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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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Date:

August 21, 2020

LEGEND:

Taxpayer =

Subsidiary =

State X =

State Y =

Program =

\$a =

#b =

c% =

\$d =

Dear :

This is in reply to Taxpayer's request for a ruling on behalf of its indirectly wholly-owned Subsidiary, as to the information reporting obligations of Subsidiary with respect to cash payments Subsidiary makes to home buyers under Program.

## FACTS

Taxpayer is a corporation headquartered in State X. Subsidiary is a real estate brokerage company in State Y. Subsidiary provides online platforms where potential buyers may be matched with a broker for the purpose of buying a home. Subsidiary receives referral fees from a broker when a qualifying transaction is closed. The referral fees are paid out of the broker's commissions.

Subsidiary offers buyers the opportunity to participate in Program, and to receive a cash payment after closing a qualifying transaction with a broker referred through Subsidiary's client referral network. To join Program, a buyer submits an inquiry online about Program, and is contacted and then matched with a broker. A buyer might also be asked if they want to be in Program after making a general inquiry.

To receive a cash payment under Program, a buyer must purchase a home in an eligible area for a closing price of at least \$a within #b months after submitting an inquiry about the program or responding affirmatively when asked if they would like to participate in Program. The amount of the cash payment is based on the closing price of the home and is c% of Subsidiary's referral fee, not to exceed \$d. Subsidiary pays the cash payment to the buyer only if the broker pays Subsidiary its contracted referral fee in full. The referral fee is paid to Subsidiary after the close of the qualifying transaction.

Taxpayer requests a ruling that payments Subsidiary makes to a buyer under Program be considered adjustments to purchase price of the home and thus are not includible in the buyer's gross income under section 61 of the Internal Revenue Code ("Code"), and therefore Subsidiary does not have an obligation to file or furnish Forms 1099-MISC, *Miscellaneous Income*, for these payments under section 6041 of the Code.

## LAW AND ANALYSIS

*Income Taxation*

Section 61 of the Code provides that, except as otherwise provided, gross income means all income from whatever source derived.

In *Pittsburgh Milk Co. v. Commissioner*, 26 T.C. 707 (1956), the taxpayer was a licensed milk dealer under state law. Pursuant to state law, it was unlawful to sell milk at a price less than the minimum price applicable to a particular transaction. Contrary to this law, the taxpayer gave certain customers discounts, allowances or rebates (collectively, "allowances") on purchases of milk products. Customers were billed (and paid) the full amount of the billings reflected in their accounts, but were subsequently issued checks by the taxpayer in the amount of the agreed upon allowance. The Tax Court likened the allowances to situations in which goods were sold at a catalog list price, less a trade discount. In such cases, the Tax Court had recognized that trade

discounts reduce gross sales. Accordingly, the Tax Court held that the milk product allowances in this case should be applied to reduce the taxpayer's gross sales, and thus reflected the actual agreed upon prices for which the milk was sold.

Similarly, courts have concluded that contractual allowances that provided for the delivery of extra merchandise were purchase price adjustments and thus were excluded from the taxpayer's gross income. See, e.g., *Max Sobel Wholesale Liquors v. Commissioner*, 69 T.C. 477 (1977), aff'd, 630 F.2d 670 (9<sup>th</sup> Cir. 1980); *Haas Brothers, Inc. v. Commissioner*, 73 T.C. 1217 (1980).

Situation 2 of Rev. Rul. 2006-27, 2006-21 I.R.B. 915, involves a nonprofit corporation that provides down payment assistance towards the purchase of homes to low-income individuals and families. The ruling holds that down payment assistance received by a home purchaser represents a rebate or an adjustment to the purchase price, and, as such, is not included in a purchaser's gross income.

Rev. Rul. 76-96, 1976-1 C.B. 23, as modified by Rev. Rul. 2005-28, 2005-1 C.B. 997, involves a manufacturer of automobiles that paid rebates to its retail customers who purchased or leased new automobiles from dealers. The ruling holds that a rebate is not includible in a customer's gross income; but rather, represents an adjustment to the purchase price of the automobile.

In Rev. Rul. 2008-26, 2008-1 C.B. 985, the Service concluded that Medicaid rebates paid by a pharmaceutical manufacturer to State Medicaid agencies were adjustments to the sales price of drugs ultimately dispensed to Medicaid patients for purposes of computing gross receipts.

In the present case, the payment to the buyer from Subsidiary essentially reduces the amount that the buyer ultimately paid in order to acquire the home, which reduced the overall cost of the home to the buyer. Accordingly, the payment represents an adjustment to the purchase price of the home and generally is not includible in a buyer's gross income.

### *Information Reporting*

Section 6041 of the Code requires all persons engaged in a trade or business and making payment 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, to file an information return with the Internal Revenue Service and to furnish an information statement to the payee. Section 1.6041-1(a)(2) of the Income Tax Regulations provides that the return required by section 6041(a) is made on Forms 1096 and 1099.

Section 1.6041-1(c) provides that payments are fixed when they are paid

in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained.

A payor generally is not required to make a return under section 6041 of the Code for payments that are not includible in the recipient's income, nor is a payor 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 income. As used in section 6041, "income" means "gross income."

Subsidiary does not have an information reporting obligation under section 6041 of the Code with respect to payments to buyers under Program because, as concluded above, such payments represent adjustments to the purchase price of the homes and are generally not includible in the buyers' gross income. Nor does Subsidiary have an information reporting obligation for those amounts under any other section of the Code.

#### CONCLUSION

Based strictly on the information submitted and the representations made, we conclude that payments from Subsidiary to buyers under Program are adjustments to the purchase price of the homes and are not includible in the buyers' gross income. Subsidiary is not required to file or furnish Forms 1099-MISC to report these payments.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

/s/ Pamela W. Fuller

Pamela W. Fuller  
Senior Technician Reviewer, Branch 2  
(Procedure and Administration)

cc: