

## Internal Revenue Service

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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:APJP:B01

PLR-140749-05

Date:

October 19, 2005

Re:

### Legend

Company =

Dear :

This letter responds to a letter dated July 12, 2005, submitted by Company's authorized representative on its behalf requesting certain rulings under section 6050P of the Internal Revenue Code (Code).

### Facts

Company annually purchases millions of past due consumer accounts receivable from credit card issuers and other consumer debt issuers that have charged-off the accounts after unsuccessful attempts to collect. Company typically acquires accounts in portfolios that may include 100 to 100,000 accounts from a debt issuer. Company acquires title to the accounts and will seek to collect on the accounts over a long period of time; only rarely does Company decide to write-off an account. The balance of an individual account may vary from a few dollars to thousands of dollars. The amount that the debt issuer may have charged-off on an account may include principal, interest, and other charges ("charged-off amount").

Within the first week after acquiring a portfolio of accounts, Company stores the accounts onto its collection database. Within approximately

Throughout each year, Company sends letters and makes automated and manual phone calls to debtors on accounts for which it has correct addresses and phone numbers. If Company does not have a correct address or phone number for an account, it will run the account through “skip tracing efforts” each year.

Company continues these efforts from year to year unless the account is settled, or Company decides not to continue collection activity and to write-off the account.

As permitted by Federal and state law, Company reports accounts to three major credit bureaus twice a month.

Company uses this information in seeking to collect on its accounts.

Company rotates accounts to different collectors every six months if an assigned collector has been unable to collect on the account. Company rotates accounts that have been assigned to third party collection agencies, as well as accounts assigned to its own collectors. Company continues to rotate accounts from year to year unless the account is settled, or Company decides not to continue collection activity and to write-off the account.

Company’s collectors negotiate payment terms and settlement amounts with debtors. If a debtor refuses to pay and Company thinks that the debtor has the ability to pay, Company will take legal action and file suit, provided the statute of limitations has not expired. If the statute of limitations has expired, Company will pursue other collection activities as permitted by Federal and state law. Company also files claims against the estates of bankrupt debtors and deceased debtors in continuing its collection efforts on accounts.

Each account accrues interest on the charged-off amount during the period of time that Company holds the account.

Company may hold more than one account for the same debtor. It has been Company’s longstanding standard business practice to settle on the basis of each account of a debtor, rather than to settle on the basis of all accounts of the debtor.

#### Rulings Requested

(1) Company's collection practices constitute "significant, bona fide collection activity" within the meaning of section 1.6050P-1(b)(2)(iv)(A) of the Income Tax Regulations (regulations), for purposes of the non-payment testing period identifiable event under section 1.6050P-1(b)(2)(i)(H).

(2) Company may report discharges of indebtedness of \$600 or more on the basis of each account of a debtor, rather than on the basis of all accounts of the debtor.

(3) If a settlement involves a discharge of interest and principal, Company is required to report only discharges of stated principal of \$600 or more.

### Law and Analysis

#### Ruling 1

Section 6050P(a) of the Code provides that any applicable entity that discharges indebtedness of any person during a calendar year must file an information return reporting the discharge. Section 6050P(c)(2)(D) defines an "applicable entity" to include an organization with a significant trade or business of lending money. Section 1.6050P-2(a) of the regulations provides that lending money is a significant trade or business if the organization lends money on a regular and continuous basis during the calendar year. Section 1.6050P-2(e) provides that lending money includes acquiring an indebtedness.

Section 1.6050P-1 of the regulations provides that, upon the occurrence of an identifiable event during a calendar year, an applicable entity must report cancellation of indebtedness of \$600 or more during the calendar year unless an exception to reporting applies. Section 1.6050P-1(b)(2)(i) provides eight identifiable events that trigger reporting of cancellation of indebtedness.

Section 1.6050P-1(b)(2)(i)(H) of the regulations provides a rebuttable presumption that an identifiable event has occurred during a calendar year if a creditor has not received a payment at anytime during a 36 month testing period ending at the close of the year. In applying the non-payment testing period to an organization that purchases debt, on December 31 of each year, the organization must determine how long it has not received payment. See section 1.6050P-1(b)(2)(iv).

The section 6050P(c)(2)(D) reporting requirements apply to discharges of indebtedness that occur on or after January 1, 2005. See section 1.6050P-2(i) of the regulations. If the non-payment testing period identifiable event, or any other identifiable event, occurred prior to the effective date of section 1.6050P-2, no reporting is required upon the occurrence of a subsequent identifiable event. If, however, an identifiable event has not occurred before the effective date of section 1.6050P-2, an organization must determine if an identifiable event, including the non-payment testing period identifiable event, has occurred during 2005 or during any subsequent year for purposes of section 6050P reporting.

An organization can rebut the presumption that the non-payment testing period identifiable event occurred by engaging in significant, bona fide collection activity during the last 12 months that is more than nominal or ministerial. See section 1.6050P-1(b)(2)(iv) of the regulations. This would require the organization to pursue collection activity beyond merely generating an automated mailing. See section 1.6050P-1(b)(2)(iv)(A). The organization can also rebut the presumption if the facts and circumstances on January 31 of the following year indicate the debt has not been discharged. See section 1.6050P-1(b)(2)(iv). The facts and circumstances may include the existence of a lien relating to the debt. See section 1.6050P-1(b)(2)(iv)(B).

Based on the facts submitted and the representations made, Company engages in numerous collection activities throughout each year until the account is settled, or Company decides not to continue collection activity and to write-off the account. For example,

These collection activities are significant and are more than merely nominal or ministerial.

### Ruling 2

Section 1.6050P-1(a)(1) of the regulations provides that an applicable entity must report cancellation of indebtedness of \$600 or more during a calendar year. Section 1.6050P-1(a)(2) provides that an applicable entity is not required to aggregate multiple discharges of indebtedness of less than \$600 for purposes of section 6050P reporting unless the separate discharges are pursuant to a plan to evade the reporting requirements of section 6050P of the Code.

Based on the facts submitted and the representations made, Company discharges debt on the basis of each account of a debtor, rather than on the basis of all accounts of the debtor. This has been Company's standard business practice prior to being subject to the section 6050P(c)(2)(D) reporting requirements. There is no indication that Company's practice is pursuant to a plan to evade the reporting requirements of section 6050P of the Code.

### Ruling 3

Section 6050P(b) of the Code provides that no information reporting is required under section 6050P(a) if the amount of the discharge is less than \$600. Section 1.6050P-1(a)(1) of the regulations provides that, except as provided in section 1.6050P-1(d), an applicable entity must report cancellation of indebtedness of \$600 or more during a calendar year.

Section 1.6050P-1(c) of the regulations defines indebtedness to mean any amount owed, including stated principal, fees, stated interest, penalties, administrative costs, and fines. Section 1.6050P-1(d)(2) provides that an applicable entity is not required to report the discharge of an amount that is interest. Section 1.6050P-1(d)(3) provides that, in the case of a lending transaction, an applicable entity is not required to report discharges of amounts other than stated principal. Section 1.6050P-2(e) provides that lending money includes acquiring an indebtedness.

Company acquires debt and, therefore, is considered to be engaged in the trade or business of lending money and lending transactions. Company is not required to report discharges of interest and is required to report only discharges of stated principal of \$600 or more.

### Conclusions

Accordingly, based on the information submitted and representations made, we conclude that:

- (1) Company's collection practices constitute "significant, bona fide collection activity" within the meaning of section 1.6050P-1(b)(2)(iv)(A) of the regulations, for purposes of the non-payment testing period identifiable event under section 1.6050P-1(b)(2)(i)(H);
- (2) Company may report discharges of indebtedness of \$600 or more for each account of the debtor; and
- (3) If a settlement involves discharge of interest and principal, Company is required to report only discharges of stated principal of \$600 or more.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

The rulings contained in this letter are based upon information submitted and representations made by the taxpayer and submitted under penalty of perjury. While this office has not verified any of the material submitted in support of the request for rulings, it may be subject to verification on examination.

Sincerely yours,

Donna Welch  
Senior Counsel, Administrative Provisions &  
Judicial Practice  
(Procedure & Administration)

Enclosures (2)  
Copy of this letter  
Copy for section 6110 purposes

cc: