



IRS Nationwide Tax Forum | 2023

Challenging Information Returns

Learning Objectives

Today our presentation will:

- Review IRS Forms: W-2, 1099-NEC, 1099-MISC, 1099-K, W-2G, Schedule K-1, and 1099-C.
- Learn how to properly challenge incorrect Forms.
- Review caselaw on challenging incorrect Forms.



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Information Reporting (In General)

Information Reporting

- What are information returns?
- I.R.C. § 6724(b): any penalty imposed shall be paid on notice and demand by the Secretary;
- I.R.C. § 6724(d) defines information returns and payee statements.

Filing Requirements for Information Returns (partial exhibit below)

I.R.M. Exhibit 20.1.7-3

Form	Title	Paper Transmittal	Due Date (Paper)	Due Date (E-file)	Information Return IRC Penalty Applicable
Form 1042-S	Foreign Person's U.S. Source Income Subject to Withholding	Form 1042-T	Mar 15	Mar 15	6721, 6722
Form 1095-B	Health Coverage	Form 1094-B	Feb 28	Mar 31	6721, 6722
Form 1095-C	Employer-Provided Health Insurance Offer and Coverage	Form 1094-C	Feb 28	Mar 31	6721, 6722
Form 1097-BTC	Bond Tax Credit	Form 1096	Feb 28	Mar 31	6721, 6722
Form 1098	Mortgage Interest	Form 1096	Feb 28	Mar 31	6721, 6722



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W-2 and 1099-NEC

Wage and Tax Statement; Nonemployee Compensation

I.R.C. § 6041(a)

“All persons engaged in a trade or business and making payment in the course of such trade or business to another person, **of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income.**”

- Requires payments of **\$600** or more made in the course of a trade or business to be reported on an annual return;
- Information required includes gains, profits, and income, and the name and address of the recipient of such payment.
- I.R.C. § 6041(d): every person required to make a return under I.R.C. § 6041(a) shall furnish to each payee a written statement showing:
 - Name, address, and phone number of the person required to make such return; and
 - The aggregate amount of payments to the person required to be shown on return.

Step 1: Contact the Issuer of the Payee Statement

- Businesses are required to complete and provide the employees/independent contractors Forms W-2 and 1099-NEC by January 31 (or next business day if weekend/holiday).
- Contact the payor regarding the payee Statement (preferably before it is sent to the IRS)
- In general, to correct an information return or payee statement, the **issuer** should prepare a corrected version of the original form with the corrected information, mark the form as "CORRECTED" or use the designated corrected form (e.g., Form W-2c), and file it with the appropriate agency.
- The issuer should also provide a copy of the corrected form to the payee.

I.R.M. 21.3.6.4.7 (10-01-2020) and I.R.M. 21.3.6.4.7.1 (03-09-2022)

If	And	Then
<p>The taxpayer states they discovered the SSN on their Form W-2, Wage and Tax Statement, was incorrect</p>	<p>Have already filed a return</p>	<p>Advise the taxpayer to contact their employer for a corrected Form W-2C, Corrected Wage and Tax Statement. It is not necessary to file Form 1040-X, Amended U.S. Individual Income Tax Return, if the only change is to correct the SSN. Taxpayers should check their corrected Form W-2C against Social Security Administration (SSA) records found at www.ssa.gov. If the earnings shown on Form W-2C do not show on SSA records, they should contact SSA at the telephone number shown on the web site.</p>
<p>The taxpayer states they discovered the SSN on their Form W-2, Wage and Tax Statement, is incorrect</p>	<p>Have not filed a return</p>	<p>Advise the taxpayer to contact their employer for a corrected Form W-2C, Corrected Wage and Tax Statement. Tell the taxpayer to attach the original Form(s) W-2 and any Form(s) Form W-2C to the return when they file. Taxpayers should check their corrected Form W-2C against Social Security Administration (SSA) records found at www.ssa.gov. If the earnings shown on Form W-2C do not show on SSA records, they should contact SSA at the telephone number shown on the web site.</p>

Step 2: Initiate a Complaint with the IRS

- Call the IRS toll free at **800-829-1040** or make an appointment to visit an IRS Taxpayer Assistance Center (TAC).
 - The IRS will send your employer a letter requesting that they furnish you a corrected Form W-2 within ten days.
 - The IRS will send you a letter with instructions and Form 4852, Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. You can use the Form 4852 in the event that your employer doesn't provide you with the corrected Form W-2 in time to file your tax return.
- **MAINTAIN RECORDS!**



Form 4852, Substitute for Form W-2

Form 4852 (Rev. September 2020)	Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.	OMB No. 1545-0074
Department of the Treasury Internal Revenue Service	▶ Attach to Form 1040, 1040-SR, or 1040-X. ▶ Go to www.irs.gov/Form4852 for the latest information.	Attachment Sequence No. 04

You must take the following steps before filing Form 4852

- Attempt to get your Form W-2, Form W-2c, or Form 1099-R (original or corrected) from your employer or payer before contacting the IRS or filing Form 4852.
- If you don't receive the missing or corrected form from your employer or payer by the end of February, you may call the IRS at 800-829-1040 for assistance. You must provide your name, address (including ZIP code), phone number, social security number, and dates of employment. You must also provide your employer's or payer's name, address (including ZIP code), and phone number. The IRS will contact your employer or payer and request the missing form. The IRS will also send you a Form 4852. If you don't receive the missing form in sufficient time to file your income tax return timely, you may use the Form 4852 that the IRS sent you to file with your return.

1 Name(s) shown on return	2 Your social security number
3 Address	
4 Enter year in space provided and check one box. For the tax year ending December 31, _____, I have been unable to obtain (or have received an incorrect) <input type="checkbox"/> Form W-2 OR <input type="checkbox"/> Form 1099-R. I have notified the IRS of this fact. The amounts shown on line 7 or line 8 are my best estimates for all wages or payments made to me and tax withheld by my employer or payer named on line 5.	
5 Employer's or payer's name, address, and ZIP code	6 Employer's or payer's TIN (if known)

7 Form W-2. Enter wages, tips, other compensation, and taxes withheld.

a Wages, tips, and other compensation	f State income tax withheld
b Social security wages	(Name of state)
c Medicare wages and tips	g Local income tax withheld
d Social security tips	(Name of locality)
e Federal income tax withheld	h Social security tax withheld
	i Medicare tax withheld

8 Form 1099-R. Enter distributions from pensions, annuities, retirement or profit-sharing plans, IRAs, insurance contracts, etc.

a Gross distribution	f Federal income tax withheld
b Taxable amount	g State income tax withheld
c Taxable amount not determined <input type="checkbox"/>	(Name of state)
d Total distribution	h Local income tax withheld
e Capital gain (included on line 8b) <input type="checkbox"/>	(Name of locality)
	i Employee contributions
	j Distribution codes

9 How did you determine the amounts on lines 7 and 8 above?

10 Explain your efforts to obtain Form W-2, Form 1099-R (original or corrected), or Form W-2c, Corrected Wage and Tax Statement.

General Instructions

Section references are to the Internal Revenue Code.

Future developments. For the latest information about developments related to Form 4852, such as legislation enacted after it was published, go to www.irs.gov/Form4852.

Purpose of form. Form 4852 serves as a substitute for Forms W-2, W-2c, and 1099-R (original or corrected) and is completed by you or your representatives when (a) your employer or payer doesn't issue you a Form W-2 or Form 1099-R, or (b) an employer or payer has issued an incorrect Form W-2 or Form 1099-R. Attach this form to the back of your income tax return before any supporting forms or schedules.

You should always attempt to get your Form W-2, Form W-2c, or Form 1099-R (original or corrected) from your employer or payer before contacting the IRS or filing Form 4852. If you don't receive the missing or corrected form from your employer or payer by the end of February, you may call the IRS at 800-829-1040 for assistance. You must provide your name, address (including ZIP code), phone number, social security number, and dates of employment. You must also provide your employer's or payer's name, address (including ZIP code), and phone number. The IRS will contact your employer or payer and request the missing form. The IRS will also send you a Form 4852. If you don't receive the missing form in sufficient time to file your income tax return timely, you may use the Form 4852 that the IRS sent you.

Step 3: File a Disclosure Statement (and Related Forms) With the Tax Return

- If the issuer does not correct the statement, or if the taxpayer believes the correction is still wrong, the taxpayer should file a correct tax return. Because the correct tax return will be inconsistent with the payee statement, it will cause a “matching error.” The matching error can result in a notice, an audit or a notice of deficiency.
- File Form 8275 (generally filed to minimize penalties of substantial understatement of income tax) with your original tax return.
- You may be able to file Form 8275 with an amended return. See Regulations sections 1.6662-4(f)(1) and 1.6664-2(c)(3) for more information.
- To make adequate disclosure for a position or positions related to more than one foreign entity, you must complete and file a separate Form 8275 for each foreign entity.

Form 8275, Disclosure Statement

Form **8275** | **Disclosure Statement** | OMB No. 1545-0889

(Rev. August 2013)
 Department of the Treasury
 Internal Revenue Service

Do not use this form to disclose items or positions that are contrary to Treasury regulations. Instead, use Form 8275-R, Regulation Disclosure Statement.
 ▶ Information about Form 8275 and its separate instructions is at www.irs.gov/form8275.
 ▶ Attach to your tax return.

Attachment Sequence No. **92**

Name(s) shown on return _____ Identifying number shown on return _____

If Form 8275 relates to an information return for a foreign entity (for example, Form 5471), enter:
 Name of foreign entity ▶ _____
 Employer identification number, if any ▶ _____
 Reference ID number (see instructions) ▶ _____

Part I General Information (see instructions)

	(a) Rev. Rul., Rev. Proc., etc.	(b) Item or Group of Items	(c) Detailed Description of Items	(d) Form or Schedule	(e) Line No.	(f) Amount
1						
2						
3						
4						
5						
6						

Part II Detailed Explanation (see instructions)

1 _____

2 _____

3 _____

4 _____

5 _____

6 _____

Part III Information About Pass-Through Entity. To be completed by partners, shareholders, beneficiaries, or residual interest holders.
 Complete this part only if you are making adequate disclosure for a pass-through item.

Note: A pass-through entity is a partnership, S corporation, estate, trust, regulated investment company (RIC), real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).

1 Name, address, and ZIP code of pass-through entity 	2 Identifying number of pass-through entity _____
	3 Tax year of pass-through entity _____/_____/_____ to ____/____/____
	4 Internal Revenue Service Center where the pass-through entity filed its return _____

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 61935M Form **8275** (Rev. 8-2013)

Form 3949-A, Information Referral

Form 3949-A (October 2020)	Department of the Treasury - Internal Revenue Service Information Referral <small>(See instructions on reverse)</small>	OMB Number 1545-1960
Use this form to report suspected tax law violations by a person or a business.		
CAUTION: READ THE INSTRUCTIONS BEFORE COMPLETING THIS FORM. There may be other more appropriate forms specific to your complaint. (For example, if you suspect your identity was stolen, use Form 14039.)		
Section A – Information About the Person or Business You Are Reporting		
<small>Complete 1, if you are reporting an individual. Complete 2, if you are reporting a business only. Complete 1 and 2 if you are reporting a business and its owner. (Leave blank any lines you do not know.)</small>		
1a. Name of individual	b. Social Security Number/TIN	c. Date of birth
d. Street address	e. City	f. State <input type="text" value="v"/> g. ZIP code
h. Occupation	i. Email address	
j. Marital status (check one, if known) <input type="checkbox"/> Married <input type="checkbox"/> Single <input type="checkbox"/> Head of Household <input type="checkbox"/> Divorced <input type="checkbox"/> Separated		k. Name of spouse
2a. Name of business	b. Employer Tax ID number (EIN)	c. Telephone number
d. Street address	e. City	f. State <input type="text" value="v"/> g. ZIP code
h. Email address	i. Website	
Section B – Describe the Alleged Violation of Income Tax Law		
3. Alleged violation of income tax law. (Check all that apply.)		
<input type="checkbox"/> False Exemption	<input type="checkbox"/> Unsubstantiated Income	<input type="checkbox"/> Unreported Income
<input type="checkbox"/> False Deductions	<input type="checkbox"/> Earned Income Credit	<input type="checkbox"/> Narcotics Income
<input type="checkbox"/> Multiple Filings	<input type="checkbox"/> Public/Political Corruption	<input type="checkbox"/> Kickback
<input type="checkbox"/> Organized Crime	<input type="checkbox"/> False/Altered Documents	<input type="checkbox"/> Wagering/Gambling
<input type="checkbox"/> Failure to Withhold Tax		
<input type="checkbox"/> Failure to File Return		
<input type="checkbox"/> Failure to Pay Tax		
<input type="checkbox"/> Other (describe in 5)		
4. Unreported income and tax years		
Fill in Tax Years and dollar amounts, if known (e.g., TY 2010-\$10,000)		
TY ____ \$ _____	TY ____ \$ _____	TY ____ \$ _____
TY ____ \$ _____	TY ____ \$ _____	TY ____ \$ _____
5. Comments (Briefly describe the facts of the alleged violation-Who/What/Where/When/How you learned about and obtained the information in this report. Attach another sheet, if needed.)		
6. Additional information. Answer these questions, if possible. Otherwise, leave blank.		
a. Are books/records available? (If available, do not send now. We will contact you, if they are needed for an investigation.)		
b. Do you consider the taxpayer dangerous		<input type="checkbox"/> Yes <input type="checkbox"/> No
c. Banks, Financial Institutions used by the taxpayer		<input type="checkbox"/> Yes <input type="checkbox"/> No
Name	Name	
Street address	Street address	
City	State <input type="text" value="v"/>	ZIP code
City	State <input type="text" value="v"/>	ZIP code
Section C – Information About Yourself		
<small>(We never share this information with the person or business you are reporting.)</small>		
This information is not required to process your report, but would be helpful if we need to contact you for any additional information.		
7a. Your name	b. Telephone number	c. Best time to call
d. Street address	e. City	f. State <input type="text" value="v"/> g. ZIP code
Print and send your completed form to: Internal Revenue Service PO Box 3801 Ogden, UT 84409		
Catalog Number 47872E www.irs.gov		



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1099-MISC

Miscellaneous Income

1099-MISC

- Form 1099-MISC is used to report various types of income, including **nonemployee compensation, rents, royalties, and more.**
- If you believe the information on the 1099-MISC is incorrect, you can take steps to challenge it.
- Carefully review the information on the Form 1099-MISC for accuracy.
- Check the payer's information, your personal information, and the amounts reported in each box.
- Collect any supporting documentation that can verify the correct information, such as contracts, invoices, or other relevant records.

Fiedziuszko v. Commissioner

- T.C. Memo. 2018-75:
- Petitioner signed contract to provide consulting services to third party;
- Contracting party withheld Federal income tax, Social Security taxes, and Medicare benefits.
 - Contracting party did not offer medical insurance, paid vacation leave, or reimbursements, but did offer deferred compensation plan.
- Contracting party listed Petitioner as statutory employee for one year and not the other.
- Tax Court found Petitioner was a statutory employee and not a common law employee.
 - Parties intended to form “an independent consulting relationship rather than a common law employee-employer relationship.”



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1099-K

Payment Card and Third Party Network Transactions

Communicate with the Payer, Request a Corrected Form

- Under IRC § 6050W, payment settlement organizations (Including third party settlement organizations, merchant acquiring entities and third-party settlement organizations) are required to report payments made in settlement of payment card and third party network transactions.
- Payment Settlement Entity (“PSE”) – in the case of a payment card transaction, a merchant acquiring entity; and, in the case of a third party network transaction, a third party settlement organization.

Communicate with the Payer, Request a Corrected Form

- Merchant Acquiring Entity – the bank or other organization with the contractual obligation to make payment to participating payees in settlement of payment card transactions.
- Third Party Settlement Organization (“TPSO”) – the central organization that has the contractual obligation to make payment to participating payees of third party network transactions.

Recent Changes to Form 1099-K Rules

- IRS announces delay for implementation of \$600 reporting threshold for third-party payment platforms' Forms 1099-K - IR -2022-226 (January 3, 2023)
- 2022 is a transition year (See Notice 2023-10)
- The transition period delays the reporting of transactions in excess of \$600 to transactions that occur after calendar year 2022
- FAQs About Form 1099-K (FS-2022-41)

If You Get a Form 1099-K in Error

You may get a Form 1099-K in error when the form:

- Reports payments that were gifts or reimbursements from family or friends
- Doesn't belong to you or is a duplicate

If this happens:

- Contact the issuer immediately – see FILER on the top left corner of Form 1099-K
- Keep a copy of the original form and all correspondence with the issuer for your records

If Your Form 1099-K Is Incorrect

- Take the following steps if any of this information on the form is incorrect:
 - Payee Taxpayer Identification Number (TIN)
 - Gross amount of payment card/third party network transactions
 - Number of payment transactions
 - Merchant Category Code (MCC)
- Request a corrected form from the issuer – see FILER on the top left corner of Form 1099-K. If you don't recognize the issuer, contact the Payment Settlement Entity (PSE) on the bottom left corner of the form above your account number.
- Keep a copy of the corrected Form 1099-K with your records, along with any correspondence you have with the issuer or PSE.
- Don't contact the IRS. They can't correct your Form 1099-K.

