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INTERNAL REVENUE SERVICE
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CC:IT&A:2:MEBrookens
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INTERNAL REVENUE SERVICE NATIONAL OFFICE SIGNIFICANT
SERVICE CENTER ADVICE

MEMORANDUM FOR AREA COUNSEL
TAX EXEMPT & GOVERNMENT ENTITIES
PACIFIC COAST/CENTRAL MOUNTAIN
THOUSAND OAKS, CA CC:TEGE:PCCM:LA
Attn: Mark A. Weiner

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

SUBJECT: Form 8282 - Required Donor Identification Numbers

This Significant Service Center Advice responds to your memorandum concerning the above subject, relating to a question raised by the Ogden Service Center. Significant Service Center Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

ISSUE:

If a donee organization fails to include a donor's taxpayer identification number (TIN) when filing the information return required by § 6050L of the Internal Revenue Code (Form 8282), what procedure should the Ogden Service Center follow in determining whether to impose a penalty on that organization under § 6721?

CONCLUSION:

The donee's obligation under § 6050L is to file a correct information return. Failure to file a correct information return, including failure to include all information, is subject to a penalty under § 6721. The penalty may be waived for reasonable cause. The donee may demonstrate reasonable cause by showing that the failure was due to the donor's refusal to provide the TIN.

FACTS:

A donee organization received a gift of charitable deduction property for which the donor claimed a charitable contribution of more than \$5,000 under § 170. Within 2 years of its receipt, the donee organization disposed of the property for consideration. As required by § 6050L, the donee organization filed an information return with the IRS

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on Form 8282, Donee Information Return, but failed to include the donor's TIN on the form.

Section 6721 provides for imposition of a penalty if a person required to file an information return fails to file it, or provides incomplete information. You seek our views concerning a procedure to determine if imposition of the penalty is appropriate.

LAW AND ANALYSIS:

1. Overview. This case involves closely related Code and regulatory provisions pertaining to the substantiation required of donors of charitable deduction property, the information reporting obligations of donee organizations receiving and then disposing of such property, and the penalties to which those donee organizations may be subjected if their reporting obligations are not met. In brief, § 170 and § 1.170A-13 of the Income Tax Regulations require donors who claim charitable deductions in excess of \$5,000 for contributions of property (other than publicly traded securities) to substantiate the deduction by filing an appraisal summary with the IRS and by giving a copy of that appraisal summary to the donee organization.

Section 6050L and its regulations generally require a donee of charitable deduction property to file an information return with the IRS, and to provide a copy of the return to the donor, if the donee of the charitable deduction property sells, exchanges, or otherwise disposes of such property within 2 years after its receipt. Section 6721 provides generally for a penalty to be imposed on any person who fails either to file a required information return or who fails to include on that return all the information it is required to provide.

These Code sections and the regulations and forms designed to implement them are discussed in more detail below.

2. The § 170 charitable contribution substantiation rules and Form 8283. Section 170(a)(1) provides generally that a deduction shall be allowed for any charitable contribution paid within the taxable year, but that the deduction is allowable only if the charitable contribution is verified under regulations prescribed by the Secretary.

In § 155(a) of the Deficit Reduction Act of 1984, 1984-3 C.B. (Vol. 1) 1, 199 (the Act), Congress directed the Treasury Department to prescribe regulations concerning substantiation of charitable contributions under § 170(c)(1). In general, these substantiation regulations were to address contributions of property (other than publicly traded securities) if the claimed value of the property exceeded \$5,000.

Pursuant to the Congressional directive, the Treasury Department promulgated rules, found in § 1.170A-13, concerning gifts of property to charitable organizations. Section 1.170A-13(c)(1)(i) imposes the substantiation rules on individuals, partnerships, closely held corporations, personal service corporations, and S corporations making charitable gifts after December 31, 1984, if the gift is of property other than money or a publicly

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traded security and the donor reports or claims a § 170 deduction for the gift in an amount exceeding \$5,000. Section 1.170A-13(c)(2)(i) requires the donor of such property, as a condition for the allowance of the deduction, to obtain a qualified appraisal for the property, to attach a fully completed appraisal summary to the donor's tax return, and to maintain certain specified records.

The § 1.170A-13(c) regulations are implemented in part by Form 8283, Noncash Charitable Contributions, which donors of property are required to file with their tax returns if claiming a charitable deduction of more than \$500. Form 8283 and § 1.6050L-1(b) require donors to provide their TINs (a social security number for an individual or an employer identification number for all other filers), to describe the property donated, to list any conditions or restrictions to which the property is subject, and to give the name and address of the donee organization. A donor claiming a deduction of more than \$5,000 must also complete and file an appraisal summary (and under some circumstances may be required to attach a complete appraisal of the property being donated).

