

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-157111-06
Date:
February 09, 2007

Taxpayer =
State A =
Y =
Amount 1 =

Dear _____ :

This responds to your letter dated November 30, 2006, requesting a ruling that Taxpayer does not have an information reporting obligation under section 6041 for amounts paid to its customers, purchasers of real property. Specifically, you request a ruling that the amounts are not reportable under section 6041 because the amounts are not taxable income to the purchasers.

FACTS

Taxpayer is a real estate broker located in State A. Taxpayer represents customers who purchase homes offered for sale on Y. Y is a database that allows real estate brokers representing sellers under a listing contract to share information about properties with real estate brokers who may represent potential purchasers or wish to cooperate with a seller's broker in finding a purchaser for the property.

A seller is required by law to pay a commission when a seller offers a home for sale on Y. Part of the commission is paid to the seller's agent, a broker that lists the home for sale; and part of the commission is paid to the buyer's agent, a broker that produces a ready, willing, and able purchaser. Taxpayer receives commissions from the seller when it acts as a buyer's agent in connection with real estate transactions.

Taxpayer enters into written and signed buyer's agency agreements with each purchaser that it represents. In its buyer's agency agreement, Taxpayer agrees to pay the purchaser Amount 1 of any commission that it receives from the seller in a completed sales transaction. Taxpayer pays the purchaser in one of two ways: (1) after closing, the cash and loan proceeds are distributed to the seller and the agents, and after Taxpayer receives its share of the commission, Taxpayer writes a check to the purchaser pursuant to the agreement; or (2) the purchaser receives a credit at closing in an amount equal to Amount 1 of the commission owed to Taxpayer. The buyer's agency agreement permits the purchaser to use the payment towards the purchaser's down payment, closing costs, and/or a reduction in purchase price as directed by the purchaser and allowed by law.

LAW AND ANALYSIS

Issue 1 – Payments or Credits are Not Taxable Income

Section 61 of the Internal Revenue Code (Code) provides that, except as otherwise provided, gross income means all income from whatever source derived.

Situation 2 of Rev. Rul. 2006-27, 2006-21 I.R.B. 915, involves a nonprofit corporation that provides down payment assistance towards the purchase of homes to low-income individuals and families. The ruling holds that down payment assistance received by a home purchaser represents a rebate or an adjustment to the purchase price, and, as such, is not included in a purchaser's gross income.

Rev. Rul. 76-96, 1976-1 C.B. 23, as modified by Rev. Rul. 2005-28, 2005-1 C.B. 997, involves a manufacturer of automobiles that paid rebates to its retail customers who purchased or leased new automobiles. The ruling holds that a rebate is not includible in a customer's gross income; but rather, represents an adjustment to the purchase price of the automobile.

In the present case, a payment or credit at closing from Taxpayer represents an adjustment to the purchase price of the home and generally is not includible in a purchaser's gross income.

Issue 2 – Information Reporting Obligations

Section 6041 of the Code requires all persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year, to file an information return with the Internal Revenue Service and to furnish an information statement to the payee.

Section 1.6041-1(a)(2) of the Income Tax Regulations provides that the return required by section 6041(a) of the Code is made on Forms 1096 and 1099. Section 1.6041-1(c) provides that payments are fixed when they are paid in amounts definitely pre-determined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained.

A payor generally is not required to make a return under section 6041 of the Code for payments that are not includible in the recipient's income, nor is a payor required to make a return if the payor does not have a basis to determine the amount of a payment that is required to be included in the recipient's income.

In the present case, Taxpayer does not have an information reporting obligation under section 6041 of the Code because, as concluded above, a payment or credit at closing represents an adjustment to the purchase price of the home and generally is not includible in a purchaser's gross income. Nor does Taxpayer have an information reporting obligation for those amounts under any other section of the Code.

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made to the letter when it is disclosed under section 6110 of the Code.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Donna Welch
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures