



A Closing Agent's Guide to the 1099-S

Presented by:
LEGAL EDUCATION DEPARTMENT
of
Attorneys' Title Fund Services, Inc.

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Table of Contents		PDF Page Number
1.	PowerPoint Slides.	5
2.	Definitions.	36
3.	“The Who, What and When of 1099-S Reporting,” 41 <i>Fund Concept</i> 1 (Jan. 2009)	37
4.	“1099-S Reporting: Practical Tips for Frequently Encountered Situations,” 42 <i>Fund Concept</i> 105 (Dec. 2010)	43
5.	“The Catch-22 of Foreign Sellers and the Form 1099-S,” 49 <i>Fund Concept</i> 105 (Sep. 2017)	46
Internal Revenue Code and Regulations		
6.	26 U.S.C.A. Sec. 6045. Return of brokers.	48
7.	26 C.F.R. Sec. 1.6045-4. Information reporting on real estate transactions with date of closing on or after January 1, 1991.	55
8.	26 U.S.C.A. Sec. 121. Exclusion of gain from sale of principal residence.	70
9.	26 C.F.R. Sec. 1.6045-5. Information reporting on payments to attorneys.	78
Cases		
10.	Hacker v. Hacker, 2012 WL 6604712 (Ct. of App., Michigan 2012)	84
11.	Comm. Bk. Bergen Co. v. Borough of Maywood, 2018 WL 4288659 (T.C., New Jersey 2018)	88
12.	Pitcher v. Waldman, 2014 WL 1392551 (S.D. Ohio 2014)	93
Miscellaneous		
13.	Certification for No Information Reporting on the Sale or Exchange of a Principal Residence. Presenter sample.	101

14.	Accreditation materials.	102
Links to Internal Revenue Service Forms and Publications		
	2022 Instructions for Form 1099-S Proceeds From Real Estate Transactions. https://www.irs.gov/pub/irs-pdf/i1099s.pdf	
	Form 1099-S (2022) Proceeds From Real Estate Transactions. https://www.irs.gov/pub/irs-pdf/f1099s.pdf	
	2022 General Instructions for Certain Information Returns. https://www.irs.gov/pub/irs-pdf/i1099gi.pdf	
	2022 Instructions for Forms 1099-MISC and 1099-NEC Miscellaneous Income and Nonemployee Compensation. https://www.irs.gov/pub/irs-pdf/i1099mec.pdf	
	Form 1099-MISC (2022) Miscellaneous Income https://www.irs.gov/pub/irs-pdf/f1099misc.pdf	
	Form 1099-NEC (2022) Nonemployee Compensation https://www.irs.gov/pub/irs-pdf/f1099nec.pdf	
	Instructions for the Requester of Form W-9 Request for Taxpayer Identification Number and Certification (Rev. October 2018) https://www.irs.gov/pub/irs-pdf/iw9.pdf	
	Form W-9 Request for Taxpayer Identification Number and Certification (Rev. October 2018) https://www.irs.gov/pub/irs-pdf/fw9.pdf	
	Instructions for Form W-8BEN Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals) (Rev. October 2021) https://www.irs.gov/pub/irs-pdf/iw8ben.pdf	
	Form W-8BEN Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals) (Rev. October 2021) https://www.irs.gov/pub/irs-pdf/fw8ben.pdf	
	Instructions for Form W-8BEN-E Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities) (Rev. October 2021) https://www.irs.gov/pub/irs-pdf/iw8bene.pdf	
	Form W-8BEN-E Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities) (Rev. October 2021) https://www.irs.gov/pub/irs-pdf/fw8bene.pdf	

A Closing Agent's Guide to the 1099-S



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Resources

- Instructions for Form 1099-S
- General Instructions for Certain Information Returns
- I.R.C. Sec. 6045 Returns of brokers
- Sec. 1.6045-4 Information reporting on real estate transactions with dates of closing on/after January 1, 1991
- I.R.C. Sec. 121 Exclusion of gain from sale of principal residence
- Certification for no information reporting on sale or exchange of a principal residence

2021
Instructions for Form 1099-S
Proceeds From Real Estate Transactions

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments
For the latest information about developments related to Form 1099-S and its instructions, such as legislation enacted or that may be enacted, go to www.irs.gov/form1099.

Reminders
In addition to these specific instructions, you should also read the 2021 General Instructions for Certain Information Returns. Those general instructions include information about the following topics:

- Who files this form.
- When and where to file.
- Electronic reporting.
- Corrected and void returns.
- Backup withholding.
- Taxpayer identification numbers (TINs).
- Penalties.
- Other general topics.

You can get the general instructions at www.irs.gov/efile or www.irs.gov/form1099.

Online PDF filable Forms 1099-S and 1099-B
The Form 1099-S, Proceeds From Real Estate Transactions, is report the sale or exchange of real estate. You can complete these reports online for furnishing statements to recipients and for retaining in your own files.

Specific Instructions
The Form 1099-S, Proceeds From Real Estate Transactions, is report the sale or exchange of real estate. You can complete these reports online for furnishing statements to recipients and for retaining in your own files.

Reportable Real Estate
Generally, you are required to report a transaction that results in a sale or exchange of real estate for which you are the seller or transferor. This includes a sale or exchange of real estate for which you are the seller or transferor, even if the transaction is not a sale or exchange for which you are the seller or transferor. For example, a sale of real estate may be a reportable sale even though the transferor may be entitled to exclude the gain under section 121. But see **Exclusions** below. Also, a transfer to a corporation that qualifies for nonrecognition of gain under section 361 is a reportable exchange. In addition, a transfer under a first contract is reportable in the year in which the parties enter into the contract.

Ownership interest. An ownership interest includes fee simple interests, life estates, reversions, remainders, and joint tenancy interests. It also includes any previously owned right to possession or use for all or part of any particular year (for example, a leasehold, easement, or time share). If such rights have a remaining term of at least 30 years, including any period for which the holder may renew such rights, determined on the date of closing. For example, a preexisting leasehold on a building with an original term of 99 years and a remaining term of 25 years on the closing date is an ownership interest. However, if the remaining term is 10 years, it is not an ownership interest. An ownership interest does not include any option to acquire real estate. An ownership interest also includes any contractual right to a sale or exchange of real estate for a lump-sum payment that is fixed and not contingent.

Incidental co-ownership. A sale of real estate under a deed or instrument of conveyance, occupation, or consideration is generally a reportable transaction.

Transfer. Report on Form 1099-S payments of broker's fees, commissions, and other fees, including those payable under section 1224. For more information, see **Exclusions** below.

Exclusions.
The following is a list of transactions that are not reportable. However, you may choose to report them if you do. You are subject to the rules in these instructions.

1. Sale or exchange of a residence (including stock in a corporation) involving proceeds for \$250,000 or less if you received an acceptable written assurance (certification) from the seller that such residence is the principal residence within the meaning of section 121 of the seller and the full amount of the gain on such sale is excludable from gross income under section 121. If the certification includes an assurance that the seller is married, the certifying statement must be signed by both parties. If the certification includes an assurance that the seller is a single individual, the certifying statement must be signed by the seller. The Form 1099-S for any sale that also includes the residence must be signed by the seller. The seller must include in the certification that there has been no period of unqualified use for that term as defined in section 1224(c)(2). The seller must also include a statement that the seller is a single individual, or if married, that the full amount of the gain from the sale is excludable under section 121. This certification must be signed by each seller under penalty of perjury.

A sample certification form can be found in **Form 1099-S, 2021, at 1099-S-10A**, available at www.irs.gov/efile.

The sample certification does not include an assurance that there has been no period of unqualified use and an assurance that the full amount of the gain from the sale is excludable under section 121. The seller must include the information as explained in the instructions.

You may get the information any time on or before January 31 of the year after the year of sale. You may rely on the certification and not file or transfer Form 1099-S unless you have that any assurance on the certification is incorrect.

Rev 34, 2020. Cat. No. 27080X

Information Return Reporting Categories

- General Reporting
 - 1099-MISC, Miscellaneous Information
 - 1099-S, Proceeds from Real Estate Transactions
- Education Reporting
- Health Insurance Reporting
- Transfers of Stock Reporting
- Retirement Reporting



3

Form 1099-S

- Sale or exchange for money, indebtedness, or services
- Any present or future ownership interest in “reportable real estate”
- ***For 10 or more filings, must file electronically by April 1, 2024**

What to Report	Responsible Party for this Reporting	Form & Instructions	Amounts to Report	Due to IRS	Due to Recipient
Gross proceeds from the sale or exchange of real estate	(see specific instructions)	1099-S, Proceeds from Real Estate Transactions (Instructions)	Generally, \$600 or more	February 28*	February 15
Timber royalties	(see specific instructions)	1099-S, Proceeds from Real Estate Transactions (Instructions)	\$10 or more	February 28*	January 31



4

IRS Guidelines

- Info reporting increases voluntary compliance and improves collections
- Person engaged in trade or business must file
- File electronically if filing **10** or more (previously 250)
- FIRE or IRIS platforms (need Transmitter Control Code)
- Form 1096 (Annual Summary and Transmittal of U.S. Information Returns)
 - To accompany paper filings
- Furnish statements to parties (income recipients)

5



IRS Form 1099-S



Proceeds from Real Estate Transactions

- Sale or exchange
- Present or future ownership interest
- Certain types of property
- Filed by responsible person
- Calendar year following settlement

7575 ☐ VOID ☐ CORRECTED

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number

1 Date of closing

OMB No. 1545-0047

Form **1099-S**

2 Gross proceeds

(Rev. January 2022)

3 Address (including city, state, and ZIP code) or legal description

4 Check here if the transferor received or will receive property in services as part of the consideration ☐

5 Check here if the transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) ☐

6 Buyer's part of real estate tax

Form **1099-S** (Rev. 1-2022) Cat. No. 64252E www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

Proceeds From Real Estate Transactions

Copy A
For Internal Revenue Service Center
File with Form 1096.
For Privacy Act and Paperwork Reduction Act notices, see the current General Instructions for Certain Information Returns.



7

Sale or Exchange

- Money, indebtedness, or services
- Any transaction treated as such for income tax purposes (even if not currently taxable)
- Transfer of principal residence even if entitled to defer recognition (section 1034 rollover) or to an exclusion (section 121)
- Transfer to corporation that qualifies for nonrecognition of gain
- Transfer under land contract (year of contract)



8

Present or Future Ownership Interest

- Fee simple, life estates, reversions, remainders, and perpetual easements (but not options to acquire)
- Rights to possession or use if remaining term of at least 30 years (including renewal options)
- Leaseholds, easements, or timeshares
- Involuntary conversions
- Contractual interest in standing timber



9

Certain Types of Property

- Improved or unimproved land including air space
- Inherently permanent structures (residential, commercial or industrial)
- Condominium units
- Stock in cooperative housing corporation (co-op)
- Non-contingent interest in standing timber



10

Excluded Ownership Interests

- Transfers of types of property excluded from reporting:
 - Surface/subsurface natural resources or crops (except timber)
 - Even if not severed from the land
- Burial plot or vault
- Manufactured housing not affixed to a foundation
 - Unless related to sale or exchange of reportable real estate

11



The Fund

Exceptions



The Fund

Transactions Not Reportable

- Qualified exception for principal residence
- Transfer by
 - Corporation
 - Governmental unit (including foreign government) or
 - International organization
- Transfer by exempt volume transferor
- Bequest; gift; or financing unrelated to acquisition of real estate
 - (not considered “sale or exchange”)
- Full or partial debt satisfaction (foreclosure, deed in lieu, or abandonment)
- De minimis transfer (less than \$600)



13

Principal Residence Exception

- Sale price of \$250,000 or less (\$500,000 if married) and seller(s) certifies:
 - Owned and used as principal residence for periods of
 - 2 years or more during
 - Last 5 years
- No sale or exchange of principal residence within 2 years
- No portion of residence used for business or rental purposes after May 6, 1997
- No “nonqualified use” since Dec. 31, 2008
- Did not acquire in 1031 exchange within previous 5 years
- Full amount of gain excludable under Sec. 121 I.R.C.



14

Non-Qualified Use

- Property not principal residence of taxpayer, taxpayer's spouse or former spouse for any period preceding January 1, 2009, except:
 - Any portion of previous 5 years after last date used as principal residence
 - Any period (not exceeding 10 years) taxpayer or spouse serving on "qualified official extended duty"
 - Uniformed services, foreign service, intelligence community
 - Temporary absence (not exceeding 2 years) due to change of employment, health conditions, or other unforeseen circumstances as specified by Secretary of the Treasury

15



Spousal Interests

- Joint return required to qualify for \$500,000 exclusion; both provide valid certifications
- Un-remarried transferor may use ownership and use periods of deceased spouse
- Transferee incident to divorce may use ownership periods of transferor spouse
 - (except if transferor is nonresident alien)
- Use by spouse or former spouse pursuant to divorce or separation agreement accrues to satisfy residential use period of owner spouse



16



Details

CERTIFICATION FOR NO INFORMATION REPORTING ON THE SALE OR EXCHANGE OF A PRINCIPAL RESIDENCE

This form may be completed by the seller of a principal residence. This information is necessary to determine whether the sale or exchange should be reported to the seller, and to the Internal Revenue Service on Form 1099-S, Proceeds From Real Estate Transactions. If the seller properly completes Parts I and III and makes a "true" response to assurances (1) through (7) in Part II (or a "not applicable" response to assurance (7)), no information reporting to the seller or to the Service will be required for that seller. The term "seller" includes each owner of the residence that is sold or exchanged. Thus, if a residence has more than one owner, a real estate reporting person must either obtain a certification from each owner (whether married or not) or file an information return and furnish a payee statement for any owner that does not make the certification.

Part I. Seller Information

1. Name: _____
2. Address or legal description (including city, state, and zip code) of residence being sold or exchanged: _____
3. Taxpayer Identification Number (TIN): _____

Part II. Seller Assurances

Check "true" or "false" for assurances 1 through 6, and "true," "false," or "not applicable" for assurance (7):

1. I owned and used the residence as my principal residence (as defined under Section 121 of the Internal Revenue Code) for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and there has been no period of nonqualified use (as that term is defined in section 121(b)(5)(C)) after December 31, 2008
2. I have not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence.
3. I (or my spouse or former spouse if I was married at any time during the period beginning May 6, 1997, and ending today) have not used any portion of the residence for business or rental purposes after May 6, 1997.
4. The full amount of the gain on such sale or exchange is excludable from gross income under section 121.
5. At least one of the following three statements applies:
The sale or exchange is of the entire residence for \$250,000 or less; or
I am married, the sale or exchange is of the entire residence for \$500,000 or less, and the gain on the sale or exchange of the entire residence is \$250,000 or less; or
I am married, the sale or exchange is of the entire residence for \$500,000 or less, and (a) I intend to file a joint return for the year of the sale or exchange, (b) my spouse also used the residence as his or her principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and (c) my spouse also has not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the principal residence.
6. During the 5-year period ending on the date of the sale or exchange of the residence, I did not acquire the residence in an exchange to which Section 1031 of the Internal Revenue Code applied.
7. If my basis in the residence is determined by reference to the basis in the hands of the person who acquired the residence in an exchange to which Section 1031 of the Internal Revenue Code applied, the exchange to which Section 1031 applied occurred more than 5 years prior to the date I sold or exchanged the residence.

Part III. Seller Certification

Under penalties of perjury, I certify that all the above information is true as of the end of the day of the sale or exchange.

Signature of Seller

Date

Principal Residence Certification

Introduction

CERTIFICATION FOR NO INFORMATION REPORTING ON THE SALE OR EXCHANGE OF A PRINCIPAL RESIDENCE

This form may be completed by the seller of a principal residence. This information is necessary to determine whether the sale or exchange should be reported to the seller, and to the Internal Revenue Service on Form 1099-S, Proceeds From Real Estate Transactions. If the seller properly completes Parts I and III and makes a "true" response to assurances (1) through (7) in Part II (or a "not applicable" response to assurance (7)), no information reporting to the seller or to the Service will be required for that seller. The term "seller" includes each owner of the residence that is sold or exchanged. Thus, if a residence has more than one owner, a real estate reporting person must either obtain a certification from each owner (whether married or not) or file an information return and furnish a payee statement for any owner that does not make the certification.

Principal Residence Certification

Introduction

Part I. Seller Information

1. Name: _____
2. Address or legal description (including city, state, and zip code) of residence being sold or exchanged:

3. Taxpayer Identification Number (TIN): _____

19



Principal Residence Certification

Part II. Seller Assurances

1. I owned and used the residence as my principal residence (as defined under Section 121 of the Internal Revenue Code) for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and there has been no period of nonqualified use (as that term is defined in section 121(b)(5)(C)) after December 31, 2008
2. I have not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence.
3. I (or my spouse or former spouse if I was married at any time during the period beginning May 6, 1997, and ending today) have not used any portion of the residence for business or rental purposes after May 6, 1997.
4. The full amount of the gain on such sale or exchange is excludable from gross income under section 121.

20



Principal Residence Certification

Part II. Seller Assurances

5. At least one of the following three statements applies:

The sale or exchange is of the entire residence for \$250,000 or less; or

I am married, the sale or exchange is of the entire residence for \$500,000 or less, and the gain on the sale or exchange of the entire residence is \$250,000 or less; or

I am married, the sale or exchange is of the entire residence for \$500,000 or less, and (a) I intend to file a joint return for the year of the sale or exchange, (b) my spouse also used the residence as his or her principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and (c) my spouse also has not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the principal residence.

21



Principal Residence Certification

Part II. Seller Assurances

6. During the 5-year period ending on the date of the sale or exchange of the residence, I did not acquire the residence in an exchange to which Section 1031 of the Internal Revenue Code applied.
7. If my basis in the residence is determined by reference to the basis in the hands of the person who acquired the residence in an exchange to which Section 1031 of the Internal Revenue Code applied, the exchange to which Section 1031 applied occurred more than 5 years prior to the date I sold or exchanged the residence.

Part III. Seller Certification

Under penalties of perjury, I certify that all the above information is true as of the end of the day of the sale or exchange.

Signature of Seller

Date

22



More Exceptions



Exempt Transferor Exception

- Corporation
- Name contains unambiguous expression of corporate status
 - Incorporated; Inc.; Corporation; Corp; or P.C.; (but not Company or Co., unless an “insurance company,” “reinsurance company,” or “assurance company”); or
- Association, joint-stock company, publicly-traded partnership; or
- Transfer or loan documents clearly indicate corporate status
- Election to be treated as corporation not sufficient
 - (e.g., LLC not exempt)

Exempt Transferor Exception (cont'd)

- Governmental unit
- U.S., States, D.C., U.S. possessions; and
 - Their political subdivisions and wholly owned agencies or instrumentalities
- Foreign governments; and
 - Their political subdivisions and wholly owned agencies or instrumentalities
- Public international organizations under the International Organizations Immunities Act; and
 - Their wholly owned agencies or instrumentalities

25



Exempt Transferor Exception (cont'd)

- Volume transferor
 - Did or may sell or exchange at least 25 units to 25 or more transferees in a calendar year
 - In the ordinary course of business
- Provides "penalties of perjury certification"
 - Format in 26 C.F.R. Sec. 1.6045-4
 - Received at or before closing
- May file 1099-S report even if qualifying certificate received

26



Responsible Person



1099-S Filing Responsibility

- Person who closed transaction
 - Settlement agent identified on Closing Disclosure
 - Person preparing closing disclosure (e.g., settlement statement)
 - Transferee's primary attorney
 - Transferor's primary attorney
 - Title or escrow company disbursing closing proceeds
- If none, then
 - Mortgage lender (primary source of new funds; or first in priority)
 - Transferor's real estate broker
 - Transferee's real estate broker
 - Transferee (first listed on deed)



Filing Responsibility – Designation

- Written agreement signed and dated by designee (and any others who sign agreement)
 - Designee is settlement agent, preparer, attorney, escrow disbursing agent, or mortgage lender
 - NOT RE broker, transferee, or person unaffiliated w/ transaction)
 - Designee identified by name and address
 - Names and addresses of transferor(s)/transferee(s)
 - Property Identified by address or otherwise
 - Kept by signer(s) for 4 years and available for inspection by IRS and any party not signing agreement
 - May be an attachment to closing statement

29



Duties



Logistics of 1099-S Reporting

- Gather information
- Status: U.S. or foreign person
 - Form W-9, Request for Taxpayer Identification Number and Certification
 - Forms W-8BEN / W-8BEN-E (Certificates of Foreign Status)
- Allocation statement
- Settlement statement
- Exemption certificates



31

IRS Form W-9

- Request for Taxpayer ID Number and Certification
- U.S. person or resident alien
 - U.S. partnership, corporation, company; association
 - Estate (other than foreign estate)
 - Domestic trust
- Certifies, under penalty of perjury as to
 - TIN
 - Status as U.S. person
- Civil (\$50) and criminal penalties
- Withholding statement may be deleted

Form W-9
Rev. October 2018
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Go to www.irs.gov/FormW9 for instructions and the latest information.

1 Name (as shown on your income tax return). Name is required on this line. Do not leave this line blank.

2 Business name(s) (partnered or entity name, if different from above)

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following (unless otherwise noted).

Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate ☐

4 Exemptions (check only if you are exempt from FATCA reporting. Do not check if you are not exempt.)

Exemption from FATCA reporting (check if any) ☐

5 If you are a U.S. person, enter the tax classification (S-C corporation, S-C corporation, Partnership, etc.)

6 Address (number, street, apt. or box no.) (see instructions)

7 City, state, and ZIP code

8 Requester's name and address (optional)

9 (If account number(s) here (optional))

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, line 1. For other entities, enter your employer identification number (EIN). If you do not have a number, see How to get a TIN, later.

10 Social security number

11 Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest and dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and

3. I am a U.S. person (other than a foreign partnership, S-C corporation, or other U.S. person defined below); and

4. The FATCA rules do not require me to file an information return with the IRS.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contribution to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign this certification, but you must provide your correct TIN. See the instructions for Part I, line 1.

Sign Here Signature of U.S. person Date

32

IRS Form W-8BEN

- Certification of Foreign Status of Beneficial Owner (Individuals)
- Entity uses W-8BEN-E
- Typically used in connection with withholding requirements
- May instead request TIN by separate solicitation
- The Catch-22 of Foreign Sellers and the Form 1099-S



THE CATCH-22 OF FOREIGN SELLERS AND THE FORM 1099-S

BY LINDA MONACO, FUND LEGAL EDUCATION ATTORNEY

Transactions involving a foreign seller can bring complications for the settlement agent, but it does not need to be that way. In order to make the closing process go more smoothly, determine if the transaction is subject to Foreign Investment in Real Property Tax Act (FIRPTA) withholding. If so, withhold the proper amount, usually 15 percent, fill in the simple Internal Revenue Service (IRS) Forms 8288 and 8288-A, and submit the forms and funds to the IRS within 20 days of closing. Transactions which are subject to FIRPTA withholding still require the issuance of an IRS Form 1099-S to the seller and reporting to the IRS.

