



January 25, 2010

Department of the Treasury  
Internal Revenue Service  
CC:PA:LPD:PR (REG-139255-08)  
Room 5205  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

***Re: REG-139255-08 (Information Reporting for Payments Made in Settlement of Payment Card and Third Party Network Transactions)***

Ladies and Gentlemen:

The American Financial Services Association (“AFSA”) appreciates the opportunity to comment on REG-139255-08, the notice of proposed rulemaking on information reporting for payments made in settlement of payment card and third party network transactions (“Proposed Rule”). We have comments on four on the Proposed Rule.

AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. The association encourages and maintains ethical business practices and supports financial education for consumers of all ages. AFSA members provide consumers with many kinds of credit, including payment cards, traditional installment loans, mortgages, and vehicle finance.

**I. PRIVATE LABEL CARD PROGRAM EXEMPTION**

AFSA respectfully requests that the Internal Revenue Service’s (“IRS”) implicit exclusion for all private label card programs be made explicit. Several AFSA members have large private label card programs and we believe that Congress did not intend for the rulemaking to cover private label cards. Additionally, the definition of “payment card” in the Proposed Rule seems to exclude private label cards, but, for reasons detailed below, a specific exemption is needed.

Many private label cards are issued only to consumers of a particular merchant, which would exempt them from the definition of “payment card” because they are not accepted by “a network of persons unrelated to each other, and to the issuer.” However, some merchants, including many small business owners, cannot afford to support a private label credit card program tailored specifically for their business. To meet the needs of these merchants, financial

services companies have developed private label card programs that operate within a particular industry or share certain characteristics. These cards are not designed to promote a particular merchant's brand specifically, since they serve multiple unrelated merchants, but may instead leverage unique aspects, traits or characteristics of the industry. Unlike traditional private label cards, the intellectual property associated with these programs (e.g. brand names, trademarks) is typically owned by the financial institution that issues the payment card associated with the program. Because the cardholder has the ability to use these industry cards at multiple, unrelated merchants, they appear to be covered under the Proposed Rule. However, since these types of programs are intended to serve a similar function as closed-loop, private label programs, should be explicitly, not implicitly, exempted from the reporting requirements under the final regulations.

Without an exception, a large operational burden will be unfairly placed on a small segment of card issuers and merchants. Often, private label cards provide credit to a segment of the population which may not otherwise have access to credit. An overly burdensome rule could limit the number of private label cards and harm small businesses (who may not otherwise be able to afford access to the benefits of a private label card program) and consumers.

## **II. THIRD PARTY PAYMENT NETWORK**

AFSA urges the IRS to refine the definition of "third party payment network" because the current definition appears to be broader than Congress intended.

AFSA is concerned that the Proposed Rule's definition of "third party payment network" could cause many financial institutions that offer payment acceptance products to their customers to be deemed "third party settlement organizations" subject to reporting obligations. For example, many commercial customers of financial institutions are merchants who provide goods or services to their customers. Many financial institutions offer products and services that allow those types of merchants to accept electronic checks from their customers. In such an arrangement, the financial institution typically agrees to settle electronic check transactions accepted by the merchant from the merchant's customer to an account the merchant has established at the financial institution. If this type of arrangement is deemed to constitute a "third party payment network," then AFSA is concerned that the financial institution would be deemed a "third party settlement organization" subject to reporting obligations, and AFSA does not believe this is what Congress or the IRS intended. Accordingly, AFSA suggests that the IRS revise the definition of third party payment network to explicitly provide that such an arrangement will not be deemed a "third party payment network" unless the providers of the goods or services sold through the network, as well as the prospective buyers, are both required to open accounts with the central organization to participate in the payment arrangement.

AFSA also asks that the IRS include in the Proposed Rule the statement in the Housing Assistance Tax Act of 2008 ("Act") that, "The term 'third party payment network' mean any agreement or arrangement but that which provides for the issuance of payment cards." Because the Proposed Regulation repeats only *part* of the Internal Revenue Code ("Code"), it might be incorrectly read to suggest that the part of the Code that is not included is questioned by the

regulation. Since the Explanation of Provisions includes that Code exclusion, then the repetition of the Code definition in the regulation should do likewise.

### **III. ELECTRONIC CONSENT PROCEDURES**

The IRS has asked for comments on whether the existing consent procedures should be modified. AFSA agrees with previous commenters, as mentioned in the Explanation of Provisions in the Proposed Rule, that the existing procedures for payee statements should be modified to eliminate the requirement for an affirmative consent to receive the payee statement under section 6050W electronically. We respectfully request that merchants already receiving business communications electronically be deemed to have consented to receive electronic payee statements under section 6050W.

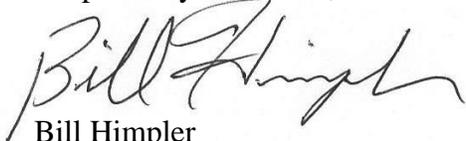
### **IV. TIN MATCHING PROGRAM**

AFSA commends the IRS for requiring the payee to furnish the payee's taxpayer identification number (TIN) to the payor. This will result in fewer withholding occurrences. To make reporting requirements even more practical and manageable, AFSA respectfully requests that the IRS allow a payment settlement entity to obtain and rely on a participating payee's TIN data obtained from a verifiable third-party source.

### **CONCLUSION**

AFSA appreciates the opportunity to comment on the Proposed Rule. Please feel free to contact me with any questions at 202-296-5544, ext. 616 or [bhimpler@afsamail.org](mailto:bhimpler@afsamail.org).

Respectfully submitted,



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American Financial Services Association