

Office of Chief Counsel
Internal Revenue Service
Memorandum

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UILC: 6041.00-00, 6045.01-00

date: June 06, 2014

to:

(Large Business & International)

(Large Business & International)

from: Associate Area Counsel (Detroit)
(Large Business & International)

subject: Requirement to File Information Returns Under I.R.C. §§ 6041 and/or 6045

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Company =
Affiliate =
b% =
c% =
\$d =

ISSUES

1. Is Company (or are its affiliates) required to file information returns under I.R.C. § 6041?
2. Is Company a “broker” within the meaning of I.R.C. § 6045?

CONCLUSIONS

1. No. Company is not required to file information returns under I.R.C. § 6041 to the extent the payments at issue are for freight hauling services. However, the evidence provided does not conclusively establish that all of Company's payments are for freight hauling services.
2. No. Company is not a broker as defined in I.R.C. § 6045.

FACTS

Company is a motor freight carrier that operates in many states. It primarily contracts with independent operators to haul freight on trailers that it owns. Affiliate, a related company, leases tractor units (trucks) to independent operators, while independent operators who own a tractor unit (owner/operators) may contract with Company without leasing a tractor from Affiliate. Company generally pays the independent operator or owner/operator approximately b percent of the rate it charges the shipper of the goods. Company also pays specified fees for loading and unloading, reimburses highway and bridge tolls, and offers a referral bonus. Affiliate pays a sign-on bonus of \$d when an independent operator leases a tractor unit.

The exam team represents that a typical Company transaction works as follows: Company contracts with a large, national retailer (R) to haul R's goods from warehouses to R's retail stores for a total fee of \$10x per trailer load. R loads its goods onto Company's trailers. Company also contracts with D, an independent operator or owner/operator, to pick up a trailer and transport it to one of R's stores. D hauls R's goods, on Company's trailer, to R's retail store and earns x% of the \$10x fee Company charged R. Company retains the remaining c% as its fee but pays any tolls and certain other expenses of the independent operator.

Company has, in the past, issued Forms 1099 to independent operators but no longer does so. In a November 9, 2011 "State Laws Newsletter," the American Trucking Association advised its members that, in its opinion, Forms 1099 generally are not required for "freight services." Company interprets relevant sections of the Code and regulations as not requiring Forms 1099 for the freight hauling activities described in this memo.

LAW AND ANALYSIS

Form 1099 Requirements

I.R.C. § 6041(a) requires any person who makes payments in the course of his trade or business to another person of rent, salaries, wages, premiums, annuities, compensation, remuneration, or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year to file an information return with the Service.

I.R.C. § 6041A contains similar rules for, in relevant part, “service-recipients.” If any service-recipient pays in the course of his trade or business \$600 or more in any remuneration to any person for services performed by such person, the service-recipient must file an information return with the Service. I.R.C. § 6041A(a). No return is required under section 6041A with respect to a payment that is exempt under section 1.6401-3 of the regulations from the return requirement of section 6041. Prop. Treas. Reg. § 1.6041A-1(d)(2); see also H.R. Conf. Rep. No. 760, 97th Cong., 2d Sess. 567 (1982) (noting that, in the absence of regulations under section 6041A, the existing section 6041 exceptions apply).

Payments of bills for merchandise, telegrams, telephone, freight, storage, and similar charges are exempt from the return requirement of section 6041. Treas. Reg. § 1.6401-3(c) (emphasis added).

The Service has repeatedly interpreted the word “freight” in section 1.6401-3(c) to mean a method or service for transporting goods or the cost of such transportation. See, e.g., PLR 9348058 (June 14, 1993), PLR 9329001 (March 5, 1993), PLR 9127002 (March 13, 1991, PLR 9325004 (March 5, 1993). Payments for transporting goods, whether incidental or integral to a taxpayer’s business, are therefore excepted from information reporting. The fact that the payments may be made to an independent operator does not change this exception.

Although private letter rulings are not binding precedent, I.R.C. § 6110(k)(3), we agree with their analysis that the freight exception in section 1.6401-3(c) is to be read broadly and consistently with the common meaning of “freight.” We also note that the freight exception has existed in the regulations since 1918 and that Congress has, on many occasions, amended sections 6401 and 6401A without changing the freight exception.

The facts you have presented indicate but do not conclusively prove that the payments in question are for hauling freight. To the extent you are able to develop facts to support that the payments may, in fact, be attributable to other items (for example, interest, compensation for services other than hauling freight, referral bonuses, sign-on bonuses, etc.), then the freight exception may not apply and an information return may be required. If you would like additional legal advice after you know more about the specific nature of each payment, please return to us for assistance.

Broker Returns

I.R.C. § 6045(a) requires every person doing business as a broker to, when required by the Secretary, make a return showing the name and address of each customer, with the details regarding gross proceeds and other information as the Secretary may require. A person required to make a return under section 6045(a) also is required to furnish to each customer a written statement meeting certain requirements. I.R.C. § 6045(b).

The Code defines a broker as including a dealer, a barter exchange, and any other person who (for consideration) regularly acts as a middleman with respect to property or services. I.R.C. § 6045(c)(1). The regulations, however, contain a more restrictive definition: “Broker” means any person that, in the ordinary course of a trade or business, stands ready to effect sales to be made by others. Treas. Reg. § 1.6405-1(a)(1) (emphasis added). There are no provisions or examples in the section 6405 regulations where a person who acts as a middleman between a service provider and a service recipient is a broker. In fact, the regulations provide that the term “sale” means any disposition of securities, commodities, regulated futures contracts, or forward contracts but does not include entering into a contract that requires delivery of personal property or an interest therein. Treas. Reg. § 1.6405-1(a)(9). The existence of section 6041A, which requires information returns with respect to service-recipients, indicates that a broker does not include a person who merely facilitates services. Of course, section 6041A is, as we note above, subject to the freight exception in Treas. Reg. § 1.6401-3(c).

We have not found any cases with facts similar to Company’s and doubt that a court would construe the Code and regulations as including in the definition of “broker” an entity that, like Company, contracts separately with shippers and haulers of freight. We therefore recommend that you not raise section 6045 as an issue in your examination.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (313) 628-3133 if you have any further questions.

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By: _____
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