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Little Publicized Section of Tax Cut and Jobs Act Could Cause Burden for Governments.

Changes to Internal Revenue Code section 162(f) and an added section 6050x imposed by the Tax Cut and Jobs Act could result in burden for governments. Under section 162(f), taxpayers cannot deduct amounts paid or incurred to a government or governmental entity in response to a violation of law or potential violation of law. An exception exists if a taxpayer can show that the amount (i) constitutes restitution for damage or harm that may have been caused by the violation of or potential violation of law, or (ii) is paid to come into compliance with any law that was violated. Additionally, the court or settlement agreement must identify the amount as restitution or as paid to come into compliance with the law.

The Tax Cuts and Jobs Act also added section 6050X which requires governments and governmental entities to report amounts received from taxpayers under section 162(f). Section 6050X requires governments to report the amount of the nondeductible payment, any amount that constitutes restitution or remediation of property, and any amount paid for coming into compliance with any law that was violated or part of the investigation.

Issues that have been noted by states include:

- The reporting is required at the point the suit or agreement is reached making it impossible to trigger the reporting from the financial transaction.
- Each state agency's legal counsel would need to be made aware of the reporting requirements related to 6050x as it would be legal counsel's responsibility to determine when a suit or settlement agreement is finalized and whether it is subject to 6050x reporting.
- The forms would need to be immediately produced for 6050x reporting for the "defendant" in the suit. The forms would also need to be filed with the IRS (per the requirements of this notice/section of the law).
- Such reporting would pose a substantial administrative burden on a state having to review all settlements/suits a State may have to determine if the reportable under the law (6050x).
- It also appears that the tax reporting burden would be on the legal counsel whom is not generally an expert in tax reporting.

As the provision applied when the law was passed on December 22, 2017 however, the IRS has released transitional guidance on the new requirement setting the compliance date for some time after January 1, 2019. The proposed regulations are expected soon.

A copy of the transitional guidance (Notice 2018-23) regarding nondeductible penalties under Code sections 162(f) and 6050X can be found [here](#).

Further, the IRS is seeking comment on the burden of the 6050x transitional guidance. This is not a request for comment on the guidance itself but rather a request for comment on the burden of collection i.e., a paperwork reduction notice. Nonetheless, people often provide comment on the actual requirement even though the notice requests comment on paperwork burden.

Should you have any comments on the issue, please provide those to Cornelia Chebinou. Should we receive enough input, we will craft an association response. The paperwork reduction notice is available [here](#).

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