

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201604003**  
Release Date: 1/22/2016  
Index Number: 6050W.00-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PA:02  
PLR-107063-15

Date:  
August 24, 2015

LEGEND

Taxpayer:

Customers:

Providers:

Dear :

This is in response to your ruling request submitted by your authorized representative concerning the federal income tax reporting requirements for Taxpayer under section 6050W of the Internal Revenue Code (Code) and the regulations thereunder. Specifically, Taxpayer requested a ruling that Taxpayer is a third party settlement organization operating a third party payment network and has an information reporting obligation under section 6050W.

FACTS

Taxpayer provides an platform and marketplace through which persons offering ("Providers") may . Persons seeking ("Customers") use Taxpayer's platform to locate Providers and enter into direct agreements regarding . Taxpayer provides a search function through which these interested parties can locate each other, a means to communicate directly and determine the terms for , and a secure payment processing service to permit Providers to receive payments from Customers. offered by Providers include

Taxpayer is not a party to the agreements between Providers and Customers regarding . Taxpayer only provides the platform which allows Providers and Customers to connect and serves as a payment collection agent for purposes of accepting payments from Customers on behalf of Providers.

Taxpayer does not act as for Providers, although it does provide a guarantee by which it agrees to pay Providers for

Furthermore, Taxpayer does not offered by Providers.

Providers determine the fees they will charge for use of their (“ Fee”). Taxpayer plays no role in determining the amount of the Fee. Providers pay a Fee to Taxpayer for the use of the platform and other services, which is calculated as a percentage of the Fee. In addition to paying the Fee to Providers, Customers pay a Fee to Taxpayer, which is also calculated as a percentage of the Fee.

Taxpayer collects Fees and Fees from Customers at the time of . Taxpayer agrees to initiates payment of Fees, less Fees, to Providers within 24 hours of when Customers Providers’ . Taxpayer’s terms of service state that the Customer’s payment obligation to the Provider for the Fees is extinguished once payment is made to Taxpayer and Taxpayer is thereafter responsible for remitting the payment to the Provider.

In the event that a Provider cancels a , Taxpayer refunds both the Fee and the Fee to the Customer. If a Customer cancels a before confirmation by the Provider, Taxpayer refunds all funds it is holding on behalf of the Customer to the Customer. If a Customer cancels a after are confirmed by the Provider, the Provider’s cancellation policy controls the amount that Taxpayer refunds to the Customer.

Under a separate Customer refund policy, Taxpayer agrees “in its discretion” to reimburse Customers or use reasonable efforts to provide alternative comparable when certain issues arise.

If a Customer damages a Provider’s , Taxpayer may attempt to collect payments for damage from the Customer’s credit card on file or it may

Payments made by Customers to Taxpayer are primarily made by credit card or through a third party settlement organization. Taxpayer acknowledges that these payments from Customers to Taxpayer are payment card transactions or third party network

transactions subject to information reporting under section 6050W. Taxpayer acknowledges that the relevant merchant acquiring entity or third party settlement organization issues Forms 1099-K to Taxpayer.

Payments made by Customers to Taxpayer are placed into custodial accounts for the benefit of each Provider. Within 24 hours of a Customer's , Taxpayer pays Providers by direct deposit to a Provider's bank account or account, through services provided by , or through a third party who provides payment to Providers on a prepaid debit card.

Taxpayer currently reports payments made to Providers under section 6050W without regard to the reporting thresholds for third party settlement organizations under section 6050W(e).

## LAW AND ANALYSIS

### *Section 6050W*

Section 6050W of the Code, as enacted by the Housing Assistance Tax Act of 2008, requires payment settlement entities to file an information return for each calendar year with respect to payments made in settlement of reportable payment transactions. Section 6050W covers two types of transactions: (1) payment card transactions and (2) third party network transactions. A payment settlement entity in the payment card context is a merchant acquiring entity; in the third party network context, it is a third party settlement organization (TPSO). I.R.C. § 6050W(b)(1).

The Code and regulations define a merchant acquiring entity as the bank or other organization with the contractual obligation to make payments to participating payees in payment card transactions. A payment card transaction is any transaction in which a payment card is accepted as payment. I.R.C. §§ 6050W(b)(2)-(3), 6050W(c)(3); Treas. Reg. § 1.6050W-1(b)(1)-(2).

The Code and regulations define a TPSO as the central organization that has the contractual obligation to make payments to the participating payees of third party network transactions. I.R.C. § 6050W(b)(3); Treas. Reg. § 1.6050W-1(c)(2). A third party network transaction is any transaction that is settled through a third party payment network. I.R.C. § 6050W(c)(3). A central organization is a TPSO with a reporting obligation if it provides a third party payment network that allows purchasers to transfer funds to providers of goods and services. Treas. Reg. § 1.6050W-1(c)(2).

