

**Internal Revenue Service  
memorandum**

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Procurement/  
Small Business*

DEPARTMENT OF THE TREASURY  
FEDERAL RESERVE CENTER  
JAN 15 AM 11:10

date: JAN 14 1987  
to: Doug Mulholland

from: Richard C. Stark  
Assistant to the Commissioner

subject: Section 6050M

Attached please find lists of the folks in the intelligence and law enforcement communities to which a copy of the section 6050M announcement was sent.

As we have previously discussed, we would very much appreciate your involvement in coordinating an approach to the problems posed by the announcement with the security community.

Section 6050M and its legislative history, copies of which are attached, appear to provide us with little or no leeway to carve out exceptions for certain contracts based on anything other than a dollar amount.

Assuming that reporting on certain contracts will be undesirable, it would seem that the following alternatives could be pursued:

1. Amending the law to provide a statutory exclusion for certain types of contracts,
2. Repealing the law,
3. Providing for the exclusion of certain contracts based on a clear legal standard--such as the exclusion of contracts based on the fact that disclosure of such contracts would itself violate a statute, or
4. Inclusion by the Staff of the Joint Committee on Taxation in the General Explanation of the Act (i.e., the Blue Book), of language indicating that authority exists to interpret the statute by regulation in a manner consistent with national security and law enforcement needs.

There may be other approaches that make sense to resolve the problem, and we are certainly not limited to these four. However, a common approach satisfactory with all concerned would be highly desired.

*Dick*

Attachments

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*Conference Agreement*

The conference agreement follows the House bill and the Senate amendment, with modifications. The conference agreement provides that the primary responsibility for reporting is on the person responsible for closing the transaction, including any title company or attorney who closes the transaction. This is generally the person conducting the settlement. Treasury may issue regulations specifying who is the person responsible for closing the transaction, because it may not be clear which of several persons is the one responsible for closing the transaction. (These regulations need not rely upon the presence or absence of a legal obligation at closing.) Thus, Treasury may provide uniform rules to determine which of the persons involved with the closing is the one with primary responsibility for the information reporting.

If there is no person responsible for closing the transaction, the reporting must be done by the mortgage lender. If there is no mortgage lender, the reporting must be done by the seller's broker. If there is no seller's broker, the reporting must be done by the buyer's broker. If there is no buyer's broker, the reporting is to be done in accordance with regulations to be prescribed by the Secretary.

The Secretary is to provide guidance to taxpayers on how this information reporting is to be accomplished well before the effective date of this provision. The Secretary should provide guidance as to what real estate transactions are subject to information reporting. The Secretary may also exclude from information reporting certain types of real estate transactions where information reporting on those transactions would not be useful. Information reporting is not required on refinancings of real estate, unless the Secretary otherwise provides. The Secretary should also provide guidance as to the gross proceeds required to be reported.

The conferees anticipate that this information reporting will be done on a Form 1099, similar to that required for other transactions effected by brokers. The conferees also anticipate that the rules requiring that information returns from brokers be filed on magnetic media (see sec. 6011(e)) will encompass these information returns on real estate. Thus, all the information returns required to be filed by one entity would generally be filed together in one magnetic media filing. Because the provision is drafted so that mandatory reporting on real estate transactions is done under the general information reporting requirements relating to brokers (sec. 6045(a) and (b)), all penalties and related provisions that apply to the general broker reporting requirements also apply to reporting on real estate transactions.

The provision is effective for real estate transactions with respect to which closing on the contract occurs on or after January 1, 1987.

*Present Law*

There is no provision of present law that requires information reporting on persons receiving Federal contracts.

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II-788

*House Bill*

The House bill requires the head of each Federal executive agency to file an information return indicating the name, address, and taxpayer identification number (TIN) of each person with which the agency enters into a contract. The Secretary is given the authority both to establish minimum amounts for which no reporting is necessary as well as to extend the reporting requirements to Federal license grantors and subcontractors of Federal contracts.

This provision is effective on January 1, 1986. Thus, all contracts signed on or after that date are subject to information reporting. In addition, all contracts signed prior to that date are subject to information reporting if they are still in effect on that date.

*Senate Amendment*

The Senate amendment is the same as the House bill, effective January 1, 1987.

*Conference Agreement*

The conference agreement follows the House bill and the Senate amendment, effective January 1, 1987.

**3. Information Reporting on Royalties**

*Present Law*

A number of provisions of the Code require that payors of specified payments report those payments to the IRS and provide a copy of the information report to the taxpayer receiving the payment. Section 6041 is the broadest of these provisions; this section requires information reporting on "rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income." The Treasury regulations for this section specifically require information reporting on royalties.

Information reporting under section 6041 applies to payments totalling \$600 or more during the taxable year. Other information reporting provisions, such as those for interest (section 6049), dividends (section 6042), patronage dividends (section 6044), and unemployment compensation (section 6050B), apply to payments totalling \$10 or more during the taxable year.

*House Bill*

No provision.

*Senate Amendment*

The Senate amendment includes a new provision of the Code that requires that persons who make payments of royalties aggregating \$10 or more to any other person in a calendar year must provide an information report on the royalty payments to the IRS. A copy of this information report must be supplied to the taxpayer. If a person makes payments to a nominee, the nominee must report the information to the taxpayer and to the IRS, as required

I-698

### **Subtitle C—Information Reporting Provisions**

#### **SEC. 1521. REQUIREMENT OF REPORTING FOR REAL ESTATE TRANSACTIONS.**

(a) **GENERAL RULE.**—Section 6045 (relating to returns of brokers) is amended by adding at the end thereof the following new subsection:

“(e) **RETURN REQUIRED IN THE CASE OF REAL ESTATE TRANSACTIONS.**—

“(1) **IN GENERAL.**—In the case of a real estate transaction, the real estate broker shall file a return under subsection (a) and a statement under subsection (b) with respect to such transaction.

“(2) **REAL ESTATE BROKER.**—For purposes of this subsection, the term ‘real estate broker’ means any of the following persons involved in a real estate transaction in the following order:

“(A) the person (including any attorney or title company) responsible for closing the transaction,

“(B) the mortgage lender,

“(C) the seller’s broker,

“(D) the buyer’s broker, or

“(E) such other person designated in regulations prescribed by the Secretary.

Any person treated as a real estate broker under the preceding sentence shall be treated as a broker for purposes of subsection (c)(1).”

(b) **BACKUP WITHHOLDING REQUIREMENTS.**—Paragraph (5) of section 3406(h) (relating to other definitions and special rules) is amended by adding at the end thereof the following new subparagraph:

“(D) **REAL ESTATE BROKER NOT TREATED AS A BROKER.**—Except as provided by regulations, such term shall not include any real estate broker (as defined in section 6045(e)(2)).”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to real estate transactions closing after December 31, 1986.

(a) **IN GENERAL.**—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by adding at the end thereof the following new section:

#### **“SEC. 6050M. RETURNS RELATING TO PERSONS RECEIVING CONTRACTS FROM FEDERAL EXECUTIVE AGENCIES.**

“(a) **REQUIREMENT OF REPORTING.**—The head of every Federal executive agency which enters into any contract shall make a return (at such time and in such form as the Secretary may by regulations prescribe) setting forth—

“(1) the name, address, and TIN of each person with which such agency entered into a contract during the calendar year, and

“(2) such other information as the Secretary may require.

“(b) **FEDERAL EXECUTIVE AGENCY.**—For purposes of this section, the term ‘Federal executive agency’ means—

**Reporting Provisions**

**FOR REAL ESTATE TRANSACTIONS**

relating to returns of brokers) the following new subsection:

**FOR REAL ESTATE TRANSACTIONS**

in a real estate transaction, the following shall apply with respect to such transaction. For purposes of this subsection, the following persons shall be treated as the following order: (1) attorney or title company; (2) broker.

as prescribed in regulations prescribed for a broker under the preceding section for purposes of subsection (a).

Paragraph (5) of sections 6050A and 6050B (and special rules) is amended by adding at the end thereof the following new subparagraph:

**PERSONS RECEIVING CONTRACTS TO BE TREATED AS A BROKER.**—For purposes of this section, such term shall not include any person (as defined in section 6050A) who is not a broker.

made by this section shall take effect on or after December 31, 1986.

**PERSONS RECEIVING CONTRACTS TO BE TREATED AS A BROKER.**

Paragraph (5) of section 6050A (and special rules) is amended by adding at the end thereof the following new subparagraph:

**PERSONS RECEIVING CONTRACTS TO BE TREATED AS A BROKER.**

At the head of every Federal extract shall make a return under subsection (a) in the manner prescribed by regulations prescribed by the Secretary.

of each person with which such return is required to be made during the calendar year, the Secretary may require.

For purposes of this section, the following shall apply:

"(1) any Executive agency (as defined in section 105 of title 5, United States Code) other than the General Accounting Office, (2) any military department (as defined in section 102 of such title), and (3) the United States Postal Service and the Postal Rate Commission.

**(c) AUTHORITY TO EXTEND REPORTING TO LICENSES AND SUBCONTRACTS.**—To the extent provided in regulations, this section also shall apply to—

- "(1) licenses granted by Federal executive agencies, and
- "(2) subcontracts under contracts to which subsection (a) applies.

**(d) AUTHORITY TO PRESCRIBE MINIMUM AMOUNTS.**—This section shall not apply to contracts or licenses in any class which are below a minimum amount or value which may be prescribed by the Secretary by regulations for such class.

**(b) CLERICAL AMENDMENT.**—The table of sections for such subpart B is amended by adding at the end thereof the following new item:

"Sec. 6050M. Returns relating to persons receiving contracts from Federal executive agencies."

**(c) EFFECTIVE DATE.**—The amendments made by this section shall apply to contracts (and subcontracts) entered into, and licenses granted, before, on, or after January 1, 1987.

**SEC. 1523. RETURNS REGARDING PAYMENTS OF ROYALTIES.**

**(a) IN GENERAL.**—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by adding at the end thereof the following new section:

**"SEC. 6050N. RETURNS REGARDING PAYMENTS OF ROYALTIES.**

**(a) REQUIREMENT OF REPORTING.**—Every person—

"(1) who makes payments of royalties (or similar amounts) aggregating \$10 or more to any other person during any calendar year, or

"(2) who 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 make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

**(b) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS FURNISHED.**—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the person required to make such return, and

"(2) the aggregate amount of payments to the person required to be shown on such return.

The written statement required under the preceding sentence shall be furnished (either in person or in a statement mailing by first-class mail which includes adequate notice that the statement is en-

**Internal Revenue Service**

Department of the Treasury

Associate Commissioner  
(Operations)

Washington, DC 20224

December 17, 1986

Mr. Douglas P. Mulholland  
Special Assistant to the Secretary (National Security)  
Department of the Treasury - Room 2049  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Dear Mr. Mulholland:

I would like to take this opportunity to share with you the impact of a recently-enacted provision of the Internal Revenue Code of 1986. Section 6050M requires the head of every Federal executive agency to report to the Internal Revenue Service (IRS) on contracts such agency makes to purchase goods and services. This applies to all contracts in effect on January 1, 1987, as well as all contracts entered into after that date.

The IRS will be issuing regulations early in 1987 to implement section 6050M, and the information returns will be processed in early 1988. Enclosed is a copy of our advance notice which describes the statute and sets forth the specific items of information which will be reported to the IRS.

The wording of Section 6050M is very broad and the only exception allowed is for contracts involving payments of \$25,000 when no exception exists for contracts classified for national security or law enforcement reasons. We recognize that reporting classified contracts has implications which do not appear to be addressed by the statute, and we are striving to achieve a solution which permits us to carry out our mandate under Section 6050M with a minimum amount of disruptive effect on competing governmental interests.

Because your department or agency may have contractual relationships relating to national security or law enforcement that would be subject to the information reporting system under section 6050M, we welcome any thoughts or suggestions that you may have which would assist us during our implementaton process.



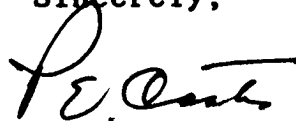
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**Mr. Douglas P. Mulholland**

**Please submit these concerns to me at the following  
address at your earliest convenience:**

**Associate Commissioner (Operations)  
Internal Revenue Service - Room 3017  
1111 Constitution Ave., N.W.  
Washington, DC 20224**

**Sincerely,**

A handwritten signature in cursive script, appearing to read "P. E. Coates".

**P. E. Coates**

**Enclosure**

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