

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

September 21, 2004

Third Party Communication: None
Date of Communication: Not Applicable

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CASE-MIS No.: TAM-128309-04

District Director

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No
Years Involved:
Date of Conference:

LEGEND:

X:
Year 1:
Year 4:

ISSUES

1. Do the reporting requirements of section 60501 of the Internal Revenue Code (Code) apply when a single customer purchases multiple items of personal property at the same time and pays for the purchase via a series of cash payments totaling in excess of \$10,000?
2. Are X's employees deemed separate recipients for purposes of section 60501 of the Code?
3. Is X subject to either the Failure to File Correct Information Returns penalty under section 6721(a) or the Intentional Disregard penalty under section 6721(e) of the Code?

CONCLUSIONS

1. The reporting requirements of section 6050I apply when a single customer purchases multiple items of personal property at the same time and pays for the purchase via a series of cash payments totaling in excess of \$10,000.
2. X's employees are not deemed separate recipients for purposes of section 6050I.
3. X is subject to the section 6721(a) Failure to File Correct Information Return penalty. X is not subject to the section 6721(e) Intentional Disregard penalty.

FACTS

X is a retail business that sells household furnishings and accessories (furniture). Although no individual item of furniture has a sales price exceeding \$10,000, customers purchase multiple pieces of furniture at the same time causing the total sales price to exceed \$10,000 for the single purchase.

Customers can pay for their purchases in full at the time of sale, or may make a deposit on their purchase and pay the balance by installment. Customers can pay with cash, credit, check, or a combination of the three. If the customer makes a deposit, the customer must pay the remaining balance before delivery. Customers paying through installment deposits often make many small cash payments at various times until their balance is paid in full. The customers at issue paid X for their purchases via cash installments.

Typically, the employee making the sale is not the employee collecting payment. Various employees receive multiple payments of currency from customers over a series of weeks and months, usually in amounts less than \$10,000. When an employee receives a payment from a customer, the employee enters the payment into the computer system transmitting the payment to a central unit. Once X's central unit receives the payment information, X settles the payment against the customer's account. Because of security policies, X has not authorized its employees to access customer account histories. Because of this restriction, employees cannot determine the aggregate amount of payments made by a customer on a purchase.

On September 21, Year 1, the Internal Revenue Service (Service) concluded the first of two Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, compliance reviews. The Service determined that X failed to file nine Forms 8300 for tax Year 1. Upon the Service's request, the Vice President of Finance mailed a letter to each of the nine customers who made cash payments in excess of \$10,000, requesting a copy of their driver's license and social security card. None of the customers responded to the request. As a result, the nine Forms 8300 were prepared and filed with incomplete information.

The Service did not propose any penalties for X's failure to file correct information returns for Year 1. The Service informed the Vice President of Finance that a subsequent compliance review could occur. In addition, the Service explained the section 6050I reporting requirements, and specifically stated that X was required to issue a Form 8300 when a customer makes cash payments exceeding \$10,000, whether the payment is made in a single installment or through multiple installments. After the discussion, the Vice President of Finance signed an "Acknowledgement of Requirements to File Form 8300." The Vice President of Finance has not changed.

On June 12, Year 4, the Service mailed an initial appointment letter to X scheduling a subsequent Form 8300 compliance review in July. On July 2, Year 4, and again on July 3, Year 4, X prepared and mailed a Form 8300 to separate customers. During the July, Year 4 review, the Service identified five additional transactions requiring X to issue and file a Form 8300. Because of X's failure to file these Forms 8300, the Service recommended imposing section 6721(a) and section 6721(e) penalties against X. X contested the proposed penalties. X argues that it satisfied the section 6050I reporting requirement and, therefore, imposing a penalty is incorrect.

DISCUSSION

1. Do the reporting requirements of section 6050I apply when a single customer purchases multiple items of personal property at the same time and pays for the purchase via a series of cash payments totaling in excess of \$10,000?

