DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224
June 17, 1999

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR E:EX1539
               MIDWEST DISTRICT, OMAHA
               ATTN: ██████████

FROM: ██████████████
               Deputy Associate Chief Counsel
               (Income Tax & Accounting)

SUBJECT:

UILC: 6041.06-00

This memorandum is in response to your request for technical advice dated May 14, 1999. As was discussed in a telephone conversation on May 28, 1999, with a member of this office, Rev. Proc. 99-2, 1999-1 I.R.B. 73, contemplates that technical advice may be issued on questions under the jurisdiction of the examination division or the appeals office that arise during the examination of a taxpayer's return, consideration of a claim for refund, or the appeals process. See section 2 of the revenue procedure.

We cannot issue technical advice in this matter because the question did not arise during a "proceeding" as set forth in section 2, i.e., the request involves taxpayer's future taxable years and the taxpayer is not under examination or in appeals. However, the taxpayer may submit a request for a private letter ruling under Rev. Proc. 99-1, 1999-1 I.R.B. 6. The schedule of user fees is set forth in Appendix A of the revenue procedure.

Although we cannot provide you with technical advice concerning taxpayer's information reporting obligations, we are pleased to provide you with the following general information.

Section 6041(a) of the Internal Revenue Code provides, in part, that all persons engaged in a trade or business and making payment in the course of the 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 to the Secretary of the Treasury setting forth the amount of those gains, profits, and income and the name and address of the recipient of such payment.

Section 6041A states that if any service-recipient engaged in a trade or business pays in the course of such trade or business during any calender year remuneration to any person for services performed by such person, and the aggregate of such remuneration paid to such person during such calender year is $600 or more, then the service recipient shall make a return setting forth the aggregate amount of such payments and the name and address of the recipient of such payments. The term "service-recipient" means the person for whom the service is performed.

Section 1.6041-3(d) of the Income Tax Regulations excepts freight payments from information reporting. Section 6041A was added to the law by § 312(a) of the Tax Equity and Fiscal Responsibility Act of 1982, 1982-2 C.B. 561. The Conference Report states that until new regulations are issued under § 6041A, the existing regulatory exceptions under § 6041 will continue to apply. H.R. Conf. Rep. No. 760, 97th Cong., 2d Sess. 567 (1982), 1982-2 C.B. 646. Because no new applicable regulatory exception has been issued under § 6041A, the exception contained in § 1.6041-3(d) applies to information reporting under § 6041A.

The exception for "freight" has been in existence since 1918. We have consistently interpreted the term "freight" using its plain meaning, i.e., as a method or service for transporting goods or the cost of such transportation. This interpretation results in a general exception from reporting of payments for truck, rail, ship, and air freight services.

If a trucking company has reached its hauling capacity and contracts with another trucking company to haul excess livestock or goods and an employer-employee relationship has not been created, it appears that the payment is for the cost of transporting goods or "freight."   Additionally, we should note that payments to incorporated trucking companies are excepted from reporting by § 1.6041-3(c).

We hope that this information is helpful to you. If you have additional questions please call my office at (202) 622-4920.