement entity, the payment settlement entity may file the information return by designation if the parties agree in writing. However, a designation does not relieve the party with the reporting obligation from liability for any reporting failures. The party with the obligation to file the annual information return under this section remains liable for any applicable penalties under sections 6721 and 6722 if the requirements of this section are not satisfied.

(4) *Conversion into United States dollars of amounts paid in foreign currency.* When a payment is made or received in a foreign currency, the U.S. dollar amount shall be determined by converting such foreign currency into U.S. dollars on the date of the transaction at the spot rate (as defined in § 1.988-1(d)(1)) or pursuant to a reasonable spot rate convention. For example, a payor may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts reported and from year to year. Such convention cannot be changed without the consent of the Commissioner or his or her delegate.

(5) *Unrelated persons.* For purposes of this section, *unrelated* means any person who is not related to another person within the meaning of section 267(b) (providing a list of relationships), including the application of section 267(c) and (e)(3) (providing rules relating to constructive ownership), and section 707(b)(1) (relationships with partnerships).

(e) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Merchant acquiring entity. Customer A purchases goods from merchant B using a credit card issued by Bank X. B is one of a network of unrelated persons that has agreed to accept credit cards issued by X as payment under an agreement that provides standards and mechanisms for settling the transaction between a merchant acquiring bank and the persons who accept the cards. Bank Z is the merchant acquiring bank with the contractual obligation to make payment to B for goods provided to A in this transaction. As defined in paragraph (b)(2) of this section, Z is the merchant acquiring entity that must file the annual information return required under paragraph (a)(1) of this section to report the payment made to settle the transaction for the sale of goods from B to A.

Example 2. Third party settlement organization. (1) Merchant B is one of a substantial number of persons selling goods or services over the Internet that have an account with X, an Internet payment service provider. None of these persons, including B, are related to X, and all have agreed to settle transactions for the sale of goods or services to customers according to the terms of their contracts with X. X has guaranteed payment to all of these persons, including B, for the sale of goods or services to customers. Customer A purchases goods from B. A pays X for the goods purchased from B. X, in turn, makes payment to B in settlement of the transaction for the sale of goods from B to A.

(ii) X's arrangement constitutes a third party payment network as defined in paragraph (c)(3) of this section because a substantial number of persons that are unrelated to X, including B, have established accounts with X, and X is contractually obligated to settle transactions for the provision of goods or services by these persons to purchasers. Thus, under paragraph (c)(2) of this section, X is a third party settlement organization and the transaction discussed in this *Example* is a third party network transaction under paragraph (c)(1) of this section. Therefore, X must file the annual information return required under paragraph (a)(1) of this section to report the payment made to B in settle-

ment of the transaction with A provided that X's aggregate payments to B from third party network transactions exceed \$20,000 and the aggregate number of X's transactions with B exceeds 200 (as provided in paragraph (c)(4) of this section).

Example 3. Automated clearinghouse network. A operates an automated clearinghouse ("ACH") network that merely processes electronic payments (such as wire transfers, electronic checks, and direct deposit payments) between buyers and sellers. There are no contractual agreements between A and the sellers for the purpose of permitting the sellers to use the ACH network. Thus, A is not a third party settlement organization under paragraph (c)(2) of this section, the ACH network is not a third party payment network under paragraph (c)(3) of this section, and the electronic payment transactions are not third party network transactions under paragraph (c)(1) of this section. A is not required to file the annual information return required under paragraph (a)(1) of this section.

Example 4. ACH processor. B provides a variety of ACH payment processing services to a large number of merchants, such as converting checks received in payment of bills into ACH transactions. B groups payment transactions into an ACH file and transmits the ACH file into the ACH network on behalf of merchants in order to initiate payment to merchants through the ACH network. B makes payments to the merchants after the ACH network verifies that the customers' accounts have sufficient funds. Because the ACH network is not a third party payment network under paragraph (c)(3) of this section, B cannot be a third party settlement organization with respect to the ACH network. Similarly, because the ACH itself is not a third party settlement organization under paragraph (c)(2) of this section, B cannot be an electronic payment facilitator because B is not acting on behalf of a payment settlement entity. However, B may itself be operating third party payment network under paragraph (c)(3) of this section if B has a separate agreement or arrangement that: involves the establishment of accounts with B by a substantial number of unrelated merchants who provide goods or services and have agreed to settle transactions for the provision of the goods or services pursuant to the agreement or arrangement; provides for standards and mechanisms for settling the transactions; and guarantees persons providing goods or services pursuant to such agreement or arrangement that these persons will be paid for providing such goods or services.

Example 5. Gross amount. On Day 1, Customer A uses a payment card to purchase \$100 worth of goods from merchant B. Bank X, the merchant acquiring entity for B, is the party with the contractual obligation to

make payment to B in settlement of the transaction. On Day 2, X, after deducting fees of \$2, makes payment of \$98 to settle the transaction for the sale of goods from B to A. Under paragraph (a)(6) of this section, X must report the amount of \$100, the amount of the transaction on Day 1, without any reduction for fees or any other amount, as the gross amount of this reportable payment transaction on the annual information return filed under paragraph (a)(1) of this section.

Example 6. Gift card. (i) Customer A purchases a gift card from Merchant X that may be used only at X and its related network of stores. A purchases the gift card using cash. A gives the gift card to B. B uses the gift card to purchase goods at one of X's stores. The purchase of the gift card by A using cash is not a payment card transaction described in paragraph (b)(1) of this section and, thus, is not required to be reported in a return of information required under paragraph (a)(1) of this section. Under paragraph (b)(3) of this section, the gift card is not a payment card because the gift card is only accepted as payment by persons who are related to the issuer of the gift card and to each other. Therefore, the use of the gift card by B is not required to be reported in a return of information required under paragraph (a)(1) of this section.

(ii) The facts are the same as in paragraph (i), except that B adds value to the gift card using a credit card. The use of the credit card to add value to the gift card is a reportable payment transaction (as defined in paragraph (a)(3) of this section) and must be reported in a return of information under this section by the bank or other organization that has the contractual obligation to make payment to X in settlement of the transaction.

Example 7. Private label card. Bank B issues a card imprinted with Retailer C's logo to cardholder A. The "C-card" is accepted as payment only at C or at stores related (within the meaning of section 267(b), (c) and (e)(3) and, section 707(b)(1)) to C. A uses the card at C to purchase electronics equipment. Under paragraph (b)(3) of this section, the C-card is not a payment card because the card is accepted as payment only within a network of persons who are related to each other. Therefore, the use of the card by A at C is not required to be reported in a return of information required under paragraph (a)(1) of this section.

Example 8. Quasi-private label card. Bank B issues a card to cardholder A. The card, known as an "E-card," is issued by B pursuant to an agreement that provides that the E-card is accepted as payment only within a limited network of merchants that carry electronics equipment. The agreement provides for standards and mechanisms for settling the transactions between the mer-

chants and the merchant acquiring entities. The merchants accepting the E-card as payment are not related (within the meaning of section 267(b), (c) and (e)(3) and section 707(b)(1)) to each other or to B. A uses the card to purchase electronics equipment at F Store, one of the stores within the network of merchants accepting the E-card. Under paragraph (b)(3) of this section, the E-card is a payment card because the card is issued pursuant to an agreement that provides for a network of persons unrelated to each other, and to the issuer, who agree to accept the card as payment. Therefore, the use of the E-card by A to purchase electronics equipment at F Store must be reported in a return of information required under paragraph (a)(1) of this section.

Example 9. Campus card. (i) University Y issues Student A a card that may be used on campus at various university-owned merchants and at various local merchants unrelated to Y. A uses the card in the university-owned cafeteria to purchase lunch. Under paragraph (b)(5)(iii) of this section, no return of information is required because the card is being accepted as payment by a person who is related to the issuer of the card.

(ii) The facts are the same as in paragraph (i), except that A uses the campus card to purchase lunch at a local restaurant, unrelated to Y, that has agreed to accept the campus card as payment. Under paragraph (b)(3) of this section, the campus card is a payment card in this transaction because the card is accepted as payment by a person that is unrelated to this issuer of the card pursuant to an agreement. Therefore, the use of the card by A in the local restaurant for the purchase of lunch must be reported in a return of information required under paragraph (a)(1) of this section by the bank or other organization that has the contractual obligation to make payment to the restaurant in settlement of the transaction.