Law

In general, section 6050I of the Code provides that any person engaged in a trade or business, and who, in the course of such trade or business, receives more than \$10,000 in cash in 1 transaction (or 2 or more related transactions), shall make the return described in subsection (b) with respect to such transaction (or related transactions) at such time as the Secretary may by regulations prescribe.

The Treasury Regulations (regulations) explain that the section 6050I reporting requirements apply to multiple cash installment payments (or other similar payments or prepayments) received on or after January 1, 1990, relating to a single transaction (or two or more related transactions). Section 1.6050I-1(b)(2) addresses reporting when the initial payment is \$10,000 or less.

Section 1.6050I-1(b)(2) of the regulations provides that if the initial payment does not exceed \$10,000, the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until the aggregate amount exceeds \$10,000, and report with respect to the aggregate amount within 15 days after receiving the payment that causes the aggregate amount to exceed \$10,000.

Section 1.6050I-1(c)(1)(ii) of the regulations provides that for amounts received on or after February 3, 1992, the term “cash” is defined as the coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued.

Section 6050I of the Code requires that the recipient receive the cash payments exceeding \$10,000 in one transaction (or 2 or more related transactions). Section 1.6050I-1(c)(7) states that the “transaction” is the underlying event precipitating the payer’s transfer of cash to the recipient. Transactions include (but are not limited to) a sale of goods or services, and may not be divided into multiple transactions in order to avoid reporting under section 6050I of the Code. For example, a person who has an agreement with a gold dealer to purchase \$36,000 in gold bullion may not recast the transaction into four separate \$9,000 transactions to avoid the section 6050I reporting requirements. See Treas. Reg. § 1.6050I-1(c)(7)(iii), example 1.

Analysis

X argues that it has met the Section 6050I reporting requirements because it filed a Form 8300 whenever a salesperson received cash in excess of \$10,000 in one payment from a customer. Because the transactions at issue are solely cash transactions, the analysis of the term “cash” ends with section 1.6050I-1(c)(1)(ii)(A).

The Transaction

X must file an information return if in the course of its trade or business X receives more than \$10,000 in cash in one transaction, or 2 or more related transactions. The transaction is the underlying event precipitating the payer’s transfer of cash to the recipient. See Treas. Reg. § 1.6050I-1(c)(7)(i). The reporting requirements of section 6050I focus on the cause of payment and receipt of cash, rather than the acts of paying and receiving.

Aggregate Cash Payments

If the customer’s initial payment does not exceed \$10,000, X must aggregate the initial payment and subsequent payments made within one year of the initial payment until the aggregate amount exceeds \$10,000. X must report the aggregate amount within 15 days of receiving the payment that caused the aggregate amount to exceed \$10,000. See Treas. Reg. § 1.6050I-1(b)(2)

Here, in a single sale, customers purchased multiple pieces of furniture having a total sales price in excess of \$10,000. The underlying event, or cause of payment, was the purchase of furniture by the customer. Therefore, the transaction occurred when X’s customer, in a single sale, purchased multiple pieces of furniture from X, and the total sales price exceeded \$10,000. Because X’s customers paid for the purchase via a series of cash payments totaling in excess of \$10,000, X should have filed a Form 8300 within 15 days of receiving the payment that caused the total to exceed \$10,000.

2. Are X's employees deemed separate recipients for purposes of section 6050I of the Code?

Law

Section 1.6050I-1(c)(8) of the regulations defines the term "recipient" as the person receiving the cash. The regulations specify that each store, division, branch, department, headquarters, or office comprising a portion of a person's trade or business shall be deemed a separate recipient.

Section 1.6050I-1(c)(8)(ii) provides an exception to the definition for branches. Specifically, the regulation states that a branch that receives cash payments will not be deemed a separate recipient if the branch (or a central unit linking such branch with other branches) would in the ordinary course of business have reason to know the identity of payers making cash payments to other branches of such person.

The regulations illustrate this exception by providing two examples. In example 1, N, an individual, purchases \$7,500 and \$5,000 of regulated futures contracts from two different branches of Commodities Broker X on the same day, and pays in cash. Each branch of Commodities Broker X transmits the sales information regarding each of N's purchases to a central unit of Commodities Broker X (which settles the transactions against N's account). The example concludes that Commodities Broker X must report the two related sales because the separate branches of Commodities Broker X are not deemed to be separate recipients. See Treas. Reg. § 1.6050I-1(c)(8)(iii), example 1.

In example 2, an individual places five \$3,000 cash wagers at separate racetrack betting windows owned and operated by a corporation. The example concludes that each betting window is deemed a separate cash recipient because each betting window does not have reason to know the identity of persons making wagers at other betting windows in the ordinary course of business. Since no individual recipient received cash in excess of \$10,000, the corporation is not required to report under section 6050I.

Analysis

X argues that its operations are synonymous to that of a racetrack's, since X's employees do not have access to the customer's payment histories and cannot determine previous payments made by a customer. X argues that individual employees do not have reason to know the customer's payment history, and therefore, each employee should be deemed a separate recipient. We disagree with X's analogy.

X's situation is closer to the fact pattern in example 1. As in example 1, X's employees transmit each cash payment received from a customer for a purchase to a central unit. Once the central unit receives the payment information, the payment is settled against

the customer's account. This information updates the payment status of a customer's account, and allows X to determine when a customer has paid off his or her balance.

X has reason to know the identity of persons making payments to its employees in the ordinary course of business through its central unit. Therefore, X must report the related cash payments. Employees who transmit payment information to an employer's central unit are not separate recipients for purposes of section 6050I.

3. Is X subject to either the failure to file correct information returns penalty under section 6721(a) or the intentional disregard penalty under section 6721(e) of the Code.

Law

Section 6721(a) provides that in the case of a failure described in section 6721(a)(2) by any person with respect to an information return, such person shall pay a penalty of \$50 for each return with respect to which such a failure occurs, but the total amount imposed on such person for all such failures during any calendar year shall not exceed \$250,000.

Section 6721(b) provides that the failures subject to the penalty include (A) any failure to file an information return with the Secretary on or before the required filing date, and (B) any failure to include all of the information required to be shown on the return or the inclusion of incorrect information. Section 6724(d)(1) defines "information return" as including any statement of the amount of payments to another person required by section 6050I(a).

A higher penalty is imposed on persons who intentionally disregard their filing duties. Section 6721(e) provides that if one or more failures described in section 6721(a)(2) are due to intentional disregard of the filing requirement imposed by section 6050I (or the correct information reporting requirement), then, with respect to each such failure: (1) sections 6721(b), (c), and (d) shall not apply; (2) the penalty imposed under section 6721(a) shall be \$100, or, if greater, 10 percent of the aggregate amount of the items required to be reported correctly; and (3) the \$250,000 limitation under section 6721(a) shall not apply, and the penalty shall not be taken into account in applying such limitation (or any similar limitation under section 6721(b)) to penalties not determined under section 6721(e)(2).

Section 301.6721-1(f)(2) of the regulations provides that a failure is due to intentional disregard if it is a knowing or willful failure to file timely, or failure to include correct information. Whether a person knowingly or willfully fails to file timely or fails to include correct information is determined on the basis of all the facts and circumstances in the particular case.

Analysis

X failed to file Forms 8300 with the Secretary within 15 days of receiving the cash payment exceeding \$10,000 from the customer for Year 4. Because of the failure to file these forms, the Service is entitled to impose a section 6721(a) failure to file correct information return penalty for each of the missed forms. Therefore, the Service may impose a section 6721(a) penalty against X for the failure to file Forms 8300 in Year 4.

The imposition of a section 6721(e) penalty is determined on the basis of all the facts and circumstances in the particular case. Considering all the facts and circumstances, we do not believe that X's conduct was willful, or that X intentionally disregarded its filing requirements for Year 4. Accordingly, we do not suggest imposing a section 6721(e) intentional disregard penalty against X for Year 4.

CAVEAT(S):

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.