**AMERICAN PAYROLL ASSOCIATION**

June 7, 2019

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2019-30) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044
www.regulations.gov

Re: Public Comment on Recommendations for 2019-2020 Priority Guidance Plan (Notice 2019-30)

Dear Ms. Lesniak:

Thank you for allowing the American Payroll Association (APA) to comment on the 2019-2020 Priority Guidance Plan (Notice 2019-30).

**ABOUT APA**

APA is a professional organization serving the interests of more than 21,000 payroll professionals nationwide. Our primary mission is to educate members about the laws and regulations that impact payroll operations, including tax administration. APA's advocacy goals center on reduced administrative burden for government, employers, and individual workers.

**ELECTRONIC CAPABILITIES FOR LEVIES**

APA supports system modernization initiatives undertaken by the IRS and Treasury Department. APA is particularly interested in the electronic delivery of IRS tax levies to employers and the capability for employers to submit electronic responses to the levies and payments to the IRS for amounts withheld from their employees through required payroll deductions and payroll agreements under Form 2159. This is very important to larger employers withholding and making payments each pay period, especially for those employers with same day payment requirements.

In April, the IRS announced a multiyear Integrated Modernization Business Plan. APA recommends that electronic capabilities for levies be included in that effort.

**ELECTRONIC CAPABILITIES FOR FILING THE ADJUSTED FORM 94X SERIES**

APA is requesting electronic filing capabilities for filing adjustments to the Form 94x series, *Employer's Federal Tax Returns*, related forms, and corresponding schedules to increase efficiency for both the IRS and employers. Including the principal form and all of the related schedules and forms is important because employers are less likely to file returns electronically if all components of the filing cannot be filed together. This also reduces processing time and the potential for lost information.

Although an employer can upload a Form W-2c, *Corrected Wage and Tax Statement*, file electronically to the SSA to correct Forms W-2, *Wage and Tax Statement*, which is then transmitted electronically to the IRS, the corresponding Form 94x series corrections must be filed on paper with the IRS. The lag time between these two filings (electronic and paper) creates an unnecessary administrative and cost burden for payroll departments and employers.

For example, paper filing causes a delay in the processing of adjusted forms, which in turn creates a risk that the IRS will process the returns out of order. When viewed out of order, the IRS may reject a return because it appears that corrections were not made accurately. Employers find it difficult to track the returns and identify the order in which they were processed, which may result in yet another adjusted return filing. Electronic filing capabilities would resolve this issue.

**ELECTRONIC CAPABILITIES FOR FORM 1099-MISC**

APA recommends that the IRS issue guidance creating a free, direct-to-the-IRS e-filing service for Forms 1099-MISC to accommodate businesses without the resources to engage third parties in helping them file through the IRS's Filing Information Returns Electronically (FIRE) system. A free-filing service for original and corrected Forms 1099-MISC will increase accuracy and is a cost savings for employers and the IRS.

**DEFINITION OF CONSTRUCTIVE PAYMENT**

APA is requesting that the IRS consider how income tax withholding, depositing, and reporting requirements should apply to on-demand pay. An emerging trend among employers and payroll industry vendors is offering employees access to accrued earnings in advance of their regular payday. This trend is frequently referred to as on-demand pay. Guidance is needed to help payroll professionals and their employers determine when these arrangements constitute payment of wages subject to payroll tax withholding, depositing, and reporting requirements (i.e., under what circumstances does an employee's access to accrued earnings trigger actual or constructive payment of wages)? Can the

withholding, depositing, and reporting of taxes associated with on-demand pay be processed on the employee's next regular payday?

The commonality among on-demand programs is the reliance on certain payroll data, such as hours worked and rates of pay. However, different on-demand programs are managed in various ways. Some examples include the following:

- Employers offer on-demand pay through internal management. The employer fully funds the payment and has complete discretion over the amount and frequency. The employer recovers the full amount of the on-demand payment on the regular payday by making a deduction from net pay.

- Employers select a third party to provide the service to employees as a benefit. Among vendor plans, there are diverse approaches to administration:

  - Some plans are funded by the employer and managed by the vendor. The employer has some discretion over plan design and frequency. In these plans, the employee's net pay is reduced by the on-demand pay amount on payday similar to employer offered plans.

  - Other third-party vendors manage the service, including funding the on-demand payments. These vendors provide the service directly to employees and require the employee to repay the amount to the vendor on payday. The employer has little involvement.

Thank you again for allowing APA to offer recommendations on the IRS's Priority Guidance Plan. APA appreciates our excellent working relationship with the IRS and Treasury Department to ensure compliance with tax policy and administration.

Sincerely,

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