The IRS released a new Form 1099-S earlier this year. The new form has added a numbered "checkbox" for foreign sellers. The checkbox, in line number five, states "[c]heck here if the transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust)." The Form 1099-S consists of three parts, Copy A for the IRS which is filed with the report, Copy B for the transferor, and Copy C for the filer.

Form 1099-S requires the taxpayer identification number (TIN). Sometimes this is not a problem; however, many foreign sellers do not have a TIN. Since 2003, all foreign buyers have been required to obtain a TIN; however, many still do not apply for it. Additionally, reporting a Form 1099-S without a TIN can subject the reporter (i.e., the settlement agent) to a minimum penalty of \$50 per form. Since one cannot report information that does not exist, the IRS

33

Request for ITIN – Add to Closing Document

Instructions for Transferor

For sales or exchanges of certain real estate, the person responsible for closing a real estate transaction must report the real estate proceeds to the IRS and must furnish this statement to you. To determine if you have to report the sale or exchange of your main home on your tax return, see the instructions for Schedule D (Form 1040 or 1040-SR). If the real estate was not your main home, report the transaction on Form 4797, Form 6252, and/or the Schedule D for the appropriate income tax form. If box 4 is checked and you received or will receive like-kind property, you must file Form 8824.

Federal mortgage subsidy. You may have to recapture (pay back) all or part of a federal mortgage subsidy if all the following apply.

- You received a loan provided from the proceeds of a qualified mortgage bond or you received a mortgage credit certificate.
- Your original mortgage loan was provided after 1990.
- You sold or disposed of your home at a gain during the first 9 years after you received the federal mortgage subsidy.
- Your income for the year you sold or disposed of your home was over a specified amount.

This will increase your tax. See Form 8828 and Pub. 523. **Transferor's taxpayer identification number (TIN).** For your protection, this form may show only the last four digits of your TIN (social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN)). However, the issuer has reported your complete TIN to the IRS.

Account number. May show an account or other unique number the filer assigned to distinguish your account.

- Box 1.** Shows the date of closing.
- Box 2.** Shows the gross proceeds from a real estate transaction, generally the sales price. Gross proceeds include cash and notes payable to you, notes assumed by the transferee (buyer), and any notes paid off at settlement. Box 2 does not include the value of other property or services you received or will receive. See Box 4.
- Box 3.** Shows the address or legal description of the property transferred.
- Box 4.** If checked, shows that you received or will receive services or property (other than cash or notes) as part of the consideration for the property transferred. The value of any services or property (other than cash or notes) is not included in box 2.
- Box 5.** If checked, shows that you are a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust).
- Box 6.** Shows certain real estate tax on a residence charged to the buyer at settlement. If you have already paid the real estate tax for the period that includes the sale date, subtract the amount in box 6 from the amount already paid to determine your deductible real estate tax. But if you have already deducted the real estate tax in a prior year, generally report this amount as income on the "Other income" line of Schedule 1 (Form 1040 or 1040-SR). For more information, see Pub. 523, Pub. 525, and Pub. 530.

YOU ARE REQUIRED BY LAW to provide your correct taxpayer name and identification number for the transaction described above to Richard P. Bruce, Esq.,

If you do not provide your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.

UNDER PENALTIES OF PERJURY, I certify that the number shown on this statement is my correct taxpayer identification number. I acknowledge that I have received a copy of this statement.

Seller

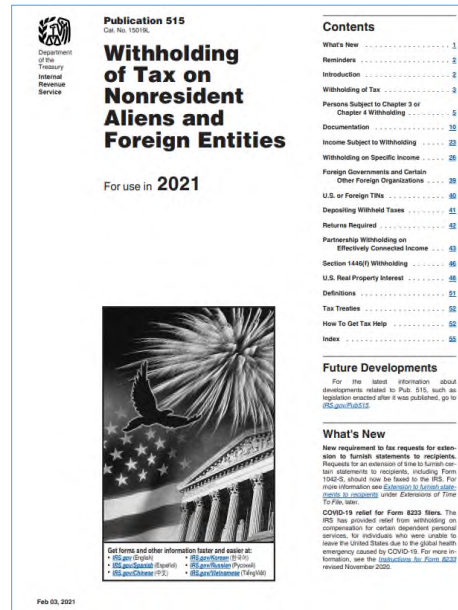
Seller



34

Other Duties of the Filer

- Foreign transferors
- FIRPTA withholding responsibility (See Pub. 515)
- Multiple transferors
- Separate 1099-S for each
- Allocate gross proceeds
- Special rules for married couples in title



35

Multiple Transferors

Allocation of gross proceeds

- Request at or before closing (need not be in writing)
 - Reasonable effort to contact all transferors
 - Allocate according to unchallenged response
 - No additional effort once complete allocation received
 - If no allocation or incomplete allocation, report entire unallocated amount to each unresponsive transferor
 - If conflicting allocations report entire gross proceeds on each 1099-S report



36

Allocation Examples for Multiple Transferors

A, B, C, and D are unrelated transferors

- A & B separately inform filer that each have 25% interests
- Make no representation about other interests

1099-S for A & B will each reflect 25% gross proceeds

1099-S for C & D will each reflect 50% gross proceeds (incomplete allocation received)

Same ownership scenario

- But this time the filer receives allocation responses totaling 150%

1099-S for A, B, C & D will each reflect 100% gross proceeds (conflicting allocations)

37



Nominee Return Requirements

- Recipient of Form 1099-S for amount belonging to another
 - Original payer ("Filer") not required to correct
 - Nominee identifies correct recipients on new forms 1099-S
 - Accurate allocation
 - Nominee is also new recipient even if \$0
 - Copy B to each
 - Submit Copy A with Form 1096 (paper copy filings)
- Does not apply to amounts owed by spouse



38

Married Couples & Partnerships

- One form for married couples if
 - Tenancy in common
 - Joint tenancy
 - Tenancy by the entireties or
 - Community property
- Report either as transferor and file one 1099-S
- No need to request allocation
- If allocation given, file separate reports using allocation formula provided
- One form for partnership (never file separate forms for each partner)

39



Settlement Statement – Necessary Information

- Date of closing
- Gross proceeds (sale price)
- Property address
- Other consideration (property or services)
- Real estate taxes paid in advance by buyer
- Transferor's name and (preferably new) address
- Filer information

This form is a statement of real loan terms and closing costs. Compare this document with your loan estimate.

Closing Disclosure		Transaction Information		Loan Information	
Closing Information		Transaction Information		Loan Information	
Sale Number	00000000	Buyer	Barbara Murphy	Loan term	30 Years
Closing Date	03/17/2015	Seller	1 Southern Place Orlando, Florida 32809	Purpose	Purchase
Settlement Date	03/17/2015	Settlement Agent	Richard H. Bruce, Esq. 12200 1 Southern Place Orlando, Florida 32826	Product	Fixed Rate
File #	022 Dene	Refin	Payor R. Bruce and Linda Dene 4228 Church Street Chicago, Illinois 60643	Loan Type	<input checked="" type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> MIC #
Property	1 Southern Place Orlando, Florida 32826	Lender	Bank of Florida	Loan #	14883
Sale Price	\$225,000.00				
Loan Terms		Can this amount increase after closing?			
Loan Amount	\$180,000	NO			
Interest Rate	3.5%	NO			
Monthly Principal & Interest <small>(See Projected Payments below for your Estimated Total Monthly Payment)</small>	\$0.00	NO			
Does the loan have these features?					
Prepayment Penalty	NO				
Ballroom Payment	NO				
Projected Payments		Years 1 -			
Payment Calculation	Principal & Interest				
Mortgage Insurance	Estimated Expense	+ 0			
Amount can increase over time	Estimated Total Monthly Payment	+ 0			
Estimated Total Monthly Payment		\$0			
Estimated Taxes, Insurance & Assessments <small>Amount can increase over time. See page 4 for details.</small>	\$0.00 monthly	This estimate includes: <input type="checkbox"/> Property Taxes <input type="checkbox"/> Homeowner's Insurance <input type="checkbox"/> Other <small>See Escrow Account on page 4 for details. You must pay for other property costs separately.</small>			
Costs at Closing		Is it new?			
Closing Costs	\$2,371.40	<input type="checkbox"/> Paying Taxes <input type="checkbox"/> Homeowner's Insurance <input type="checkbox"/> Other <small>See Escrow Account on page 4 for details. You must pay for other property costs separately.</small>			
Cash to Close	\$2,371.40	Includes \$1,122.50 in Loan Costs + \$1,248.90 in Other Costs - \$0 in Lender Credits. See page 3 for details.			
Includes Closing Costs. See Calculating Cash to Close on page 3 for details.					

