



September 28, 2010

Mr. Keith Brau
Office of Associate Chief Counsel for Procedure & Administration
Internal Revenue Service
Ben Franklin Station
Room 5203
Washington, DC 20044

Re: CC:PA:LPD:PR (Notice 2010-51) - Information Reporting Under the Amendments to Section 6041 for Payments to Corporations and Payments of Gross Proceeds and With Respect to Property

Dear Mr. Brau:

On behalf of the International Franchise Association (IFA), I write to comment on the Internal Revenue Service's (IRS) invitation for public comments regarding "Information Reporting under the Amendments to Section 6041 for Payments to Corporations and Payments of Gross Proceeds and With Respect to Property," published on July 19, 2010 (Internal Revenue Bulletin 2010-51).

IFA is the largest and oldest franchising trade group, representing more than 85 industries, including more than 11,000 franchisee, 1,100 franchisor and 500 supplier members nationwide. IFA protects, enhances and promotes franchising by advancing the values of integrity, respect, trust, commitment to excellence, honesty and diversity. According to a 2008 study conducted by PricewaterhouseCoopers, there are more than 900,000 franchised establishments in the U.S. that are responsible for creating 21 million American jobs and generating \$2.3 trillion in economic output. Franchising operates in industries including automotive, commercial and residential services, restaurants, lodging, real estate and business and personal services.

On behalf of our members, I respectfully submit these comments and appreciate the opportunity to share our views as the IRS develops guidance. The immense scope of this new information reporting requirement will undoubtedly impact the operations of small franchised businesses and lead to serious unintended consequences. Since the IFA represents companies from over 85 diverse industries, our comments will focus on some of the chief concerns facing all franchised businesses. The IFA believes that the comments provided here, and by other business trade associations and coalitions that represent our members, will greatly benefit all stakeholders and individuals impacted by the amendments to Section 6041 of the Internal Revenue Code.

The IFA informally queried our membership across the various sectors we represent. A common theme emerged, with many respondents asking, "Why was this change made to the IRS reporting requirements and what does it have to do with health insurance reform?" More generally, members of the franchise business community are concerned about the increased costs of both time and money associated with this expanded reporting requirement. Based on these new requirements, small business

owners will be forced to spend more time collecting the information needed to properly report their business-to-business transactions. In addition to the time and money spent on these new forms and tracking payment information, our members are also concerned that this new requirement will change their tax filings and prompt additional questions from the IRS.

With the amount of new information the IRS will receive, small businesses are likely to face a heightened level of scrutiny from IRS examiners. Most troubling is that these inquiries are likely to fall on already compliant small business taxpayers, forcing them to defend their tax filings against IRS inquiries. Furthermore, the increased burden to carefully track all payments to each and every new and existing vendor and the influx of paperwork filing will inevitably result in mistakes and trigger audits. The IRS should take considerable care and allow as much flexibility as possible for mistakes to be corrected.

Moreover, businesses that utilize franchising as a model could create confusion for other businesses that purchase goods or services from a franchised business. For a large percentage of the public, they see franchised businesses as a single corporate entity and do not make the connection that there is a local, independent business owner that owns and operates the location. While each franchise business owner will have a unique Taxpayer Identification Number (TIN), the business or corporate consumer may file Form 1099s listing the franchisor instead of the franchisee. This reporting requirement has the potential to generate numerous incorrect filings attributed to the wrong vendor. For example, the IRS could receive numerous Form 1099s that list a franchisor headquartered in Illinois even though the actual vendors were the franchisees in several other states.

Determining the Impact

It is difficult to calculate the impact the new information reporting requirement will have without final guidance from the IRS. However, many of our member companies were able to provide details or anecdotes based on their current experience with filing information reports to the IRS using Form 1099. Overall, franchisors report that they expect a significant increase in the amount of forms to be filed. While many larger franchisors expect to be able to handle the increased reporting, they fear that individual franchisees and smaller franchisors will struggle to comply with new recordkeeping and paperwork burdens.

In an example provided to the IFA, a large franchisor with significant operations in every state, reported filing 4,200 Form 1099 for the 2009 tax year. Using the same data, were the new reporting requirements in effect for 2009, the company determined they would have filed 12,800 forms. The company issued a Form 1099 to 14 percent of its vendors in 2009, and projected that would rise to 39 percent under the new requirement. There are two main cost factors associated with this increase, which include costs associated with paperwork production and recordkeeping as well as mailings to both the IRS and follow up with vendors. Internally, they conservatively estimate four 1099 forms issued per franchisee for transactions between franchisor and franchisee, which would generate 68,000 new forms per year.

While larger franchisors anticipate having the staff necessary to handle the additional labor associated with the recordkeeping and paperwork, they cannot reasonably estimate the impact to their franchisees. Several multi-unit franchise owners may be sophisticated enough to handle the new requirements from

their corporate headquarters. Many smaller businesses will not have the staff or operational capacity in place to deal with the influx of requests from consumers outside the franchise system; however, and the franchisor expects that a large percentage of its franchisees will struggle with the increased paperwork burden.

Another concern for businesses is the potential to see a significant increase from the IRS in “B” notices. When a “B” notice is received due to an inaccurate TIN, a business is required by the IRS to take several follow up measures to contact the vendor to determine the correct TIN or other information. In certain circumstances, backup withholding will be required as well as the potential for penalties from the IRS.

Several franchisors have reported they have already implemented the TIN Matching Program to alleviate the likelihood for errors pre-filing, but report the registration process is burdensome and will deter smaller companies and franchisees. Since the new reporting requirement will likely create an influx of first-time Form 1099 filers, the TIN Matching Program will be of no immediate assistance to thousands of small business owners.

In another example, a small franchisee (11 employees) reports they expect an explosion in the number of Form 1099 filings. They are deeply concerned about the amount of time and attention that will be spent serving as a de facto tax enforcement agent for the IRS rather than providing outstanding service to their customers. In total, this particular small business owner estimates that they will go from filing six 1099 forms to 475 forms annually. That represents a 7,816 percent increase per year in the amount of forms this one small business will be required to file. In the current economic environment, this business owner concludes that “the manpower required, which I don’t have, and cost of compliance is unsupportable by my small business.”

Small franchise business owners report that many vendors—in particular, larger corporations—routinely ignore requests for additional information from smaller customers. This will require small businesses to make repeated inquiries and follow-up contacts by phone, mail and email. This owner determined the processes required to comply with the reporting requirement: run expenditure reports, analyze for qualifying vendors, print TIN request letters, mail, track, monitor compliance, do phone follow-up and re-request information then receive, and finally, confirm and file the data. He estimates the time required to complete this process as approximately 30 minutes per form, or 237.5 hours, which equates to a nearly six week full-time work schedule. This calculation represents 12 percent of the business’ annual work capacity.

This individual small business owner states that with the fragile economy and weak consumer demand, he has seen a 35 percent drop in sales since the fall of 2008. In this environment, small businesses and their employees are compelled to operate leanly and work hard to avoid redundancy and errors while increasing productivity and improving customer service to survive. The owner concludes that if he is compelled to reallocate 12 percent of his capacity and devote it to activities unrelated to producing revenue, growing the business and serving customers, it will push his small business toward financial ruin and lead to the unemployment of eleven people.

Withholding Requirements

Under the IRC, if a vendor fails to either provide a TIN or submits inaccurate information or an incorrect TIN, a small business could be required to withhold 28 percent of the value of the goods or services. This requirement will create several unintended consequences and lead to particularly difficult situations with certain vendors.

For example, how does a business withhold 28 percent from a service like airline tickets or contracts with hotels for meeting services which can be paid prior to the actual delivery of services? Similarly, withholding on certain long-term and continuing services, such as electrical utilities, telecommunications and data services could lead to these utility services being suspended. These examples of routine transactions do not lead to easy solutions and additional guidance and clarity would be helpful.

Conclusion

The Department of the Treasury and the Internal Revenue Service have requested ways to minimize the expanded reporting burden on businesses. We strongly urge the Department and the IRS to provide clear guidance for small business owners and ample flexibility for business owners to make corrections when necessary. Ultimately, however, the statutory changes included in the Patient Protection and Affordable Care Act (P.L. No 111-148 or PPACA) are very broad and afford no opportunity to minimize the burden of these requirements. Therefore, the IFA strongly believes that the only solution for franchise business owners is to repeal Section 9006 of the PPACA before it is scheduled to go into effect.

We appreciate the opportunity to submit comments from the franchise business community perspective on this important new requirement impacting businesses of every size and in every industry sector.

Thank you for your consideration in this matter.

Respectfully submitted,



David French
Senior Vice President
Government Relations & Public Policy

cc: Nancy-Ann DeParle
Director, White House Office of Health Reform