HFMA Tax Webinar

Disclaimer

The following information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

The IRA for Tax-Exempt Organizations

Energy Tax Credits Overview

The Inflation Reduction Act made significant changes to energy tax credits

- Significant enhancements and modifications made to existing energy tax credits (solar, wind, EVs, charging stations, etc.)
- New credits added for additional technologies and activities
- New prevailing wage and apprenticeship requirements to maximize many of the credits
- Additional "bonus" credit rates are possible for meeting additional criteria (e.g. site location, content)
- New "direct pay" election allows most tax-exempt and some government entities to access several specified credits
  - For ***tax years beginning after December 31, 2022,*** tax-exempt and governmental entities can receive a cash refund for the amount in excess of their tax liability
- Transferability election allows other taxpayers to monetize credits

Applicable Credits

Pre-IRA credits (now with a direct pay option)

- **Sec. 30C – Alternative fuel vehicle refueling property credit**
- Sec. 45 – Electricity produced from certain renewable resources (but only for projects originally placed in service after 12/31/2022)*
- Sec. 45Q – Credit for carbon oxide sequestration (but only for projects originally placed in service after 12/31/2022)
- **Sec. 48 – Energy credit***
- Sec. 48C – Qualifying advanced energy project credit

New Credits (with a direct pay option)

- Sec. 45U – Zero-emission nuclear power production credit
- Sec. 45V – Credit for production of clean hydrogen (but only for projects originally placed in service after 12/31/2022)
- **Sec. 45W – Credit for qualified commercial clean vehicles**
- Sec. 45X – Advanced manufacturing production credit
- Sec. 45Y – Clean electricity production credit*
- Sec. 45Z – Clean fuel production credit
- **Sec. 48E – Clean electricity investment credit***

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Overview of § 48 Investment Tax Credit (ITC)

One-time investment tax credit (ITC) equal to a percentage of the eligible basis of qualifying energy property placed in service during the taxable year.

Eligible basis* ✖ **ITC %** = **ITC**

Eligible Basis

- Compute eligible basis based on project costs
- Cost segregation analysis identifies eligible vs. ineligible direct costs
- Generally indirect costs allocated based on direct costs

ITC %

- Base rate
- Prevailing wage & apprenticeship bonus
- Domestic content bonus (or reduction)
- Energy community bonus
- Environmental justice bonus

Section 48 Energy Credit

Approximately 16 types of property qualify under section 48, including

- Microgrid controller
- Microturbine powerplants
- Fuel cell powerplants
- **Thermal energy storage property**
- **Solar energy property**
- **Combined heat and power system property (cogen)**
- **Geothermal heat pumps**
- **Energy storage technology**

Polling Question #1: Does your institution have any of the energy technologies listed out in the previous slide?

A. Yes,
B. No,
C. I don't know,
D. Not applicable.

Section 48E (New) Energy Credit

Section 48E is available for property that is placed in service after 2024

Facility must be a "zero emissions" facility (except for energy storage technology and thermal energy storage property)

- Certain technologies that qualify under section 48 would likely not qualify under new section 48E without carbon capture (*i.e.*, cogen, fuel cells, microturbines)
- Solar energy property would likely qualify as zero emissions

Phases out over a three-year period beginning the later of: (i) projects that begin construction after 2032 or (ii) when electric power sector's carbon emissions are reduced by 75% as compared to 2022 levels

Direct Pay
Final Regulations

Direct Pay Election Mechanics

Applicable entity must make the direct pay election to access credit

- Election must be made on an **original** annual tax return, no later than the due date (including extensions), with additional required forms (e.g., Form 990-T with attached credit forms, as prescribed by form instructions)
- Election must be made no later than the due date (including extensions) of the annual tax return

Secretary may require information or registration deemed necessary to prevent duplication, fraud, improper/excessive payments

- Online pre-filing registration is required
  - Registration number is required for the entity and for each credit property
  - Registration number for credit property is only valid for specified year; may need to amend registration if timeline or other information changes
  - Allow time for registration process to be completed before filing return/making election – IRS recommends registering at least 120 days before filing is due

Penalty for "excessive payments" = 20% of the "excessive payment" (or just the excessive payment amount if reasonable cause is demonstrated)

Unclaimed Property & the Healthcare Industry

Unclaimed property basics

What is unclaimed property?

The concept of unclaimed property

Unclaimed Property law & regulations are not a “tax”

- But can be a source of revenue to the states
- Typically represented as on balance sheet liabilities

Traditional tax nexus principles do not apply

- Priority rules for which state can take property were set by the U.S. Supreme Court (Texas vs. New Jersey)
- Last known address of the address of the owner controls which state law applies

If efforts by holders to reunite rightful owners with their property are unsuccessful

- After a period of time, the property must be reported and remitted to the state

Custodial laws – Derivative Rights Doctrine

Most states act as a custodian to “step into the shoes” of the owner in perpetuity; not a true “escheat”

What can be unclaimed property?

Although not an all-inclusive list, common types of unclaimed property include:	
Uncashed accounts payable checks	Gift Cards, gift certificates, or merchandise credits
Unpaid wages, payroll, expense, bonus or commission checks	Checking accounts, savings accounts, CDs, money orders, escrow accounts
Accounts receivable credit balances and credit memos	Rebates
Unidentified remittances	Insurance claim payments
Customer deposits	Health insurance premiums/refunds
Refunds	Equity related property, including stock and dividends
Oil and gas royalty payments	Unapplied cash
Individual Retirement Accounts (IRAs)	Health savings & flexible spending disbursements

All state unclaimed property laws generally include a "catch-all" provision which expands the coverage of the unclaimed property requirements to any other amounts held, due, or owing in the company's normal course of business.

Basic compliance obligations

To identify, track, and safeguard unclaimed property

- Research outstanding items at least annually

To perform due diligence (i.e., owner notification)

- Detailed notification requirements vary among states

To file an annual report and to report and remit **property by a specific deadline** to the relevant state

- Detailed requirements vary among states

To retain documentation demonstrating compliance

- Typically 10+ report years (issue year + dormancy)
- No statute of limitations for property not reported
- Some states require that you keep documentation to support what you did not report.

Note: Failure to comply with statutory obligations can expose businesses to penalty and interest assessments.

Unclaimed property issues and risk in the healthcare industry

Transaction & property types

Payers/insurers

- Patient or provider refunds
- Medical loss ratio refunds
- Uncashed claim payments
- Premium overpayments
- Direct enrollee bank account overdrafts
- Billing and payment discrepancies
- Aged claim payables

Healthcare specific property types

Providers

- Uncashed patient and payer refunds
- Small balance A/R write-offs
- Aged refund payables (patient and payer)
- Billing and payment discrepancies (contractual pricing differences, recorded receivables accounting
- State “Prompt Pay” and recoupment law application/interpretation differences

Patient credits: How do patient credits become reportable unclaimed property?

