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Memorandum**

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(Small Business/Self-Employed)

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subject: Form 8300 Reporting for Pawnbroker Transactions

This Chief Counsel Advice responds to a request for assistance. This advice may not be used or cited as precedent.

LEGEND

Corporation X =

ISSUE

Whether two or more seriatim pawn loans between the same pawnbroker and pawnor (borrower), secured with the same collateral, are related transactions for purposes of information reporting on Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, when each succeeding loan is the basis to retire the preceding loan and the unpaid amount of the retired loan is the amount of the new loan.

CONCLUSION

Multiple, successive pawn loans between the same parties and collateralized with the same personal property are related transactions for purposes of Form 8300 reporting when the debt from one loan is, in practical terms, shifted to a subsequent loan, even if

the loans are separate transactions as a matter of state law. Thus, if the pawnor pays the pawnbroker in the course of a one-year period more than \$10,000 in “cash” in connection with the related transactions, the pawnbroker must file Form 8300 reporting the transactions.

FACTS

Corporation X is a licensed pawnbroker operating pawnshops in New York City. The Service is conducting a Form 8300 compliance check of X. X, like pawnbrokers generally, is in the business of lending money to persons who pawn (pledge) personal property, which is deposited with the pawnbroker as security for the loan. When collateral is deposited with a pawnbroker, the broker gives the customer a pawn ticket to present later to reclaim the property. Pawn loans are relatively short-term, a few months at most. The repayment and redemption period may be fixed by law, otherwise by contract. In New York the period is four months. N.Y. Gen. Bus. Law § 48. In addition, state and local laws often set a maximum rate of interest and regulate the charging of service fees. The maximum interest rate in New York is four percent per month. N.Y. Gen. Bus. Law § 46. If the borrower does not repay the debt, including interest and other charges, by the end of the loan period, plus any statutory waiting period, the broker may sell the property pawned. Pawn loans are nonrecourse, meaning that the pawnbroker has no right to collect the debt from the borrower and recovery is limited to the proceeds from a sale of the collateral.

In some instances, a customer with an existing loan from one of X’s pawnshops will agree to a new loan with X because the customer cannot pay off or chooses not to pay off the debt at maturity yet does not want to forfeit the collateral. The new loan is secured with the same collateral as before, which remains in the pawnshop’s possession. The amount of the new loan is the same as (or possibly more than) that of the prior loan. The borrower will pay any remaining interest and finance charges not already paid on the old obligation, and that loan ends. The borrower, however, does not pay the principal of the first loan.

To illustrate with a modified example provided by X, a borrower enters into a pawn loan at one of X’s pawnshops for \$7,000 and pledges a piece of jewelry. Fees and interest over the loan period total \$1,250. At or before the end of the term, the borrower returns to the pawnshop and pays \$1,250 in cash but not the remaining \$7,000. X and the borrower make a new loan for \$7,000 at the same terms, and the jewelry is again the collateral. The first loan is extinguished, and X gives the borrower a new pawn ticket. At the end of the repayment period for the second loan, the borrower again pays \$1,250 and a third \$7,000 loan is made. This event may repeat itself several times before the underlying \$7,000 of principal is eventually repaid (and the jewelry is released to the debtor) or the property is forfeited.¹ Each loan in the series has its own number and

¹ Conceivably there could also be some variation up or down in the amount borrowed from one loan to the next, such as if the borrower repays a small portion (but not all) of the principal on one loan before it is

paperwork, in accordance with state law. See N.Y. Gen. Bus. Law § 44. By the time all of these loans have concluded, the borrower may have paid, in principal, interest, and fees, an aggregate of more than \$10,000 in cash to X in the same year. X has questioned whether transactions in the situation described above are related transactions for Form 8300 reporting. X has taken the position that the transactions are not related transactions because the loans are “legally separate” under state law.

LAW AND ANALYSIS

Section 6050I Reporting Generally

Section 6050I(a) provides that any person engaged in a trade or business who, in the course of that trade or business, receives more than \$10,000 in cash in one transaction or two or more related transactions, shall file a return, as described in section 6050I(b), reporting the transaction(s). The return is due at the time prescribed by the Secretary in regulations. Section 6050I(b) requires the information return to be made on whatever form the Secretary designates and must include the name, address, and TIN of the person or persons from whom the cash was received; the amount of cash received; the date and nature of the transaction(s); and any other information as directed. The Service (as the Secretary’s delegate) has prescribed the Form 8300 to report section 6050I transactions, and the return must be filed by the 15th day after the cash is received. Treas. Reg. § 1.6050I-1(e)(1), (2). Multiple payments for one transaction (or two or more related transactions) that are made with one year are aggregated for purposes of the reporting requirements. Treas. Reg. § 1.6050I-1(b). Once an aggregate of payments goes over \$10,000 at any point during the year, the 15-day period begins. Treas. Reg. § 1.6050I-1(b)(2)-(3).

Definitions

A “transaction” required to be reported is “the underlying event precipitating the payer’s transfer of cash to the recipient” and includes a loan, payment on a loan or other debt, and an exchange of cash for other cash. Treas. Reg. § 1.6050I-1(c)(7)(i). “Cash” is defined as the coin and currency of the United States or a foreign country. I.R.C. § 6050I(d)(1); Treas. Reg. § 1.6050I-1(c)(1)(ii)(A). “Cash” also means a cashier’s check, bank draft (but not a personal check from the account holder), traveler’s check, or money order in an amount of \$10,000 or less² that is received in any transaction in which the recipient knows that the instrument is being used in an attempt to avoid

subsumed by the next loan or if the collateral has sufficient value to secure a larger replacement loan. In any case, the amount of the new loan is at least as much as the unpaid amount of the one it replaces.

² The total amount received from the transaction or related transactions must, of course, still exceed \$10,000 to trigger Form 8300 reporting (e.g., two cashier’s checks for \$8,000 a piece, or a \$6,000 money order and \$5,000 in currency).

reporting under section 6050I.³ I.R.C. § 6050I(d); Treas. Reg. § 1.6050I-1(c)(1)(ii)(B). “Related transactions” are any transactions between a payer and a recipient of cash occurring in a 24-hour period. Treas. Reg. § 1.6050I-1(c)(7)(ii). If the transactions are more than 24 hours apart, they are related if the recipient “knows or has reason to know that each transaction is one of a series of connected transactions.”⁴ *Id.*

Pawn Loans

Pawn loans in a series like the one described above are plainly related transactions. The existence of the debt resulting from the first loan, which the debtor cannot or chooses not to pay off by the maturity date, is the reason for the second loan, and that debt is, in turn, the reason for the third loan, and so on. Beginning with the second loan, the customer is incurring a new debt each time because of an earlier one, and both parties arrive at the terms of the new loan—particularly the amount—in direct relation to its predecessor. Each new loan, with the same lender,⁵ allows for the preceding one to be retired without the debtor either paying it off or losing his or her interest in the pawned property; one of those outcomes would necessarily happen without the fresh loan. To conclude that the loans are other than related transactions would be disregarding reality.

That the loans are separate transactions does not make them unrelated. Indeed, related transactions must by definition be separate transactions from one another. If multiple events are part of one overall transaction, the concept of two or more related transactions does not apply. The sorts of transactions subject to reporting under section 6050I will usually have their own separate paperwork and formalities, but such facts are largely if not entirely immaterial to Form 8300 reporting. Rather, section 6050I information reporting is determined on the basis of the criteria enumerated in the statute and the regulations, namely, the fundamental character of the transactions and several crucial facts like the timing and dollar amounts involved.

Although X emphasizes that all of its loans “are legally distinct credit extensions” under “other federal and state laws,”⁶ pawn loans are not unique in that way or so different

³ Or, if one of these monetary instruments (in an amount less than \$10,000) is received in a “designated reporting transaction,” it is “cash.” Treas. Reg. § 1.6050I-1(c)(1)(ii)(B)(1). A “designated reporting transaction” has its own particular meaning not relevant here.

⁴ “Connected transactions” is not defined in the regulations.

