September 10, 2015

Soliciting SSNs for Information Reporting Requirements

Many employers and health plans are sending SSN solicitations to comply with the 6055/6056 information reporting requirements. One issue that has arisen is whether the $50 penalty under Code Section 6723 applies to the individuals who fail to furnish a SSN to his/her employer or health plan.

Under the SSN solicitation regulations of Code Section 6724, the regulations provide that when soliciting a SSN in writing that the solicitation should mention the possibility of a $50 IRS penalty. The $50 IRS penalty can be imposed under Code Section 6723, which allows the IRS to penalize anyone who does not provide a SSN to another person when it is required.

The issue is that it's not clear whether Section 6723 actually applies in this situation. When the IRS finalized the information reporting requirements for employers and health plans, the IRS amended the penalty regulations under Sections 6721 and 6722 to include the information reporting requirements under Sections 6055/6056. Those two sections of the Code form the basis of the penalties on employers and health plans for not filing the required information reporting forms with the IRS and individuals.

However, in the information reporting final regulations, the IRS made no mention of the penalties on individuals under Code Section 6723 and did not amend the underlying regulations. This could be due to the fact that Code Section 6723 is generic in nature, and the IRS thought no amendments were needed because Code Section 6723 automatically applies. Alternatively, it could be due to the fact that the IRS does not intend on applying the $50 penalty in this case.

In the end, the SSN solicitation regulations do require the $50 penalty language to be included in a written solicitation, and therefore including such statement in the SSN solicitation letter is correct, regardless of whether the IRS in fact would apply the penalty. Further, if an employer or health plan excludes such statement from a SSN solicitation, the IRS could claim the SSN solicitation was not valid.