



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224
September 16, 1999

OFFICE OF
CHIEF COUNSEL

CC:DOM:IT&A:2: [REDACTED]
SPR-111984-99

Index No: 60501.00-00
Number: **199952009**
Release Date: 12/30/1999

MEMORANDUM FOR

ASSISTANT DISTRICT COUNSEL
PENNSYLVANIA DISTRICT, PHILADELPHIA

FROM:

Deputy Assistant Chief Counsel
(Income Tax & Accounting)

SUBJECT: Cash Payments for Bail in Excess of \$10,000

This responds to your e-mail dated June 13, 1999, requesting our comments on a draft memorandum concerning the application of § 60501(g) of the Internal Revenue Code. Your memorandum raised and discussed two separate issues.

ISSUES:

- (1) Whether Pennsylvania district justices are responsible for the preparation and filing of Form 8300 for bail payments they receive that are in excess of \$10,000 in cash?
- (2) Whether the additional payment of court processing fees, which causes the total amount paid to exceed \$10,000, requires the filing of Form 8300 if the total amount is paid in cash?

CONCLUSIONS:

- (1) Pennsylvania district justices are responsible for the preparation and filing of Form 8300 for bail payments they receive that are in excess of \$10,000 in cash.
- (2) Additional payments of court processing fees are not to be taken into account in determining whether a bail payment exceeds \$10,000.

FACTS:

In Pennsylvania, bail is received by the clerk of the court for each county as well as by district justices. District justices remit the bail to the clerk of the court and in many cases pass on the responsibility of preparing and filing Forms 8300 when bail exceeds \$10,000. Additionally, there are instances when the amount of bail is less than \$10,000

SPR-111984-99

but the additional assessment of processing fees causes the total amount to exceed \$10,000.

LAW AND ANALYSIS:

(1) Section 60501(g) states that any clerk of a federal or state court who receives more than \$10,000 in cash as bail for an individual charged with a specified criminal offense must file an information return with respect to that transaction. The specific offenses are: (a) any federal criminal offense involving a controlled substance; (b) racketeering (as defined in 18 U.S.C. § § 1951, 1952, and 1955); (c) money laundering (as defined in 18 U.S.C. § § 1956 and 1957); and (d) any state criminal offense substantially similar to an offense described in (a), (b), or (c). Section 1.60501-2(a) of the Income Tax Regulations provides that “clerk” includes the clerk’s office, or the office, department, division, branch, or unit of the court that is authorized to receive bail. If someone other than a clerk receives payment on behalf of a clerk, the clerk is deemed to have received the bail and is responsible for making a return of information. Section 1.60501-2(c)(2) prescribes that the return of information is to be made on Form 8300.

Under 42 Pa. C.S.A. § 1515(a)(4), subject to exceptions not here relevant, district justices have the power to preside at arraignments and fix and accept bail. Consequently, a district justice when receiving bail is within the definition of “clerk” as set forth in § 1.60501-2(a), *i.e.*, a unit of the court authorized to receive bail. As such, district justices have the responsibility for ensuring that Form 8300 is prepared and filed for any bail they receive that exceeds \$10,000 in cash.

(2) Section 60501(g) was added to the Code by § 20415(a) of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322. Unfortunately, the legislative history of that act does not define “bail.” Neither does the Code or the regulations. The word, when used as a noun, as it is in § 60501(g), generally means the security required and given for the release of a person in the custody of the law, conditioned upon a written undertaking that he or she will appear when required and do all other things stipulated. Commonwealth v. McDonald, 476 Pa. 217, 382 A.2d 124 (1978). Bail is to insure the appearance of the accused, not to guarantee payment of fines, costs, or awards. Ruckinger v. Weicht, 356 Pa.Super 455, 514 A.2d 9487 (1986).

We have concluded that under state law “bail” does not include an additional amount the defendant is required to pay as a processing fee and such additional amount may not be considered when determining whether the “in excess of \$10,000” threshold has been reached. The issue here under consideration is distinguishable from reported cases in which a portion of bail money was withheld by the court for administration purposes, *e.g.*, Commonwealth v. McDonald, *supra*, and Commonwealth v. Tanure, 512 A.2d 1276 (1986). Rule 4015(d) of the Pennsylvania Rules of Criminal Procedure provides that within 20 days of the full and final disposition of a case, the bail deposit shall be returned, less any bail-related fees or commissions and reasonable costs of

SPR-111984-99

administering the percentage cash bail program. Thus, under state law a portion of bail money may be withheld and used for paying processing fees. But when processing fees are assessed separately, those fees are not considered as part of “bail” for purposes of § 6050I(g). Both § 6050I(g) and § 1.6050I-2(a) condition the responsibility for filing Form 8300 on the receipt of “more than \$10,000 in cash as bail.” (Emphasis added.) Unless there is a cash payment in excess of \$10,000 designated as bail, Form 8300 is not required.

This memorandum is for your general information and is advisory only. We hope this information will be helpful to you. It is not intended to be conclusive as to the tax consequences for any specific taxpayer. If we may be of additional assistance, please contact CC:DOM:IT&A:2 at 202-622-4920.