

## Internal Revenue Service

Number: **201836008**  
Release Date: 9/7/2018  
Index Number: 6050W.00-00

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PA:02  
PLR-136944-17

Date:  
June 07, 2018

### Legend

Taxpayer:

Platform:

Service Provider:

Service Recipient:

Service:

Dear \_\_\_\_\_ :

This is in response to the November 14, 2017 ruling request submitted on your behalf by your authorized representative concerning your federal income tax reporting obligations under section 6050W of the Internal Revenue Code (Code) and the regulations thereunder. Specifically, you have requested a ruling that:

1. Taxpayer is a third party settlement organization (TPSO) with respect to Service Recipient payments made to Service Providers through its mobile application and online payment platform; and
2. If Taxpayer qualifies as a TPSO, then, for the purposes of determining whether the de minimis rules in section 6050W(e) are satisfied, each Service provided by a Service Provider constitutes a single "transaction" even if multiple Service

Recipients submit payment for the same Service and regardless of the number of times a Service Provider is paid for a single Service.

## FACTS

Taxpayer is a \_\_\_\_\_ company that provides a \_\_\_\_\_ platform (Platform) which allows individuals providing Services (Service Providers) to connect with individuals (Service Recipients) seeking such \_\_\_\_\_ Services. In order to offer these \_\_\_\_\_ Services or receive payments through Taxpayer's Platform, Service Providers must enter into a contractual agreement with Taxpayer. The terms of the agreement entered into between Taxpayer and Service Providers includes a guarantee that Taxpayer will remit to Service Providers those payments it collects from the Service Recipients for whom those Service Providers provided \_\_\_\_\_ Services. Taxpayer currently contracts with more than 50 Service Providers in the United States.

In Taxpayer's standard service and payment model, a Service Provider provides \_\_\_\_\_ Services \_\_\_\_\_ in exchange for a fee paid by the Service Recipient to the Service Provider and computed according to a formula determined by Taxpayer (Fee).

In addition to the Fee, the Service Recipient is also responsible for paying any other applicable fees, including a Service fee charged by Taxpayer.

Taxpayer \_\_\_\_\_ collects the Fee and these additional amounts (collectively, Service Recipient Payment) from the Service Recipient. Taxpayer then remits Fees to the Service Provider on at least a weekly basis.

In addition to this standard service and payment model, Taxpayer also offers another \_\_\_\_\_ option that pairs one Service Recipient with one or more other Service Recipients \_\_\_\_\_. In this model, a Service Provider provides two or more separate Services to two or more separate Service Recipients in tandem, in exchange for two or more separate Fees. At the completion of the first Service, Taxpayer collects and processes the first Fee. At the completion of the second Service, Taxpayer then collects and processes the second Fee. Finally, Taxpayer also offers all Service Recipients the option to split the cost of a single Service between two or more Service Recipients (Split Fee Service). If Service Recipients select the Split Fee Service option, Taxpayer collects and processes a single Service Recipient Payment, a portion of which is paid by each Service Recipient. In the Split Fee Service model, two or more Service Recipients will remit payment for a single Service.

Taxpayer's Platform allows Service Recipients to pay for Services using various forms of payment, including credit card, debit card, and a third-party payment processor. To offer Services or receive payment through Taxpayer's platform, a Service Provider must create an account via Taxpayer's online portal and provide certain information, including a taxpayer identification number and bank account information. To provide the standards and mechanisms for settling transactions with Service Providers, Taxpayer has entered into agreement with banks, payment processors, and other third party service providers.

Multiple steps are involved in the processing of payments made by Service Recipients through Taxpayer's Platform. Service Recipients enter their payment information into Taxpayer's Platform using either Taxpayer's mobile application or via a secure form on Taxpayer's website. To initiate payment, Taxpayer sends payment instructions to one of its "payment gateways," which are third party entities that facilitate payment transactions by transferring information between Taxpayer's Platform and the front-end payment processor or acquiring bank. After receiving payment instructions from Taxpayer, the payment gateway sends instructions to Taxpayer's payment processors, which are responsible for forwarding the transaction information to the respective card associations for verification and authorization. Once the payment processor receives confirmation that the payment card details have been verified, it relays this information to the merchant acquiring bank, which then deposits funds attributable to the Service Recipient's total Service Recipient Payment into Taxpayer's bank account.<sup>1</sup> Finally, Taxpayer deposits into the Service Provider's bank account the total Service Recipient Payment less a service fee charged to Service Providers by Taxpayer. Payments are deposited in a Service Provider's bank account via ACH transfer on at least a weekly basis.

## LAW & ANALYSIS

### *Section 6050W*

Section 6050W of the Code, as enacted by the Housing Tax 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. The annual information return must set forth (1) the name, address, and taxpayer identification number (TIN) of the participating payee to whom payments were made and (2) the gross amount of the reportable payment transactions with respect to

---

<sup>1</sup> When a Service Recipient pays Taxpayer using a third-party payment processor, similar steps are taken to process the payments. Once the Service is completed, Taxpayer sends a request to the third-party payment processor to transfer the necessary funds from the Service Recipient's third-party payment processor account, to the Taxpayer's third-party payment processor account. The third-party payment processor then aggregates all the funds into a daily deposit, which is transferred to Taxpayer's bank account. The minor differences in settling transactions when a third-party payment processor is used instead of a payment card do not affect the analysis in this ruling.

that payee. I.R.C. § 6050W(a). The regulations define gross amount to mean the total dollar amount of the aggregate reportable payment transactions for each participating payee, without regard to any adjustments for credits, cash equivalents, discount amounts, fees, refunded amounts, or any other amounts. Treas. Reg.

§ 1.6050W-1(a)(6). Taxpayers required to make returns under section 6050W do so by filing Forms 1099-K, Payment Card and Third Party Network Transactions.

Section 6050W covers two types of reportable payment transactions: (1) payment card transactions and (2) third party network transactions. I.R.C. § 6050W(c). 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)(2); 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 and services with purchasers according to the terms of agreements; (ii) provides standards and mechanisms for settling transactions; and (iii) guarantees payments to the providers of goods and services in settlement of transactions with the purchasers. I.R.C. § 6050W(d)(3); Treas. Reg. § 1.6050W-1(c)(3). Neither the Code nor the regulations defines what constitutes a “substantial number” of providers for the purposes of defining a third party payment network. However, 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 and 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.

A participating payee, in the case of a third party network transaction, is any person who accepts payment from a third party settlement organization in the settlement of such transaction. I.R.C. § 6050W(d)(1)(A)(ii).

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 that participating payee exceeds 200. I.R.C. § 6050W(e).

A payer that is a common law employer with respect to a payee cannot be a TPSO with respect to that payee. See Treas. Reg. § 1.6041-2(a)(1). Wage payments to an employee are reported on a Form W-2, Wage and Tax Statement. See, e.g., Treas. Reg. § 31.6051-2(a).

### *Analysis*

If Taxpayer is not the common law employer of the Service Providers, Taxpayer is a TPSO with respect to payments made to Service 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 of services 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 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 provided in the contractual agreement between Taxpayer and Service Providers; and (3) which guarantees that persons providing services pursuant to this arrangement will be paid for providing these services, as also provided in the contractual agreement between Taxpayer and Service Providers.

Here, the providers of services are the Service Providers who make Services available to Service Recipients.<sup>2</sup> Over 50 of these Service Providers, who are unrelated to Taxpayer, have established accounts with Taxpayer to settle transactions for the provision of Services. The standards and mechanisms for settling transactions between Service Providers and Service Recipients for the provision of these Services are provided in the contractual agreement between Taxpayer and Service Providers, along with a guarantee that Service Providers will be paid for their Services. Taxpayer is, therefore, a TPSO.

A third party network transaction occurs when a Service Provider provides a Service for which the Service Provider is entitled to receive payment from a Service Recipient or

---

<sup>2</sup> Although the term “goods and services” is not defined in section 6050W or the regulations under that section, such term includes the Services offered by Service Providers to Service Recipients through Taxpayer’s Platform.

Service Recipients via Taxpayer's third party payment network. Each Service, provided by Service Provider and paid for by a Service Recipient or Service Recipients is a single transaction. In the context of a Split Fee Service, where two or more Service Recipients submit payment for the same Service, there is only one transaction. When a Service Provider is providing two or more separate Services in tandem, there is a separate transaction for each Service. The frequency with which Taxpayer remits payment to a Service Provider is not determinative of what constitutes a transaction for the purposes of section 6050W.

As a TPSO, Taxpayer is required to report third party network transactions for a participating payee – here, a Service Provider – when the amount to be reported exceeds \$20,000 and the aggregate number of transactions with that Service Provider exceeds 200. Taxpayer must report the gross amount of all reportable payment transactions with respect to that Service Provider on a Form 1099-K.

The rulings contained in this letter do not address the worker classification status of any Service Provider or whether Taxpayer is the common law employer of any Service Provider.

## CONCLUSIONS

1. If Taxpayer is not the common law employer of the Service Providers, Taxpayer is a TPSO within the meaning of section 6050W and Treas. Reg. § 1.6050W-1 with respect to payments made by Service Recipients to Service Providers through Taxpayer's Platform;
2. If Taxpayer is a TPSO and not the common law employer of the Service Providers, and for the purposes of determining whether the de minimis reporting threshold in section 6050W(e) has been satisfied, each Service provided by a Service Provider constitutes a single "transaction" even if multiple Service Recipients submit payment for the same Service and regardless of the number of times a Service Provider is paid for a single Service.

The rulings contained in this letter do not address the worker classification status of any Service Provider or whether Taxpayer is the common law employer of any Service Provider.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the 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  
Branch Chief, Branch 2  
(Procedure & Administration)