Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: Robin Corthell
(Criminal Tax)

from: Ashton Trice
Chief, Branch 2
(Procedure and Administration)

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subject: Form 8300 Reporting of Transactions in U.S. Territories

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

This memorandum addresses whether persons (individuals, corporations, or other entities) engaged in a trade or business in a U.S. territory are required to file Form 8300, *Report of Cash Payments Over $10,000 Received in a Trade or Business*, with the U.S. Internal Revenue Service. We conclude that those persons are required to file Form 8300 with the IRS, because they are subject to the general jurisdiction of the IRS.

BACKGROUND

In general, § 6050I of the Internal Revenue Code requires each person engaged in a trade or business who, in the course of that trade or business, receives more than $10,000 cash in a transaction (or two or more related transactions) to file an information return. The Treasury regulations under IRC § 6050I generally provide that there is no obligation to report if the “entire transaction occurs outside the United States (the fifty states and the District of Columbia).” Treas. Reg. § 1.6050I-1(d)(4). However, the same regulations further provide that if any portion of an entire transaction occurs in Puerto Rico or a U.S. possession or territory and the recipient is “subject to the general jurisdiction of the Internal Revenue Service under Title 26 of the United States Code,” then reporting by the recipient is required. The information reporting requirements of IRC § 6050I are met by filing Form 8300. Treas. Reg. § 1.6050I-1(e)(2).

Similar reporting requirements are imposed under the USA Patriot Act, 31 U.S.C. § 5331. The regulations under these Title 31 reporting requirements are framed in language that is almost identical to that in the regulations under IRC § 6050I, including the rule applicable to transactions occurring in U.S. possessions or territories. See 31 C.F.R. § 1010.330(d)(1)(i). Although Title 31 requires information reports to be filed with Treasury's Financial Crimes Enforcement Network (FinCEN), the Title 31 regulations provide that a single Form 8300 filed with the IRS for each reportable transaction will satisfy the reporting requirements under both Title 26 and Title 31. 31 C.F.R. § 1010.330(a)(1)(ii), (e)(1).[1] Form 8300 is structured as a dual-purpose IRS and FinCEN form to be filed centrally with IRS's Detroit Computing Center.

ISSUE

Does IRC § 6050I require recipients in U.S. territories[2] of cash transactions of more than $10,000 to file Form 8300 with the IRS?

CONCLUSION

Yes. In general, persons engaged in a trade or business in U.S. territories are subject to the general jurisdiction of the IRS and must file Form 8300 with the IRS.[3] This filing obligation is in addition to any filing obligation the person may also have with territory tax authorities under rules similar to IRC § 6050I, including under territorial mirror income tax codes.

LAW AND ANALYSIS

General Jurisdiction of the Internal Revenue Service

The pivotal issue in determining whether a cash recipient conducting business activities in a U.S. possession or territory has a filing requirement with the IRS under IRC § 6050I is whether such person is "subject to the general jurisdiction of the Internal Revenue Service." Treas. Reg. § 1.6050I-1(e)(2). This concept is not referenced or defined elsewhere in the Internal Revenue Code or in regulations. The U.S. District Court for the District of Puerto Rico, however, considered the language in United States v. Casablanca Motors, Inc., 863 F. Supp. 50 (D.P.R. 1994).

In Casablanca, the court ruled that a Puerto Rico corporation was subject to criminal penalties for failing to file Form 8300 with the IRS. The corporation argued that

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[1] IRC § 6050I(c)(1)(A) provides for relief from IRS filings if there would be duplication of reporting under Title 31.

[2] For purposes of this memorandum, U.S. territory means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands.

[3] The other requirements of IRC § 6050I must also be met; for example, the transaction (or any portion of an entire transaction) must occur in the 50 states, the District of Columbia, or a U.S. territory.

because the cash transaction occurred exclusively in Puerto Rico, the corporation was outside the general jurisdiction of the IRS and not subject to the Form 8300 reporting requirements. The court disagreed, citing U.S. income taxation of a Puerto Rico corporation's U.S. source income (under IRC § 882) and the applicability to Puerto Rico corporations of federal employment taxes (under IRC §§ 3101 and 3501). The court used these two examples to illustrate how a Puerto Rico corporation is subject to the general jurisdiction of the Internal Revenue Code.[4] The court also noted that exempting Puerto Rico recipients from the reporting requirements of IRC § 6050I would in effect promote money laundering and underreporting in a U.S. territory. The analysis the district court used in Casablanca in regard to Puerto Rico would be equally applicable to the other U.S. territories.

Whether subject to U.S. income tax or not, all territory corporations may also be subject to U.S. employment taxes. Employers (whether in corporate or other form) and self-employed individuals in the U.S. territories are generally subject to U.S. employment taxes. Employers in the territories are subject to social security and Medicare taxes (FICA taxes) on wages paid to employees. See IRC § 3111.[5] Individuals who are self-employed in a U.S. territory are also subject to social security and Medicare taxes (self-employment taxes) on their earnings. See IRC § 1401. As the Casablanca court found, the obligation of these employers and self-employed individuals to file and pay these employment taxes to the IRS demonstrates they are subject to the general jurisdiction of the IRS. See generally Instructions to Form 941-SS, *Employer's Quarterly Federal Tax Return*/Form 941-PR, *Planilla para la Declaración Federal Trimestral del Patrono;* and Form 1040-SS, *U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico*/Form1040-PR, *Planilla para la Declaración Federal sobre el Trabajo por Cuenta Propia (Incluyendo el CréditoTributario Adicional por Hijos para Residentes Bona Fide de Puerto Rico)*, respectively.

Individuals who are bona fide residents (BFRs) of the U.S. territories are also subject to the general jurisdiction of the IRS in relation to U.S. income taxes. BFRs of the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands are generally required by IRC §§ 932 and 935 to file only one income tax return with and pay all income tax due to the territory. These BFRs are excused by operation of the Internal Revenue Code from filing an income tax return with, or paying income tax to, the IRS only if they properly file and fully pay their income taxes with the territory tax department. Treas. Reg. § 1.935-1(b)(6)(i) and IRC § 932(c)(4). The IRS continues to have jurisdiction over these BFRs to determine whether they are compliant with these

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[4] Although the court referenced the Internal Revenue Code instead of the IRS in its analysis, this conflation should not diminish the court's ultimate legal conclusion. The IRS's own Publication 1544, *Reporting Cash Payments of Over $10,000*, similarly substitutes "Code" for "Service," and with even less precision in paraphrasing the regulatory language – "subject to the Internal Revenue Code."

[5] Additionally, employers in Puerto Rico and the U.S. Virgin Islands are subject to federal unemployment taxes (FUTA) on wages paid to their employees. *See* IRC § 3301 *et seq*.

U.S. tax laws and rules. The IRS also has general jurisdiction over BFRs of American Samoa and Puerto Rico, because these BFRs may be required to file an income tax return with and pay income tax to both the United States (to report non-territory source income) and the territory.

A further important dimension of general IRS jurisdiction with respect to the territories is the direct administrative authority that the IRS has in the U.S. territories for purposes of assessing, collecting, and enforcing all taxes imposed by the Internal Revenue Code. IRC § 7651(1) provides that all "provisions of the laws of the United States applicable to the assessment and collection of any tax imposed by [Title 26] or of any other liability arising under [Title 26] (including penalties) shall, in respect of such tax or liability, extend to and be applicable in any possession of the United States in the same manner and to the same extent as if such possession were a State, and as if the term 'United States' when used in a geographical sense included such possession." See also IRC § 7651(2) (additionally providing for applicability of IRS administrative powers to Title 26 taxes imposed in a U.S. possession). Under § 7651, for example, the IRS may use its Title 26 administrative powers to file a tax lien, levy on property in a U.S. territory, or issue a summons in a U.S. territory, as if the territory were one of the 50 states. See generally IRC §§ 6321, 6331, and 7602. Accordingly, the extension of IRS administrative powers to the U.S. territories is another basis upon which a person in a U.S. territory is subject to the general jurisdiction of the IRS.

Based upon the preceding analysis, we conclude that persons engaged in a trade or business in a U.S. territory are subject to the general jurisdiction of the IRS and must file Form 8300 with the IRS.

Interaction with Similar Territorial Reporting Requirements

Our conclusion that Form 8300 must be filed with the IRS does not alter the additional reporting obligation a person may also have with territory tax authorities under territorial rules similar to IRC § 6050I, including under territorial mirror income tax codes. Therefore, territory-based transactions that would trigger a reporting obligation if transacted in the 50 states or the District of Columbia may also be subject to reporting to the tax authority of the territory.

Under a "mirror code" system, a territory administers income tax laws that are generally identical (except for the substitution of the name of the relevant territory for the term "United States" where appropriate) to those in force in the United States. Currently, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands administer mirror income tax laws. In contrast, American Samoa and Puerto Rico have income tax laws that are similar to U.S. income tax laws but that are not necessarily mirrored or directly tied to the Internal Revenue Code. Persons who are engaged in a trade or business in any of these U.S. territories may have a filing obligation with the territory tax department under either § 6050I of a mirror code[6] or territorial rules that are similar to IRC § 6050I.

Conversely, unlike the express single-filing tax coordination rules of IRC §§ 932 and 935 that apply with respect to income taxes, as discussed above, Internal Revenue Code administrative provisions are directly applicable to the U.S. territories under IRC § 7651. There is no provision in IRC § 6050I or elsewhere in U.S. law that excuses persons in the territories from complying with IRC § 6050I when they may also have a similar filing obligation with a territory tax authority under rules similar to IRC § 6050I. Accordingly, a person's obligation to file Form 8300 with the IRS applies irrespective of whether the person has complied with, or is required to comply with, § 6050I of a territorial mirror income tax code or territorial rules similar to IRC § 6050I.

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Please call Danielle Pierce at (202) 317-6845 if you have any further questions.

cc: Jackie B. Manasterli, International, Branch 7

[6] For example, under the Guam Organic Act, all provisions of Subtitle F (§ 6001 et seq.) of the Internal Revenue Code apply in Guam. 48 U.S.C. § 1421i(d)(1)