



TaxNewsFlash

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Notice 2018-23: Transitional guidance on expanded nondeductibility of certain fines, penalties and information reporting

The IRS today released an advance version of Notice 2018-23 as transitional guidance concerning new tax law measures that, under section 162(f), expanded the nondeductibility of certain fines and penalties paid to a governmental or nongovernmental regulatory entity and that imposed new information reporting requirements under section 6050X.

[Notice 2018-23](#) [PDF 48 KB] announces that the IRS and Treasury Department intend to issue proposed regulations to implement the new law's measures. Today's notice provides transitional guidance until the regulations are proposed. The IRS notice requests that suggestions for the proposed regulations be submitted by May 18, 2018.

Notice 2018-23 states that concerning the information reporting required under new section 6050X, governmental entities will not be required to comply with these new requirements "until the date specified in the proposed regulations." That specified date will not be earlier than January 1, 2019. The notice also provides that information reporting will not be required with respect to amounts required to be paid or incurred under a binding court order or agreement entered into before the specified date.

The transitional guidance provided with respect to the section 6050X reporting requirement does not affect or delay the applicability of section 162(f). Accordingly, Notice 2018-23 provides guidance on the identification requirement for determining amounts that qualify for the section 162(f)(2) exception.

New law provisions

Fines and penalties paid to a government are nondeductible for federal income tax purposes under section 162(f). A provision under the new tax law (Pub. L. No. 115-97,

enacted December 22, 2017) further denies any otherwise deductible amounts paid or incurred to or at the direction of a governmental or specific nongovernmental regulatory entity for the violation or potential violation of any law.

Certain exceptions apply to payments established as restitution, remediation of property, or required for correction of noncompliance, as well as amounts paid or incurred as taxes due, but only if identified in the court order or settlement agreement. The exceptions do not apply to reimbursements of government investigative or litigation costs.

New section 6050X provides that the appropriate official of any government or any nongovernmental entity which is involved in a subject suit or agreement will make a return and provide certain information “as determined by the Secretary.”

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