



# TaxNewsFlash

United States



No. 2020-309  
May 12, 2020

## Proposed regulations: Disallowed deductions and information reporting for fines, penalties

The U.S. Treasury Department and IRS today released for publication in the Federal Register a notice of proposed rulemaking (REG-104591-18) concerning section 162(f)'s denial of deductions for certain fines, penalties, and other amounts.

The proposed regulations affect taxpayers that pay or incur amounts in relation to the violation of a law or investigations or inquiries by governments, governmental entities or nongovernmental entities into the potential violation of a law.

The proposed regulations also include guidance for governments, governmental entities or certain nongovernmental entities with respect to information reporting requirements that are imposed under section 6050X about such disallowed payments of fines, penalties, and other amounts.

Read the [proposed regulations](#) [PDF 337KB] (16 pages as published in the Federal Register)

Comments and requests for a public hearing are due by July 13, 2020.

### Background

The 2017 tax law (Pub. L. No. 115-97, the legislation that is often referred to as the "Tax Cuts and Jobs Act" (TCJA)) expanded on the rules for the nondeductibility of certain fines and penalties paid to a government under section 162(f).

The TJCA provisions further deny 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. There are certain exceptions for 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 so identified in the court order or settlement agreement. These exceptions do not apply to reimbursement of government investigative or litigation costs.

### Proposed regulations

As noted in the preamble, the proposed regulations revise Reg. section 1.162-21 and provide operational and definitional guidance concerning the application of section 162(f), as amended by the TCJA.

Prop. Reg. section 1.162-21(a) provides generally that a taxpayer may not take a deduction for amounts (1) paid or incurred by suit, agreement, or otherwise; (2) to, or at the direction of, a government or governmental entity; (3) in relation to the violation, or investigation or inquiry into the potential violation, of any civil or criminal law. This general rule applies regardless of whether the taxpayer admits guilt or liability or pays the amount imposed for any other reason, including to avoid the expense or uncertain outcome of an investigation or litigation.

Prop. Reg. section 1.162-21(b) describes an exception to the general rule, to allow a deduction for certain amounts identified in the order or agreement as restitution, remediation, or paid or incurred to come into compliance with a law and the taxpayer establishes that the amount was paid or incurred for the purpose identified.

Concerning the information reporting requirements, section 6050X imposes a reporting requirement on governments and governmental entities with respect to the payment amount identified pursuant to certain suits, agreements, or otherwise. Prop. Reg. section 1.6050X-1 provides rules for complying with these reporting requirements. The proposed regulations require reporting of payment amounts greater than \$50,000 and provide that filing must occur on Form 1098-F filed annually by January 31<sup>st</sup> of the year following the date the agreement is entered into or the order is issued.

These rules include but are not limited to, settlement agreements; non-prosecution agreements; deferred prosecution agreements; judicial proceedings; administrative adjudications; decisions issued by officials, committees, commissions, or boards of a government or governmental entity; and any legal actions or hearings in which a liability for the taxpayer is determined or pursuant to which the taxpayer assumes liability.

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