⁵ For this advice (and the sake of simplicity), we assume that the loans are always made at the same pawnshop, and not two or more different pawnshops owned and operated by X. Each “store, division, branch, department, headquarters, or office” of a person’s trade or business is subject to separate Form 8300 reporting unless a store or branch that receives cash payments, or “a central unit linking” the group, has reason to know that the same payer is making cash payments at multiple places. Treas. Reg. § 1.6050I-1(c)(8).

⁶ The Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, is one.

from other types of transactions that they should be treated differently for information reporting purposes. When a person buys or rents real or personal property or takes out a loan and some time later executes a new transaction of the same type and with the same business, the business will normally use a separate sales contract, lease, or loan document for each transaction. Additionally, each sale, loan, lease, or other transaction will have its own existence (creating certain rights and obligations in the parties) under statutory or common law, whether it be contract law, landlord-tenant, consumer credit, etc. In promulgating the regulations, the Service and Treasury surely were aware of those realities but did not intend for them to control or obscure reporting of cash transactions over \$10,000. This is reflected in two of the regulatory examples of related transactions. In one of them:

[A]n individual attends a one day auction and purchases for cash two items, at a cost of \$9,240 and \$1,732.50 respectively (tax and buyer's premium included). Because the transactions are related transactions as defined in paragraph (c)(7)(ii) of this section, the auction house is required to report the aggregate amount of cash received from the related sales (\$10,972.50), *even though the auction house accounts separately on its books for each item sold and presents the purchaser with separate bills for each item purchased.*

Treas. Reg. § 1.6050I-1(c)(7)(iii), Example (4) (emphasis added). In the second example:

[A] coin dealer, sells for cash \$9,000 worth of gold coins to an individual on three successive days [, i.e., three separate sales, each presumably having its own documentation]. Under paragraph (c)(7)(ii) of this section the three \$9,000 transactions are related transactions aggregating \$27,000 if [the dealer] knows, or has reason to know, that each transaction is one of a series of connected transactions.

Treas. Reg. § 1.6050I-1(c)(7)(iii), Example (5).

The examples illustrate that if two or more transactions meet either the first or second prong of the definition of "related," then the cash amounts of the transactions are aggregated to determine reporting, irrespective of transaction-by-transaction accounting or paperwork. On that basis, the successive pawn loans addressed in this advice, which fall under the second prong because the pawnbroker knows that "each transaction is one of a series of connected transactions," are to be treated as related transactions even though the pawnbroker accounts separately for each loan as dictated by state law and provides a separate pawn ticket to the borrower each time. The pawnbroker obviously has knowledge of each of the serial transactions with the same customer and, as we have explained, also knows that the transactions are connected to one another (both parties understand that a subsequent loan is meant to replace the immediately preceding loan, which may have replaced its own antecedent debt, so that

all of the transactions are linked). In point of fact, it is difficult to imagine the transactions being any more connected without being the same transaction.

The overt connection that is absent from the second example quoted above is present in the case of the serial pawn loans. The facts of the example—that all three sales are between the same buyer and seller, in the same amount (\$9,000), for the same merchandise, and on three successive days—are suggestive of a connection between the sales, but whether they are truly related transactions depends on whether there are further facts forming a basis for the dealer to know of an actual connection. Similar to the example, serial pawn loans involve the same customer and business operator, equal or overlapping transactional amounts, and the same personal property (pledged in exchange for, and redeemed with, cash). But unlike the example, an additional fact true of serial pawn loans is that one loan is the cause of the next loan, which is a reaction to, and has a direct effect on the disposition of, the prior loan. This demonstrable connection is what makes the loans related transactions⁷

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⁷ Of course, if there were no connection between the borrowed amount of one loan and another, the conclusion would be different. For instance, if one of X's customers borrows \$4,500 on one occasion, repays it at the end of the term, and a week later borrows another \$4,500 at the same pawnshop, using the same collateral, the loans would seem, without more, to be unrelated transactions. While the two loans may be factually identical, there is no apparent connection between them—the first \$4,500 loan does not beget the second one, and the second loan does not replace the first.