ISSUE 95
April 1, 2012
Elder Client PLANNER
Spidell's strategic tax advisor
Spidell Publishing Inc.
TAX, LEGAL & FINANCIAL SOLUTIONS FOR YOUR RETIRED CLIENTS

No merchant reporting on business returns

TAX: Form 1099-K requirement stays.

By Tim Hilger, CPA
Editor

The IRS has decided that businesses will not be required to reconcile their gross receipts with merchant card transactions reported on Form 1099-K, Merchant Card and Third Party Network Payments, on their 2012 or later returns.

As such, there will be no separate line to report sales receipts from merchant cards on future business returns. However, the 1099-K requirements remain intact and businesses that receive payments through credit cards or other electronic payments will still receive 1099-Ks.

Steven T. Miller, IRS deputy commissioner for services and enforcement, said in writing to the National Federation of Independent Business that no reconciliation will be required on 2012 or future business tax returns.[1] The IRS subsequently backed up that statement in FAQs on their website.[2]

The 1099-K Overreach Prevention Act has also been introduced in Congress that would prevent the IRS from using 1099-K data to require reconciliations on business returns.[3]

Background

The Housing Assistance Act of 2008 added new §6050W to the Internal Revenue Code. Starting in 2011, IRS regulations require all businesses that process credit card and electronic payments to send a Form 1099-K to sellers with more than threshold transaction numbers and dollar amounts.

In line with that requirement, the IRS also intended to require businesses to report payments received electronically and by credit card on a separate line of the tax return. The line appeared on the draft 2011 Schedules C and E as well as the draft Form 1120, U.S. Corporation Income Tax

See **Merchant**, *page 2*

IRS grants extension of time for some estates to make portability election

ESTATES: Guidance gives break to executors who may not have known about election.

By Tim Hilger, CPA
Editor

The IRS has issued guidance granting an extension of time to make the portability election for certain smaller estates of married individuals who died during the first six months of 2011.[1] Estates qualifying for and taking advantage of the extension will have up to 15 months after the date of death to make the election.

How to get the extension

IRS will grant the executor of a qualifying estate a six-month extension of time until 15 months after the decedent's date of death to file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, if the executor:

- Files Form 4768, Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes, with the IRS;
- Files Form 4768 no later than 15 months from the decedent's date of death; and
- Enters at the top of Form 4768 the notation "Notice 2012-21, Extension for Good Cause Shown" or otherwise sufficiently notifies the IRS on or with Form 4768 that it is being filed pursuant to Notice 2012-21.

Background on the portability election

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010[2] added a new portability feature for estates of decedents dying in 2011 and 2012. For deaths in

See **Portability election**, *page 2*

In this Issue

E-mail us:
ecplanner@spidell.com

Form 1041 reporting requirements for grantor trusts

TRUSTS: Knowing when a trust doesn't have to file Form 1041 can save preparation time and costs.

By Richard Malamud, CPA, J.D., LL.M.
Guest Contributor

Revocable living trusts, commonly used in California to avoid probate, are considered grantor trusts for tax reporting purposes. Grantor trust status means that all of the income is taxed to the grantor rather than to the trust. This is a fairly well known concept. What isn't well known is how and where the income and deductions of the trust are reported.

Generally, a trust is required to file Form 1041, U.S. Income Tax Return for Estates and Trusts, if it has:

- Any taxable income for the tax year;
- Gross income of $600 or more (regardless of taxable income); or
- A beneficiary who is a nonresident alien.[1]

However, for grantor trusts, there are alternative reporting methods that don't require filing a Form 1041.

Grantor as trustee

The reporting of grantor trusts is governed by Treas. Regs. §§301.6109-1(a)(2) and 1.671-4(b)(2),[2] which provide that a grantor trust — owned by a single person — in which the grantor is a trustee or a co-trustee is not required to obtain a taxpayer identification number so long as the grantor's taxpayer identification number and address of the trust are furnished to all payers of income.

This also applies to a joint grantor trust for married couples that file a joint return if one of the taxpayers is a trustee or co-trustee. In that case, the trustee is not required to file any type of return with the Internal Revenue Service. Everything is reported on the Form 1040 of the grantor(s).

Grantor not a trustee

If the grantor is not a trustee or co-trustee, no Form 1041 is required if the trustee selects one of three alternative methods.

Under Method 1, the trustee does not have to furnish a trust taxpayer identification number to payers of income. The grantor's Social Security number is used. The name on the account, however, should be changed to that of the trust.

It requires the trustee to furnish the following information to each payer and to the grantor(s):

1. To each payer, the name and Social Security number of the grantor and the address of the trust; and
2. To the grantor(s), a statement that:
   (1) Shows all items of income, deduction, and credit of the trust for the taxable year;
   (2) Identifies the payer of each item of income;
   (3) Provides the grantor with the information necessary to take the items into account in computing the grantor's or other person's taxable income; and
   (4) Informs the grantor that the items of income, deduction, etc., must be included in computing the tax return of the grantor.

Also available is Method 2, which requires the trust to obtain an identification number which is furnished to all payers. The trust is then required to file Forms 1099 for all income listing the trust as the payer and the grantor as the payee. All other income not reported on Form 1099 must be reported in the same manner as that used for the non-reporting trust listed in Method 1 above.

Method 3 applies to trusts with two or more grantors or other persons. The rules are essentially the same as for Method 2.

Under all methods, the grantor must furnish a Form W-9, Request for Taxpayer Identification Number and Certification, to the trustee.

Changing methods

A trustee can elect to change to any permissible method by filing a final Form 1041 for the preceding year and writing on the front of the final return, "Pursuant to section 1.671-4(g), this is the final Form 1041 for this grantor trust" and checking the "final return" box in item F.

Certain trusts don't qualify

The alternative methods are not available to:

1. A common trust fund as defined in Section IRC §584(a);
2. A foreign trust or a trust that has any of its assets located outside the United States;
3. A Qualified Subchapter S Trust (QSST) as defined in IRC §1361(d)(3);
4. A fiscal-year grantor;
5. A trust in which a one or more grantors are not a U.S. person; or
6. A trust in which one or more grantors is an exempt recipient for information reporting purposes.

Death of grantor

When the grantor dies, the trust generally becomes irrevocable and a fiduciary tax return — a Form 1041 — is required. The previously discussed provisions are no longer applicable, as the trust is no longer a grantor trust.

These rules are very detailed and this is merely a summary. Further explanations can be found on pages 11–12 of the instructions to Form 1041 (2011).

About the author

Richard Malamud is a professor in the Department of Accounting and Finance at California State University Dominguez Hills, where he teaches federal income tax law. You may reach him at: (310) 243-2239 or rmalamud@csudh.edu.

[1] IRC §6012(a)

[2] The regulation applies for tax years 1996 and later.