Discounts

Write-offs

Contractual pricing adjustments

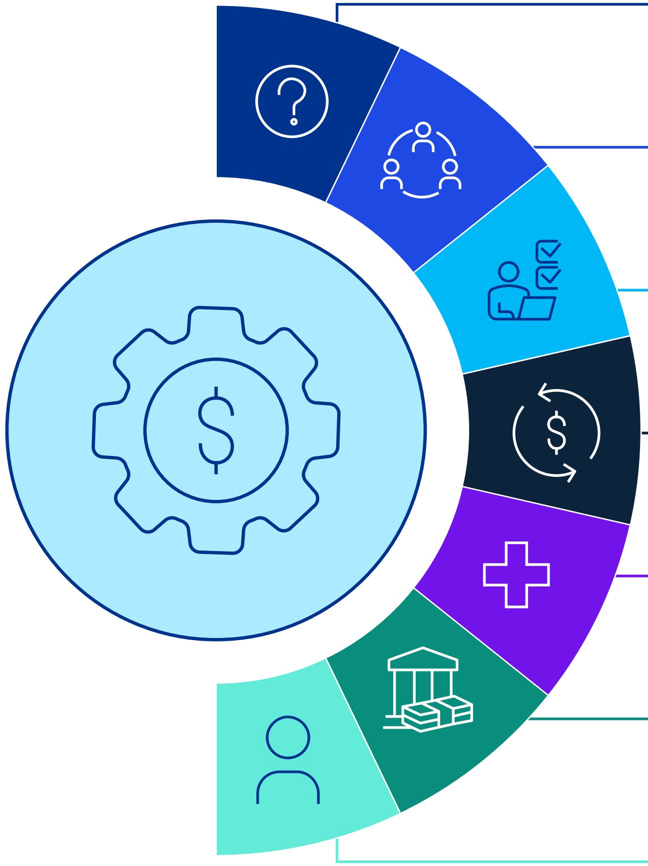
Information systems modifications

Rate changes applied retroactively

Duplicate payments and overpayments

Prepayments and deposits

Patient credit issues



- Who are they owed to?
- Patient? Government payor? Commercial Payor?
- Are there contractual provisions that should be considered?
- Do state recoupment and prompt pay laws apply?
- Are there governmental program considerations? (i.e., Medicare/Medicaid)
- Is netting of credit balances appropriate?
- Are state exemptions and exclusions applicable?

Shared services issues

Patient Accounting, Payroll and Accounts Payable

Is the required data being captured?

Does the shared services group use policies and procedures that are consistent with unclaimed property laws and regulations?

How is the shared services group involved with the unclaimed property process?

Privacy issues

Particularly with regard to unclaimed property enforcement by states, privacy of patient personal identifying Information (PII) and protected health information (PHI) is a concern.

- HIPAA – Health Insurance Portability and Accountability Act
- Consumer Privacy Laws – For example:
  - General Data Protection Regulation (GDPR)
  - California Consumer Privacy Act (CCPA)
  - Colorado Privacy Act (CPA)
- Note that New York state has consumer privacy legislation pending: Senate Bill 365.

Unclaimed property enforcement

Polling Question #2: Has your organization undergone an unclaimed property audit within the last 5 years?

A. Yes,
B. No,
C. I don't know,
D. Not applicable.

Unclaimed audits

Unclaimed property, not the typical audit

- Contingent-fee audit firm authorized by multiple states
- Scope period typically spans 15 years or more
- Take approximately 24 to 36 months to complete

Estimations where detailed records not available:

- Most states provide for estimations for years where detailed records are not available or deemed incomplete

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- Little formal guidance from states related to estimation techniques, which continues to be litigated
  - Base periods to be used for testing
  - Definition of complete and researchable records
  - Error rate calculation
  - Statistical sampling

- States require “Record Availability Attestation” letter to protect against indemnification claims

Why is unclaimed property a risk area for businesses?

Long audit "look back" periods

Many of the states' audit look back periods do not move forward, so for each year of non-compliance the likelihood of additional records being destroyed, and additional estimation periods, increase

Many businesses do not have complete accounting records to cover the audit look back period in part due to document retention/destruction policies, system conversion, etc.

Many states engage third-party audit firms to perform multi-states audits, and such audits may be on a contingency fee basis

If records are not available for the entire audit look back period, the holder's state of incorporation/formation generally has the right to review all available records to derive error ratios and estimate and assess liabilities to cover the pre-records portion of the look back period

Burden of proof that property is not owed is high, providing sufficient documentation is challenging

The estimated amounts assessed are one-time windfalls to the states of incorporation/formation, which may increase a state's likelihood of identifying and auditing potentially non-compliant holders

UP enforcement issues & challenges: Healthcare

Volume of transactions

- For both healthcare insurers and providers, the volume of transactions related to uncashed checks, credit balances, and payment discrepancies spanning the long audit scope period (i.e., 15 years) often results in unclaimed property audits being resource-intensive and time consuming to complete.

Accounting systems and access/quality of records

- Patient accounting system/credit balances
- Insurance rate changes – current at time of billing?
- Quality and availability of documentation
- Prima facie evidence/burden of proof/rebuttable presumption

Multiple parties, multiple payments

- Providers and Insurance Companies
- Providers and Patients
- Insurance Companies and Patients
- Who is owed?

UP enforcement issues & challenges: Healthcare (Cont'd)

Privacy concerns

- HIPPA – Can information be provided?
- Auditors argue required by (UP) law
- Auditor as “law enforcement agency”
- Additional State Guidance needed
- PII – Auditor’s data security measures?

Prompt pay and recoupment laws vs. UP law

- Lack of clarity/guidance
- Concept of private escheat
- State-by-state legal analysis

Other enforcement measures: “Self-audit” programs

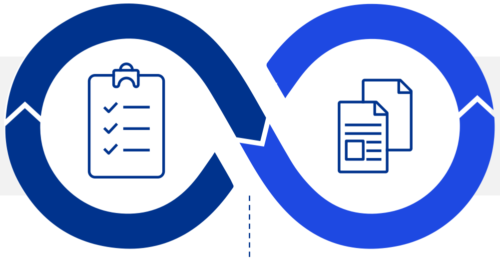
A growing trend is new state programs, managed by third parties on the state’s behalf, where the company is requested by the state to undergo a “self-audit”.

- Some states have “self-audit” programs, including Illinois, Indiana, District of Columbia, Florida, Massachusetts, Minnesota, Utah and Washington State.
- The programs are often managed by third parties that also perform audits for the states (i.e.., Kelmar Associates, Kroll Government Solutions, etc.)
- Companies are notified of their selection for the self-audit program via a “self-audit notice letter” which provides that they must respond by completing a form to be sent to the third party vendor.
- Not responding to the letter could subject the company to an unclaimed property audit.
- Similar to some states’ voluntary disclosure programs, the company is directed to complete a review of its records and provide a report of its review scope and identify the outstanding unclaimed property uncovered.
- The state/third party vendor must accept the findings and if they do, the holder must file a report.
- The timeframe for the self review and report are often only 60 days with the possibility of maybe a 30 day extension.
- Completion of a self-audit doesn’t preclude the state from auditing the company for the same property types and time scope covered in the self-audit.

The states have indicated that ignoring self-audit notices will trigger a full scale review by the state or their agents.

Other enforcement measures: Verified reports and compliance reviews

Verified Reports



Compliance Review

Some state unclaimed property statutes permit the state administrator to request that a holder, under certain conditions, verify the information in a submitted “positive” report or confirm a negative/nil report. Typically, this means a state requesting a copy of the business’ unclaimed property-related policy and procedures, plus that the business complete an entity listing and file a report indicating any additional property identified. (States such as Delaware and the District of Columbia have implemented verified report programs.)

Permits states to perform, under certain conditions, a more in-depth review of a holder’s information to determine if the holder is compliant with the state’s unclaimed property statute. Information such as tax returns and charts of account may be requested.

Unclaimed property: Recent Statutory Changes

Statutory Updates – Fall 2024 Compliance

- ## Colorado
  - **Reporting:** Negative reports required beginning in Fall 2024.
- ## Connecticut
  - **Effective Date:** July 1, 2024
  - **Dual Notice Delivery**: Holders must send notices via first-class mail and email, provided the owner has consented to email communications.
  - **Reporting Details**: Reports must now include the owner's physical address, email address, and last known telephone number.
- ## Florida
  - **Effective Date:** May 2, 2024
  - **Notice Delivery:** Holders must send the notice by first-class mail or email if the owner has elected this method of delivery.
  - **Content Requirements**: The notice must include specific content similar to RUUPA, including the header language and a statement that any property not legal tender of the US may be sold or liquidated by the department.
  - **Reporting:** Aggregate reporting limit reduced to $10 from $50.

Statutory Updates – Fall 2024 Compliance

- **Idaho**
  - **Effective Date:** July 1, 2024
  - **Notice Timing:** Changes from not more than 120 days to 60 to 180 days before filing the report for payroll and utility related unclaimed property.
  - **Notice Delivery**: Dual notice delivery via first-class mail and email is required if the owner has consented to email from the holder.
  - **Dormancy Acceleration**: The dormancy period for deceased owners is reduced to 2 years for specific property types.
  - **Reporting:** Elimination of de minimis exemption and reporting of previously exempt items from the prior 5 years.
- **Michigan**
  - **Effective Date:** July 23, 2024
  - **Reporting:** Dormancy periods increased to 5 years for various property types for owners on active duty military service or a reserve component on active orders

Statutory Updates – Fall 2024 Compliance

- **North Carolina**
  - **Effective Date**: July 20, 2024
  - **Due Diligence Letters**: Must include the report submission date and a 30-day claim period
- **Oregon**
  - **Effective Date:** January 1, 2024
  - **Reporting:** The payroll dormancy period is reduced from 3 years to 1 year
- **Wisconsin**
  - **Reporting:** EFT remittances are mandatory for all remittances.
  - **VDA Program**: Revival of the Voluntary Disclosure Agreement program with a new website.

Key takeaways

Annual compliance can be challenging

- Wide range of potential property types
- Unclaimed property is not a tax; state of owner/payee last known address controls
- Compliance obligations vary by state/jurisdiction

Noncompliance can be costly and time consuming

- Industry currently subject to audits by contingent-fee firms
- Penalty and interest provisions exacerbate risks
- Audit scope periods can span 15 or more years and often result in unclaimed property audits being resource-intensive and time consuming to complete

Ongoing state legislative reform continues to reshape annual reporting responsibilities

- Important to understand how these changes impact your company

Forms 1099 for Healthcare Organizations

Agenda

- **Updates: Current 1099 Landscape**
  - IRS Audit Activity and Areas of Focus
  - Transmitter Control Codes (TCC)
  - Information Return Intake System (IRIS)
- **Advanced Issues: Common Pain Points and Potential Audit Exposure**
  - State 1099 Reporting
  - Legal Settlements
  - Medical and Legal Services
  - Reimbursements
- **Best Practices**
  - TIN Matching
  - Responding to Penalty Notices
  - Correcting Past Issues
- **Questions and Answers**

Updates: Current 1099 Landscape

IRS Audit Activity and Areas of Focus

- **Past**
  - 1099-specific audits very rare
  - Majority of penalties for late notices, failure to file, B-notices
- **Current**
  - Increased funding from Inflation Reduction Act
  - More robust automation – can review for inconsistencies between years, double filings, etc.
  - Data scientists embedded with audit teams
  - 1099-specific audits still rare but can be referred under 1042-S audit
    - 1099s current sit with Employment Tax
- **Future**
  - 1099s may move under Foreign Payments Practice (1042-S audits)
  - Form 1099-DA and crypto

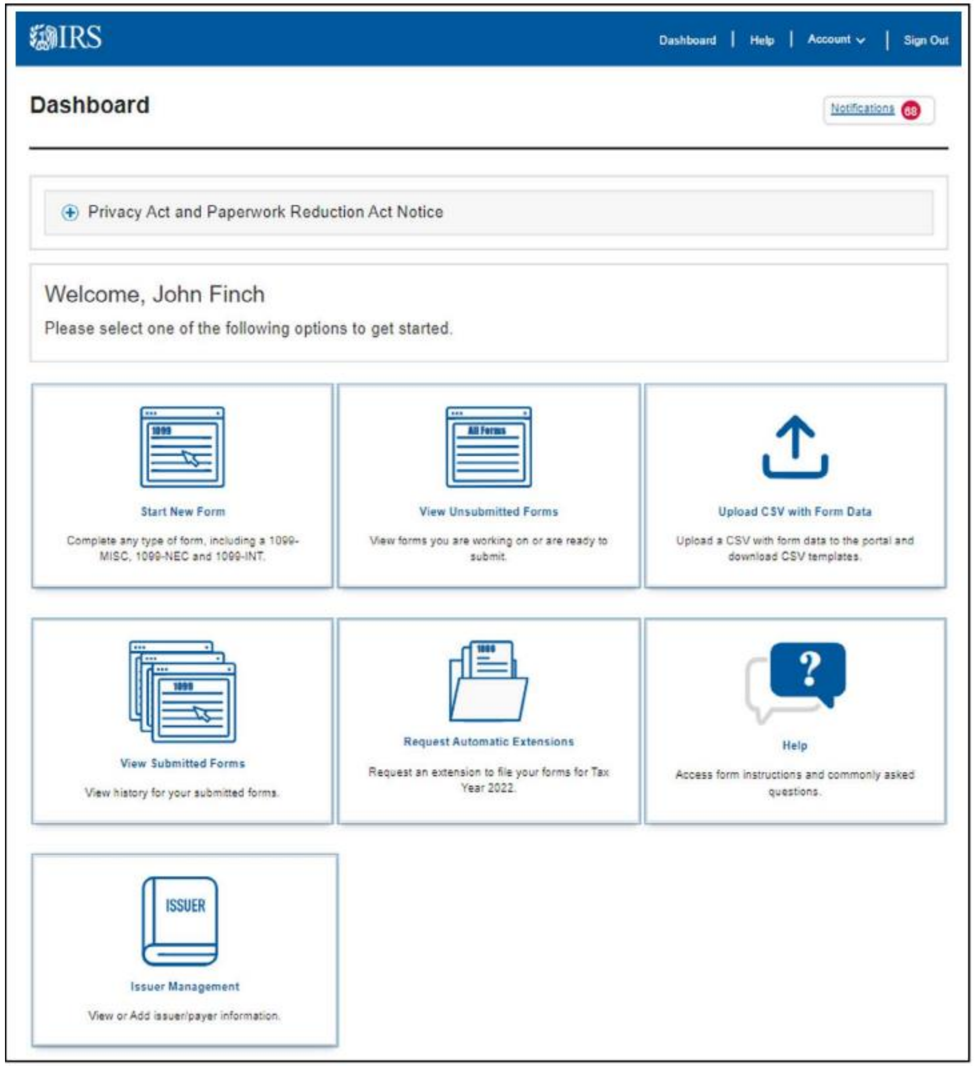
Transmitter Control Code (TCC)

- Code issued by the IRS required for filing electronic returns (5 characters – different from an EIN/SSN)
- If obtained before September 26, 2021, organization should have completed a new application for a TCC by August 1, 2023 (TCC will otherwise become inactive)
- To obtain new TCC, identification verification with the IRS's ID.me system required
- Obtaining TCC requires an SSN or TIN
- If a service provider is filing on your organization's behalf, they can use their own TCC
  - If organization is using software to submit on its own, organization will use their own TCC

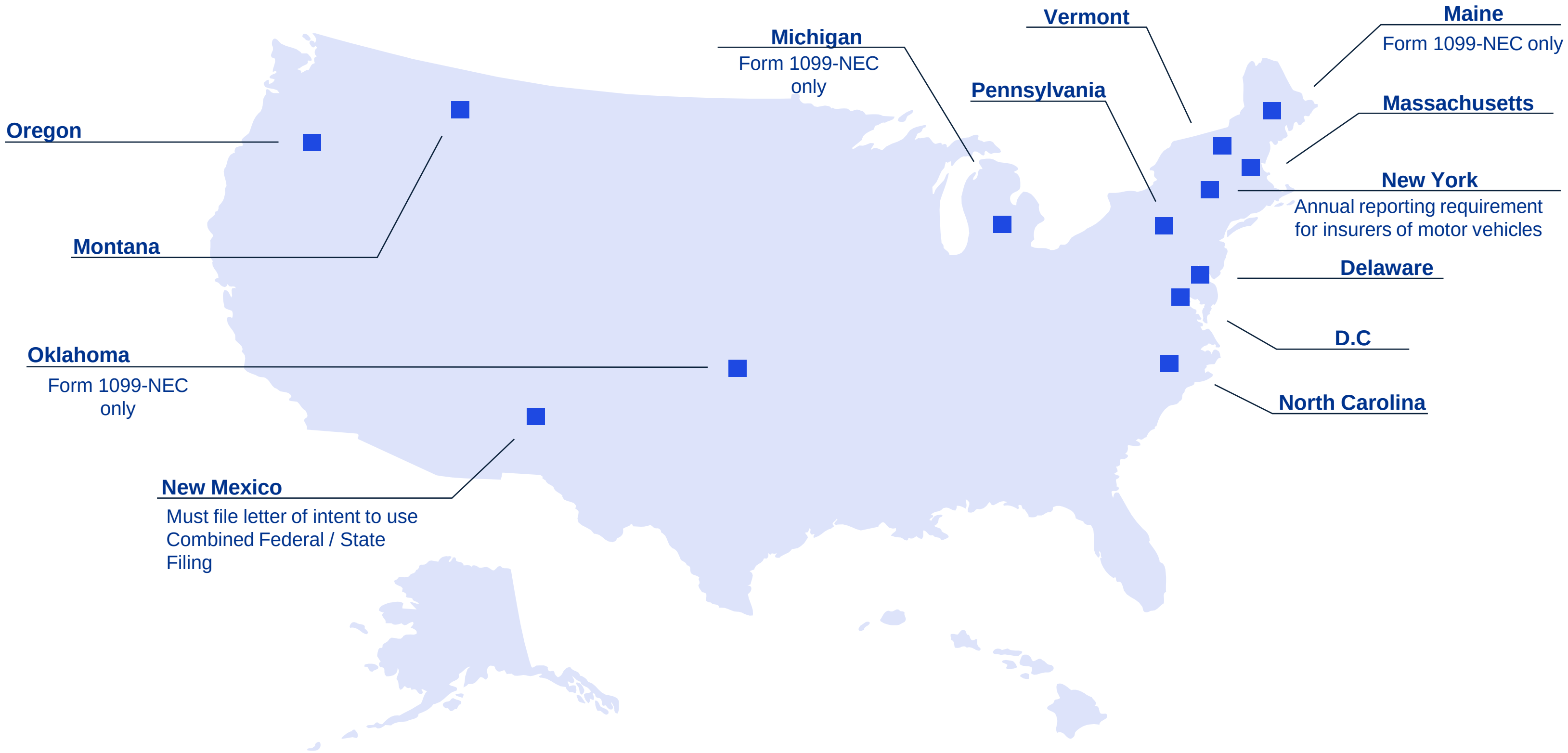
Polling Question #3: Did your organization apply for a new TCC on or before August 1, 2023 ?

A. Yes,
B. No,
C. I don't know,
D. Not applicable.

Form 1099 Reporting – Information Return Intake System (IRIS)



States with Potential Separate Form 1099 Reporting Requirements



Each state has its own criteria regarding what must be reported

- e.g., payment to a resident of the state, payments “sourced” in the state, payments for services performed in the state.

In practice, most organizations typically report based on the recipient’s address

- e.g., all recipients with a PA address will be reported to PA regardless of any other factors

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Medical and Legal Services

Medical and Healthcare Payments

- Do not report payments for flu vaccine (goods)
- Include payments made by medical and healthcare insurers under health, accident, and sickness insurance programs
- Examples of reportable payments include drug screenings, nurses to administer vaccines, etc.

