



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

OFFICE OF
CHIEF COUNSEL

November 15, 2005

Number: **INFO 2005-0214**
Release Date: 12/30/05
UIL: 6041.00-00

CC:PA:APJP:B01
POSTS-152373-05

Dear _____ :

This letter responds to your request for information dated September 15, 2005 concerning requirements for Form 1099 reporting by fiduciaries. You ask whether payments made through your agency, acting as a fiduciary on behalf of another person from that person's funds, which are in commingled accounts meeting FDIC regulations, are personal payments not subject to Form 1099 reporting.

Section 6041(a) of the Internal Revenue Code states that all persons engaged in a trade or business making payments of \$600 or more in the course of such trade or business for rent, salaries, compensation, remunerations, or other fixed or determinable gains, profits, and income shall file a return with the Secretary indicating the amount of the payment, and the name and address of the recipient. This section does not apply to payments reportable under sections 6042(a)(1) and (2) (dividends and corporate earnings and profits), 6044(a)(1) and (2) (patronage dividends), 6045 (brokers), 6047(e) (employee stock ownership plans), 6049(a) (payments of interest), or 6050N (royalties).

Section 1.6041-1(a) of the Income Tax Regulations (regulations) provides that persons engaged in a trade or business shall make annual information returns for payments made during the calendar year in the course of such trade or business for payments described in paragraphs (a)(1)(i)(A) and (B) of this section.

Section 1.6041-1(a)(1)(i)(A) of the regulations describes payments of salaries, wages, commissions, fees, and other forms of compensation for services rendered totaling \$600 or more.

Section 1.6041-1(a)(1)(i)(B) of the regulations describes payments of interest, rent, royalties, annuities, pensions, and other gains, profits, and income totaling \$600 or more.

Section 1.6041-1(b) of the regulations states that “persons engaged in a trade or business” for purposes of section 6041(a) includes nonprofit organizations, including organizations described in sections 401(a) (pension and profit-sharing plans), 501(c) (organizations exempt from income tax including charitable organizations), 501(d) (religious organizations) and 521 (farmers’ cooperatives).

Section 1.6041-1(e) of the regulations provides that generally a person making payments in the course of its trade or business on behalf of another person must file an information return if such payments are described in section 1.6041-1(a), and that person performs managerial or oversight functions with respect to the payment, or the person has a significant economic interest in the payment. As noted above, payments described in section (a) of this section are salaries, wages, commissions, fees, other forms of compensation, interest, rent, royalties, annuities, pensions, and other gains, profits, and income. See Section 1.6041-1(a)(1)(i)(A) & (B).

Section 1.6041-3 describes payments for which no information return under section 6041 of the Code is required. For example, payments of bills for merchandise, telegrams, freight, storage and other like charges do not have to be reported on information returns.

Accordingly, the _____ would be required to file Forms 1099 only if the payments made were described in section 1.6041(a), and the _____ either performed management or oversight functions with respect to these payments or had a significant economic interest in such payments.

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. 2005-1, §2.04, 2005-1 IRB 7 (Jan. 3, 2005). If you have any additional questions, please contact our office at _____.

Sincerely,

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