

This responds to a letter dated November 30, 2007 submitted on behalf of Taxpayer by its authorized representative, requesting a ruling concerning the treatment of payments made by Taxpayer to its customers in connection with the Promotion. Specifically, Taxpayer has requested a ruling that (i) such payments are not gross income to the recipients, (ii) Taxpayer does not have any information reporting obligation pursuant to § 6041(a) of the Internal Revenue Code concerning such payments, and (iii) such payments are not subject to withholding pursuant to §§ 1441(a), 1442(a), and 3406(a).

STATEMENT OF FACTS

We rely on the information provided and the representations made in Taxpayer's submissions dated November 30, 2007.

Taxpayer owns retail stores located in Region. Taxpayer advertised the Promotion on Date 1. Under the terms and conditions of the Promotion, customers would be entitled to a payment of the Amount if (i) they purchase qualifying merchandise from Taxpayer during the period beginning Date 1 and ending Date 2, (ii) they take delivery of the merchandise on or before Date 3, (iii) the Event occurs, and (iv) they submit claims for the payment on or before Date 4. The Amount cannot be greater than the price that the customers paid to purchase the qualifying merchandise.

Taxpayer did not charge any fee to its customers to participate in the Promotion. The prices charged by Taxpayer for all items of qualifying merchandise sold during the period of the Promotion were Taxpayer's customary retail prices, which were subject to any generally applicable coupons, discounts, or special pricing arrangements. Taxpayer did not specially increase or decrease the prices of any items of qualifying merchandise for the promotional period.

On Date 5, the Event occurred, and customers who satisfied the terms and conditions of the Promotion became entitled to a payment of the Amount.

LAW AND ANALYSIS

Issue 1 – Gross Income

Section 61 provides generally that, except as otherwise provided by law, gross income includes all income from whatever source derived. The concept of gross income encompasses accessions to wealth, clearly realized, over which taxpayers have complete dominion. Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955); 1955-1 C.B. 207.

Purchase price adjustments are one exception to this broad definition of gross income. Generally, when a payment is made by a seller to a customer as an inducement to

purchase property, the payment does not constitute income but instead is an adjustment to the cost or purchase price of acquiring the property. See Rev. Rul. 76-96, 1976-1 C.B. 23 (rebate by automobile manufacturer to retail customer represents a reduction in the purchase price of the automobile).¹ The payment is, in effect, a means by which the buyer and seller reach an agreed upon price. For example, in Pittsburgh Milk Co. v. Commissioner, 26 T.C. 707 (1956), the Tax Court concluded that amounts paid by a milk producer to buyers were purchase price discounts because the “intention and purpose of the allowance was to provide a formula for adjusting a specified gross price to an agreed net price.” Pittsburgh Milk, at 717.

More recent cases have applied a similar analysis. In Sun Microsystems, Inc. v Commissioner, T.C. Memo 1993-467, the taxpayer, a manufacturer of computer workstations, granted stock warrants to a customer. The stock warrants were exercisable if a certain volume of workstations were purchased within a certain time. The customer met the volume requirements and the warrants were exercised. The Tax Court determined that the stock warrants were issued to induce the customer to purchase a certain volume of computer workstations. Thus, the Tax Court concluded that the taxpayer correctly treated the value of the warrants as a sales discount or allowance.

In the present case, the promotion was intended to induce customers to purchase qualifying merchandise during the period beginning Date 1 and ending Date 2. Taxpayer allowed only the customers who purchased qualifying merchandise from Taxpayer and satisfied the terms and conditions of the Promotion to receive a payment of the Amount. The Amount could not be greater than the price that the customers paid to purchase the qualifying merchandise. Based on the information provided and the representations made, we conclude that each payment represents a reduction in the purchase price that the customer paid for the qualifying merchandise with respect to which the payment is made, and is not generally includible in the recipient’s gross income.

