

## ISSUING FORM 1099 TO CASH ADVANCE PAYEES

By

T. Scott Gilligan

During January of each year, funeral homes face the dilemma of sending out Form 1099s to suppliers of cash advance items. Typically, the questions arise because the funeral home's accountant instructs the funeral home to issue a Form 1099 to each minister, hairdresser, musician, or florist who has received cash advance payments in an aggregate amount of \$600 or more from the funeral home during the tax year. The purpose of the Form 1099 is to report to the IRS that payments have been made, who received the payments, and how much the payments were. Obviously, the issuance of the Form 1099 places an onerous paperwork burden on the funeral home and often triggers the question as to whether funeral homes are legally required to issue a Form 1099 to each recipient of cash advance payments.

The answer in most cases is **NO**. Section 1.6041-1 of the IRS Regulations governs the issuance of Form 1099. Subsection (e) addresses the situation where a business serves as a middleman in the payment process. The regulation requires the business that makes a payment as a middleman to issue a Form 1099 to the payee, but only if the business:

- (1) performs management or oversight functions in connection with the payment; and
- (2) has a significant economic interest in the payment.

Several years ago, the IRS was asked whether a funeral home was responsible to issue a Form 1099 with regard to cash advance payees. Relying upon Regulation 1.6041-1(e), the IRS issued a private letter ruling (PLR 200106032) which found that generally funeral homes do not perform management or oversight functions with regard to services performed by cash advance payees. In that regard, the IRS noted that the funeral home "neither directs or inspects the quality of the work provided." It also does not select the providers, negotiate the price for services, or have the discretion to withhold payment for unsatisfactory performances. As such, the IRS found that the funeral home was not obligated to issue Form 1099 to third party providers who receive cash advance payments from the funeral home.

When issuing private letter rulings, the IRS always notes that the ruling does not serve as precedent in other cases. However, they do provide an indication to taxpayers on how the IRS interprets its own regulations. Since Regulation 1.6041-1(e) has not changed since the private letter ruling on cash advances was issued, it appears that the private letter ruling is still applicable to the question of whether funeral homes have to issue Form 1099 to cash advance payees. As long as the funeral home is not exercising supervisory control over the third party

service provider, the IRS private letter ruling would indicate that a funeral home does not have to issue a Form 1099 to a cash advance payee.

Any OFDA member who has questions regarding this article or who wishes to obtain a copy of Private Letter Ruling 200106032, should contact General Counsel Scott Gilligan at 513-871-6332.

**Internal Revenue Service**

**Department of the Treasury**

**Number: 200106032**  
**Release Date: 2/9/2001**  
**Index Number: 6041.06-00**

**Washington, DC 20224**

**Person to Contact:**  
**Patricia A. Manasevit**  
**Telephone Number:**  
**202-622-4910**  
**Refer Reply To:**  
**CC:PA:APJP:B01-PLR-110212-00**  
**Date:**  
**November 13, 2000**

**LEGEND:**

**X=**

**Dear :**

This letter responds to your submission of , and supplemental correspondence, dated , in which you requested a ruling on behalf of X as to the applicability of the reporting requirements under section 6041(a) of the Internal Revenue Code to certain cash advances made to third party service providers.

**FACTS:**

X operates funeral homes. X's business operations involve preparing human remains for burial, transporting the deceased to the burial site, providing facilities for visitation before and after the funeral, the sale of caskets and burial vaults, and the orchestration of the funeral. In addition to providing these goods and services directly, X serves as a liaison between the families of the deceased and providers of other various services.

Additional services or items for which families often incur additional expenses include; gratuities to clergy, special music, death notices, hairdressers or barbers, florists, transportation, long distance telephone charges, copies of certified documents and professional fees to other funeral directors. The families, not X, select these third party service providers. Typically families know which cemetery, clergy, and other service providers they wish to use. For those families without strong preferences X furnishes a list of available providers to select from. In those rare circumstances when X is asked to provide greater guidance and actually make the arrangements, X rotates among available providers. X's random selection under this rotation system is subject to the approval of the family.

For the convenience of the families of the deceased it is a common practice in the funeral industry for the funeral home to prepay the providers of these other services, i.e., to make cash advances. The option of having X make cash advances to the other service providers is discussed at the time X meets with the family to discuss all the

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funeral arrangements. If cash advances are used, they are separately enumerated on X's standard funeral contract. The funeral contract reflects that X does not provide this accommodation for profit. X is reimbursed dollar for dollar, generally on the day of the funeral service.

X neither negotiates prices for these services nor has any discretion in withholding payments. X does not direct or inspect the work that is done by third party providers. If unsatisfied with the services rendered, the family may seek recourse against the provider, but remains obligated to A for the cash advances made on their behalf.

#### LAW AND RATIONALE:

Section 6041(a) of the Internal Revenue Code provides that 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, shall render a true and accurate return setting forth the amount of such gains, profits, and income, and the name and address of the recipient.

Section 1.6041-1(a)(1)(i) of the Income Tax Regulations requires every person engaged in a trade or business to make an information return reporting payments in the course of that trade or business to another person of fixed or determinable salaries, wages, commissions, fees, and other forms of compensation for services aggregating \$600 or more in a calendar year, unless specifically excluded under section 1.6041-3.

Section 1.6041-3(d) provides an exception for payments of bills for merchandise, telegrams, telephone, freight, storage, and similar charges.

Section 1.6041-3(p) provides an exception from reporting for payments made to principals by persons carrying on the banking business and payments made by other specified types of institutions of funds collected when acting in the capacity of collection agents. Section 1.6041-3(p) cautions however, that the exception does not apply to the regular and continuing collection of items under an escrow, trust, custody, or investment advisory agreement. Clarification was provided in Revenue Ruling 77-53, 1977 C.B. 368, explaining that the regulations require reporting when an institution assumes a management function or retains the collected funds under an arrangement other than the customary depositor relationship.

With this exception as its foundation, Revenue Ruling 93-70, 1993-2 C.B. 295, addresses banks and other businesses acting as escrow agents making disbursements to building contractors. The escrow agent, on behalf of the owner and general contractor, was responsible for ensuring that loan proceeds were properly applied and paid, conducting site inspections in order to ascertain whether work had been completed, and

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evaluating and assessing project costs, and communicating any concerns based on that evaluation to the owner in order to make modifications or obtain additional funding. Based on these facts the ruling concludes that escrow agent performed management and oversight functions and thus was required to file information returns under section 6041.

On October 17, 2000, the Service issued a Notice of Proposed Rulemaking adopting a regulatory scheme consistent with the rationale of the exceptions carved out in the revenue rulings. In incorporating this oversight and management analysis, section 1.6041-1(e), the so-called "middleman" regulations provide as follows:

In general. A person that makes a payment in the course of its trade or business on behalf of another person is the payor that must make a return of information under this section with respect to that payment if the payment is described in paragraph (a)<sup>1</sup> of this section and, under all the facts and circumstances that person

(i) Performs management or oversight functions (i.e., performs more than mere administrative or ministerial functions) in connection with the payment ; or

(ii) Has a significant economic interest in the payment

Unlike the escrow agent in the revenue ruling, X performs no oversight function. By its very nature, the majority of services rendered for a funeral must be completed before or at the time of the funeral service and burial. X neither directs nor inspects the quality of the work provided. X does not select the providers, negotiate the price for services, order or direct provision of the third party services. Further evincing a lack of managerial control or oversight is the fact that X has no discretion to withhold payment.

The standard funeral contract reflects that X has no significant economic interest in these payments. Indeed, such interest, if extant, is required to be disclosed pursuant to the Federal Trade Commission (FTC) Funeral Industry Practices Trade Regulation Rule. See 16 CFR Part 463.

#### CONCLUSION:

Pursuant to section 1.6041-3(d), telephone, freight and similar charges are excluded from the reporting requirements. Accordingly, X is not required to issue an

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<sup>1</sup>The Notice of Proposed Rulemaking makes no change to paragraph (a) of the current regulation.

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information return for payments of telephone charges made by or on behalf of family members from A's premises or for removing and transporting remains from one location to another.

As to the cash advances for clergy, special music, death notices, hairdressers or barbers, florists, copies of certified documents and professional fees to other funeral directors, X performs no management or oversight function and has no significant economic interest as contemplated by section 1.6041-1(e). Accordingly, X is not required to issue information returns to service providers for those payments made on behalf of a family pursuant to X's contractual agreement with the family.

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

Pursuant to the power of attorney on file in this office, the original of this letter is being sent to the Taxpayer's authorized representative.

Sincerely,  
PAMELA W. FULLER  
Acting Chief, Branch 1  
Administrative Provisions and Judicial Practice

Enclosures (2):  
Copy of this letter  
Copy for Section 6110 purposes

cc: District Director, District