Gross Proceeds Paid to an Attorney – Includes payments to an attorney as part of a legal settlement (**not** a payment to an attorney for services)

CORRECTED (if checked)

		3 Other income $	4 Federal income tax withheld $	Copy B For Recipient
PAYER'S TIN	RECIPIENT'S TIN	5 Fishing boat proceeds	6 Medical and health care payments $	
		...r made direct sales ...ng $5,000 or more of ...umer products to ...ient for resale ☐	8 Substitute payments in lieu of dividends or interest $	This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
Street address (including apt. no.)		9 Crop insurance proceeds $	10 Gross proceeds paid to an attorney $	
City or town, state or province, country, and ZIP or foreign postal code		11 Fish purchased for resale $	12 Section 409A deferrals $	
	13 FATCA filing requirement ☐	14 Excess golden parachute payments $	15 Nonqualified deferred compensation $	
Account number (see instructions)		16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Form **1099-MISC** (Rev. 1-2022) (keep for your records) www.irs.gov/Form1099MISC Department of the Treasury - Internal Revenue Service

Best Practices

TIN Matching

- **TIN matching allows a payor to confirm the validity of a name/TIN combination under certain conditions**
- **Interactive TIN matching**
  - Allows a payor to check up to 25 name/TIN combinations per session
  - Interactive module gives immediate results
- **Bulk TIN matching**
  - Allows a payor to check up to 100,000 name/TIN combinations
  - Uploaded to the IRS website using a specified file format
  - Results returned within 24 hours
- **TIN matching API**
  - New this year
  - Allows a systematic connection with the IRS TIN matching service
  - Reports of limited/slow responses

Penalties – Responding to Penalty Notices

- Take action immediately to answer or refute Notice
- If research on issue cannot be completed in timeline provided, contact the IRS for an extension
- To demonstrate “reasonable cause” for actions, organizations must show:
  - Taxpayer acted in a responsible manner, and
  - There were significant mitigating factors or events beyond taxpayer’s control
- Provide evidence/documentation to support the taxpayer’s claim if possible (e.g., evidence of timely filing)
- Research each item the IRS includes in the penalty notice
- Do not assume the IRS is correct
- Reasonable Cause Memo
  - Cite sections of reasonable cause regulations
  - Highlight significant mitigating factors

Penalties – Significant Mitigating Factors

- Factors contributing to Established History of Compliance:
  - Never incurred penalty previously
  - Cite statistics (for example, “B Notice represents 0.02% of Forms 1099 filed,” vs. “There were 756 incorrect TINs.”)
  - First time filing requirement
- Factors contributing to Events Beyond Taxpayer’s Control:
  - Actions of payee or any other party
  - Vendor provided incorrect information on Form W-9
  - Provide supporting documentation (e.g., copy of policy on TIN matching, sample where TIN matched)
  - Actions of an agent – imputed reasonable cause (e.g., your 1099 filing vender made an error)
- Keep copy of signed letter and accompanying documentation for files
- Send response (letter, documentation, Notice page with barcode) to IRS office listed on Notice
- Always send response certified mail, return receipt requested
- If sending multiple responses, send one response per envelope

B Notices – Payor Overview

- After receiving a B Notice, the payor must:
  - Search for any accounts of a payee that have the same name/TIN combination listed on the B Notice
  - Notify the payee about the B Notice within the later of 15 business days from the date of Notice CP2100 or CP2100A or 15 business days from the date the payor received the B Notice
    - The first B Notice must be sent with a Form W-9, with instructions and any other forms the payor institution may need to change the name or TIN on its business records
    - The envelope with the information must state “Important Tax Document Enclosed” or “Important Tax Return Document Enclosed”; reply envelope is optional
    - Materials must be sent by first-class mail to customer’s last known address
  - Backup withhold on reportable payments made to the accounts after 30 business days from the date the payor receives the B Notice
    - Payor must start backup withholding after 30 business days (from the date on Notice or date of receipt of Notice, whichever is later) if the customer has not provided a certified TIN on a new Form W-9
    - Payor may elect, on an account-by-account basis, to start backup withholding at any time during this 30 business day period

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