CLOSING DISCLOSURE DoubleCheck PAGE 1 OF 5 - LOAN ID # 14883



40

Settlement Statement – Form 1099-MISC

- Closing agent pays bills on behalf of others
- Not in buyer/seller's "ordinary course of business"
- No discretionary authority over who and what to pay
- Broker must report payment made to agent even if check comes from closing agent

9595		<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-0047	
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Name		Form 1099-MISC (Rev. January 2002)	
		2 Royalties		For calendar year 20	
		3 Other income		4 Federal income tax withheld	
PAYER'S TIN		5 Payer's TIN		5 Medical and health care payments	
RECIPIENT'S name		7 Payer made direct sale to recipient for resale		8 Substantive payments in lieu of dividends or interest	
Street address (including apt. no.)		9 Gross proceeds		10 Gross proceeds paid to an attorney	
City or town, state or province, country, and ZIP or foreign postal code		11 Payer purchased for resale		12 Section 455A (discovery)	
		13 FATCA filing requirement		14 Section 455A (discovery)	
Account number (see instructions)		15 State tax withheld		16 State income	
		17 State/territory's state tax		18 State income	

Form 1099-MISC (Rev. 1-2002) OMB No. 1545-0047 www.irs.gov/Form1099-MISC Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page



41

Details!

9595		<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-0047	
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Date of closing		Form 1099-S (Rev. January 2002)	
		2 Gross proceeds		For calendar year 20	
PAYER'S TIN		3 Address (including city, state, and ZIP code) or legal description		Copy B For Transferee	
TRANSFEROR'S name		4 Transferee received or will receive property or services as part of the consideration (if checked)		This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.	
Street address (including apt. no.)		5 If checked, transferee is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust)			
City or town, state or province, country, and ZIP or foreign postal code		6 Buyer's part of real estate tax			
Account number (see instructions)		7 State tax withheld		8 State income	

Form 1099-S (Rev. 1-2002) (Keep for your records) www.irs.gov/Form1099-S Department of the Treasury - Internal Revenue Service



Settlement Statement – Form 1099-S

Closing Disclosure			This form is a statement of final loan terms and closing costs. Compare this document with your loan estimate.		
Closing Information Date Issued 00/00/0000 Closing Date 03/17/2015 Disbursement Date 03/17/2015 Settlement Agent Richard P. Bruce, Esq. File # CD Demo Property 1 Southern Place Orlando, Florida 32828 Sales Price \$225,000.00		Transaction Information Borrower Barbara Martin 1 Southern Place Orlando, Florida 32828 Seller Peter R. Glenn and Linda Glenn 4726 Church Street Chicago, Illinois 60643 Lender Bank of Florida		Loan Information Loan term 30 Years Purpose Purchase Product Fixed Rate Loan Type <input checked="" type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> Loan ID # 14553 MIC #	
BORROWER'S TRANSACTION K. Due from Borrower at Closing \$227,371.40 01. Sale Price of Property \$225,000.00 02. Sale Price of Any Personal Property Included in Sale 03. Closing Costs Paid at Closing (L) 04. Adjustments 05. 06. 07. Adjustments for Items Paid by Seller in Advance 08. City/Town Taxes to 09. County Taxes to 10. Assessments to			SELLER'S TRANSACTION M. Due to Seller at Closing \$225,000.00 01. Sale Price of Property \$225,000.00 02. Sale Price of Any Personal Property Included in Sale 03. Adjustments 04. 05. 06. 07. Adjustments for Items Paid by Seller in Advance 08. City/Town Taxes to 09. County Taxes to 10. Assessments to		

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	OMB No. 1545-0097	Proceeds From Real Estate Transactions
			Form 1099-S (Rev. January 2022) For calendar year 20__	
FILER'S TIN		TRANSFEROR'S TIN	3 Address (including city, state, and ZIP code) or legal description	Copy B For Transferor This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.
TRANSFEROR'S name		4 Transferor received or will receive property or services as part of the consideration (if checked) <input type="checkbox"/>		
Street address (including apt. no.)		5 If checked, transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) <input type="checkbox"/>		
City or town, state or province, country, and ZIP or foreign postal code		6 Buyer's part of real estate tax		
Account number (see instructions)		\$		
Form 1099-S (Rev. 1-2022) (keep for your records) www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service				



43

Form 1099-S Filer Information

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	OMB No. 1545-0097	Proceeds From Real Estate Transactions
Richard P. Bruce, Esq. 5955 T.G. Lee Blvd., Orlando, FL 32828 407-555-5000			Form 1099-S (Rev. January 2022) For calendar year 20__	
FILER'S TIN	TRANSFEROR'S TIN	3 Address (including city, state, and ZIP code) or legal description		Copy B For Transferor This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.
59-2278736		4 Transferor received or will receive property or services as part of the consideration (if checked) <input type="checkbox"/>		
TRANSFEROR'S name		5 If checked, transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) <input type="checkbox"/>		
Street address (including apt. no.)		6 Buyer's part of real estate tax		
City or town, state or province, country, and ZIP or foreign postal code		\$		
Account number (see instructions)		21-00427		
Form 1099-S (Rev. 1-2022) (keep for your records) www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service				

44



Form 1099-S Foreign Transferor

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	OMB No. 1545-0997	Proceeds From Real Estate Transactions
		2 Gross proceeds	Form 1099-S (Rev. January 2022)	
		\$	For calendar year 20__	
FILER'S TIN	TRANSFEROR'S TIN 123-45-6789	3 Address (including city, state, and ZIP code) or legal description		Copy B For Transferor This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.
TRANSFEROR'S name Peter R. Glenn Street address (including apt. no.) 4728 Church St. City or town, state or province, country, and ZIP or foreign postal code Chicago, IL 60643 Account number (see instructions)		4 Transferor received or will receive property or services as part of the consideration (if checked) <input type="checkbox"/>		
		5 If checked, transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) <input checked="" type="checkbox"/>		
		6 Buyer's part of real estate tax \$		
Form 1099-S (Rev. 1-2022) (keep for your records) www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service				

45



Form 1099-S Foreign Transferor

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing April 27, 2023	OMB No. 1545-0997	Proceeds From Real Estate Transactions
		2 Gross proceeds \$ 225,000.00	Form 1099-S (Rev. January 2022)	
		\$	For calendar year 20__23__	
FILER'S TIN	TRANSFEROR'S TIN	3 Address (including city, state, and ZIP code) or legal description Lot 1, Block 4, SOUTHERN, PB F/14 Orange County, FL		Copy B For Transferor This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.
TRANSFEROR'S name Street address (including apt. no.) City or town, state or province, country, and ZIP or foreign postal code Account number (see instructions)		4 Transferor received or will receive property or services as part of the consideration (if checked) <input type="checkbox"/>		
		5 If checked, transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) <input type="checkbox"/>		
		6 Buyer's part of real estate tax \$ 0.00		
Form 1099-S (Rev. 1-2022) (keep for your records) www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service				

46



Form 1099-S Corrected (duplicate filing)

