

Section 6050N.—Returns Regarding Payments of Royalties

26 CFR 1.6050N-1: Statements to recipients of royalties.

(Also: 6041, 1.6041-1.)

Royalties; information reporting.

This ruling provides guidance concerning the reporting requirements of sections 6041 and 6050N of the Code for payments by publishers to literary agents on behalf of an author.

ISSUES

What is the correct information reporting for royalty payments made by a publisher for the rights to an author's book or other literary composition if such royalties are paid to the author's literary agent who then forwards all or part of such payments to the author?

FACTS

A publisher enters into a contract for the license to use an author's literary works. The author is an individual. Pursuant to the contract, the publisher pays the author's royalties directly to the author's literary agent. The literary agent, upon receiving the royalties, subtracts his commission and expenses and then forwards the balance to the author pursuant to a contract between the literary agent and the author. During calendar year 2004, the royalties paid by the publisher exceeded \$10.

LAW AND ANALYSIS

Section 6041 of the Internal Revenue Code provides that all persons engaged in a trade or business who make a 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 of such payment.

Section 1.6041-1(a)(1)(i) of the Income Tax Regulations provides that the payments required to be reported under section 6041 include the following: (1) salaries, wages, commissions, fees, and other forms of compensation for services rendered aggregating \$600 or more; and (2) interest, rents, royalties, annuities, pensions, and other gains, profits, and income aggregating \$600 or more. The return of information required by section 1.6041-1(a)(1)(i) must be made on Form 1099. See section 1.6041-1(a)(2).

Sections 6041(a) and 1.6041-1(a)(ii) provide that payments for which an information return is required by, or under the authority of, section 6050N(a) (relating

to royalties), are not subject to reporting under section 1.6041-1(a)(1)(i).

Section 6050N(a) provides that every person who: (1) makes payments of royalties (or similar amounts) aggregating \$10 or more to any other person during any calendar year, or (2) receives payments of royalties (or similar amounts) as a nominee and who makes payments aggregating \$10 or more during any calendar year to any other person with respect to the royalties (or similar amounts) so received, shall file a return setting forth the aggregate amount of such payments and the name and address of the recipient of such payment. Section 6050N(b) provides that every person required to make a return under section 6050N(a) must furnish a statement to each person whose name is required to be set forth in such return. Form 1099-MISC is used for this reporting requirement.

The legislative history to section 6050N provides that section 6050N applies to royalty payments for the right to exploit intangible property, such as copyrights, trade names, trademarks, books and other literary compositions. See H.R. Conf. Rep. No. 99-841, 99th Cong., 2nd Sess. II-788-789 (1986), 1986-3 (Vol. 4) C.B. 788-789.

Section 6050N(c) provides that section 6050N does not apply to any amount paid to a person described in section 6049(b)(4)(A) through (F). Section 6049(b)(4)(A) describes a corporation as such a person.

Section 1.6050N-1(c)(2) provides that the term payor shall have the meaning ascribed to it under section 1.6049-4(a). Section 1.6049-4(a)(2) defines a payor as a person who: (1) makes a payment of the type and of the amount subject to reporting under section 6049 (or under an applicable section of 26 CFR chapter 1) to any other person during a calendar year; or (2) collects on behalf of another person payments of the type and of the amount subject to reporting under section 6049 (or under an applicable section of 26 CFR chapter 1), or who otherwise acts as a middleman (as defined in paragraph (f)(4) of section 6049) with respect to such payment.

Based on the facts described above, both the publisher and the literary agent are payors of royalties for purposes of section 6050N. The royalty payments made by the publisher to the literary agent and

the royalty payments made by the literary agent to the author thus are not reportable under section 6041 and the regulations thereunder because such payments are payments to which 6050N applies. The publisher must file Form 1099-MISC reporting payments of royalties to the literary agent pursuant to section 6050N. If the literary agent is a corporation, no Form 1099-MISC is required pursuant to sections 6050N(c) and 6049(b)(4)(A). The literary agent must file a Form 1099-MISC for the royalties paid to the author regardless of whether the literary agent receives a Form 1099-MISC from the publisher.

Section 301.6011-1(b) provides that the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance the information or documentation required to be included with any return. The instructions to Form 1099-MISC provide that gross royalties (before reduction for fees, commissions, or expenses) paid by a publisher directly to an author or literary agent or paid by a literary agent to an author must be reported on Form 1099-MISC. Thus, although the literary agent may have subtracted commissions and expenses before making the payment to the author, the Form 1099-MISC required to be filed by the literary agent must report the gross amount of royalties received from the publisher pursuant to section 6050N.

Payments by a publisher to a literary agent for an author's services (e.g., speaker fees) that do not constitute royalties are not reportable under section 6050N. The information reporting for such payments is governed by section 6041 and the regulations thereunder. In such case, section 1.6041-1(e) would apply to determine whether the literary agent or the publisher must report the fees to the author. See sections 1.6041-1(e)(i) and 1.6041-1(e)(5), *Example 6*.

HOLDING

Pursuant to section 6050N, a publisher who makes royalty payments to a literary agent for the rights to an author's book or other literary composition must file an information return with respect to the payments to the literary agent unless the literary agent is a corporation. In addition, the literary agent (whether or not a corporation) who receives such payments and for-

wards all or part of such payments to the author must file an information return reporting the gross amount of royalty payments pursuant to section 6050N.

DRAFTING INFORMATION

The principal author of this revenue ruling is Tiffany P. Smith of the Office of Associate Chief Counsel (Procedure

and Administration). For further information regarding this revenue ruling, contact Tiffany P. Smith at (202) 622-4910 (not a toll-free call).