



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

Number: **INFO 2005-0172**
Release Date: 9/30/05
UIL: 6041.03-00

CC:PA:APJP:B01
GENIN-137179-05

Dear _____ :

This letter responds to your request for information dated February 11, 2005. You wrote to the Internal Revenue Service asking whether nominees are required to make a return of information pursuant to section 6041 or section 6042 for payments made by nominees of distributions that are received from foreign partnerships and paid to U.S. citizens. We provide general information concerning the information reporting requirements for such payments.

A partnership does not pay federal income tax. Rather, the income or losses flow through the partners who are taxable on their distributive shares of partnership taxable income. Nevertheless, a partnership is a tax reporting entity that must file annual information reporting on Form 1065. Section 1.6031(a)-1(b)(1) provides, however, that a foreign partnership is not required to file a partnership return (Form 1065) if the foreign partnership does not have gross income that is (or treated as) effectively connected with the conduct of a trade or business within the United States and does not have gross income (including gains) derived from sources within the United States.

Section 6041(a) of the Internal Revenue Code requires reporting of payments of \$600 or more made by all persons engaged in a trade or business and making payments in the course of such trade or business to another person of fixed or determinable gains, profits, and income. Excluded from this section are any payments with respect to which an information return may be required by section 6042(a), relating to dividends.

Section 1.6041-3(f) of the Income Tax Regulations (regulations) states that returns of information are not required under section 6041 and the regulations thereunder for compensation and profits paid or distributed by a partnership to the individual partners (but for reporting requirements, see section 1.6031-1).

Section 6042(a)(1) of the Code requires reporting by every person (A) who makes payments of dividends aggregating \$10 or more to any other person during any calendar year, or (B) who receives payments of dividends as a nominee and who makes payments aggregating \$10 or more during any calendar year to any other person with respect to the dividends received.

Section 6042(b)(1) defines a dividend as (A) any distribution by a corporation which is a dividend (as defined in section 316), and (B) any payment made by a stockbroker to any person as a substitute for a dividend.

Section 1.6042-3 of the regulations defines a dividend as (1) any distribution made by a corporation to its shareholders which is a dividend as defined in section 316; or (2) any payment made by a stockbroker to any person as a substitute for a dividend, or (3) a distribution from a regulated investment company.

Section 3406 of the Code defines a reportable payment to include any reportable dividend payment required to be shown on a return required under section 6042(a). Under section 31.3406(a)-2, a payor includes a person who is required to make an information return under section 6041 or 6042. However, section 31.3406(a)-2(c)(2) excepts from the definition of payor a partnership making a payment of a distributive share. A nominee that receives a distribution of a distributive share is a payor of a distributive share.

Section 1.6031(a)-1(b)(4)(i) provides that if a United States person is a partner in a partnership that is not required to file a partnership return, the district director or director of the relevant Service Center may require that person to render statements or provide information necessary to verify the accuracy of the reporting by that person of any items of partnership income, gain loss, deduction, or credit.

In addition, under section 1.6031(a)-1(b)(4)(ii) certain United States persons who are partners in a foreign partnership controlled (within the meaning of section 6038(e)(1)) by United States persons may be required to provide information with respect to the partnership under section 6038 of the Code.

Under section 1.6031(c)-1T any person who holds directly or indirectly, an interest in a partnership that is required to file a partnership return for a taxable year as a nominee shall furnish to the partnership a written statement (or statements) for that taxable year a statement with respect to such other person containing the information listed in paragraph (a)(1)(ii) of this section.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2004-1, §2.04, 2004-1 IRB 7. If you have any additional questions, please contact our office at (202) 622-4910.

Sincerely,

Tiffany P. Smith
Assistant to the Branch Chief, Branch 1
Administrative Provisions and Judicial Practice
(Procedure & Administration)