



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR ASSOCIATE DISTRICT COUNSEL, KENTUCKY-
TENNESSEE DISTRICT, LOUISVILLE

FROM: Heather C. Maloy
Acting Assistant Chief Counsel
(Income Tax & Accounting)

SUBJECT: Filing of 1099 Information Returns

This is in reply to your memorandum requesting that we review your conclusion "in the above captioned advisory opinion." We assume you mean the conclusion expressed in your memorandum that certain payments to haulers are not subject to the information reporting requirements of § 6041 of the Internal Revenue Code because of the exception for freight in § 1.6041-3(d) of the Income Tax Regulations.

ISSUE:

Should the exception from information reporting for payments of "freight" under § 1.6041-3(d) be narrowly construed to include only a taxpayer's payment of **incidental** freight costs during the taxable year and should information reporting be required for payments of freight that are an integral part of a taxpayer's business?

CONCLUSION:

The exception to information reporting for payments of "freight" under § 1.6041-3(d) includes not only a taxpayer's payment of incidental freight costs during the taxable year but also payments of freight that are an integral part of a taxpayer's business.

FACTS:

You state that the following situations are common in the eastern part of the Kentucky-Tennessee District:

(1) An individual who owns a dump truck or tractor trailer will agree with a coal company to haul coal from the coal mine to the tippie, the railroad siding, or the dock in return for payment of a fixed amount per trip or per mile. In this situation the mining company owns the coal both before pickup and after delivery.

(2) An individual who owns a tractor trailer will agree with the owner of timber, after it is severed from the real estate, to haul the severed logs from the timber cutting site to a sawmill or lumberyard for a fixed percentage of the sales price or a fixed amount per trip or per mile. Under this situation the landowner sells standing timber to a logger. The logger either cuts the timber or contracts with a separate cutter to cut the timber. The logger, who owns the timber after it is severed from the real estate, is the person contracting with the hauler to haul the cut logs to the sawmill or lumberyard.

You believe that if transportation is an integral part of a taxpayer's business, the taxpayer is really paying for the services of the trucker or hauler, and not paying for freight. Thus, the term "freight" under § 1.6041-3(d) should be construed to exclude only incidental freight expenses from the information reporting requirement of § 1.6041-3(d). You believe that there is a legitimate legal basis for distinguishing between incidental and non-incidental freight expenses and requiring information reporting for the latter. You suggest that this distinction be made when the regulations under § 6041A are fleshed out.

LAW & ANALYSIS:

Section 6041(a) 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 calendar year remuneration to any person for services performed by such person, and the aggregate of such remuneration paid to such person during such calendar 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 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.

As noted in your memorandum, the term "freight" has been interpreted in numerous private letter rulings as a method or service for transporting goods or the cost of such transportation (*See, e.g.*, PLR 9348058 (June 14, 1993), PLR 9329001 (March 5, 1993), PLR 9127002 (March 13, 1991), and PLR 9325004 (March 5, 1993)). This interpretation results in a general exception from reporting of payments for truck, rail, ship, and air freight services.

You note that a somewhat different result was reached in PLR 9643004 (July 12, 1996). There the taxpayer paid an independent contractor for cutting timber and hauling it to the yard owned by another party. The independent contractor purchased the timber from the landowner, with whom it dealt directly. We concluded that the taxpayer's lump-sum payment for both logging and hauling services was subject to the information reporting requirements under § 6041. Also, we stated that if the taxpayer had purchased the timber from the independent contractor, the lump-sum payment to the independent contractor for the timber, cutting, and hauling would have been a payment for "merchandise" and excepted under § 1.6041-3(d) from information reporting.

Apparently PLR 9643004 viewed the payment made by the taxpayer as solely for compensation for services. Under LAW AND ANALYSIS, it states as follows: "In the present situation, the taxpayer's payments to the independent contractor for cutting timber are 'compensation for services performed.'" Inexplicably, there is no discussion of the exception in § 1.6041-3(d) for payments for freight, even though the PLR concludes that the payments for logging and hauling services are subject to information reporting under § 6041.

The exception for "freight" has been in existence since 1918. We have consistently interpreted the term "freight" using its plain meaning; i.e., the cost of transporting goods. Thus, as explained in PLR 9348058, the freight exception under 1.6041-3(d) is not limited to items with the attribute of being incidental. Moreover, as noted in your memorandum, we rejected the idea of an incidental freight exception in PLR 9348058. We have found no basis on which to distinguish, for information reporting purposes, between freight payments that are incidental to the taxpayer's business and those that are integral to the business. We believe that any such change could not be accomplished solely by independent administrative action.

We note that in the two situations you pose, the payments for hauling coal and timber respectively, appear to be solely for freight. As such, the payments would not be subject to information reporting under § 6041.

This memorandum is for your general information and is advisory only. It is not intended to be conclusive as to the tax consequences for any specific taxpayer. If we can be of further assistance, please contact [REDACTED]