Example 10. Mall card. Customer B purchases a card that is issued by shopping mall A. Pursuant to an agreement or arrangement, the card is accepted as payment by various merchants located within the mall, who are unrelated to the issuer of the card and to each other. B uses the card in the mall to purchase goods from merchant C. Under paragraph (b)(3) of this section, the mall card is a payment card because the card is accepted as payment by a network of persons who are unrelated to the issuer of the card and to the other merchants who have agreed to accept the card as payment. Therefore, the use of the mall card by B to purchase goods from merchant C is required to be reported in a return of information required under paragraph (a)(1) of this section.

Example 11. Electronic benefit transactions card. Government Agency A issues benefits electronically to recipients by loading these benefits onto a payment card. Pursuant to

an agreement, a network of merchants unrelated to A, and to each other, has agreed to accept the benefits card as payment. A issues a card to B, who uses the card to purchase goods from Merchant C. The card issued by A is a payment card (as defined in paragraph (b)(3) of this section) because the card is accepted as payment by a network of persons that are unrelated to the issuer of the card, and to each other.

The use of the card by B to purchase goods from C must be reported in a return of information required under paragraph (a)(1) of this section.

Example 12. Prepaid telephone card. A purchases a prepaid telephone card from Company X that may be used to make telephone calls using various long-distance providers unrelated to X that have agreed to accept the card as payment. A places a telephone call using the prepaid card as payment for the telephone call. Under paragraph (b)(3) of this section, the prepaid telephone card is a payment card because the card is accepted as payment by a person that is unrelated to the issuer of the card pursuant to an agreement. Therefore, the use of the prepaid card to make payment for the telephone call must be reported in a return of information required under paragraph (a)(1) of this section by the bank or other organization that has the contractual obligation to make payment to the long distance provider in settlement of the transaction.

Example 13. Transit card. City Z accepts a transit card as payment for use of its mass transit system. The transit card is issued by B, an organization unrelated to Z. A network of persons, including Z, who are unrelated to each other and to B, have agreed to accept the transit card issued by B as payment for transit and for other goods and services. Transit rider X purchases a transit card and uses the card to pay for travel on Z's mass transit system. Under paragraph (b)(3) of this section, the transit card is a payment card because the card is accepted as payment by a person who is one of a network of persons that are unrelated to the issuer of the card, and to each other, and that have agreed to accept the card as payment. Therefore, the use of the transit card by X to pay for transit on Z's mass transit system is a payment card transaction described in paragraph (b)(1) of this section that must be reported in a return of information required under paragraph (a)(1) of this section by the bank or other organization that has the contractual obligation to make payment to Z. Z is the participating payee, described in paragraph (a)(5)(i)(A) of this section, of the payment card transaction.

Example 14. Cash advance. Bank A issues Cardholder B a credit card that is a payment card under paragraph (b)(3) of this section. B uses the card at a local bank to obtain a cash advance. Under paragraph (b)(5)(i) of this

section, B's use of the payment card to obtain a cash advance is not a payment card transaction (as defined in paragraph (b)(1) of this section) because the card is not being accepted as payment by a merchant.

Example 15. Withdrawals from automated teller machines. Bank A issues Cardholder B a credit card that is a payment card under paragraph (b)(3) of this section. B uses the card at an automated teller machine to obtain cash. Under paragraph (b)(5)(i) of this section, B's use of the payment card to obtain cash is not a payment card transaction (as defined in paragraph (b)(1) of this section) because the card is not being accepted as payment by a merchant.

Example 16. Convenience checks. Bank A issues Cardholder B a credit card that is a payment card under paragraph (b)(3) of this section. A sends B paper checks imprinted with the account number associated with the credit card. B uses one of the checks to purchase goods from Merchant S. The check is accepted by S and processed through the bank system in the same manner as a traditional check. Under paragraph (b)(5)(ii) of this section, B's use of the convenience check to purchase goods is not a payment card transaction (as defined in paragraph (b)(1) of this section) because the check is accepted and processed as a traditional check, not as a payment card.

Example 17. Healthcare network. Health carrier A operates healthcare network Y. A collects premiums from covered persons pursuant to a plan agreement between A and the covered persons for the cost of membership in Y. Separately, A pays healthcare providers pursuant to provider agreements to compensate these providers for services rendered to covered persons who are members of Y. A is not a third party settlement organization under paragraph (c)(2) of this section because A does not operate a third party payment network that enables purchasers to transfer funds to providers of goods and services. Therefore, A is not required to file the annual information return required under paragraph (a)(1) of this section.

Example 18. Third party accounts payable. X is a "shared-service" organization that performs accounts payable services for numerous purchasers that are unrelated to X. A substantial number of providers of goods and services have established accounts with X and have agreed to accept payment from X in settlement of their transactions with purchasers. The provider agreement with X includes standards and mechanisms for settling the transactions and guarantees payment to the providers, and the arrangement enables purchasers to transfer funds to providers. Under paragraph (c)(3) of this section, X's accounts payable services constitute a third party payment network, of which X is the third party settlement organization (as defined in paragraph (c)(2) of this section).

For each payee, X must file the annual information return required under paragraph (a)(1) of this section to report payments made by X in settlement of accounts payable to that payee if X's aggregate payments to that payee exceed \$20,000 and the aggregate number of transactions with that payee exceeds 200 (as provided in paragraph (c)(4) of this section).

Example 19. Toll collection network. State A charges a toll to vehicles that travel its state highways. The tolling agency for A contracted with organization X to perform its toll collection. X provides an electronic toll collection system that allows the toll facility to record the passage of a vehicle with a transponder affixed to the vehicle. The customer account associated with the transponder is automatically debited for the amount of the toll. The customer funds a balance in the account, which is then depleted as the toll transactions occur. X periodically bills the customer to replenish the account. X then makes payment to A to settle the toll transactions that are recorded by the transponder. X also contracts with a substantial number of other entities unrelated to X that have established accounts with X and have agreed to accept payment using the electronic toll collection system provided by X. X guarantees payment to the entities for all toll transactions that are recorded by the transponders, and the arrangement enables customers to transfer funds to State A and other entities that charge tolls. Under paragraph (c)(3) of this section, X's electronic toll collection system constitutes a third party payment network, of which X is the third party settlement organization (as defined in paragraph (c)(2) of this section). For each payee, including A, X must file the annual information return required under paragraph (a)(1) of this section to report payments made by X in settlement of toll transactions if X's aggregate payments to that payee exceed \$20,000 and the aggregate number of transactions with that payee exceeds 200 (as provided in paragraph (c)(4) of this section).

Example 20. Hotel kiosk. Under a "hotel kiosk" arrangement, Hotel B permits its customers to charge, to their room account, transactions for goods and services at a substantial number of sellers unrelated to B that operate on B's premises, or on the premises of hotels related to B, and that have established accounts in B's hotel kiosk system. Customers settle their room account with B when they check out, and B in turn settles the hotel kiosk transactions with the unrelated sellers. B guarantees payment to the sellers for these transactions and the arrangement enables customers to transfer funds to the sellers by means of one payment made to the hotel. Under paragraph (c)(3) of this section, B's hotel kiosk system constitutes a third party payment network, of

which B is the third party settlement organization (as defined in paragraph (c)(2) of this section). For each payee, B must file the annual information return required under paragraph (a)(1) of this section to report payments made by B in settlement of the hotel kiosk transactions if B's aggregate payments to that payee exceed \$20,000 and the aggregate number of transactions with that payee exceeds 200 (as provided in paragraph (c)(4) of this section).

Example 21. Aggregated payee. Corporation A, acting on behalf of A's independently-owned franchise stores, receives payment from Bank X for credit card sales effectuated at these franchise stores. X, the payment settlement entity (as defined in paragraph (a)(4)(i) of this section), is required under paragraph (d)(1)(i) of this section to report the gross amount of the reportable payment transactions distributed to A (notwithstanding the fact that A does not accept payment cards and would not otherwise be treated as a participating payee). In turn, under paragraph (d)(1)(ii) of this section, A is required to report the gross amount of the reportable payment transactions allocable to each franchise store. X has no reporting obligation under this section with respect to payments made by A to its franchise stores.

Example 22. Electronic payment facilitator. (i) Bank A is a merchant acquiring entity (as defined in paragraph (b)(2) of this section) with the contractual obligation to make payments to participating merchants to settle certain credit card transactions. A enters into a contract with Processor X. Pursuant to this contract, X prepares and submits instructions to move funds from A's account to the accounts of participating merchants to settle credit card transactions. X is making payment on A's behalf in settlement of payment card transactions pursuant to a contract between X and A. Therefore, under paragraph (d)(2) of this section, X is an electronic payment facilitator and must file the information return required under paragraph (a)(1) of this section with respect to credit card transactions settled by X. A has no reporting obligation with respect to payments made by X on A's behalf.

(ii) The facts are the same as in paragraph (i) except that A and X state in their contract that A will file the information return required under paragraph (a)(1) of this section. A may file the information return pursuant to this designation. However, X is liable for any applicable penalties under sections 6721 and 6722 if the reporting requirements of this section are not satisfied.

(iii) The facts are the same as in paragraph (i) except that X merely prepares the instructions to move the funds to the accounts of participating merchants, and the instructions are actually submitted by A. A, not X, is making payment in settlement of payment card transactions. Therefore, A retains the

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obligation to file the information return required under paragraph (a)(1) of this section with respect to credit card transactions settled by A.

(f) *Prescribed form.* The return required by paragraph (a)(1) of this section must be made according to the forms and instructions published by the Internal Revenue Service.

(g) *Time and place for filing.* Returns made under this section for any calendar year must be filed on or before February 28th (March 31st if filing electronically) of the following year at the Internal Revenue Service Center location designated in the instructions to the relevant form.

(h) *Time and place for furnishing statement—(1) In general.* Every payment settlement entity required to file a return under this section must also furnish to each participating payee a written statement with the same information (as described in paragraph (h)(2) of this section). The statement must be furnished to the payee on or before January 31st of the year following the calendar year in which the reportable payment is made. If the return of information is not made on magnetic media, this requirement may be satisfied by furnishing to such person a copy of all Forms 1099-K, “Merchant card and third-party payments,” or any successor form with respect to such person filed with the Internal Revenue Service Center. The statement will be considered furnished to the payee if it is mailed to the payee’s last known address. The payment settlement entity may furnish the statement electronically in accordance with the rules provided in § 1.6050W-2.

(2) *Information to be shown on statement furnished to payee.* Each written statement furnished under paragraph (h)(1) of this section must include the following information—

(i) The name, address, and phone number (or email address if the statement is furnished electronically) of the information contact of the payment settlement entity.

(ii) With respect to the participating payee, the gross amount of—

(A) The aggregate reportable payment transactions for the calendar year; and

(B) The aggregate reportable payment transactions for each month of the calendar year.

(iii) Any other information required by the form, instructions, or current revenue procedures.

(i) *Cross-reference to penalties.* For provisions relating to the penalty for failure to file timely a correct information return required under section 6050W, see section 6721 and the associated regulations. For provisions relating to the penalty for failure to furnish timely a correct payee statement required under section 6050W(f), see section 6722 and the associated regulations. See section 6724 and the associated regulations for the waiver of a penalty if failure is due to reasonable cause and is not due to willful neglect.

(j) *Effective/applicability date.* The rules in this section apply to returns for calendar years beginning after December 31, 2010.

[T.D. 9496, 75 FR 49828, Aug. 16, 2010]

§ 1.6050W-2 Electronic furnishing of information statements for payments made in settlement of payment card and third party network transactions.

(a) *Electronic furnishing of statements—(1) In general.* A person required by section 6050W to furnish a written statement (furnisher) regarding payments made in settlement of payment card and third party network transactions to the person to whom it is required to be furnished (recipient) may furnish the statement in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (a)(5) of this section is treated as furnishing the required statement.

(2) *Consent—(i) In general.* The recipient must have affirmatively consented to receive the statement required under section 6050W in an electronic format or, in the alternative, have previously consented to receive other federal tax statements in an electronic format from the furnisher. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made