

Safe Harbor Exception for De Minimis Dollar Amount Reporting Errors

by Kenneth F. Ginder on January 9, 2024

As part of the routine administration of employee benefit plans, shortly after the end of a calendar year, many transactions must be reported to the federal government (“information returns”) and participants (“payee statements”) using forms such as Forms W-2, 1099, 1094, and 1095. As benefits professionals know, errors can—and do—occur in administering benefit plans, including reporting errors. Notably, on December 19, 2023, the IRS and Treasury Department issued final regulations that provide an exception to penalties that could otherwise be imposed for erroneous information returns or payee statements if the error involves a de minimis dollar amount. In addition, the final regulations provide that no corrective filing is required for a de minimis dollar amount error because the erroneous filing is treated as correct.

General Rule: Under Section 6721 of the Internal Revenue Code (“Code”), a \$250 penalty can be imposed for each information return that includes incorrect information. No more than one penalty may be imposed for each information return, and the total amount of penalties that may be assessed against one person in a calendar year is capped at \$3,000,000 (adjusted for inflation). For example, if a plan administrator files 14,000 Form 1099-Rs for the 2023 calendar year with incorrect information, the penalty exposure is \$3,000,000 ($\$250 \times 14,000 = \$3,500,000$; however, penalties would be capped at \$3,000,000). Virtually identical penalties can apply to incorrect payee statements under Code Section 6722.

Exception for de minimis dollar amount reporting errors: Under the final regulations, no penalty will be imposed, and an erroneous information return or payee statement will be treated as correct if:

- the error relates to an incorrect dollar amount;
- the dollar amount is de minimis;
- the information return or payee statement was otherwise correct;
- the information return or payee statement was timely filed or furnished;
- the error was not due to intentional disregard; and

- the individual to whom a payee statement is furnished does not elect to override the safe harbor exception.¹

The dollar amount will be considered de minimis if:

- the difference between any single amount in error and the correct amount is not more than \$100; and
- for taxes withheld, the difference is not more than \$25.

The following examples illustrate the conditions of the exception:

Example 1: Plan Administrator Z must file a Form 1099-R with the IRS by February 28, 2024, and furnish a copy to Participant A by February 15, 2024, that reports a distribution made from a 401(k) plan to Participant A. The gross distribution to Participant A was \$5,000, and \$1,000 was withheld for Federal income tax. The Form 1099-R, however, reported the gross distribution in Box 1 as \$4,900 and the Federal income tax withheld in Box 4 as \$975. The Form 1099-R was otherwise correct, and it was filed and furnished in a timely manner. The error was not the result of intentional disregard, and Participant A did not elect to override the safe harbor exception.

The safe harbor exception will apply because the difference for each error is not more than the applicable de minimis amount. The error in the dollar amount reported in Box 1, Gross distribution, is not more than \$100; it is exactly \$100. The error in the dollar amount reported in Box 4, Federal income tax withheld, is also de minimis because the difference between the amount in error and the correct amount is not more than \$25.

Example 2: The facts are the same as in Example 1, except that Administrator Z reports \$974 as the amount in Box 4, Federal income tax withheld.

The safe harbor exception will not apply because the Form 1099-R contains an error that is not a de minimis dollar amount error. The difference between the amount in error (\$974) and the correct amount (\$1,000) is \$26, which is more than the \$25 limit for de minimis dollar amount errors to an amount reported for tax withheld.

¹ Note that in addition to the safe harbor exception described in this post, there are other ways to reduce or eliminate reporting penalties. For example, the penalty can be reduced or eliminated if corrected returns are filed within certain time periods or if the error is shown to be inconsequential. A discussion of these other provisions, however, is beyond the scope of this post.

Payee Election and Reasonable Cause: A unique aspect of the de minimis dollar amount exception is that a payee can make an election not to have the exception apply to their statement. If a payee files such an election, the payor must furnish a correct

payee statement and file a correct information return. The payor, however, may still avoid the penalties imposed under Code Sections 6721 and 6722 by showing “reasonable cause.” Reasonable cause can be established if:

- the de minimis exception would have applied “but for” the election by the payee; and
- the filer files a corrected information return and furnishes a corrected payee statement within 30 days of the election date, as applicable.²

The payee must make the election to override the exception by the later of 30 days after the date on which the payee statement is required to be furnished to the payee or October 15th of the calendar year in which the statement is due. An election remains in effect for all subsequent years unless revoked. In addition, an election will apply to all types of payee statements the filer must furnish to the payee unless the payee specifies otherwise.

Voluntary Correction: Even if the exception for de minimis dollar amount reporting errors applies, a payor can issue a corrected payee statement voluntarily; however, a corresponding corrected information return must also be filed.

Bottom line: Reporting errors are common and can result in significant penalties. It is important, therefore, for plan fiduciaries to be aware of the new exception for de minimis dollar amount reporting errors.

If you have any questions about reporting errors, please contact a member of Verrill’s Employee Benefits & Executive Compensation Group.



Kenneth F. Ginder

Partner

T (207) 253 4912

[email](#)

² See Treasury Regulation §301.6724-1(h). Note that if a specific rule provides additional time to file corrected information returns and furnish corrected payee statements, the specific rule will supersede the 30-day rule.