If You Can't Get a Corrected Form 1099-K

- Report the amount on Schedule 1 (Form 1040), Additional Income and Adjustments to Income
- Example: You receive Form 1099-K for \$650 your roommate sent you for their share of rent.
- On Schedule 1 (Form 1040):
 - Enter the error on Part I – Line 8z – Other income: “Form 1099-K received in error, \$650”
 - Adjust it on Part II – Line 24z – Other adjustments: “Form 1099-K received in error, \$650”
- These 2 entries note the error and result in a \$0 net effect on your adjusted gross income (AGI).



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Certain Gambling Winnings

W-2G

Form W-2G

- Form W-2G, *Certain Gambling Winnings*;
 - If filing paper version, include with Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*, (Due February 28th).
 - Form 5754, *Statement by Person(s) Receiving Gambling Winnings*.
 - Following will be reported on W-2G:
 - Bingo or slot winnings of \$1,200 or more (not reduced by wager);
 - Keno winnings (reduced by wager) of \$1,500 or more;
 - Poker winnings (reduced by wager or buy-in) of \$5,000 or more;
 - Winnings (other than those above) reduced by wager of:
 - \$600 or more;
 - 300x the wager; or
 - Winnings subject to federal income tax withholding.

Challenging a Form W-2G

- **Review the Form W-2G:** Carefully examine the details provided on the Form W-2G, such as your personal information, the type of gambling winnings, the amount reported, and the payer's information. Ensure that all the information is accurate and matches your records.
- **Gather supporting documentation:** Collect any relevant documentation, such as receipts, tickets, or other records that validate your gambling activities and winnings. These documents will serve as evidence to support your challenge.
- **Contact the payer:** Reach out to the payer listed on the Form W-2G, typically the casino or gambling establishment, to discuss the discrepancy. Provide them with the details of your concern and any supporting evidence you have. Request an explanation and correction if necessary.

Challenging a Form W-2G (cont.)

- **Maintain detailed records:** Keep a record of all communications with the payer, including dates, times, names of individuals spoken to, and summaries of the discussions. This documentation will be helpful if further action is required.
- **Contact the IRS if needed:** If the payer does not correct the Form W-2G or if you believe it is necessary to involve the Internal Revenue Service (IRS), you can contact the IRS for further assistance. Reach out to the IRS at the appropriate contact number or visit their website for guidance on disputing the reported gambling winnings.



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Schedule K-1

Partner's Share of Income, Deductions, Credits, etc.

IRS SCHEDULE K-1

- Schedule K-1 is used to report a partner, shareholder, or beneficiary's share of income, deductions, credits, etc.
- Schedule K-1 are filed with the IRS and furnished to partners, shareholders, or beneficiaries.
- Recipients are generally required to report their share of income, deductions, credits, etc. consistently with their Schedule K-1.

651121
OMB No. 1545-0123

2022

Schedule K-1 (Form 1065) Department of the Treasury Internal Revenue Service

Final K-1 Amended K-1

For calendar year 2022, or tax year beginning / / 2022 ending / /

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss)	14	Self-employment earnings (loss)
2	Net rental real estate income (loss)	15	Credits
3	Other net rental income (loss)	16	Schedule K-3 is attached if checked
4a	Guaranteed payments for services	17	Alternative minimum tax (AMT) items
4b	Guaranteed payments for capital	18	Tax-exempt income and nondeductible expenses
4c	Total guaranteed payments	19	Distributions
5	Interest income	20	Other information
6a	Ordinary dividends	21	Foreign taxes paid or accrued
6b	Qualified dividends	22	More than one activity for at-risk purposes*
6c	Dividend equivalents	23	More than one activity for passive activity purposes*
7	Royalties	*See attached statement for additional information.	
8	Net short-term capital gain (loss)		
8a	Net long-term capital gain (loss)		
9a	Collectibles (28%) gain (loss)		
9b	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)		
11	Other income (loss)		
12	Section 179 deduction		
13	Other deductions		

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

C IRS center where partnership filed return:

D Check if this is a publicly traded partnership ("PTP")

Part II Information About the Partner

E Partner's SSN or TIN (Do not use TIN of a disregarded entity. See instructions.)

F Name, address, city, state, and ZIP code for partner entered in E. See instructions.

G General partner or LLC member Limited partner or other LLC member

H1 Domestic partner Foreign partner

H2 If the partner is a disregarded entity (DE), enter the partner's TIN _____ Name _____

I1 What type of entity is this partner?

I2 If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here

J Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	_____ %	_____ %
Loss	_____ %	_____ %
Capital	_____ %	_____ %

Check if decrease is due to sale or exchange of partnership interest

K Partner's share of liabilities:

	Beginning	Ending
Nonrecourse	\$ _____	\$ _____
Qualified nonrecourse financing	\$ _____	\$ _____
Recourse	\$ _____	\$ _____

Check this box if item K includes liability amounts from lower-tier partnerships

L Partner's Capital Account Analysis

Beginning capital account \$ _____

Capital contributed during the year \$ _____

Current year net income (loss) \$ _____

Other income (decrease) (attach explanation) \$ _____

Withdrawals and distributions \$ (_____)

Ending capital account \$ _____

M Did the partner contribute property with a built-in gain (loss)? Yes No If "Yes," attach statement. See instructions.

N Partner's Share of Net Unrecognized Section 704(c) Gain or (Loss)

Beginning	\$ _____
Ending	\$ _____

For IRS Use Only

For Paperwork Reduction Act Notice, see the Instructions for Form 1065. www.irs.gov/Form1065 Cat. No. 11394R Schedule K-1 (Form 1065) 2022

IF YOU DO NOT RECEIVE YOUR SCHEDULE K-1:

Option 1: File with best estimate.

- You should timely file your tax return using your best estimate of the income, deductions, credits, and other items from the partnership, s corporation, trust, or estate allocable to you.
- File Form 8082 to notify IRS of nonreceipt.
- If you later receive a Schedule K-1 that differs from your best estimates, file an amended return.

IF YOU DO NOT RECEIVE YOUR SCHEDULE K-1:

Option 2: File for extension (and pay).

- Apply for an extension to file your tax return.

Pay estimated tax to minimize underpayment penalties.

- Contact the partnership, s corporation, trust, or estate about your Schedule K-1.
- If you still do not receive your Schedule K-1 by the end of your extension, file your tax return using your best estimate along with Form 8082.

IF YOU RECEIVE AN INCORRECT SCHEDULE K-1:

- Promptly communicate the error to the partnership, s corporation, trust, or estate's representative, and request a corrected Schedule K-1.
- If the error is disputed or you are not provided with a corrected Schedule K-1, you should file your return using your best estimate as to the correct amount and file Form 8082 to disclose the inconsistent treatment to the IRS.
- Failure to disclose inconsistent treatment to the IRS on Form 8082 could result in computational adjustments and, in turn, lead to penalties and interest.

FORM 8082, NOTICE OF INCONSISTENT TREATMENT OR ADMINISTRATIVE ADJUSTMENT REQUEST

- Must include a description of the items being reported inconsistently, and support for the position taken.
- File Form 8082 with your original return.

Form 8082 Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR) OMB No. 1545-0074

(Rev. December 2018)
 Department of the Treasury
 Internal Revenue Service

(For use by partners, S corporation shareholders, estate and domestic trust beneficiaries, foreign trust owners and beneficiaries, REMIC residual interest holders, TMPs, and PRs.)
 Attachment Sequence No. **64**

► Go to www.irs.gov/Form8082 for instructions and the latest information.

Name(s) shown on return _____ Identifying number _____

Part I General Information

1 Check boxes that apply.

(a) Notice of inconsistent treatment (go to line 2)
 (b) AAR (choose one below—see instructions)

For partnership tax years beginning before January 1, 2018 (unless electing into BBA)
 TEFRA AAR
 ELIPs/REMICs

For partnership tax years beginning after December 31, 2017 (or that elected into BBA for tax years beginning after November 2, 2015, and before January 1, 2018)
 BBA AAR—go to Question A below

A Is the partnership revoking the immediately preceding partnership representative (and/or designated individual, if applicable) and appointing a successor (including the designated individual, if applicable) at the same time that the AAR is being filed? If "Yes," attach Form 8979

B Do the adjustments on the AAR result in an imputed underpayment for the reviewed year? If "Yes," go to Question C. If "No," go to Question D

C Is the partnership making an election under section 6227(b)(2) to have the adjustments taken into account by the reviewed year partners? If "Yes," go to Question D. If "No," go to Question E

D The partnership is required to provide statements to the reviewed year partners containing their share of the adjustments. By signing below, the partnership representative declares, under penalties of perjury, that all statements have been provided to the reviewed year partners as required by the instructions.

Partnership Representative Name (or designated individual, if appropriate) _____ Date _____

E Is the partnership applying modifications to the imputed underpayment? If "Yes," attach Form 8980

2 Identify type of pass-through entity in which you are a partner, shareholder, or member.

(a) TEFRA Partnership (b) S Corporation (c) Estate (d) Trust (e) REMIC (f) BBA Partnership

3 Employer identification number of pass-through entity **5** Internal Revenue Service Center where pass-through entity filed its return

4 Name, address, and ZIP code of pass-through entity **6** Tax year of pass-through entity _____ to _____

7 Your tax year _____ to _____

Part II Inconsistent or Administrative Adjustment Request (AAR) Items

	(a) Description of inconsistent or administrative adjustment request (AAR) items (see instructions)	(b) Amount as shown on Schedule K-1, Schedule Q, or similar statement, a foreign trust statement, or your return, whichever applies (see instructions)	(c) Treatment of items	(d) Amount you are reporting	(e) Difference between (c) and (d)
8					
9					
10					
11					

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 499750 Form 8082 (Rev. 12-2018)



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Cancellation of Debt

1099-C

Form 1099-C

OVERVIEW

- “If you owe a debt to someone who cancels or forgives all or some of the debt, you’re treated as having received income for income tax purposes and you may have to pay tax on this income.” *Taxpayer Advocate; Published 12/21/21 – Last Updated 2/18/22*

<https://www.taxpayeradvocate.irs.gov/get-help/general/cancellation-of-debt/>

- See also IRC §61(a)(11) which includes, generally, “*Income from discharge of indebtedness*” as part of Gross Income.
- See IRC §108 for additional rules, exclusions, reduction of tax attributes and definitions.

Form 1099-C

CORRECTED (if checked)

CREDITOR'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Date of identifiable event	OMB No. 1545-1424 Form 1099-C (Rev. January 2022)
		2 Amount of debt discharged \$	
		3 Interest, if included in box 2 \$	
CREDITOR'S TIN	DEBTOR'S TIN	4 Debt description	
DEBTOR'S name			
Street address (including apt. no.)		5 If checked, the debtor was personally liable for repayment of the debt <input type="checkbox"/>	
City or town, state or province, country, and ZIP or foreign postal code			
Account number (see instructions)		6 Identifiable event code	7 Fair market value of property \$

Cancellation of Debt

Copy B For Debtor

This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if taxable income results from this transaction and the IRS determines that it has not been reported.



Form 1099-C Not Received

- Often Forms 1099-C are issued but Taxpayers do not produce to CPAs/EAs at time of tax return preparation. The failure to report such will often result in under-reporter notices (i.e. CP-2000s) months/years later.
 - HOW TO MINIMIZE THIS PROBLEM:
- Knowing Your Client
- Ask Questions
- For returns on Extension past July: Download Wage & Income Transcripts – Detail & Summary – for each spouse
- If there is cancelled debt, report even if no 1099-C has been issued.

Review Form 1099-C

- You have reviewed the 1099-C received with your client and have reviewed/discussed the following items:
 - Date of the alleged cancellation (Box 1);
 - Amount of debt (Box 2);
 - Interest included in Box 2 (Box 3);
 - Client's personal liability (Box 5);
 - Event Codes for completeness & accuracy (Box 6);
 - If foreclosed or abandoned property is involved, the fair market value of the property at the time of cancellation (Box 7)

You Determine 1099-C to be Incorrect

- After the 1099-C review, discussions with client, and review of client records (if available), you determine the 1099-C to be incorrect. What are your next steps?
 - Gather as much support as possible from your client to confirm the error;
 - Approach issuer of 1099-C to request correction;
 - If issuer will correct, confirm that correction is properly filed with the IRS;
 - If issuer refuses to correct report (which will usually happen), explain and offset on tax return.
 - Retain records on all communications with issuer

CP-2000 Response If You Disagree

CP-2000 Response Process (See Publication 5181):

- Respond timely to the CP-2000
- Respond in writing:
 - Via Fax; or
 - Via Certified Mail (date-stamped at Post Office)
- If IRS does not agree with your written explanation, they will reply in writing. You have the option of calling and speaking to an examiner and, subsequently, a manager.

CP-2000 Response If You Disagree

CP-2000 Response Process (See Publication 5181):

- If still disagreed, the next step is the issuance of a Notice of Deficiency.
- There appears to be NO option to go to the IRS Independent Office of Appeals prior to petitioning the Tax Court.
- File Tax Court Petition timely. (Be sure to thoroughly redact the Notice of Deficiency, including bar codes).



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Litigating Information Returns

File a Petition With the Tax Court

- If the dispute is not resolved at the IRS examination or through the IRS appeals process, the IRS will issue a notice of deficiency.
- Section 6214 authorizes the United States Tax Court to redetermine the correct amount of a tax deficiency and to determine whether any additional amount or any addition to the tax should be assessed. The notice of deficiency will generally include a penalty based on the failure to report the income shown on the payee statement on the taxpayers' returns.
- The taxpayers then file a petition with the Tax Court to dispute the IRS's determination. The petition must be filed within 90 days of the date of the IRS notice of deficiency or other determination. A form of petition appears on the Tax Court's website

Litigation-Challenging Information Return

- Section 6201(d) provides:
 - **REQUIRED REASONABLE VERIFICATION OF INFORMATION RETURNS:** In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.

Litigation-CDP and Deficiency

- CDP
 - I.R.C. § 6320 and 6330: can challenge the underlying liability if no notice of deficiency and did not have an opportunity to dispute.
- Notice of Deficiency
 - Chapter 68 penalties are not brought by notice of deficiency.
 - Not additional amount or addition to tax.

Litigation-Refund

- I.R.C. § 7422(a): must file claim with IRS first before bringing refund claim;
- 28 U.S.C. § 1346(a)(1);
- 28 U.S.C. § 1491;
- I.R.C. § 6512(b);
- Flora v. United States
- I.R.C. § 6721 and 6722 are divisible.

Private Cause of Action-I.R.C. § 7434

- Czerw v. Lafayette Storage & Moving Corp., 2018 WL 5859525 (W.D.N.Y. Nov. 9, 2018);
- Flinn v. C Pepper Logistics LLC, 2021 WL 97159 (D. Kan. Jan 11, 2021);
 - Plead with particularity;
 - Follows Czerw;
- Greenwald v. Regency Management Services, 372 F. Supp. 3d 266 (D. Md. 2019);
 - Fraudulent underreporting of wages on W-2 is sufficient to state claim under Rule 12(b)(6);
- Yunjian Lin v. Grand Sichuan 74 St. Inc., 2019 WL 3409892 (S.D.N.Y. July 29, 2019);
 - Section 7434 was not properly pleaded.
- Cody Queen v. Zefco Inc., 2020 WL 9350977;
 - Need injury-in-fact to bring claim.

Relevant Cases (Taxpayer Friendly)

- **Scott Labor, LLC v. Comm'r, T.C. Memo. 2015-194 (U.S.T.C. Sep. 29, 2015)**: Form 941s and W-2s were off by \$2,000,000+. No intentional disregard found due to lack of pattern and taxpayer's normal practice was to have accountant meet with his bookkeeper to ensure legal compliance.
- **Mycles Cycles, Inc. v. United States, Case No.: 18-CV-314 JLS (AGS) (S.D. Cal. Sep. 4, 2019)**: Government penalized taxpayer for intentional disregard for failure to include information (TINs and job information) on Forms 8300, which was a second "offense." Court stated intentional disregard requires more than negligence or reckless disregard. Plaintiff's reasonable cause claim was waived because there was no previous request for refund claim filed.

Relevant Cases (Taxpayer Friendly)

- Am. Vending Grp., Inc. v. United States, No. CIV.A. WGC-07-2277, 2009 WL 1654535 (D. Md. Mar. 27, 2009): taxpayer issued W-2s but failed to file with SSA via Form W-3. Taxpayer was provided with Form W-3 for filing, but it was left on his “horribly messy” desk. Taxpayer’s hiring of outside personnel to help with compliance was indicative of his desire to comply.

Relevant Cases (Government Friendly)

- Stevens Techs., Inc. v. Comm'r, T.C. Memo. 2014-13 (U.S.T.C. Jan. 27, 2014): despite company's apparent troubles, it was able to operate but for filing its tax returns, paying its taxes, or making deposits. The failure was "a deliberate choice to focus on business matters rather than on tax compliance."
- Bale Chevrolet Co. v. United States, 620 F.3d 868 (8th Cir. 2010): pattern existed because taxpayer had previously been audited for the same issue-failure to file Form 8300. Although there was only one previous violation, that violation coupled with facts were sufficient for an intentional disregard penalty.



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QUESTIONS?