FOOD MARKETING INSTITUTE

September 29, 2010

***Submitted Electronically***

The Honorable Douglas H. Shulman
Commissioner of Internal Revenue
Internal Revenue Service
1111 Constitution Avenue, NW
Room 3000
Washington, DC 20224

**RE: Information Reporting Under the Amendments to Section 6041 for Payments to Corporations and Payments of Gross Proceeds and With Respect to Property**

**Notice 2010-51**

Dear Commissioner Shulman:

The Food Marketing Institute (FMI) appreciates the opportunity to respond to the Internal Revenue Service's (IRS) request for comments regarding guidance to be provided concerning new requirements with respect to the reporting of payments made in the course of the payor's trade or business. FMI looks forward to working with IRS to craft guidance which will minimize burdens and avoid duplicative reporting.

FMI is the national trade association that conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies – food retailers and wholesalers – in the United States and around the world. FMI's members in the United States operate approximately 26,000 retail food stores and 14,000 pharmacies. Their combined annual sales volume of $680 billion represents three-quarters of all retail food store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms, and independent supermarkets. Our international membership includes 200 companies from more than 50 countries. FMI's associate members include the supplier partners of its retail and wholesale members.

The IRS has requested comments on the expansion of 1099-MISC reporting beginning in 2012 under the changes in section 9006 of the Patient Protection and Affordable Care Act of 2010 ("PPACA"), which expands reporting to corporate payees and includes payments of "gross proceeds" and "amounts in consideration for property." The impact of this reporting change on the food industry, with its ever changing and large number of vendors, will result in an enormous—and very costly—new paperwork burden. The imposition of this burden on grocers is unlikely to have

2345 Crystal Drive, Suite 800 • Arlington, VA 22202-4801 • T 202.452.8444 • F 202.429.4519 • fmi@fmi.org • www.fmi.org

any significant impact on closing the tax gap for unreported income as tax compliance rates in the supermarket industry have been and continue to be very high.

We urge IRS to consider the following key issues:

- Limited Scope of Gross Proceeds: The term "gross proceeds" and "amounts in consideration for property" should be read together and limited in scope. This additional reporting should be limited to reporting purchases of goods/property that (i) are not otherwise expressly excluded from any Form 1099 series reporting and, and (ii) are not already subject to reporting on another form/Code provision.

- Expansive Payee Exceptions: No reporting should be required (i.e., reporting to these entities should be optional and any reporting failures should not result in reporting penalties or back-up withholding) for payments to the following types of corporations:

  a. publicly traded entities
  b. publicly regulated entities
  c. private companies with audited financial statements
  d. intercompany payments between affiliated groups
  e. tax-exempt organizations under Code section 501(a)
  f. foreign and international entities.

  Eligibility for exclusion can be (i) specified on Form W-9 or otherwise provided, or (ii) reasonably ascertainable from a review of the entity name, without the need for payor validation.

- Challenges for the IRS and the Industry: There a number of challenges and real-world concerns that accompany such a large systems change:

  a. Ability to Process on IRS/State System: The reporting changes will likely result in a billion returns annually that will need to be processed by the IRS on a historic processing system (FIRE). Moreover, this increased reporting obligation will also impact state reporting systems.

  b. Use of the Reporting Data: Even if the data can be properly reported and processed, it is unclear whether the new reporting obligations will provide meaningful data that will help close the tax gap. First, many corporations in the food industry are fiscal year taxpayers, but Form 1099-MISC only reports on a calendar year basis. Second, many payees are accrual basis taxpayers, but the Form 1099-MISC reports only on a cash basis. Third, the "gross proceeds" reporting will not tie to the payees' taxable income as this will not take into account the basis in the property (e.g., cost of goods sold). Fourth, for large corporations, unreported income is not identified as a cause of the corporate tax gap. Fifth, as much of the food industry is based on consumer transactions, which are not subject to reporting, the correlation from the Form 1099-MISC reporting of business transactions and taxable revenue will be difficult to ascertain.

c. TIN Matching: The anticipated large number of TIN mismatches for the expanding filings during the transition period, and developing a process to obtain the proper name and TIN (along with the proper address to be used) will be a very time consuming, costly and burdensome process.

d. Back-Up Withholding: With the anticipated difficulties of the TIN matching process, and the resulting "B" notices and related potential penalties and interest for failure to back-up withhold, this process will impose unnecessary burdens on the food industry in building new processes to gather the TIN information and implement back-up withholding when a proper TIN cannot be obtained. Implementing back-up withholding is even more difficult when paying for purchases of goods and cash payments of non-recurring expenses that may be paid outside the accounts payable process. Importantly, the section 3402(t) proposed regulations exempt payments of less than $10,000 from withholding because of the burdens of withholding. Therefore, a similar exception from back-up withholding for small payments (e.g., $600 reporting threshold) is appropriate for Form 1099-MISC.

- Small Payors: The reporting burdens that will be imposed on the food industry are the most troubling for small employers that do not have the necessary resources or skills, particularly in the current economy, to comply with the expanded reporting provisions. Accordingly, additional relief or exceptions for small purchases are welcomed.

- Transition Relief: The TIN matching program should be revised to facilitate corporate reporting and "soft" B notices (with no obligation to back-up withhold), and a good faith standard for reporting and withholding penalties should be used for a reasonable transition period through at least 2013.

FMI appreciates the opportunity to comment on this important matter.

Sincerely,

Erik R. Lieberman
Regulatory Counsel