

Part III - Administrative, Procedural, and Miscellaneous

Nonapplication of Section 6050W to Insurance Companies that Administer Certain Insurance Arrangements

Notice 2011-78

PURPOSE AND BACKGROUND

Section 6050W of the Internal Revenue Code requires information returns to be made for each calendar year by merchant acquiring entities and third party settlement organizations with respect to payments made in settlement of payment card transactions and third party network transactions occurring in that calendar year. The requirement to make information returns applies to returns for calendar years beginning after December 31, 2010.

In August 2010, the Treasury Department and the Internal Revenue Service published final regulations providing guidance to assist persons required to report payment card and third party network transactions to payees of those transactions. T.D. 9496, 75 F.R. 49821 (August 16, 2010); 2010-43 I.R.B. 484. Under the final regulations, a healthcare network generally is outside the scope of section 6050W because a healthcare network does not enable the transfer of funds from buyers to sellers. §1.6050W-1(e) (Example 17). The preamble to the final regulations acknowledges a comment to the effect that a self-insurance arrangement likewise should be treated as outside the scope of section 6050W. 75 F.R. at 49823; 2010-43 I.R.B. at 486. Although the final regulations do not address this issue directly, the

preamble states that the suggestion was not adopted "because this arrangement could create a third party payment network of which the health insurance entity is the third party settlement organization to the extent that the health insurance entity effectively enables buyers (the self-insuring companies) to transfer funds to sellers of healthcare goods or services."

DISCUSSION

Upon further consideration, the Treasury Department and the Internal Revenue Service have decided to amend the existing regulations under section 6050W to expressly provide that an insurance company or an affiliate administering a self-insured arrangement on behalf of an employer or other entity on a cost-plus basis, or under an Administrative Services Only (ASO) plan or an Administrative Services Contract (ASC) plan, will not be treated as a third party settlement organization. Insurance companies and their affiliates may rely on the interim guidance provided in this notice until the regulations are amended.

Before amending the existing regulations, the Treasury Department and the Internal Revenue Service invite comments from the public regarding the contents of this notice. Comments should be submitted by November 3, 2011 to:

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2011-78)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

or hand deliver comments Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2011-78)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Alternatively, persons may submit comments electronically via e-mail to the following address: Notice.Comments@irsounsel.treas.gov. Persons should include "Notice 2011-78" in the subject line. All comments submitted by the public will be available for public inspection and copying in their entirety.

DRAFTING INFORMATION

The principal author of this notice is Girish Prasad of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this Notice, contact Mr. Prasad at (202) 622-4910 (not a toll-free call).