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**Office of Chief Counsel
Internal Revenue Service
memorandum**

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date: July 24, 1998

to: District Counsel, Central California District

from: Assistant Chief Counsel, Income Tax & Accounting

subject: Significant Service Center Advice

This responds to your request for Significant Advice in connection with questions posed by the Examination Division, Central California District.

DISCLOSURE STATEMENT

Unless specifically marked "Acknowledged Significant Advice, May Be Disseminated" above, this memorandum is NOT to be circulated or disseminated except as provided in CCDM (35)2(13)3:(4)(d) and (35)2(13)4:(1)(e). This document may contain confidential information subject to the attorney-client and deliberative process privileges. Therefore, this document shall not be disclosed beyond the office or individual(s) who originated the question discussed. In no event shall it be disclosed to taxpayers or their representatives.

ISSUE

May an individual or entity not required to file a Form 1099-C under section 6050P of the Internal Revenue Code nevertheless voluntarily file such a form?

CONCLUSION

Individuals or entities not required by section 6050P to file Form 1099-C may nevertheless voluntarily file such forms in appropriate circumstances.

FACTS

The taxpayers are private businesses that extend credit to their customers. However, these businesses are not financial institutions. Occasionally, some of the customers will default on their credit obligations. Normally the creditor will write off the debt when it becomes uncollectible, and may issue a Form 1099-C to the defaulting customer.

DISCUSSION

Section 6050P requires certain governmental entities and financial institutions to report discharges of indebtedness of

\$600 or more during any calendar year to the Service and to furnish a corresponding statement to the debtor.

Section 6050P applies to (1) an executive, judicial, or legislative agency (as defined in section 3701(a)(4) of title 31, United States Code), (2) any financial institution described in section 581 or 591(a) and any credit union, (3) the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit Union Administration, and any other Federal executive agency (as defined in section 6050M), and any successor or subunit of any of the foregoing, (4) any other corporation which is a direct or indirect subsidiary of any a financial institution described in section 581 or 591(a) or a credit union, but only if, by virtue of being affiliated with such entity, such other corporation is subject to supervision and examination by a Federal or State agency which regulates entities referred to in subparagraph (A). Section 6050P(c)(1) and (2).

While the requirement to report discharges of indebtedness applies only to the entities described above, there is no specific prohibition in the Internal Revenue Code or the Income Tax Regulations that forbids the reporting of discharges of indebtedness by entities not required to report. Such reporting may encourage voluntary tax compliance and proper gross income inclusions.

There are numerous instances where information returns are filed when not required, *e.g.*, to report mortgage interest received of less than \$600,¹ to report the discharge of guarantors, or, in the case of interest reporting, to report payments of less than \$10². However, we note that when filing an information return, whether required or voluntary, the reporting ought to be in accordance with the regulations promulgated for

¹ Section 1.6050H-1(a)(3) Optional Reporting, states, "An interest recipient may, but is not required to, report its receipt of less than \$600 of interest on a qualified mortgage for a calendar year. Similarly, an interest recipient may report reimbursements of interest on a qualified mortgage even if the reimbursements are not required to be reported by §1.6050H-2(a)(2)(iv). An interest recipient that chooses, but is not required, to file a return as provided in this section . . . is subject to the requirements of this section . . ."

²The IRS publication entitled Instructions for Forms 1099, 1098, 5498, and W-2G states, "Although, generally, you are not required to report payments smaller than the minimum described for each form, you may prefer, for economy and your own convenience, to file Copies A for all payments. The IRS encourages this."

such reporting, including all instructions relating to the particular form. Section 1.6050P-1(a)(1) states that the return must include the following information--

- (i) The name, address, and taxpayer identification number (TIN) ... of each person for which there was an identifiable event during the calendar year;
- (ii) The date on which the identifiable event occurred, as described in paragraph (b) of this section;
- (iv) The amount of indebtedness discharged, as described in paragraph (c) of this section;
- (iv) An indication of whether the identifiable event was a discharge of indebtedness in a bankruptcy, if known; and
- (v) Any other information required by Form 1099-C or its instructions, or current revenue procedures.

In the case of a Form 1099-C, final regulations provide a specific list of identifiable events which indicate that a reporting of discharge of indebtedness should occur. Section 1.6050P-1(b)(2) lists the following identifiable events:

- (A) A discharge of indebtedness under title 11 of the United States Code (bankruptcy);
- (B) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable in a receivership, foreclosure, or similar proceeding in a federal or State court, as described in section 368(a)(3)(A)(ii) ...;
- (C) A cancellation or extinguishment of an indebtedness upon the expiration of the statute of limitations for collection of an indebtedness, subject to the limitations described in paragraph (b)(2)(ii) of this section, or upon the expiration of a statutory period for filing a claim or commencing a deficiency judgment proceeding;
- (D) A cancellation or extinguishment of an indebtedness pursuant to an election of foreclosure remedies by a creditor that statutorily extinguishes or bars the creditor's right to pursue collection of the indebtedness;
- (E) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable pursuant to a probate or similar proceeding;

(F) A discharge of indebtedness pursuant to an agreement between an applicable financial entity and a debtor to discharge indebtedness at less than full consideration;

(G) A discharge of indebtedness pursuant to a decision by the creditor, or the application of a defined policy of the creditor, to discontinue collection activity and discharge debt; or

(H) The expiration of the non-payment testing period, as described in paragraph (b)(2)(iv) of this section.

Furthermore, § 1.6050P-1(b)(3) Permitted reporting, states, "[i]f a discharge of indebtedness occurs before the date on which an identifiable event occurs, the discharge may, at the creditor's discretion, be reported under this section." In addition, § 1.6050P-1(e)(8) No multiple reporting, states, "[i]f a discharged indebtedness is reported under this section, no further reporting under this section is required for the amount so reported, notwithstanding that a subsequent identifiable event occurs with respect to the same amount. Further, no additional reporting or Form 1099-C correction is required if a creditor receives a payment of all or a portion of a discharged indebtedness reported under this section for a prior calendar year."

In view of the above, we believe that for a non-financial institution, or other person not otherwise required to file a Form 1099-C, to report a discharge of indebtedness, there ought to be either a discharge of the indebtedness or alternatively, a specific identifiable event described in § 1.6050P-1(b)(2). In most cases, the occurrence of an identifiable event will correspond to an actual discharge of indebtedness.

Furthermore, the filing of the Form 1099-C will generally demonstrate that the indebtedness has been discharged and further collection activity on the part of the creditor in appropriate. Whether the filing of the Form 1099-C affects the creditor's rights to collect the debt is a question under state or other applicable law. However, many of the identifiable events are tied to the termination of the creditor's rights under applicable law. Other identifiable events occur pursuant to unilateral action on the part of the creditor to discharge the indebtedness (i.e., a decision or defined policy of the creditor to discontinue collection activity and discharge debt). Furthermore, while the expiration of the non-payment testing period described in § 1.6050P-1(b)(2)(i)(H) may not directly indicate a termination of the creditor's rights to collect the indebtedness, we note that the presumption that the non-payment testing period has expired may be rebutted by evidence that the indebtedness has not been discharged. Under those circumstances,

we conclude that collection of an indebtedness after filing of a Form 1099-C ought to occur very infrequently.

In addition, the filing of intentionally erroneous, false, or fraudulent information returns may subject the filer to the section 7207 penalty (relating to fraudulent returns, statements or other documents), as well as to possible civil actions on the part of the debtor. However, the penalty provisions set forth in sections 6721 - 6724 apply, generally, only to returns and statements required to be filed under specific provisions of the Code.

Finally, we express no opinion whether utilization of Form 1099-C as a debt collection technique may violate provisions of non-Internal Revenue Code law, such as Federal Bankruptcy law, and possibly provisions of the Fair Debt Collection Act and similar consumer protection legislation.

Thank you for your question regarding this matter.

Sincerely,

Assistant Chief Counsel
(Income Tax & Accounting)

by _____/s/_____
Christopher F. Kane
Assistant to the Chief, Br. 3

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