

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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August 25, 2000

MEMORANDUM FOR DISTRICT COUNSEL
NEW ENGLAND DISTRICT
CC:NER:NED:BOS
Attn:

FROM: Curtis G. Wilson
Assistant Chief Counsel
(Administrative Provisions & Judicial Practice)

SUBJECT: Significant Service Center Advice

Legend:

State =

Service Center =

This responds to your subsequent request for Significant Service Center Advice, dated May 26, 2000, referencing our advice to you concerning a question posed by the Service Center regarding the issuance of Employer Identification Numbers ("EINs").

ISSUE

Whether the Internal Revenue Code ("Code") or regulations, for information reporting purposes, restricts State from requesting an EIN from an individual until State makes a reportable payment to such individual.

CONCLUSION

Neither the Code nor the regulations prohibits State from requesting an EIN from an individual prior to State making a reportable payment to such individual.

FACTS

In accordance with _____, the holder of property deemed to be abandoned under State law must turn the property over to the Treasurer of State. State pays interest on funds that have been surrendered to it as abandoned property when such funds are distributed to a successful claimant.

The executor or administrator of an estate who files a claim with State for the abandoned property of a decedent is required by State to provide the original or attested copy of appointment as Executor(rix) or Administrator(rix). State also requests the EIN of the decedent's estate at the time the claim is filed.

DISCUSSION

Section 6041(a) of the Code, and the Treasury regulations promulgated thereunder, require every person engaged in a trade or business, including a state, that makes payment of \$600 or more of fixed or determinable income in the course of such trade or business to another person during a calendar year to file an information return (Form 1099) with the Service.

Section 1.6041-1(c) of the Income Tax Regulations provides that income is fixed when it is to be paid in amounts definitely predetermined and that it is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained.

Section 6041 of the Code and the regulations require recipients of payments reportable under that section to furnish their names, addresses, and taxpayer identification numbers ("TIN") to the payor.

Section 301.6109-1(a)(1)(ii)(C) of the Regulations on Procedure and Administration provides that any person other than an individual (such as corporations, partnerships, nonprofit associations, trusts, estates, and similar nonindividual persons) that is required to furnish a taxpayer identifying number must use an EIN.

According to the facts you have provided, when a claimant files a claim with State for abandoned property on behalf of an estate, State requests the EIN from such individual in order to begin processing the claim. At that time, State does not make any payments to the claimant.

We have reviewed the relevant Code provisions, regulations, and other guidance and have found nothing that prohibits State from requesting the claimant's EIN, for information reporting purposes, prior to making the reportable payment to claimant. Accordingly, State's actions do not appear to be improper.

Please call if you have any further questions regarding this matter.

CURTIS G. WILSON

By: _____
PAMELA W. FULLER
Acting Assistant to the Branch Chief
Branch 1