

Returns Regarding Payments by Service-Recipients

Notice 2001-38

PURPOSE

This notice clarifies that the exceptions from information reporting contained in the regulations under § 6041 of the Internal Revenue Code will continue to apply to payments made by service-recipients that would otherwise be reportable under § 6041A after January 1, 2001.

BACKGROUND

Section 6041 requires persons engaged in a trade or business to report payments made in the course of that trade or business for salaries, wages, commissions, fees, and other forms of compensation for services of \$600 or more in any taxable year. Section 1.6041-3 of the Income Tax Regulations excepts certain payments from this reporting requirement.

In 1982, Congress expanded the reporting requirements previously encompassed by § 6041 by enacting § 6041A. Section 6041A(a) requires certain service-recipients to report payments of \$600 or more to a ser-

vice provider. Section 6041A(b) requires certain persons selling consumer products to a buyer for resale on a buy-sell or deposit-commission basis to report such sales. The legislative history of § 6041A indicates that the regulatory exceptions to the reporting requirements of § 6041 should also apply for purposes of § 6041A until regulations under § 6041A are issued. *See H.R. Conf. Rep. No. 760, 97th Cong., 2d Sess. at 567 (1982).*

In temporary regulations on backup withholding, the Treasury Department (Treasury) and the Internal Revenue Service (IRS) followed this legislative history by providing that the exceptions to reporting under § 6041 would apply for purposes of § 6041A until final regulations were issued. Section 35a.9999-3, Q&A 14, of the Temporary Employment Tax Regulations. Proposed regulations under § 6041A issued in 1986 also provide that the exceptions to reporting under § 6041 apply for purposes of § 6041A. Section 1.6041A-1(d)(2) of the proposed Income Tax Regulations.

In 1997 and 2000, Treasury and the IRS published new withholding and reporting regulations under chapter 3 (sections 1441–1464) and subpart G of subchapter A of chapter 61 (§§ 6041–6050S). T.D. 8734, 1997-2 C.B. 109; T.D. 8881, 2000-23 I.R.B. 1158. These new withholding and reporting regulations are a significant revision of the procedural rules regarding the withholding, documentation, and information reporting requirements that apply to payments of income to foreign persons. The regulations generally became effective January 1, 2001. As part of this revision, the temporary regulations under part 35a on

backup withholding were removed. In addition, final regulations under § 6041A were issued excepting certain international payments from reporting. Section 1.6041A-1(d)(3) of the Income Tax Regulations. Section 1.6041A-1(d)(2) of the proposed Income Tax Regulations, which provides that the exceptions applicable to reporting under § 6041 also apply to reporting under § 6041A, was not affected by this change.

DISCUSSION

A question has arisen regarding whether the exceptions from reporting under § 1.6041-3 will continue to apply to payments of a type reportable under § 6041A after January 1, 2001. There was no intention on the part of Treasury or the IRS to remove the exceptions under § 1.6041-3 for payments of a type reportable under § 6041A(a), either when adopting § 1.6041A-1(d)(3) or when removing § 35a.9999-3, Q&A-14. Accordingly, until final regulations are issued under § 6041A, information returns will not be required under § 6041A(a) with respect to a payment of a type exempt from reporting under § 1.6041-3.

DRAFTING INFORMATION

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