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From: [REDACTED]

Sent: Tuesday, August 25, 2015 2:31:27 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: FW: 6050I question

Hi ;

It is our view that payment of an option fee in the context of a pawnshop business transaction constitutes a "retail sale" for purposes of defining "cash" under I.R.C. § 6050I which requires reporting of "cash" receipts of more than \$10,000.

As we understand the transaction, under Colorado law, pawnshop transactions are structured as either as a "purchase transaction" or a "contract for purchase" with the customer as the seller and the pawnbroker as the buyer. Purchase transactions are outright sales to the pawnbroker with no later right to recover the item. The Colorado pawnbroker statute defines a "contract for purchase" as a "contract entered into between a pawnbroker and a customer pursuant to which money is advanced to the customer by the pawnbroker on the delivery of tangible personal property by the customer on the condition that the customer, for a fixed price and within a fixed period of time, to be no less than thirty days, has the option to cancel such contract." COLO. REV. STAT. § 12-56-101(1) (2014). We understand, however, that in some cases, the consumer delivers title to the vehicle to the pawnbroker rather than deliver the vehicle itself. See Colorado Office of the Attorney General, Administrative Interpretation No. 1.202-9401 (August 31, 1994).

Under I.R.C. § 6050I and its regulations, the term cash includes:

coin and currency of the United States (Treas. Reg. § 1.6050I-1(c)(1)(ii)(A)), or of any foreign country (I.R.C. § 6050I(d)(1), which circulate in and are customarily used and accepted as money in the country of issue (Treas. Reg. § 1.6050I-1(c)(1)(ii)(A)), and;

whether or not in bearer form (I.R.C. § 1.6050I(d)(2)), a cashier's check, (by whatever named called, including "treasurer's check or "bank check"), bank draft, traveler's check or money order (Treas. Reg. § 1.6050I-1(c)(1)(ii)(B)),

- (1) With a face amount of \$10,000 (I.R.C. § 1.6050I-1(d)(2)), and
- (2) Which is received in a designated reporting transaction, or any transaction in which the recipient knows that the specified monetary instrument is being used in an attempt to avoid these reporting requirements.

Specified monetary transactions are treated as cash if they are received in a designated reporting transaction. A designated reporting transaction is a “retail sale”, or the receipt of funds by a broker or other intermediary in connection with a “retail sale” of a consumer durable, a collectible or a travel or entertainment activity. (Treas. Reg. § 1.6050I-1(c)(1)(iii)).

For purposes of the definition of a “designated reporting transaction,” a “retail sale” is any sale, whether for resale or for any other purpose, made in the course of a trade or business if that trade or business principally consists of making sales in the course of such trade or business of items that will be resold. See Publication 1544, *Reporting Cash Payments of Over \$10,000 (Received in a Trade or Business)*, at 2 (September 2014). We believe this definition is broad enough to encompass option payments made with respect to a “contract for purchase” in the course of a pawn business subject to Colorado law. The definition of a contract for purchase under Section 12-56-101(1) appears to describe a sales contract that may be cancelled. For purposes of the Internal Revenue Code, the term “sale” is given its ordinary meaning and is generally defined as a transfer of property or a promise to pay money. See *Commissioner v. Brown*, 380 U.S. 563, 571 (1965) *Sollberger v. Commissioner*, 691 F.3d 1119, 1123 (9th Cir. 2012); *Anschultz Co. v. Commissioner*, 664 F.3d 313 (10th Cir. 2011). In the case of a contract for purchase, the customer is transferring the automobile or title document in exchange of a cashier’s check, (by whatever named called, including “treasurer’s check or “bank check”), bank draft, traveler’s check or money order, with an ability to later cancel the contract.

Moreover, Publication 1544 on page 1 states “For example, you may have to file Form 8300 if you are ... a pawnbroker.”

Although IRS Publications are not authoritative, *Bobrow v. Commissioner*, Docket No. 7022-11, Order on Motion for Reconsideration (IRS publication is not binding precedent and does not constitute substantial authority for any position), we believe it is instructive for purposes of setting forth IRS policies and interpretation of tax law.

We hope this has been helpful. Please contact this office if we can be of further assistance.