

Internal Revenue Service

Department of the Treasury
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November 5, 2004

Legend

Company =

\$X =

Dear :

This is in response to your request dated August 27, 2004, submitted on behalf of Company, requesting a letter ruling under section 6041 of the Internal Revenue Code (Code). Specifically, Company has requested a ruling that based on the facts and assumptions set forth herein, Company will not be required to make a return of information pursuant to section 6041 as a result of volume rebate points having been awarded to its members or upon a member's use of those points to reduce the cost of future purchases through the Company.

FACTS

Company is a business venture designed to reduce the cost of obtaining medical care, health insurance, and/or health related products to its members. This benefit will be provided to members in the form of volume purchase rebate "points" that will be used to offset the cost of future purchases by members. Under the program, each rebate point awarded to a member represents a future purchase price reduction of \$X. The amount of rebate points granted to a member will be limited by the amount of actual purchases made by such member.

The computation of the amount of volume rebate points granted to a member is based on several factors including: the type and quantity of the goods or services purchased; the vendor of those goods or services; the amount of Company purchases made by the member receiving the points; and the member's participation in community purchasing groups. In order to receive the benefit of volume purchase rebate points earned, the

member must purchase additional products or services through the Company. The methodology used to calculate the number of points awarded any particular member is applied automatically by a computer program and each member is not identified by the source methodology used to determine the points. The rebate points based on credit card transactions are placed in member "buckets" for future redemption, are fungible, and retain no identifying association with their origins.

Company knows the total rebate points a member is entitled during the year and whether that member has made sufficient purchases to receive those points. Company will not, however, track the origin of rebate points or attempt to tie the redemption back to the original transactions that generated the points and does not know whether the redeemed points originated from the member's own purchases, the purchases of a community member, or a combination thereof.

For purposes of this ruling request we assume that the use of volume rebate points by a member to reduce the cost of purchasing goods or services through the Company constitutes gross income to that member under section 61 of the Code to the extent that the points used were calculated with reference to that member's participation in community purchasing groups.

Because volume rebate points are essentially fungible and are not identified by source, there is no reasonable way of knowing the source of the points awarded or the source of the points (as to direct member versus community volume) at the time the points are used to reduce the cost of future purchases through the Company.

LAW

Information Reporting

Section 6041(a) of the Code requires reporting of payments of \$600 or more made by all persons engaged in a trade or business and making payments in the course of such trade or business to another person of fixed or determinable gains, profits, and income.

Section 1.6041-1(c) of the Income Tax Regulations states that payments are "fixed" when they are paid in amounts definitely predetermined. Payments are "determinable" whenever a basis of calculation by which the amount to be paid may be ascertained.

Purchase Price Adjustment

A purchase price adjustment reduces a specific gross purchase price of property to an agreed net price. The adjustment is excluded from the purchaser's gross income but reduces the purchaser's cost of the property acquired. See Rev. Rul. 76-96, 1976-1 C.B. 23. See also *Max Sobel Wholesale Liquors v. Commissioner*, 69 T.C. 477 (1977), *acq.*, 1982-2 C.B. 2, *aff'd*, 630 F.2d 670 (9th Cir.1980), and *Pittsburgh Milk Co. v. Commissioner*, 26 T.C. 707 (1956), *acq.*, 1982-2 C.B. 2.

The Tax Benefit Rule

Under section 111(a) of the Code, gross income does not include income attributable to the recovery during the taxable year of any amount deducted in any prior taxable year to the extent such amount did not reduce the amount of tax imposed. Under the judicially-developed tax benefit rule, gross income will result upon the occurrence of a later event that is fundamentally inconsistent with the premise on which the earlier deduction was based. *Hillsboro National Bank v. Commissioner*, 460 U.S. 370 (1983).

ANALYSIS

Section 6041 of the Code requires that a payor make fixed or determinable payments of \$600 or more in a taxable year in order to require the making of an information return. Company is unable to satisfy this statutory requirement of section 6041 because it is unable to determine whether a member has benefited from community rebate points valued at \$600 or more. Neither Company nor the members know the value of the rebate points attributable to community purchases versus the value of rebate points attributable to individual purchases. Furthermore, because the volume rebate points are not convertible into cash and must be used by the member to offset the cost of future purchases, no benefit is received by the member unless and until points are used to offset the cost of future purchases. Therefore, in a given taxable year, Company will not know whether the amount of a member's rebate points, calculated with reference to the member's purchasing community and used to make purchases, meets or exceeds the \$600 requirement in section 6041.

Moreover, purchases made by members may be eligible to be claimed as a medical expense deductible as an itemized deduction or as self-employed medical insurance costs, factors that are unknown and unknowable to Company. A member who receives a discount will receive gross income under the tax benefit rule to the extent the members' prior deduction for the cost of medical expenses results in a tax benefit. Company lacks the ability to determine a member's tax treatment of the rebate points as it cannot determine how each member will treat the community rebate points for his or her own tax purposes.

Thus, Company has no obligation to make information returns for its Members because it is unable to determine which members, if any, have used community rebate points that satisfy the \$600 requirement, or how each member will treat the community rebate points for his or her own tax purposes for a tax benefit analysis.

CONCLUSION

Company cannot determine whether the benefits provided result in gross income to the recipients. Therefore, the extent to which the Company's program is income to members is not fixed and determinable. Accordingly, Company will not be required to make a return of information pursuant to section 6041 as a result of volume rebate points having been awarded to its members or upon a member's use of those points to reduce the cost of future purchases through the Company.

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 the taxpayer's representative.

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,

Tiffany P. Smith
Assistant to the Branch Chief, Administrative
Provisions & Judicial Practice,
(Procedure & Administration)

Enclosures (2):

Copy of this letter
Copy for section 6110 purposes

cc: