

Internal Revenue Service

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Person To Contact:
, ID No.

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Legend

Taxpayer: , a subsidiary of

Clients: Customers of tax return preparers who enter into an agreement with Taxpayer to use Taxpayer's disbursement products for receiving their federal and state tax refunds.

Providers: Tax return preparers who enter into an agreement with Taxpayer to offer Taxpayer's disbursement products to tax return preparers' clients.

Dear and Subsidiary:

This is in response to your ruling request submitted by your authorized representative concerning the federal income tax reporting requirements for Taxpayer under sections 6050W and 6041 of the Internal Revenue Code (Code) and the regulations thereunder. Specifically, Taxpayer requested a ruling that it does not have an information reporting obligation under section 6050W or section 6041 with respect to certain tax preparation fees deducted from individual Clients' refunds and paid to Providers who utilize Taxpayer's refund disbursement services.

FACTS

Taxpayer is in the business of providing financial product management, marketing, training, and technology services to banks, and assisting banks with developing and

coordinating relationships with certain tax return software providers, transmitters, and tax professionals. Taxpayer's primary business purpose is to provide services to Providers to assist their Clients with obtaining refunds, although it has recently expanded its services to banks in support of electronic transaction services.

Agreement with the Bank

In order to facilitate the disbursement of tax refunds, Taxpayer and several FDIC-insured commercial banks and issuers of prepaid/stored value cards (the Bank) have established partnership relationships, governed by an agreement (the Program).

The Program allows Taxpayer to offer three methods by which Clients can receive their tax refunds: (1) prepaid/stored value card; (2) direct deposit into a personal bank account; or (3) paper check. Each method is priced differently and results in different bank product fees payable to the Bank; Clients may choose to have this costs deducted from their refunds. Additionally, Clients may choose to pay their tax return preparation fees to their Provider by having those fees deducted directly from their refund along with any bank product fees.

In order to facilitate the payment of refunds, the Bank sets up temporary deposit accounts on behalf of each Client for purposes of receiving and disbursing tax refunds issued by federal and state taxing authorities to Clients. These accounts are owned by the Bank and the funds in these accounts are treated as deposit funds of Clients at all times.

When Taxpayer learns of an upcoming transfer of funds on behalf of a Client, Taxpayer calculates the appropriate Bank and Provider fees for that Client and compiles disbursement components. When the transfer is made to the Client's account, Taxpayer sends electronic instructions to the Bank for disbursement of the Client's refund. The Bank uses these instructions to disburse a portion of the refund to the Bank for any Program fees, to Taxpayer for any processing fees, to the Provider for any tax preparation fees that were authorized by the Client, and finally to the Client in the manner selected by the Client.

The Bank disburses the net refund due to a Client according to the method selected by the Client: by issuance of a Bank check if the Client elected to receive its net refund by check, by electronic transfer of funds to a specified bank account if the Client elected to receive its net refund by direct deposit, or by transfer of funds to a card processor if the Client elected to receive its net refund by prepaid/stored value card. The card processor ultimately sends a prepaid or stored value card to the Client.

Under the terms of the agreement between Taxpayer and the Bank, the Bank is entitled to collect and receive all revenue from the Program. Taxpayer generates revenue solely through its receipt of a monthly marketing fee from the Bank.

Agreement with Providers

In addition to its relationship with the Bank, Taxpayer establishes relationships with Providers, who market the products offered through the Program to Clients. Taxpayer's relationship with Providers is established through an annual (the Agreement).

Under the Agreement, Taxpayer agrees to provide a platform to facilitate the disbursement of Clients' federal and state refunds by one of the options provided in the agreements pursuant to the Program.

In addition, Taxpayer agrees to facilitate and administer the payment of any current year tax preparation fees owed to the Provider. Taxpayer's duties and obligations with respect to the tax preparation fees are set out in the Agreement. The Agreement states that Taxpayer shall direct the Bank to transfer payment of tax return preparation fees to the Provider by an automated clearinghouse credit to the account designated by the Provider during its enrollment in the program. Taxpayer only instructs the Bank to send the fees the Provider after the Client's refund has been deposited with the Bank.

The Agreement does not provide for any compensation from the Provider to Taxpayer or from Taxpayer to the Provider in exchange for the services provided by each party. Rather, each party benefits economically through its interactions and agreements with third parties. The Agreement allows Taxpayer to fulfill its service obligations with the Bank and earn revenues under the program. Providers benefit because they can offer Clients bank products provided by Taxpayer and because they allow Clients to forego paying the Provider for its services at the time they are rendered.

Taxpayer does not have any control over the fees Providers charge Clients. Moreover, Taxpayer does not have direct ownership of or control over Clients' funds; the Bank owns and controls all accounts related to the receipt and disbursement of funds. Furthermore, Taxpayer does not have any obligation pursuant to an agreement with the Bank, Providers, or Clients to make payment of fees owed to the Provider in the event that a Client's refund is not sufficient to cover those fees. Taxpayer's only function with regard to the tax preparer fees is to inform the Bank that the refund has been received, the amount of the Provider fee to be deducted from the refund, and provide the Provider's account and routing numbers so that the Bank can transmit the fee to the Provider by automated clearinghouse transfer. The Bank is not a party to the Agreement and has no obligations under it.

Agreement with Clients

Taxpayer also enters into an agreement with Clients regarding Clients' use of Taxpayer's refund disbursement products (the Agreement). The Agreement informs Clients of their options for receiving their tax refund. The

Agreement states that once a Client's account is funded with a tax refund, Taxpayer will direct payment from the account of (1) fees owed to the Provider, (2) fees owed to Taxpayer, and (3) any other fees that the Client previously approved. Once these fees have been paid, the balance of the account is transferred to the Client in the manner selected by the Client. The agreement informs Clients that if a tax refund is not received by the Bank and placed in the Client's account, then funds will not be available to pay the appropriate fee to the Provider. In the event that any part of an anticipated refund is disallowed or offset, or if the Client directly receives a refund check from a taxing authority, the Client is required to notify Taxpayer immediately and promptly pay the Provider any fees owed.

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 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).

The Code and regulations also provide special rules for two types of intermediaries who are required to report under section 6050W: aggregated payees and electronic payment facilitators.

An intermediary is required to report under section 6050W if it qualifies as an aggregated payee. According to the Code and regulations, where an intermediary receives payments from a payment settlement entity on behalf of one or more participating payees and distributes these payments to one or more participating payees, that intermediary is treated as (1) the participating payee for purposes of determining reporting obligations of the payment settlement entity with respect to such transactions, and (2) as the payment settlement entity with respect to the settlement of these transactions with the participating payees. I.R.C. § 6050W(b)(4); Treas. Reg. § 1.6050W-1(d)(1).

Moreover, where a payment settlement entity contracts with an electronic payment facilitator or other third party to make payments in settlement of reportable payment transactions on behalf of the payment settlement entity, that electronic payment facilitator or third party (a Facilitator) must file the annual information return under section 6050W in lieu of the payment settlement entity. A Facilitator is not required to have any agreement or arrangement with the participating payee. Moreover, these rules apply even if the payment is not made directly from a Facilitator's account; a Facilitator need only submit instructions to transfer funds to the account of the participating payee in settlement of the reportable payment transaction. A Facilitator is liable for any applicable penalties for failure to comply with the information reporting requirements of section 6050W. I.R.C. § 6050W(b)(4)(B); Treas. Reg. § 1.6050W-1(d)(2).

Section 6050W Analysis

Taxpayer is not required to report under section 6050W with respect to fees routed from individual Clients' refunds to Providers because it is not a TPSO, aggregated payee, electronic payment facilitator, or other entity that is required to make returns of information relating to payments in settlement of payment card and third party network transactions.

Third Party Settlement Organization

As discussed above, a third party settlement organization is a central network that has the contractual obligation to make payments to the participating payees of third party network transactions. A third party network transaction is a transaction that is settled through a third party payment network. A third party payment network is any agreement or arrangement that requires, among other things, that the TPSO establish accounts with a substantial number of providers of goods and services who are unrelated to the TPSO and who have agreed to settle transactions for the provision of goods and services, and that the TPSO guarantee payments to the providers of goods and services in settlement of transactions with the purchasers of the goods and services.

Here, Taxpayer does not guarantee a payment to the Provider for the services provided to its Clients. Rather, Taxpayer merely agrees to provide instructions for the transfer of funds from a Client's account, if available, to the Provider to cover tax return preparation costs. Taxpayer does not provide instructions to the Bank to transfer funds to a Provider until a Client's refund has been deposited with the Bank. Taxpayer is under no obligation to satisfy a Client's obligation to its Provider if the amount deposited in the Client's account is insufficient to cover the fees owed to the Provider. Thus, Taxpayer does not guarantee payments to the Providers within the meaning of section 6050W(d)(3)(C).

Moreover, Taxpayer does not agree to settle transactions between the Providers and their Clients. Taxpayer agrees to provide instructions to the Bank to transfer funds in payment of the Provider's services, if such funds are deposited into a Client's account by a federal or state taxing authority. Taxpayer does not, however, agree to fulfill all obligations and complete the transaction between the Providers and Clients. The agreement between Taxpayer and Clients makes clear that if the amount of a Client's refund deposited into their Bank account is insufficient to cover the fees owed to the Provider, then the Client is required to notify Taxpayer and directly pay the Provider any amounts owed. The service that Taxpayer provides is focused on providing instructions to facilitate the movement of funds, when they are available, rather than settling a transaction between Providers and Clients.

For the reasons stated above, Taxpayer has not established a third party payment network and thus is not a TPSO.

Aggregated Payee

The aggregated payee rules require reporting under section 6050W if a person receives payments from a payment settlement entity on behalf of participating payees, and then distributes such payments to those participating payees. Taxpayer is not an aggregated payee because it is neither receiving payments from a payment settlement entity nor distributing payments to participating payees. The amounts deposited in Clients' accounts are not received by Taxpayer on behalf of Clients; rather, these funds are held on Clients' behalf by the Bank. When Taxpayer learns that a deposit was made to a Client's account, Taxpayer sends electronic instructions to the Bank regarding the disbursement of the Client's refund. At no time does Taxpayer either receive Clients' refunds or disburse such refunds to other parties; Taxpayer merely provides instructions to the Bank on how to disburse the funds. Accordingly, Taxpayer is not an aggregated payee.

Electronic Payment Facilitator

Under the electronic payment facilitator rules, when a payment settlement entity contracts with an electronic payment facilitator or other third party to make payments in settlement of reportable payment transactions on behalf of the payment settlement

entity, that electronic payment facilitator or third party has the obligation to file the required information return under section 6050W. These rules apply even if the payment is not made directly from the electronic facilitator's account; it need only submit instructions to transfer funds to the account of the participating payee in settlement of the reportable payment transaction to incur a reporting obligation.

Taxpayer does not have an obligation to file returns under section 6050W as an electronic payment facilitator because it is not contracting with or making payments on behalf of a payment settlement entity. The person on whose behalf Taxpayer is submitting instructions for transfer of funds is the Client, an individual customer of a Provider. As discussed above, a payment settlement entity is defined as is a merchant acquiring entity (in the payment card context) or a third party settlement organization (in the third party network context). An individual taxpayer is not a merchant acquiring entity or a third party settlement organization. Accordingly, Taxpayer cannot be acting as an electronic payment facilitator within the meaning of section 6050W(b)(4)(B) and Treas. Reg. § 1.6050W-1(d)(2).

In conclusion, Taxpayer is not a TPSO, an aggregated payee, or an electronic payment facilitator and thus does not have a reporting obligation under section 6050W.

Section 6041

Section 6041(a) of the Code provides that 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, shall render a true and accurate return setting forth the amount of such gains, profits, and income, and the name and address of the recipient.

Treas. Reg. § 1.6041-1(d)(2) states that "fees for professional services paid to attorneys, physicians, and members of other professions" are required to be reported under section 6041 if they are "paid by persons engaged in a trade or business and paid in the course of such trade or business."

Section 6041 also provides rules requiring reporting by a party who makes payment on behalf of another party. According to Treas. Reg. § 1.6041-1(e)(1), when a person makes a payment in the course of a trade or business on behalf of another person, the payor is required to make an information return if the payor (1) performs management or oversight functions with respect to the payment, or (2) has significant economic interest in the payment.

Section 6041 Analysis

Taxpayer does not have a direct reporting obligation under section 6041 because Taxpayer is not making a payment in the course of a trade or business. Rather,

Taxpayer is submitting instructions to the Bank on how a particular Client's refund should be disbursed. Taxpayer does not control the funds in the account or directly make any payment. Although payments for fees for professional services are generally reportable under section 6041, because Taxpayer is not the party making payment, Taxpayer does not have a reporting obligation under the general rules of section 6041.

Moreover, Taxpayer does not have an obligation to report under section 6041 for making payments on behalf of Clients. As discussed above, Taxpayer does not own or otherwise have control over the funds in Client's Bank accounts. Accordingly, when Taxpayer submits instructions to the Bank on disbursement of the funds, it cannot be considered to be making a payment on behalf of Clients. Therefore, Taxpayer is not subject to reporting under section 6041 with respect to the transfer of funds from Clients' accounts to the Providers to compensate the Providers for their return preparation services.

CONCLUSION

Based exclusively on the information provided and the representations made, we have determined that Taxpayer does not have a reporting obligation under section 6050W or section 6041.

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.

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: