



NEW IRS REPORTING REQUIREMENTS

A new Federal Regulations requiring credit card processors and acquirers to report merchant electronic payments transactions to the IRS could have major implications for retailers. The requirements originated when Congress passed the Housing and Economic Recovery Act of 2008 and was intended to help the IRS identify under-reported sales. This is an unfortunate and additional piece of legislation imposed by the Federal Government to capture income which may not be correctly reported. The US Treasury believes they can collect an additional \$10 Billion over 10 years.

These new requirements will apply to transactions beginning in January 2011. All merchant acquiring entities must collect and verify the Tax ID number of each merchant by performing a Tax Identification Number (TIN) match with the associated legal business name for each merchant on file. This can be difficult because differences in spelling or punctuation could cause a mismatch. The word "AND" for example may be displayed as 'and' or with a character such as + or &. Despite these challenges, in January 2012, the merchant bank must file a Form 1099-K with the IRS and provide a copy to each merchant for which it filed. Included transactions are credit, debit and gift card. American Express will file a separate Form 1099-K. If a merchant only receives information from their processor electronically, then they may also receive their Form 1099-K electronically.

If the TIN or legal business name does not match the merchant processor must withhold 28% for the IRS

Merchant banks can be fined \$250 for each error so they will take pains to ensure their information is accurate. Should a merchant's TIN not match the IRS records, the Treasury advises the merchant bank they may be responsible for withholding merchant funds and allows the payment processor 30 days total to correct the deficiency.

If a merchant has two processors during a given year because they closed one relationship and opened a new one during the year, they will have two separate filings and reporting. **Even more problematic, beginning in 2013, if the TIN or legal business name combination that was provided to the merchant processor does not match the information the IRS has on file then the merchant processor must withhold a portion of the merchant's processing if they are not able to reconcile the mismatch. The merchant processor must withhold 28% for the IRS plus the states' applicable withholding requirements.** Worse, after the mismatch is identified and corrected any withholding paid to the IRS or state must be recovered through the merchant's tax filing at the time they file their taxes which could severely harm a merchant's planned cash flow. Imagine if your cash flow is interrupted at the beginning of the year, for example and your first two month's card payments are withheld at the 28% rate! This could be devastating for any business, let alone a florist that relies on heavy spending around Valentine Day. Those withholdings may not be reconciled with the merchant until they file their taxes after the end of the year.

The new reporting law was opposed by businesses, banks and payment professionals before it was signed into law, yet the industry must respect and adhere to it. The amount reported is gross sales which includes sales that are returned or charged back and is before any fees are deducted. Merchant's should pay attention to requests from merchant processors to reconcile their TIN and legal business name and work with them immediately if there is a mismatch. The reconciliation is easy but must be done promptly to avoid withholdings and any fee for such withholding.

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