



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

OFFICE OF THE CHIEF COUNSEL

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Via USPS

Dear :

This letter responds to an ongoing inquiry beginning with your June 24, 2013 letter which prompted a discussion of the matters below. The question raised by your office regards the proper information reporting for EHR payments which are assigned by an eligible practitioner to the eligible practitioner's practice group. Hopefully the information provided below will prove helpful.

IRC § 6041 requires all persons engaged in a trade or business, who, in the course of that trade or business, pay another person, any "fixed and determinable gains, profits, and income" aggregating \$600 or more in any taxable year, to (1) file an information return for each calendar year in which they make such payments and (2) furnish a copy of the information return to that person. See IRC §§ 6041(a) & (d) and Treas. Reg. §§ 1.6041-1(a)(1) & (b). Although the word "income" as used in § 6041 is not defined by statute or regulation, its appearance in the phrase "fixed or determinable gains, profits, and income" indicates that it refers to an amount which could constitute "gross income." Thus, § 6041 requires a payor to report only those payments aggregating \$600 or more that may be includible in the recipient's gross income.

Under § 61(a), gross income means all income from whatever source derived. Gross income extends to undeniable accessions to wealth, clearly realized, over which the taxpayers have complete dominion. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955). Under the claim of right doctrine, if a taxpayer receives money under a claim of right and without restriction as to its disposition, then he has received income that he is required to report even though it may be claimed that he is not entitled to

retain the money and may be ordered to restore its equivalent. *North American Oil Consolidated v. Burnet*, 286 U.S. 417 (1932).

An assignment is typically treated as a second payment. This is because the giving of value to the assignor (the claim of right to receive the payment) is generally a payment within the meaning of IRC § 6041 and the act of assigning the payment to the assignee is a second transaction which transfers value (the claim of right to the payment) from the assignor to the assignee. Economically, this is typically no different than if the payor paid the assignor and then the assignor paid the same amount to the assignee (using the original payor as his paying agent). Therefore, a payor should typically send an information return to the person to whom the payment is originally owed. Then, either the original payor, or the assignor, may have an additional reporting obligation with respect to the assignment to the third party depending on the relationship between the parties. See Treas. Reg. 1.6041-1.

There is a rare instance in which this general principle would not apply. If a person receives funds as a conduit for another or as an agent of another, then he does not have a claim of right to the funds, and the funds received are not income to him to the extent he passes them on to the person for whom the funds were intended. *Goodwin v. Commissioner*, 73 T.C. 215, 232 (1979). If a payee is receiving the payments as an agent or conduit of another, the payee would not be required to include the payment in gross income as long as the payment is turned over to the entity as required. See Rev. Rul. 76-479, 1976-2 C.B. 20; Rev. Rul. 69-274, 1969-1 C.B. 36; Rev. Rul. 65-282, 1965-2 C.B. 21, and Rev. Rul. 58-220, 1958-1 C.B. 26, for instances in which the IRS has held that a recipient was not taxed on receipt of a payment because he or she was an agent of another. In very general terms, if a professional is required to assign all payments for professional services related to employment, or membership in a group, under a contractual condition of that employment or membership, the professional would generally be acting as a conduit or agent of the entity with respect to payments so assigned.

As a general matter, if there is no gross income to a payee, then no information reporting would be required with respect to that payee under IRC § 6041. As a result, conduit or agency theory can create a sort of exception to the general information reporting rules with respect to assignments. If the rules and regulations governing assignments under a particular program limit assignment to cases which qualify as agency or conduit relationships with respect to those payments, then the gross income would always inure directly to the assignee. Since the payor would know that the gross income always inures only to the assignee, then information reporting would be required with respect to the payment to the assignee.

Since each state has individual authority with respect to how the EHR program is operated, and since the federal regulations on point are not within our offices jurisdiction, it is difficult for our office to make a general ruling as to the proper method of reporting for all states. However, the Federal Regulations at 42 CFR § 495.10(1) seem to suggest that an eligible practitioner may only reassign their incentive payments to an employer or entity which has a contractual right to receive payment for the eligible practitioner's professional services. If this principle is stringently followed by your state program then your assignments may be limited to cases of conduit or agency relationships and therefore reporting of payments only with respect to the assignee may be appropriate.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only; it is not binding on the government, and does not constitute a ruling or decision. See Rev. Proc. 2013-1, §2.04, 2013-1 IRB 1 (Jan. 2, 2013). If you would like a more definitive determination based on your specific facts please consider whether a formal PLR request would be appropriate. See *id.* If you would like to discuss any specifics or if you have any questions, please call
at .

Sincerely,

Blaise G. Dusenberry
Senior Technical Reviewer
(Procedure & Administration)