A third party payment network is any agreement or arrangement that (i) involves the establishment of accounts with a central organization by a substantial number of providers of goods or services who are unrelated to the central organization and who have agreed to settle transactions for the provision of goods or services with purchasers

according to the terms of agreements; (ii) provides standards and mechanisms for settling the transactions; and (iii) guarantees payments to the providers of goods and services in settlement of transactions with purchasers. I.R.C. § 6050W(d)(3); Treas. Reg. § 1.6050W-1(c)(3).

A TPSO is not required to report third party network transactions for a participating payee unless the amount to be reported exceeds \$20,000 and the aggregate number of transactions with the participating payee exceeds 200. I.R.C. § 6050W(e).

### *Analysis*

Taxpayer is a TPSO with respect to payments made to Providers because it is a central organization that has the contractual obligation to make payments to the participating payees of a third party network transaction and provides a third party payment network that allows purchasers to transfer funds to providers of services.

Taxpayer has established a third party payment network because it has an arrangement: (1) through which a substantial number<sup>1</sup> of providers of services who are unrelated to Taxpayer have established accounts with Taxpayer and have agreed to settle transactions for the provision of services; (2) which provides standards and mechanisms for settling transactions, as described in Taxpayer's terms of service, and (3) which guarantees that persons providing services pursuant to the arrangement will be paid for providing these services, also as described in Taxpayer's terms of service.

Here, the providers of services are the Providers who make \_\_\_\_\_ available for Customers. Although the term "goods and services" is not defined in section 6050W or the regulations promulgated thereunder, the \_\_\_\_\_ provided to Customers by Providers fall within the concept of "goods and services" as contemplated by section 6050W.<sup>2</sup> Taxpayer guarantees that the Providers will be paid by agreeing in its terms of service to accept payment responsibility once a Customer makes payment to Taxpayer.

<sup>1</sup> For purposes of this letter ruling, it is not necessary to define how many providers constitute a "substantial number" of providers, as Taxpayer clearly exceeds any potential threshold. In its technical explanation of the Housing Assistance Tax Act of 2008, the Joint Committee on Taxation interpreted the term "substantial number" to mean, for example, more than 50 providers of goods or services. Joint Committee on Taxation, Technical Explanation of Division C of H.R. 3221, The "Housing Assistance Tax Act of 2008" as Scheduled for Consideration by the House of Representatives on July 23, 2008 (JCX-63-08) at 61, July 23, 2008. As of the date of the ruling, according to Taxpayer's website, Taxpayer has \_\_\_\_\_ . Based on this information, it is clear that Taxpayer has a

"substantial number" of providers.

<sup>2</sup> Although not determinative, a 2004 revenue procedure that classifies businesses by Merchant Category Codes according to whether they predominantly furnish services or goods supports the position that Providers are providing services. Rev. Proc. 2004-43, 2004-2 C.B. 124 (obsoleted by T.D. 9699, removing regulations relating to information reporting and backup withholding for the Qualified Payment Card Agent Program). Under the revenue procedure, the following types of businesses, among others, are considered to predominately provide services: " \_\_\_\_\_ " and " \_\_\_\_\_ "

." Providers fit within these business types, as they are providing \_\_\_\_\_ ; thus

In instances where Taxpayer makes payments to Providers via a third party, Taxpayer maintains primary reporting responsibility for reporting such payments and is a TPSO for purposes of these payments.<sup>3</sup> When Taxpayer makes these payments, it is merely depositing the funds in an account on behalf of the Provider; the third party is not acting as a payment processor on behalf of Taxpayer. In these situations, Taxpayer is merely settling a transaction through which Customers are transferring funds to Providers, the providers of services.

This conclusion is supported by the fact that Taxpayer is the only entity handling payments from Customers which has all the information necessary to report under section 6050W. Section 6050W requires payment settlement entities, including TPSOs, to report the “gross amount of the reportable payment transaction” to participating payees. In the case of Taxpayer, that amount would be the gross amount paid by the Customer to Taxpayer, which includes both the Fee and the Fee. After receiving this amount, Taxpayer will deduct the Fee and the Fee, and will then pay the remainder to the Provider, sometimes through a third party, within 24 hours of the Customer’s . The amount paid to a Provider through a third party is not the gross amount of the reportable payment transaction, because Taxpayer deducts the Fee and the Fee prior to making payment to the Provider. Thus, a third party receiving the payment on behalf of the Provider would not have the information necessary to report on the gross amount of the reportable payment transaction.

## CONCLUSION

Based exclusively on the information provided and the representations made, we have determined that Taxpayer has a reporting obligation under section 6050W as a TPSO.

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

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Providers can be viewed as predominately providing services. Moreover, businesses which provide other types of are also considered to predominately provide services, including

. Rev. Proc. 2004-43 was obsoleted following the enactment of section 6050W and the payment card reporting regime, but it still provides guidance in determining whether a particular business is a type that should be classified as one predominately furnishing services.

<sup>3</sup> In its ruling request, Taxpayer stated that it agreed with this conclusion but was merely seeking confirmation that it was correct.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Adrienne Griffin  
Senior Technician Reviewer  
(Procedure & Administration)

cc: