Internal Revenue Service

Number: **201201001**
Release Date: 1/6/2012

Index Number: 9999.98-00, 6041.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PA:01
PLR-103891-11

Date:
September 30, 2011

LEGEND:

Company:

PBM: pharmacy benefit management business

Pharmacies: unrelated pharmacies in PBM's pharmacy network

Plan Sponsors: entities facilitating the provision of health care benefits to members of the health plan

Plan Participants: members covered under a plan sponsor's health care plan

Dear :

This letter is in reply to your request for a ruling that Company's pharmacy benefit management business (PBM) is not subject to the information reporting requirements for payments made in settlement of third party network transactions, as defined in section 6050W of the Internal Revenue Code (Code) and the regulations thereunder.

FACTS

Company's PBM gives Plan Sponsors access to a network of pharmacies. Access to a network of pharmacies allows Plan Sponsors to provide participants in their health plan, Plan Participants, with prescription drug benefits.

Generally, Company's PBM provides the Plan Participants access to prescription drugs dispensed by the pharmacies in the PBM's network. The arrangement involves three

contractual agreements: (1) an agreement between the Plan Sponsor and the Plan Participant to provide the Plan Participant prescription drug benefits, which may be part of a broader health care plan; (2) an agreement between the Plan Sponsor and the PBM; and (3) an agreement between the PBM and Pharmacies. Of principal relevance to our analysis under section 6050W are agreements (2) and (3).

Agreement (2) is an agreement between Plan Sponsors and the PBM that allows the Plan Sponsors to have access to the PBM's network of pharmacies. Plan Sponsors obtain access to the network of pharmacies by paying premiums or other fees to the PBM. The Plan Participants covered under the Plan Sponsor's prescription drug benefits plan (or health care plan) are then entitled to access any of the pharmacies within PBM's network to fill prescriptions.

Agreement (3) is an agreement between the PBM and Pharmacies providing for the terms under which such Pharmacies will participate in PBM's network. Specifically, the PBM negotiates the prices which the PBM will pay to Pharmacies for filling prescriptions for drugs covered by the health or prescription benefit plan maintained by the Plan Sponsor. The negotiated rates are independent from the premiums or fees the PBM collects from Plan Sponsors.

A typical scenario involving a Plan Participant, PBM and Pharmacies would be as follows: Plan Participant fills a prescription at one of the Pharmacies, demonstrating his or her affiliation with the plan and making any agreed upon co-payment; the Pharmacy sends membership and prescription data to the PBM; the PBM validates the Plan Participant's eligibility, the amount of the Plan Participant's independent co-payment to the Pharmacy and the pre-negotiated amount the PBM will remit to the Pharmacy for filling the prescription; the Plan Participant pays the co-pay to the Pharmacy and the PBM pays the pre-negotiated amount to the Pharmacy.

The PBM is not contractually obligated to make payments that transfer funds from the Plan Sponsor to the Pharmacies. Instead, the PBM is contractually obligated to make payments according to its agreement with the Pharmacies; there is no transfer of premiums or fees from a Plan Sponsor to the Pharmacy via the PBM. Additionally, the PBM does not guarantee any part of the co-pay a Plan Participant may need to pay to a Pharmacy in accordance with their prescription or health benefit plan.

LAW AND ANALYSIS

Section 6050W of the Code requires a third party settlement organization (TPSO) to file information returns for each calendar year with respect to payments made in settlement of third party network transactions.

The regulations define a TPSO as the central organization that has the contractual obligation to make payments to the participating payees of third party network

transactions. Treas. Reg. § 1.6050W-1(c)(2). A central organization is a TPSO if it provides a third party payment network that allows purchasers to transfer funds to providers of goods and services.

A third party payment network is provided for when there is an arrangement that (i) establishes accounts with the central organization by a substantial number of providers of goods and services, (ii) who are unrelated to the central organization, (iii) who have agreed to settle transactions with purchasers according to the terms of the agreements, (iv) provides standards and mechanisms for settling the transactions and (v) guarantees payment to the providers of goods and services in settlement of transactions with purchasers. Treas. Reg. § 1.6050W-1(c)(3).

The regulations under section 6050W provide certain examples implementing the rules for qualifying as a TPSO. Particularly relevant here, example 17 describes the general structure of a health care network. The health care network is operated by a health carrier that (i) collects premiums from covered members, pursuant to a contractual agreement between the covered member and the health carrier, to allow the covered members access to the health care network and (ii) pays health care providers, pursuant to a separate contractual agreement between the health care provider and the health carrier, to compensate the health care providers for services rendered to covered members. The example concludes that the health carrier is not a TPSO operating a third party payment network that enables purchasers to transfer funds to providers of goods and services. Notice 2011-78 further clarifies the application of section 6050W in the health benefits area. That notice states that insurance companies and their affiliates who administer self-insured arrangements on a cost-plus basis or under an administrative services only plan or an administrative services contract are not within the ambit of section 6050W. I.R.S. Notice 2011-78 (to be published on October 11, 2011 in I.R.B. 2011-41).

The PBM is not a third party settlement organization because it does not enable purchasers, the Plan Participant, to transfer funds to providers of goods and services, the Pharmacies. The agreement between the PBM and the Plan Sponsor provides access to a network of pharmacies that can be used by Plan Participants. This agreement does not transfer premiums or fees from the particular Plan Sponsor to the particular Pharmacy. There is no direct correlation between premiums or fees paid and the payment made to a Pharmacy. This is similar to the healthcare network scenario. Healthcare networks were exempted from the scope of section 6050W because there was no direct payment for the purchase of goods or services; instead, the premiums were paid for the distribution of benefits at a later time. The fact that PBM is positioned between an insurance company and the provider-Pharmacies is legally insufficient to bring this distribution of benefits within the scope of section 6050W. As a result, PBM's primary function is not the facilitation of the transfer of funds from a purchaser to a provider of goods or services.

CONCLUSION

Based exclusively on the information provided and the representations made, we have determined that Company's PBM does not have a reporting obligation under section 6050W.

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

Sincerely,

(Procedure & Administration)