The appraisal summary is found in Section B, Part 1, of Form 8283. Whenever that summary is required -- that is, whenever a deduction of more than \$5,000 is being claimed -- the regulations require the form to be signed not only by the donor, but also by the appraiser and (except in rare and unusual circumstances) by a representative of the donee charitable organization. Section 1.170A-13(c)(3)(B)(i), (c)(4)(i)(B), and (c)(4)(iv)(C)(2). Although the donee's signature on Form 8283 does not represent agreement in the appraised value of the contributed property, the signature does serve to acknowledge that the donee is a qualified organization, that the property was received on the date specified, and that the donee understands the information reporting requirements imposed by § 6050L and § 1.6050L-1. Section 1.170A-13(c)(3)(iv)(M)(i).

The donor is required to give the donee organization a copy of the appraisal summary. Section 1.170A-13(c)(4)(D). Section 1.6050L-1(d)(2) requires the donee to retain the donor's appraisal summary in the donee's records for so long as it may be relevant in administering any internal revenue law. The donee's acknowledgment on Form 8283 contains an express affirmation that the donee will inform the IRS in the event it sells, exchanges, or otherwise disposes of the donated property within 2 years of the property's receipt.

3. The § 6050L information reporting requirements and Form 8282. Section 6050L was enacted in 1984 as a companion provision to the Congressional mandate concerning substantiation regulations. Section 155(b) of the Act, 1984-3 C.B. (Vol. 1) 1, 200 - 201. Section 6050L(a) generally requires a donee of any charitable deduction property to make an information return if the donee sells, exchanges, or otherwise disposes of the property within 2 years of its receipt. Charitable deduction property is defined in § 6050L(b) in a manner precisely paralleling its definition in Act § 155(a).

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The § 6050L information reporting requirement is imposed not only on donees, but on successor donees. Section 1.6050L-1(c). However, a donee or successor donee need not file an information return if the item of charitable deduction property is consumed or distributed by the donee without consideration to further the donee's tax-exempt purpose. For example, no reporting is required with respect to medical supplies consumed or distributed by a tax-exempt relief organization in aiding disaster victims. Section 1.6050L-1(a).

The form devised to implement § 6050L is Form 8282, Donee Information Return, which must be filed with the Ogden Service Center. Form 8282 requires the donee organization to provide, at a minimum, a description of the property disposed of and its own name, address, and employer identification number. Section 1.6050L-1(b)(1).

The Code, regulations, and Form 8282 require the donee organization to provide the name, address, and TIN of the donor, to describe the property disposed of, to provide the dates of contribution and disposition, to report the amount received on the disposition, and to give the donor a copy of the form.¹ Section 6050L(a) and (c); § 1.6050L-1(b) and -1(d). The Form 8282 instructions state that the donor's TIN is the social security number (in the case of an individual) and the employer identification number (in the case of a corporation or partnership). The instructions to Form 8282 also state that the form does not have to be filled out completely if, for example, the information is not available to the donee organization because it does not have the donor's appraisal summary.

4. Information Reporting Penalties. Information Reporting penalties are set forth in §§ 6721-6723. Section 6724 provides for a waiver of the penalties for reasonable cause.

¹ Form 8282 is designed to obtain information relevant not only to substantiation, but also to other rules governing charitable deductions. For example, § 170(e)(1)(B) provides generally that deductions for contributions of tangible personal property are limited to the donor's basis in the property. However, a donor is allowed a deduction for the property's fair market value if sale of the property would produce long-term capital gain for the donor and the property is used by a public charity for a purpose related to the charity's tax exempt purposes. Under § 1.170A-4(b)(3)(ii)(b), the donor can satisfy the related use test if it "was reasonable to anticipate that the property will not be put to an unrelated use by the donee." A charity's sale of the property to raise funds is not an exempt purpose. Accordingly, if the donee organization sells tangible personal property within 2 years of a contribution, Form 8282 gives the IRS notice that the related use test may not have been met. Similarly, a filed Form 8282 regarding the sale of inventory puts the IRS on notice that the donee may not have complied with the rules of § 170(e)(3), (4), and (6) (permitting corporate donors to claim deductions in excess of basis for contributions of inventory under specified conditions).

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Section 6721 provides for a penalty for failure to file correct information returns. The penalty is imposed for (1) a failure to file an information return before the due date, or (2) a failure to include all of the information required to be shown on the return or the inclusion of incorrect information. For purposes of this section, the term “information return” is defined in § 6724(d)(1)(B)(vii) to include a return required under § 6050L.

The penalty under § 6721 is generally \$50 for each return with respect to which a failure occurs, to a maximum of \$250,000 per filer per year. There are exceptions to the amount of the penalty and/or to the maximum penalties if the filer corrects the failure within a specified time period, if the filer’s failures to include information are de minimis, or if the filer’s gross receipts do not exceed certain amounts. See § 6721(b)-(d). Section 6721(e) provides for a higher penalty in the case of failures due to intentional disregard of filing requirements.

A donee organization which fails to file a Form 8282, as required under § 6050(L)(a), or files such form omitting the donor’s TIN or other information, would therefore be subject to the § 6721 penalty. In addition, if the donee fails to furnish a complete statement to the donor, as required under § 6050(L)(c), the donee would be subject to a penalty under § 6722.

Section 6722 provides for a penalty for a failure to furnish correct payee statements. The penalty is imposed for (1) any failure to furnish a payee statement on or before the due date to the person to whom such statement is required to be furnished, or (2) any failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information. For purposes of this section, “payee statement” is defined in § 6724(d)(2)(N) to include any statement required to be furnished under § 6050L of the Code. The penalty under § 6722 is \$50 per failure to a maximum of \$100,000 per filer per year. Section 6722(c) provides for a higher penalty in the case of intentional disregard.

If the donor did not furnish his TIN to the donee, the donor is also subject to a penalty. Section 6723 provides for a penalty for failure to comply with other information reporting requirements. The penalty is \$50 per failure to a maximum of \$100,000 per year. This penalty applies to a failure to furnish a TIN to another person as required under § 6109. See § 301.6723-1(a)(4) of the Procedure and Administration Regulations.

5. Summary: Donee organization's receipt and retention of donor's TIN. Clearly, the interwoven legal rules and the forms discussed above are designed to ensure that a donee organization both receives and retains the information it needs fully to comply with its obligations under § 6050L. In particular, any donee organization required to file Form 8282 ought ordinarily to possess the donor's TIN. Taken together, the Code, regulations, and Form 8283 require donors claiming deductions under § 170 for donations of property in excess of \$5,000 to:

- include the donor's TIN on Form 8283;
- complete the appraisal summary on that form;

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- obtain the donee organization's signature on the form; and
- give the donee organization a copy of the form and appraisal summary.

Accordingly, at the time a donee organization subject to § 6050L received the donated property, it should also have received the information it needs to comply with its statutory obligations.

Moreover, a donee organization required to comply with § 6050L should have retained the information it needs to complete Form 8282. The donee is required by law to retain the appraisal summary in its records for a period sufficient for it to comply with its information reporting responsibilities. The donee's express affirmation on Form 8283 -- that it will file Form 8282 with the IRS in the event it sells, exchanges, or otherwise disposes of the property described in Section B, Part 1 (the appraisal summary) within 2 years of its receipt of the property -- is designed to remind the donee of precisely those information reporting responsibilities.

6. Assertion of penalties under § 6721 if donee organization fails to provide donor's TIN. As noted above, § 6721 provides for a penalty for failure to file a correct information return, including Form 8282. The penalty is imposed for failure to include all required information. A failure to include the TIN of a donor on a Form 8282 would constitute a failure subject to the penalty.

The Martinsburg Computing Center generates the penalty notices with respect to information returns that are missing TINs, but those notices are actually sent out to filers by the service centers. The service center does not have any leeway in sending these notices; in other words, it cannot exercise discretion in imposing a penalty at this point. However, following receipt of a penalty notice (which generally states that a penalty is proposed), a donee organization may request a waiver of the penalty due to reasonable cause.

Penalties imposed against the donee organization may be waived if the organization can show it had reasonable cause for the failure to file correct returns. In order to show reasonable cause, a filer must show that either (1) there are significant mitigating factors with respect to the failure, or (2) the failure arose from events beyond the filer's control. In addition, the filer must show that it acted in a responsible manner. See § 301.6724-1(a)(2).

Events beyond the filer's control include the actions of a payee or another person who fails to provide the filer with information necessary to comply with information reporting requirements, or who provides incorrect information upon which the filer relies in good faith. Section 301.6724-1(c)(1)(v) and (c)(6).

Section 301.6724-1(d) provides that acting in a responsible manner means generally that the filer exercised reasonable care, taking steps to avoid or mitigate the failure. With respect to missing or incorrect TINs, however, special rules are set forth in § 301.6724-1(e) and (f). The filer must have solicited the person's TIN, as provided in

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these regulations, in order to show that it acted in a responsible manner with respect to the failure to include the TIN on the information return. The regulations require an initial solicitation of the TIN, and up to two annual solicitations.

A filer seeking a waiver of the information return penalties must follow the procedures in § 301.6724-1(m). The filer must submit a written statement to the District Director or Service Center, signed under penalties of perjury, including the relevant facts and the provision under which a waiver is sought.

We note that the § 6721 penalty may be assessed without following the deficiency procedures. The § 6721 penalty is found in subtitle F, chapter 68B of the Code. Under § 6212(a), a notice of deficiency is required only for taxes imposed by subtitle A or B or for chapters 41 through 44.

If we may be of further assistance, please call Ms. Marilyn E. Brookens of this office at (202) 622-4920.