



October 21, 2010

**VIA ELECTRONIC MAIL AND FACSIMILE**

The Honorable Olympia J. Snowe  
Ranking Member  
U.S. Senate Committee on Small Business  
and Entrepreneurship  
428A Russell Senate Office Building  
Washington, DC 20510

Re: Expanded Form 1099 Filing Requirements

Dear Senator Snowe:

This is in response to your letter, dated October 5, 2010, in which you express concern regarding the expanded Form 1099 filing requirements. You describe the Internal Revenue Service (IRS) information notice requesting comments on implementing the legislation that expanded the Form 1099 requirements, and you inquire why the Office of Advocacy (Advocacy) did not formally comment on the IRS notice.

As you know, Advocacy was established pursuant to P.L. 94-305 to represent the views of small business before Federal agencies and Congress.<sup>1</sup> Advocacy is an independent office with the Small Business Administration (SBA), so the views expressed in this letter do not necessarily reflect the views of the SBA or the Administration. Section 612 of the Regulatory Flexibility Act (RFA) also requires Advocacy to monitor agency compliance with the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act.<sup>2</sup>

Advocacy takes its direction from small businesses and hosts roundtables to receive input on what issues are of greatest importance. In addition to submitting public comments to agencies that reflect small business concerns, Advocacy regularly meets agency staff to discuss rules as they are being developed. This confidential interagency process allows agencies to work closely with Advocacy early, while a rule is still being developed, to help ensure that the agency is taking into consideration the rule's potential impact on small businesses. As a previous Chief Counsel for Advocacy said: the "useful exchange of information through confidential interagency communication can only help assure that

<sup>1</sup> 15 U.S.C. § 634a (1976). [http://www.sba.gov/advo/laws/law\\_sta.html#634a](http://www.sba.gov/advo/laws/law_sta.html#634a).

<sup>2</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1981) (codified at 5 U.S.C. §§ 601-612) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. §612(a).

the spirit of the RFA is met and regulatory results will be best achieved.”<sup>3</sup> I agree strongly with this position and will continue to use the confidential interagency process as an important tool to reduce the regulatory burden on small business.

As described more fully below, Advocacy chose not to provide public comment on the IRS notice because small business owners and representatives had indicated to Advocacy that the particular IRS notice in question did not address the full impact of the 1099 burden on small business. Instead, small businesses have called for legislative action to address the burdens caused by the expanded Form 1099 reporting requirement. Nevertheless, Advocacy made small business concerns regarding the expanded reporting requirement known to the IRS through its confidential interagency process.

I can assure you that this office remains committed to independently representing the concerns of small business on the 1099 issue. Advocacy stands ready to help the IRS comply with the RFA when the IRS develops rules to implement the 1099 reporting requirements.

## **Background**

Section 9006 of the Health Care Reform Bill mandates that, beginning in 2012, all companies will have to issue IRS Forms 1099 to any individual or corporation from which they buy more than \$600 in goods or services in a tax year.<sup>4</sup> The bill makes two key changes to how Forms 1099 are used. First, it expands their scope by using Forms 1099 to track payments not only for services but also for tangible goods. Second, it requires that Forms 1099 be issued not just to individuals but also to corporations. According to the IRS Taxpayer Advocate Service, about 40 million businesses and other entities will be subject to the new requirement, including roughly 26 million sole proprietorships.<sup>5</sup>

On July 19, 2010, the IRS issued Notice 2010-51 to request public comments for ways to reduce the burden of reporting and record keeping required with Form 1099.<sup>6</sup> In the notice, the IRS provided one example of reducing the burden of the expanded requirement by observing that the IRS has “already issued a proposed regulation that would allow a broad exemption from [Internal Revenue Code] section 6041 information reporting for payment card transactions that would otherwise be reportable [on Forms 1099].”<sup>7</sup> The IRS Notice sought public comments on similar methods to reduce the burdens associated with the expanded 1099 reporting requirement.

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<sup>3</sup> Testimony of Thomas M. Sullivan, Chief Counsel for Advocacy, U.S. Small Business Administration, U.S. House of Representatives Committee on Small Business (Jul 25, 2006).

[http://www.sba.gov/advo/laws/test06\\_0725.html](http://www.sba.gov/advo/laws/test06_0725.html).

<sup>4</sup> Public Law No: 111-192- June 25, 2010.

<sup>5</sup> <http://www.irs.gov/newsroom/article/0,,id=225270,00.html>.

<sup>6</sup> <http://www.irs.gov/pub/irs-drop/n-10-51.pdf>.

<sup>7</sup> *Id.*

## **Advocacy's Outreach Efforts**

Advocacy has been involved with this issue from the beginning. On June 25, 2010, after the expanded 1099 requirement became law, a number of small businesses contacted Advocacy to express concern over the provision. Because Advocacy takes its direction from small business, Advocacy hosted a roundtable on September 22, 2010, to hear from small business owners and their representatives regarding how they anticipated that the new reporting requirements will impact them. The roundtable provided a forum for small owners to suggest alternatives to minimize the impact of the new requirement.

Approximately 30 small business owners and representatives attended the roundtable or participated by phone. Participants said that the expanded Form 1099 reporting requirement would increase burdens on small businesses in two ways. First, the expanded reporting requirement would result in a greater paperwork burden as small businesses would see an increase in the number of Forms 1099 that they are required to file. As an example, one roundtable participant anticipates that the expanded Form 1099 requirement would result in his business increasing its tax year filings from ten Forms 1099 to three hundred and sixty Forms 1099. Second, and more significantly, roundtable participants focused on the all-new internal-data controls that would need to be implemented to address the expanded reporting requirements. Roundtable participants anticipated that implementing new internal-data controls would represent 90 percent of the burden that they would face as a result of the expanded Form 1099 requirement.

