

## Werfel to appear at Ways and Means hearing with likely focus on continued delay of tighter 1099-K reporting requirements

The House Ways and Means Committee announced this week that it will hold a hearing on February 15 at 10:00 a.m., with Internal Revenue Service Commissioner Danny Werfel appearing as the sole witness.

The official announcement from the committee released on February 8 does not include a specific agenda, but it appears that the hearing is being convened in conjunction with a letter sent by Chairman Jason Smith, R-Mo., and the panel's Republicans last December 21 asking the IRS commissioner to make himself available to testify in late January or early February about the agency's decision to delay implementation of the more stringent information reporting requirements for third-party payment processors that were enacted in 2021.

**URL:** [https://gop-waysandmeans.house.gov/wp-content/uploads/2024/02/ADVISORY\\_Full-Committee\\_February-15-2024.pdf](https://gop-waysandmeans.house.gov/wp-content/uploads/2024/02/ADVISORY_Full-Committee_February-15-2024.pdf)

**URL:** <https://waysandmeans.house.gov/wp-content/uploads/2023/12/Smith-Miller-led-1099-K-letter-to-IRS-12.21.23.pdf>

### Taxpayer relief or administrative overreach?

The American Rescue Plan Act of 2021 (P.L. 117-2) reduced the dollar-threshold triggering the Form 1099-K reporting requirement from \$20,000 under prior law to \$600 and eliminated the prior-law 200-transaction threshold, effective for reporting for returns filed for calendar years after 2021.

**URL:** <https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf>

A number of lawmakers in both parties tried—without success—to postpone those more stringent thresholds reporting thresholds as part of the omnibus tax-and-spending legislation that Congress approved in December of 2022. In the wake of that failed effort, however, the IRS issued Notice 2023-10 at the end of 2022 in which it delayed enforcement of the new rules until after 2023.

**URL:** <https://www.irs.gov/pub/irs-drop/n-2023-10.pdf>

In its second round of administrative relief—Notice 2023-74, issued last November—the IRS stated that it will treat calendar year 2023 as an additional transition period with respect to enforcing the new 1099-K reporting requirements. The agency explained in a November 21 news release that its decision to further delay implementing the American Rescue Plan provision was based on “feedback from taxpayers, tax professionals, and payment processors” and its desire “to reduce taxpayer confusion.” The IRS also announced its intention to phase-in the implementation of the stricter rules enacted in the American Rescue Plan by setting the dollar-threshold triggering the reporting requirement at \$5,000 (instead of \$600) for tax year 2024.

**URL:** <https://www.irs.gov/pub/irs-drop/n-23-74.pdf>

Following the release of Notice 2023-74, Ways and Means Committee Chairman Jason Smith, R-Mo., contended in a news release that the IRS had overstepped its authority in an attempt to mitigate the impact of an “unworkable” provision.

**URL:** <https://waysandmeans.house.gov/chairman-smith-irs-concedes-democrat-signature-law-unworkable-illegally-rewrites-key-provision/>

“By delaying implementation of this arbitrary and harmful new reporting threshold that goes after Americans for selling concert tickets and used furniture, President Biden is dodging accountability for Democrats’ partisan law that places over 90 percent of the tax burden on middle-class families and gig workers, according to the Joint Committee on Taxation,” Smith said. “It’s unlikely this move is even constitutional given the clear text of the legislation Democrats enacted, when it’s up to Congress, not the White House, to amend or repeal bad laws,” he added.

In their December 21 letter asking Werfel to appear before the committee, Smith and his fellow GOP taxwriters acknowledged that they did not support the American Rescue Plan provision reducing the 1099-K threshold, but nonetheless noted that they have “serious concerns with the IRS’s actions that have continually ignored the clear letter of the law,” adding that the agency now “appears to be writing an entirely new policy without the authority to do so.”

“The legislation that our Democrat colleagues passed on a party-line vote very clearly states that the Form 1099-K threshold was set at \$600 for tax year 2022 and onward. The enacted law did not give the IRS room to delay or change this threshold,” the letter said.

### **Other possible questions**

Although the hearing likely will focus on the delayed implementation of the 1099-K reporting thresholds, Werfel also may face questions from taxwriters about the agency’s ability to implement a provision in the House-approved Tax Relief for American Families and Workers Act (H.R. 7024) that would allow the IRS to adjust refunds for those taxpayers who would be due a benefit under that measure’s expanded child tax credit but filed their taxes before the legislation becomes law.

**URL:** <https://gop-waysandmeans.house.gov/wp-content/uploads/2024/01/AINS-to-H.R.-7024.pdf>

That bipartisan legislation, which was negotiated by Ways and Means Chairman Smith and Senate Finance Committee Chairman Ron Wyden, D-Ore., cleared the House by a wide bipartisan margin on January 31. The measure is currently stuck in the Senate, however, where it has run into resistance from some GOP lawmakers who, among other things, have expressed concern that giving this refund-adjustment authority to the IRS would allow the Biden administration to manipulate the timing of additional payments for political purposes, a criticism that Smith has disputed. (See separate coverage in this issue for more on the bill’s current status.)

**URL:** <https://waysandmeans.house.gov/correcting-the-record-tax-relief-for-american-families-and-workers-act-protects-taxpayers-and-prevents-attempts-to-politicize-americans-tax-refunds/>

Ways and Means Committee members also may ask Werfel about how the IRS intends to deploy the mandatory funding allocated to it (over 10 years) in the Inflation Reduction Act of 2022 (P.L. 117-169) to strengthen its enforcement program, modernize its information technology, and enhance its taxpayer service operations, and about a recently released report from the IRS and Treasury that contends that the improvements to the agency’s operations as a result of the new funding could generate hundreds of billions of

dollars in new revenue for the government over the coming 10 years. (See separate coverage in this issue for additional details on that report.)

**URL:** <https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf>

### **Gomez makes a comeback**

In other Ways and Means developments, Rep. Jimmy Gomez, D-Calif., announced this week that he is rejoining the committee to fill the vacancy on the Democratic roster created when taxwriter Brian Higgins of New York resigned from Congress on February 2 to take a position as head of a Buffalo-area arts organization. (Higgins announced his intention to leave Congress in November of last year.)

**URL:** [https://gomez.house.gov/news/documentsingle.aspx?DocumentID=3048&&utm\\_source=%20urban\\_newsletters&utm\\_medium=news-DD&utm\\_term=TPC](https://gomez.house.gov/news/documentsingle.aspx?DocumentID=3048&&utm_source=%20urban_newsletters&utm_medium=news-DD&utm_term=TPC)

Gomez is one of three Democratic taxwriters—along with Steven Horsford of Nevada and Stacey Plaskett of the Virgin Islands—who lost their seats on the Ways and Means Committee at the start of 2023 after party ratios on all House committees were readjusted to reflect the GOP's majority status in the chamber in the 118th Congress. Although all three were eligible to return to the panel in the event of a Democratic vacancy, Gomez has the most seniority in Congress, which positioned him to be the first to be offered the open committee slot once it became available.

— Michael DeHoff  
Tax Policy Group  
Deloitte Tax LLP

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

#### **About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at [www.deloitte.com](http://www.deloitte.com).