Issue 2 – Information Reporting Obligations

Section 6041 provides, in part, that all persons engaged in a trade or business and making payments 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 to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the

¹ Rev. Rul. 2005-28, 2005-1 C.B. 997, suspends Rev. Rul. 76-96 on the issue of whether the rebate is an ordinary and necessary business expense to the payor or, alternatively, is a reduction of gross receipts. The conclusion that the rebate is a reduction in the purchase price of the automobile to the customer is not affected by the suspension.

Secretary, 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(c) of the Income Tax Regulations provides that the income is “fixed” when it is to be paid in amounts definitely predetermined. Income is “determinable” when there is a basis of calculation by which the amount may be ascertained.

As used in § 6041, the term “gains, profits, and income” means gross income and not gross amounts paid. A payor is generally not required to make a return under § 6041 for payments that are not includible in the recipient’s income, and a payor is not required to make a return if the payor does not have a basis to determine the amount of a payment that is required to be included in the recipient’s gross income.

Based on the information provided and the representations made, Taxpayer does not have a reporting requirement under § 6041 as to the recipients for the Promotion payments made by Taxpayer.

Issue 3 — Withholding Obligations

Section 1441 requires, subject to certain exceptions, that all persons having the control, receipt, custody, disposal, or payment of interest, dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of any nonresident alien individual or any foreign partnership deduct and withhold from such items a tax equal to 30 percent thereof.

Section 1442 requires deduction and withholding at the rate of 30 percent on items of income listed in § 1441 allocable to any foreign corporation subject to taxation thereunder.

Section 3406(a)(1) provides that in the case of any reportable payment, if (i) the payee fails to furnish his TIN to the payer in the manner required, (ii) the Secretary notifies the payer that the TIN furnished by the payee is incorrect, (iii) there has been a notified payee underreporting described in § 3406(c), or (iv) there has been a payee certification failure described in § 3406(d), then the payer will deduct and withhold from such payments a tax equal to the product of the fourth lowest rate of tax applicable under § 1(c) and such payment.

Section 3406(b)(1) provides that the term “reportable payment” means (i) any reportable interest or dividend payment, and (ii) any other reportable payment.

Section 3406(b)(3) provides that the term “other reportable payment” means any payment of a kind, and to a payee, required to be shown on a return required under § 6041 (relating to certain information at source).

A payor generally is not required to withhold under § 1441 or 1442 for payments that are not includible in the recipient's income, nor is a payor required to withhold if the payor does not have a basis to determine the amount of a payment that is required to be included in the recipient's income.

Payments of the Amount in connection with the Promotion are not subject to withholding under § 1441 or 1442 because, as concluded above, such payments represent adjustments to the purchase price of qualifying merchandise and generally are not includible in the recipient's gross income. In addition, such payments are not subject to withholding under § 3406 because, as concluded above, they are not subject to information reporting under § 6041.

CONCLUSIONS

1. Payments of the Amount that Taxpayer makes to the customers in connection with the Promotion are not gross incomes to the customers.
2. Taxpayer does not have any information reporting obligation under § 6041 with respect to the payments it makes in connection with the Promotion.
3. Taxpayer does not have any withholding obligation under §§ 1441(a), 1442(a) or 3406(a) with respect to the payments it makes in connection with the Promotion.

DISCLAIMERS

Except as provided above, no opinion is expressed as to the Federal tax treatment of the transaction under any other provisions of the Internal Revenue Code and the Income Tax Regulations that may be applicable or under any other general principles of Federal income taxation. Neither is any opinion expressed as to the tax treatment of any conditions existing at the time of, nor effects resulting from, the transaction that are not specifically covered by the above ruling. For example, no determination is made as to whether Taxpayer's customers must include the Amount received in gross income under the tax benefit rule.

This ruling is directed only to Taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Enclosed is a copy of the letter ruling showing the deletions proposed to be made to the letter when it is disclosed under § 6110.

PLR-152889-07

6

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to Taxpayer's authorized representative.

Sincerely,

William A. Jackson
Branch Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)