Advocacy has not only been listening to small business, it has been working closely with the IRS to describe these concerns in detail. Additional concerns are described below.

The information reported on a Form 1099, such as the Tax Identification Number (TIN) of a vendor, is different from the information usually maintained and tracked by businesses. As a result all-new internal controls will need to be implemented to determine when the expanded Form 1099 requirement is triggered and this information will need to be saved. Most small businesses do not have specific personnel available to create and manage such a system.

The truck driving industry demonstrates how the increased time and costs associated with collecting and maintaining new data that will be required under the expanded Form 1099 requirement will impact small businesses. Truck drivers usually spend more than \$600 to fill their trucks with gasoline, and therefore, paying for a full tank of gasoline will subject the truck drivers to the expanded Form 1099 reporting requirement. In order to obtain the information required to complete a Form 1099 for this purchase of gasoline, the small business owner truck driver will be required to interrupt his normal business operations, record the name of the gasoline station and track down the TIN of the gas station owner. Determining the TIN of the gas station owner – and for any new covered entity subject to the expanded reporting requirement – will be particularly burdensome for the small business truck owner. The determination of whether a gas station is independent or a franchise further complicates this process. If the gas station is part of a franchise, the truck driver will then need to figure out how to calculate multiple payments to gasoline

stations in the franchise. As this example demonstrates, there are a number of complications related to tracking and maintaining information to satisfy the expanded Form 1099 requirement.

At-home businesses, which constitute 53 percent of small businesses, further illustrate how the expanded Form 1099 requirement will complicate small businesses internal-data controls. It will be especially burdensome for at-home businesses to track and calculate payments subject to the Form 1099 requirement, such as determining what percentage of a monthly electricity bill is related to personal use and what percentage is related to the at-home business subject to the expanded Form 1099 reporting requirement.

In addition to tracking the vendor, the vendor's TIN, whether the vendor is independent or a franchisee, and the amount of payment, the new internal record-keeping procedures that small businesses implement will also need to distinguish the manner of payment made to the vendor. Because the Internal Revenue Service will exempt credit card payments from the expanded Form 1099 reporting requirement, small business internal controls will need to distinguish between payments made by credit card, cash, or check.

For this reason, small businesses and their representatives reported at the roundtable that exempting certain transactions, such as credit card transactions, from the new Form 1099 reporting requirements would only add another level of complexity to internal record-keeping processes to track transactions subject to the expanded Form 1099 reporting requirements. Furthermore, exempting credit card transactions will incentivize small businesses to pay for transactions using credit cards instead of cash or checks. This is problematic because credit card companies charge fees to use their services. Moreover, many small businesses don't even accept credit payments, and therefore, would not be able to partake in a type of transaction that is exempted from Form 1099 reporting.

In fact, at the roundtable, small business stakeholders did not offer any suggestions to minimize the impact of the expanded 1099 requirements. Instead, small business owners and their representatives expressed their hope that congressional action would address the burdens imposed by the expanded Form 1099 reporting requirements so that regulatory action by the IRS which triggers Advocacy's oversight of RFA compliance would not be necessary.

Advocacy is committed to continue its outreach efforts with small business owners and representatives to obtain their views on rules that the IRS develops to implement the expanded 1099 reporting requirements and on any legislative options that Congress introduces to address the burdens of the expanded Form 1099 reporting requirements. We are also committed to continuing to relay these concerns to the IRS as we hear from small businesses and to keeping congressional members informed of our activities as well.

## **Interagency Communications**

Immediately after the roundtable, my office initiated a conference call with the IRS regulatory attorneys responsible for drafting Notice 2010-51. We reported small business concerns directly to IRS on the expanded reporting requirement. On October 4, 2010, I personally met with the IRS Chief Counsel to discuss the input that I have received from small businesses on this issue.

In addition, my office has regularly been in contact with Congressional staff on this issue to express small business concerns over the expanded 1099 reporting requirement. For example, during this time my staff has informed your staff about our activities on this issue.

Advocacy will continue to have communications and meetings with IRS staff, both public and confidential interagency communications, to ensure that the IRS takes into account the views of small businesses on this issue. These outreach efforts do not preclude Advocacy from issuing a public comment letter as the IRS develops rules to implement the expanded Form 1099 reporting requirements. Advocacy is also available to meet with Members of Congress or their staff to share the views of small businesses and discuss ways that legislative action could address this issue.

## **Conclusion**

At our September 22, 2010, roundtable the small business participants unanimously indicated that the IRS information notice did not address the full impact of the 1099 burden on small business and therefore a response to the IRS notice was not the priority of small business; rather it was Congressional action that was needed to address the 1099 legislation. The roundtable participants suggested no alternative, short of legislative action, that would minimize the impact of the expanded Form 1099 reporting requirements. Nevertheless, Advocacy made its concerns regarding the expanded reporting requirement known to the IRS through its confidential interagency process, which is a tool Advocacy frequently uses and that, on numerous occasions, has had an even greater result than a public comment letter.

Advocacy remains committed to independently representing the concerns of small business on the 1099 issue. Advocacy stands ready to help the IRS comply with the RFA in the development of any proposed rules related to implementing the expanded Form 1099 reporting.

I understand Congress is considering legislative options to address the burdens of the expanded Form 1099 reporting requirements. Advocacy looks forward to working with you on this issue of importance to small businesses.

If you have questions about the content of this letter, please do not hesitate to contact me or have your staff contact my office's tax counsel, Dillon Taylor. He is reachable at (202) 401-9787 or [Dillon.Taylor@sba.gov](mailto:Dillon.Taylor@sba.gov).

Sincerely,

/s/

Winslow Sargeant, Ph.D.  
Chief Counsel for Advocacy