Miller & Chevalier

New TAM: No Deferral of Certain Gift Card Sales Receipts

Tax Controversy Alert

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The Internal Revenue Service has issued a technical advice memorandum narrowly construing a consolidated group's ability to defer income from gift card sales. TAM 200849015 addresses a fact pattern under which a retailer's consolidated group includes a separate gift card subsidiary. As is increasingly common, the gift card subsidiary oversees the entire gift card program for the consolidated group, and all gift cards used in stores operated by the group are issued and sold by the gift card subsidiary. Gift cards sold by the gift card subsidiary may be exchanged for goods and services offered by other members of the consolidated group.

In TAM 200849015, the IRS National Office has concluded that the gift card subsidiary must immediately recognize as gross income the entire proceeds of all gift card sales. The National Office concluded that neither of the provisions otherwise applicable to defer the recognition of income from the sale of gift cards applies where the group member selling the gift card is not the same member that will redeem the gift card through the direct provision of goods and services. The TAM also concludes that the gift card subsidiary may not immediately deduct the expenses related to the gift card sales, but instead must wait until the card is redeemed. The effect of the National Office's two conclusions is to subject to current taxation the gross receipts from the consolidated group's sales of gift cards.

As part of the 2008-2009 Priority Guidance Plan, the Treasury Department and the IRS are developing published guidance addressing the tax treatment of amounts arising from the sale and use of gift cards. Miller & Chevalier is actively engaged in discussions with the Treasury Department regarding this important project, with the goal of ensuring that the tax treatment of gift card sales reflects the business and economic realities underlying their sale and redemption.

Additional background regarding the IRS's ongoing audit activities with respect to gift card sales can be found at James Atkinson and Dwight Mersereau, "IRS Takes Aim at Gift Card Sales," 116 Tax Notes 949 (Sept. 10, 2007).
