Issue Brief

1099-MISC Nonresident Withholding

Issue

Act 43 of 2017 ushered in a new and complicated withholding obligation for Pennsylvania businesses. Beginning Jan. 1, 2018, certain payors of Pennsylvania-source income to a nonresident individual or a disregarded entity with a nonresident owner, and lease payments for Pennsylvania real estate to a lessor that is a nonresident individual, estate, or trust of at least $5,000, are required to withhold Pennsylvania personal income tax on these payments if the payments are reported to the IRS on a federal Form 1099-MISC. In addition, Act 43 imposes a duty upon a person that makes payments of Pennsylvania source income that fall within any of the eight classes of income to an individual, partnership, or single-member limited liability company that are reported on a federal Form 1099-MISC to file a copy with the Department of Revenue (DOR) that provides Pennsylvania source income and Pennsylvania personal income tax withheld, whether or not Pennsylvania personal income tax is withheld.

Given numerous ambiguities in the legislation and the short implementation time, the PICPA wrote to the DOR in January 2018 requesting a delay in the implementation of the new 1099-MISC withholding requirement. The DOR delayed implementation of the new withholding provisions until July 1, 2018. The PICPA and the DOR continue to work on corrective legislation to address practitioners’ concerns with the new requirement.

Discussion and Explanation

Determination of Income from Pennsylvania Sources where Services Are Performed Within/Without Pennsylvania

In instances where nonemployee compensation is paid for services performed both within and without Pennsylvania, the regulations provide different methods for determining Pennsylvania source income, depending upon the nature of the payee and payment. In many instances, the payor may not have all the relevant information at the time withholding is required in order to determine the amount of withholding.

House Bill 926 (HB 926) puts the duty upon the payee to determine the portion of a payment constituting income from sources within Pennsylvania in accordance with the regulations, and to provide this information to the payor. If the payee does not provide this information, the payor would be permitted to withhold Pennsylvania personal income tax on the whole payment.

Protection of Payors Acting in Good Faith from Assessment of Tax, Interest, and Penalties

The second cornerstone of HB 926 is protection for payors acting in good faith from the imposition of tax, interest, and penalties. The concern is whether a payee will provide a payor with accurate information. In many instances, the payor must rely upon a payee’s representation. As long as a payor’s reliance is reasonable, it should not be subject to an assessment of tax, interest, and penalties.

The Creeping $5,000 Threshold

HB 926 expressly addresses when a payor is required to withhold in instances where it does not anticipate making payments of at least $5,000 at the time of the first payment.

For more information, contact your CPA or the PICPA at governmentrelations@picpa.org.
If a payor is not able to determine whether the total annual payments of income from sources within Pennsylvania to a payee will be $5,000 or more at the time of a payment, the payor shall begin to withhold tax once the payor is reasonably able to determine that the total payments of Pennsylvania-source income to the payee will be at least $5,000. The payor will not be required to withhold tax on payments made prior to that time. This specific guidance will eliminate uncertainty and the potential for assessments.

**Expanded Information Return Reporting Requirements**
The expanded reporting of income from Pennsylvania sources on federal Form 1099-MISC will result in costly and undue hardship on payors. The same issues that are of concern with payor withholding also are relevant in reporting income from Pennsylvania sources, especially in instances where services are performed both within and without Pennsylvania. The process of obtaining all the relevant information is costly. These provisions should be repealed. At most, the payor should just have to file a copy of federal Form 1099-MISC with the DOR in the applicable instances.

**Legislative History**
State Rep. Keith Greiner, CPA (R-Lancaster), introduced House Bill 926, nonresident withholding fixes, to address these concerns.

State Rep. Frank Ryan, CPA (R-Lebanon), introduced House Bill 34 to repeal the reporting requirements for 1099-MISC income paid to nonresidents.