

Part III - Administrative, Procedural, and Miscellaneous

Information Reporting Under the Amendments to Section 6041 for Payments to Corporations and Payments of Gross Proceeds and With Respect to Property

Notice 2010-51

PURPOSE

This notice invites public comments regarding guidance to be provided concerning new requirements with respect to the reporting of payments made in the course of the payor's trade or business. The new reporting requirements are in section 6041 of the Internal Revenue Code (the Code), which was amended by section 9006 of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (the Act). Very generally, these amendments expand existing information reporting requirements to apply to payments made to corporations and to include certain payments of gross proceeds and with respect to property. The new reporting requirements under these amendments apply to payments made after December 31, 2011.

BACKGROUND

Section 6041 generally requires information returns to be made by every person (payor) engaged in a trade or business who makes payments, as defined in section 6041(a), aggregating \$600 or more in any taxable year to another person (payee) in the course of the payor's trade or business. The information returns must be filed with the Internal Revenue Service and corresponding statements must be sent to each payee.

Form 1099-MISC, Miscellaneous Income, is generally used for this purpose, although Form W-2, Wage and Tax Statement, is generally used for payments to employees. See Treas. Reg. §1.6041-1(a)(2).

The Act amended section 6041(a) to add payments of “amounts in consideration for property” and “gross proceeds” to the list of payments subject to reporting. However, the Act retained existing exceptions in section 6041(a) for “payments to which section 6042(a)(1), 6044(a)(1), 6047(e), 6049(a), or 6050N(a) applies,” and “payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), or 6045.” These excepted payments include most interest, dividends, royalties, and securities and broker transactions.

The Act also added new section 6041(h) regarding the application of section 6041 to payments made to corporations. Existing regulations under section 6041 generally except payments to corporations, exempt organizations, governmental entities, international organizations, and retirement plans from reporting under section 6041. See Treas. Reg. §1.6041-3(p). New section 6041(h) provides that, notwithstanding any regulation prescribed by the Secretary before the date of enactment, for purposes of section 6041, the term “person” includes any corporation that is not an organization exempt from tax under section 501(a). Thus, under new section 6041(h), payments to corporations that are not tax-exempt may be subject to information reporting.

Finally, the Act added new section 6041(i) authorizing the Secretary to prescribe such regulations and other guidance as may be appropriate or necessary to carry out

the purposes of section 6041, including rules to prevent duplicative reporting of transactions. Also, section 6041(a) provides generally that information returns under section 6041 shall be furnished under such regulations and in such form and manner, and to such extent, as may be prescribed by the Secretary.

REQUEST FOR PUBLIC COMMENTS

The Treasury Department and the Internal Revenue Service intend to issue guidance that will implement these changes to section 6041 in a manner that minimizes burden and avoids duplicative reporting. This notice requests comments regarding possible approaches to the section 6041 guidance that will assist in achieving those goals.

For example, the Treasury Department and the Internal Revenue Service have already issued a proposed regulation that would allow a broad exception from section 6041 information reporting for payment card transactions that would otherwise be reportable under section 6050W of the Code, effective for payments beginning in 2011. This proposed regulation is expected to be finalized later this summer. Thus, business purchases made with payment cards will be exempt from information reporting under section 6041.

The Treasury Department and the Internal Revenue Service request comments on additional circumstances in which duplicative reporting might otherwise occur under section 6041 and another Code section, such as section 3402(t), and on rules that would prevent such duplicative reporting. Specific comments are also requested regarding the burden associated with implementing the new reporting requirements for

different types of taxpayers and businesses.

Additional issues on which comments are requested include:

1. The appropriate scope of the terms “gross proceeds” and “amounts in consideration for property” in section 6041(a), as amended, and how to interpret these terms in a manner that minimizes the reporting burden and avoids duplicative reporting.

2. Whether or how the expanded reporting requirements should apply to payments between affiliated corporations, such as payments related to intercompany transactions within the same consolidated group.

3. The appropriate time and manner of reporting to the Service, and what, if any, changes to existing practices for Form 1099 information reporting to the Service are needed to minimize burden in compliance with the new reporting requirements.

4. What, if any, changes to Form W-9, Request for Taxpayer Identification Number and Certification, and the existing rules for soliciting taxpayer identification numbers (TINs) are needed to minimize the burden for payors to obtain TINs from payees, what are the privacy concerns with respect to TINs, and what are other concerns regarding identifying payees.

5. How should the backup withholding requirements for missing TINs under the expanded new reporting requirements be administered in order to minimize burden on payors.

Interested parties are invited to submit comments on this notice by September 29, 2010. Written comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2010-51), Room 5203, P.O. Box 7604, Ben Franklin Station,

Washington, DC 20044. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2010-51), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, D.C. Comments may also be transmitted electronically via the following e-mail address: Notice.Comments@irs.counsel.treas.gov. Please include "Notice 2010-51" in the subject line of any electronic communications. All comments will be available for public inspection and copying.

The principal author of this notice is Keith Brau of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, please contact Keith Brau at (202) 622-4940 (not a toll-free call).