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number Richard P. Bruce, Esq. 5955 T.G. Lee Blvd., Orlando, FL 32828 407-555-5000		<input checked="" type="checkbox"/> CORRECTED (if checked)	OMB No. 1545-0997 Form 1099-S (Rev. January 2022)	Proceeds From Real Estate Transactions
		1 Date of closing April 27, 2023	For calendar year 20 23	
FILER'S TIN 59-2278736	TRANSFEROR'S TIN 123-45-6789	2 Gross proceeds \$ 0.00	3 Address (including city, state, and ZIP code) or legal description 1 Southern Place Orlando, FL 32828	Copy B For Transferor This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.
TRANSFEROR'S name Peter R. Glenn Street address (including apt. no.) 4728 Church St. City or town, state or province, country, and ZIP or foreign postal code Chicago, IL 60643		4 Transferor received or will receive property or services as part of the consideration (if checked) <input type="checkbox"/>	5 If checked, transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) <input type="checkbox"/>	
Account number (see instructions) 21-00427		6 Buyer's part of real estate tax \$ 0.00		
Form 1099-S (Rev. 1-2022) (keep for your records)		www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service		

- Use same year's form as duplicate

47



Form 1099-S – Single-member LLC

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	OMB No. 1545-0997 Form 1099-S (Rev. January 2022)	Proceeds From Real Estate Transactions
		2 Gross proceeds \$	For calendar year 20 23	
FILER'S TIN	TRANSFEROR'S TIN 123-45-6789	3 Address (including city, state, and ZIP code) or legal description		Copy B For Transferor This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.
TRANSFEROR'S name Peter R. Glenn d/b/a ABC, LLC Street address (including apt. no.) 4728 Church St. City or town, state or province, country, and ZIP or foreign postal code Chicago, IL 60643		4 Transferor received or will receive property or services as part of the consideration (if checked) <input type="checkbox"/>	5 If checked, transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) <input type="checkbox"/>	
Account number (see instructions)		6 Buyer's part of real estate tax \$		
Form 1099-S (Rev. 1-2022) (keep for your records)		www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service		

- Member is transferor

48



Form 1099-S – Multi-member LLC

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	OMB No. 1545-0997 Form 1099-S (Rev. January 2022) For calendar year 20 <u>23</u>	Proceeds From Real Estate Transactions
		2 Gross proceeds \$		
FILER'S TIN	TRANSFEROR'S TIN 59-1234567	3 Address (including city, state, and ZIP code) or legal description		Copy B For Transferor This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.
TRANSFEROR'S name ABC, LLC Street address (including apt. no.) 4728 Church St. City or town, state or province, country, and ZIP or foreign postal code Chicago, IL 60643 Account number (see instructions)				
		4 Transferor received or will receive property or services as part of the consideration (if checked) <input type="checkbox"/>		
		5 If checked, transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) <input type="checkbox"/>		
		6 Buyer's part of real estate tax \$		
Form 1099-S (Rev. 1-2022) (keep for your records) www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service				

- LLC is transferor



49

Form 1099-S – Partnership

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	OMB No. 1545-0997 Form 1099-S (Rev. January 2022) For calendar year 20 <u>23</u>	Proceeds From Real Estate Transactions
		2 Gross proceeds \$		
FILER'S TIN	TRANSFEROR'S TIN 59-1234567	3 Address (including city, state, and ZIP code) or legal description		Copy B For Transferor This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.
TRANSFEROR'S name ABC, Ltd. Street address (including apt. no.) 4728 Church St. City or town, state or province, country, and ZIP or foreign postal code Chicago, IL 60643 Account number (see instructions)				
		4 Transferor received or will receive property or services as part of the consideration (if checked) <input type="checkbox"/>		
		5 If checked, transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) <input type="checkbox"/>		
		6 Buyer's part of real estate tax \$		
Form 1099-S (Rev. 1-2022) (keep for your records) www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service				



50

Form 1099-S – Sale by Personal Representative

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	OMB No. 1545-0997 Form 1099-S (Rev. January 2022) For calendar year 20 <u>23</u>	Proceeds From Real Estate Transactions
		2 Gross proceeds \$		
FILER'S TIN	TRANSFEROR'S TIN 123-45-6789		Copy B For Transferor This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.	
TRANSFEROR'S name				
Estate of Peter Robert Glenn Street address (including apt. no.) 4728 Church St. City or town, state or province, country, and ZIP or foreign postal code Chicago, IL 60643 Account number (see instructions)		3 Address (including city, state, and ZIP code) or legal description		
		4 Transferor received or will receive property or services as part of the consideration (if checked) . . . ▶ <input type="checkbox"/>		
		5 If checked, transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) ▶ <input type="checkbox"/>		
		6 Buyer's part of real estate tax \$		
Form 1099-S (Rev. 1-2022) (keep for your records) www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service				

- Estate EIN or Decedent SS# -- NEVER PR's SS#



51

Form 1099-S – Revocable Trust

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	OMB No. 1545-0997 Form 1099-S (Rev. January 2022) For calendar year 20 <u>23</u>	Proceeds From Real Estate Transactions
		2 Gross proceeds \$		
FILER'S TIN	TRANSFEROR'S TIN 123-45-6789		Copy B For Transferor This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.	
TRANSFEROR'S name				
Peter R. Glenn (Peter R. Glenn Trust) Street address (including apt. no.) 4728 Church St. City or town, state or province, country, and ZIP or foreign postal code Chicago, IL 60643 Account number (see instructions)		3 Address (including city, state, and ZIP code) or legal description		
		4 Transferor received or will receive property or services as part of the consideration (if checked) . . . ▶ <input type="checkbox"/>		
		5 If checked, transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) ▶ <input type="checkbox"/>		
		6 Buyer's part of real estate tax \$		
Form 1099-S (Rev. 1-2022) (keep for your records) www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service				

- Settlor SS# ("pass-through" tax treatment)



52

Form 1099-S – Irrevocable Trust

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	OMB No. 1545-0997 Form 1099-S (Rev. January 2022) For calendar year 20 <u>23</u>	Proceeds From Real Estate Transactions
		2 Gross proceeds		
		\$		
FILER'S TIN	TRANSFEROR'S TIN 59-1234567	3 Address (including city, state, and ZIP code) or legal description		Copy B For Transferor This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.
TRANSFEROR'S name				
Peter R. Glenn Trust Street address (including apt. no.) 4728 Church St. City or town, state or province, country, and ZIP or foreign postal code Chicago, IL 60643 Account number (see instructions)				
		4 Transferor received or will receive property or services as part of the consideration (if checked) - - - ▶ <input type="checkbox"/>		
		5 If checked, transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) - - - + + + - - - ▶ <input type="checkbox"/>		
		6 Buyer's part of real estate tax		
		\$		

Form **1099-S** (Rev. 1-2022) (keep for your records) www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service

53



Record Keeping



Non-electronic Filing (<10 Transactions)

Tripartite Paper Forms Required

- Request from IRS
 - Download not scannable
 - 3 per page (do not separate)
- **Copy A** mailed to IRS with transmittal form 1096
- **Copy B** to transferor (seller)
 - May truncate TIN on this copy only
 - May use substitute form (e.g., modified HUD-1)
- **Copy C** retained by filer



55

Timing Requirements

- Paper reports by Feb. 28th of year following closing
 - Electronic filing by April 1 (2024)
- Next business day if date is weekend or holiday
- Copy B to transferor
 - On or after closing – no later than Feb. 15th following calendar year
 - In person, by mail, or electronically
 - Consent required for electronic delivery



Retention Periods

- Retain 4 full years after calendar year date of closing:
 - Form 1099-S Copy C
 - TIN request (Form W-9, W-8BEN, W-8BEN-E, or alternate)
 - Residential sale exception certificate
 - Designation agreement
 - Volume transferor certificate



IRS Penalties (per violation)

Minimum Fine \$50 – Max. \$3 million + possible criminal penalties

- Failure to file correct return
- Failure to provide correct statement to transferor
- Failure to comply with other requirements
- Willful failure to supply information
 - Misdemeanor
 - Felony (If cash received not reported)
- Separate charges for preparing or filing Form 1099-S prohibited
- But no private cause of action

Relevant Unpublished Opinions

Hacker v. Hacker, 2012 WL 6604712

- Sibling conflict over sale of farm; tax consequences
- Suit to enforce settlement agreement
 - Requiring transfer back to original owner
 - \$1 plus payoff of existing debt
 - Seller balked at providing TIN needed for 1099-S
 - Buyer wanted to change terms of agreement
- Court ordered enforcement of settlement agreement
 - Neither parties' actions amounted to breach
 - Transaction is 1099-S reportable transaction (not de minimis transaction)

59



Relevant Unpublished Opinions

Community Bank v. Borough of Maywood, 2018 WL 4288659 (N.J. Tax)

- Law firm refused to provide TIN in connection with delivery of settlement funds payable to trust account
 - Needed for 1099-MISC report (payments to attorneys)
- Court gave firm 2 options: Provide TIN or alter settlement payment instructions
 - Payable to trust account same as payable to firm
 - 2 categories on form for reporting payments to attorneys
 - Form since changed
 - New 1099-NEC replaces non-employee compensation category on 1099-MISC



60

Relevant Unpublished Opinions

Pitcher v. Waldman, 2014 WL 1302552

- Acrimonious breakup of CPA firm
- Remaining partner knowingly issued inaccurate 1099-MISC to former partners in 2009 and 2012
 - Knew it would trigger IRS audits of former partners
 - Company received tax deduction for reported amounts
 - Subsequently replaced 2009 forms with (also incorrect) W-2 forms
- Former partners sued under 26 U.S.C. Sec. 7434
 - Civil damages for fraudulent filing of information returns
 - Awarded \$15,000 to each former partner (3 violations)
 - Statute does not apply to 1099-S reports



61

A Closing Agent's Guide to the 1099-S



Thank You!
for coming

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A Closing Agent's Guide to the 1099-S Definitions

Disregarded entity – in general, a business entity that is not a corporation and has a single owner is disregarded as an entity separate from its owner for federal tax purposes. The payee of a payment made to a disregarded entity is the owner of the entity.

File electronically – using either the Filing Information Returns Electronically ([FIRE](#)) system or Information Returns Intake System ([IRIS](#)).

Filer – the person responsible for filing Forms 1096 and 1099-S and identified as such on the form. On other forms (e.g., Form 1099-MISC) this person is the **payer**.

Involuntary conversion – a sale of real estate under threat or imminence of seizure, requisition, or condemnation is generally a reportable transaction.

Nominee recipient – one who receives a Form 1099 for amounts that belong to another. A nominee must file a Form 1099 with the IRS (the same type of Form 1099 the nominee received) for each of the other owners showing the amounts allocable to each and providing a copy to each.

Nonresident alien – an individual who is not a U.S. citizen or a resident alien. A resident of a foreign country under the residence article of an income tax treaty is a nonresident alien individual for purposes of withholding.

Payee – the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount a/k/a **Recipient (Beneficiary, Borrower, Debtor, Donor, Employee, Insured, Participant, Payment Recipient, Payer, Policyholder, Seller, Shareholder, Student, Transferor, or Winner on Certain Forms)**.

Payor (a/k/a Payer) – the person who makes a payment of the type and of the amount subject to reporting to any other person during a calendar year; also the person who collects on behalf of another payments of the type and of the amount subject to reporting, or who otherwise acts as a nominee or middleman with respect to such payment.

Resident alien – an individual who is not a citizen or national of the United States and who meets either the green card test or the substantial presence test for the calendar year.

Successor/predecessor reporting – when a successor business entity (a corporation, partnership, or sole proprietorship) and a predecessor business entity (a corporation, partnership, or sole proprietorship) agree the successor will assume all or some of the predecessor's information reporting responsibilities.

Substitute statement – any statement other than Copy B of the official form which complies with the format and content requirements specified in Pub. 1179.

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The Who, What, and When of 1099-S Reporting

By John D. Benson, Fund Underwriting Counsel

Form 1099-S, *Proceeds From Real Estate Transactions*, is required to be filed for reporting information regarding a real estate transaction pursuant to 26 C.F.R., Sec. 1.6045-4 and 26 U.S.C. 6045(e). This reporting requirement applies for all real estate transactions with dates of closing that occurred on or after Jan.1, 1991. This article will identify the Who, What, and When of this reporting information, along with permissible substitute forms and those real estate transactions which are exempt from the reporting requirements.

Who is responsible for filing a 1099-S Return?

Although there may be other persons involved in a real estate transaction, only the real estate "reporting person" must file the return with respect to a real estate transaction and furnish a statement to the transferor (seller). Under Sec. 6045(e) the "reporting person" is the person responsible for closing the transaction. Where a Uniform Settlement Statement prescribed under the Real Estate Settlement Procedures Act is used, the person listed as settlement agent is considered the person responsible for closing the transaction. If a Uniform Settlement Statement is not used, or if a Uniform Settlement Statement is used but no person is listed as settlement agent, then the person responsible is the person who prepares a closing statement presented to the parties in connection with the real estate transaction. For purposes of this section of the Code, a closing statement is defined as any closing statement, settlement statement, including a Uniform Settlement Statement, or other written document that identifies the transferor and transferee (buyer), reasonably identifies the real property and describes the manner in which the proceeds were disbursed with the closing. Where no closing statement is used, the person responsible for closing the transaction is the first of the persons that participate in the transaction as: (a) the attorney for the transferee

present at the delivery of the transferees note or a significant portion of the cash proceeds to the transferor, or who prepares or reviews the preparation of documents transferring ownership of the real estate, (b) the attorney for the transferor under the same guidelines as (a), or (c) the title or escrow company that acts as the disbursing agent of the most significant portion of the gross proceeds.

If no one is responsible for closing the transaction, then the order or priority establishing responsibility for closing the transaction is as follows: the mortgage lender, the transferor's broker, the transferee's broker or the transferee, all as defined under Sec. 6045(e)(6). The Code does permit a person to be designated as the reporting person provided there is a written designation agreement executed at or prior to the time of closing by all parties to the agreement including the designated person. The designation agreement may be in any form containing the information required under Sec. 6045(e)(5) and may be included on the closing statement.

A reporting person who is required to file a return of information using a Form 1099-S shall also furnish a written statement to the transferor containing the same information reported to the Internal Revenue Service (IRS). This requirement may be satisfied by furnishing the transferor a copy of a

(Continued on page 3)

In This Issue

- Advocating for Fund Member Agents' Legislative Interests 8
- Are You Ready for the New Year? 9
- Florida Bar Announcement on IOTA Accounts 10

Who, What, and When...continued from page 1

completed Form 1099-S (copy B) or a substitute Form 1099-S that complies with current revenue procedures under Sec. 1.6045-4(m), including the following legend shown on Form 1099-S: *“This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.”* A Uniform Settlement Statement (under RESPA) may be used as the written statement if it is conformed by including on the statement the legend (above) shown on Form 1099-S and by designating which information is reported to the IRS. A statement shall be considered furnished to a transferor if it is given to the transferor in person, either at closing or thereafter, it is mailed to the transferor at the transferor’s last known address, or electronically.

What is considered a Real Estate Transaction?

A real estate transaction consists, in whole or in part, of the sale or exchange of “reportable real estate” for money, indebtedness, property other than money, or services. “Reportable real estate” means any present or future ownership interest in: (i) land (whether improved or unimproved), including air space; (ii) any inherently permanent structure, including any residential, commercial or industrial building; (iii) any condominium unit, including appurtenant fixtures and common elements (including land); or (iv) any stock in a cooperative housing corporation. The term ownership interest includes fee simple interest, life estates, reversions, remainders and perpetual easements. In addition the term also includes any previously created rights of possession or use for all or a portion of any particular year, such as a leasehold, easement or timeshare, provided such rights have a remaining term of at least 30 years, as determined on the date of closing, including any periods where the rights may be renewed. Note: there is no distinction between warranty deeds and other types of deeds when conveying an ownership interest for purpose of requiring a return of information using a Form 1099-S.

Certain real estate transactions, transfers of interest and types of transferors are considered exempt and excepted from reporting using a Form 1099-S even if the transaction involves reportable real estate. A transaction that is not a sale or

exchange, such as a financing or refinancing that is not related to an acquisition of real property; a gift; a bequest; or a “de minimis” transfer in which the total consideration, in money, services and property, received in connection with the transaction is less than \$600 in value as of the date of closing; are all exempt from the reporting requirements. In addition, a transfer in full or partial satisfaction of any indebtedness secured by the property including a foreclosure, transfer in lieu of foreclosure or an abandonment, are also exempt from the reporting requirements under Form 1099-S. A person, governmental entity, or financial institution who is in the business of lending money in connection with their trade or business and who acquires an interest in property that was security for the debt reports these transfers using Forms 1099-A or 1099-C, however those forms and their reporting requirements are beyond the scope of this article. A full or partial satisfaction of any indebtedness secured by the property including a foreclosure, transfer in lieu of foreclosure, or an abandonment, is to be distinguished from a “short sale” which is a sale or exchange or reportable real estate and subject to the reporting requirements using a Form 1099-S.

A Form 1099-S is not required with respect to a sale or exchange of an interest in, surface or subsurface natural resources, such as timber, water, ores or other natural deposits, whether or not such natural resources or crops are severed from the land; a burial plot or vault; or a manufactured structure used as a dwelling, such as a mobile home, that was assembled at a location different from where it is used and the structure is not affixed to a foundation; provided such transfer of interest is not related to the sale or exchange of reportable real estate. For example, a transfer of an unaffixed mobile home that is unrelated to the sale or exchange or reportable real estate is excepted from the reporting requirements under this regulation.

Corporations, governmental units, and certain volume transferors are considered exempt and excepted from the reporting requirements required by a Form 1099-S. Absent actual knowledge to the contrary, a reporting person may treat a transferor as exempt provided the transferor meets certain requirements under the Regulations. To be treated as a corporation the name must contain an unambiguous expression of corporate status, such as Incorporated, Inc., Corporation, Corp., or P.C. (but not Company or Co.); the name contains the term “insurance company,” “reinsurance company,” or

“assurance company”; or the transfer or loan documents clearly indicate the corporate status of the transferor. Where the transferor is a partnership or a limited liability company (LLC), these entities are not considered exempt and a Form 1099-S is required on the sale or exchange of reportable real estate using the entity’s Employer Identification Number (EIN). Even if the general partner or the member of the LLC is a corporation, a return of information using a Form 1099-S is still required.

A governmental unit is defined under the regulations as The United States, a state, The District of Columbia, a possession of the United States, a political subdivision or any wholly-owned agency or instrumentality of any of the foregoing. In addition, a foreign government, a political subdivision thereof, an international organization, or any wholly-owned agency or instrumentality of the foregoing would qualify as exempt from the reporting requirements.

A transferor may be treated as an exempt volume transferor only if the reporting person receives a certification of exempt status. The certification of exempt status must contain, (a) the name address and tax payer identification number of the transferor; (b) sufficient information to identify any other wise reportable real estate that has not been reported by virtue of the transferor’s exempt status; and (c) a declaration that the transferor has sold or exchanged during either of the prior two calendar years or during the current calendar year, or as of the date of closing, reasonably expects to sell or exchange during the current calendar year at least 25 separate items of reportable real estate to at least 25 separate transferees, and that each such item of reportable real estate was or will be held primarily for sale or resale to customers in the ordinary course of business. The certification must be signed under penalties of perjury by the transferor or any person who is authorized to sign a declaration in behalf of the transferor and received by the reporting person no later than the time of closing. A reporting person may accept or disregard the certification and, instead, report with respect to the transaction. A sample declaration can be found in Sec. 1.6045-4(d)(3) of the regulations.

What information must be reported?

The current regulations under Sec. 1.6045-4(h) require the following information to be shown on a Form 1099-S:

(A) The name address and tax payer identification number (TIN) of the transferor. The reporting person must solicit the transferor’s TIN at or before the time of closing, and may be subject to a penalty for failure to file a correct return, including filing an incorrect TIN, or failure to report a TIN. The solicitation may be made in person or in a mailing that includes other items. In response, the transferor must furnish their TIN and certify that it is correct. The solicitation shall contain space for the name, address and TIN of the person for whom it is solicited, and a place to certify under penalties of perjury that the TIN furnished is the correct TIN of the transferor. The wording of the certification must be substantially similar to the following: “Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.” For U.S. persons, including U.S. resident aliens, a reporting person may request a TIN on a Form W-9, *Request for Taxpayer Identification Number and Certification*. Foreign persons must provide their information on the appropriate Form W-8 (includes Forms W-8BEN, W-8ECI, W-8EXP and W-8IMY). Instructions as to use of the appropriate Form W-8 and examples of such forms can be found at www.irs.gov/pub/irs-pdf/iw8.pdf.

(B) Alternatively, a reporting person may provide a written statement to the transferor similar to the following: “You are required by law to provide [insert name of reporting person] with your correct taxpayer identification number. If you do not provide [insert name of reporting person] with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.” A reporting person who does not receive the transferor’s TIN will not be subject to any penalty if the reporting person has complied with the requirements for soliciting the information.

In the case of multiple transferors, the reporting person shall file a separate information return with respect to each one. The reporting person must make a reasonable effort to contact all known transferors and must request an allocation of the gross

proceeds among transferors. The reporting person, however, may rely upon any unchallenged response of any transferor without the need to make additional efforts to contact other transferors after at least one complete allocation (whether or not contained in a single response) is received. If no allocation or an incomplete allocation is received, the entire unallocated gross proceeds (if any) shall be reported on the Form 1099-S made with respect to such transferor. If conflicting allocations are received, the reporting person shall report the entire gross proceeds on each Form 1099-S made with respect to the transaction.

Transferors who are husband and wife at the time of closing and hold the reportable real estate as tenants in common, joint tenants, tenants by the entirety, or community property are treated as a single transferor and only one Form 1099-S showing either of them as the transferor is required. Where the reporting person receives, at or prior to the time of closing, an uncontested allocation of gross proceeds between the husband and wife, a Form 1099-S is required for each of them according to the allocation.

A transfer of reportable real estate out of an estate or a Trust is also required for purposes of reporting information under a Form 1099-S. Large estates may have a separate TIN, in smaller estates the decedent's TIN would be used on the Form 1099-S.

- (C) **A general description of the real estate transferred.** The complete address of the property is sufficient to act as a general description of the property for purposes of completing a Form 1099-S. If the address would not sufficiently identify the property, a general description would also include a legal description (e.g., section, lot, and block) of the property.
- (D) **The date of closing.** Where a Uniform Settlement Statement is used, the date of closing is the "settlement date" indicated on the statement. In all other cases, the closing date is the earlier of, the date title is transferred or the date the economic burdens and benefits of ownership shift from transferor to transferee.

- (E) **The entire gross proceeds with respect to the transaction.** Gross proceeds means any cash received or to be received for the real property by or on behalf of the transferor, including a note or mortgage paid off at settlement. If the transferee assumes a liability of the transferor or takes the property subject to a liability, such liability is included as part of gross proceeds. Where a Uniform Settlement Statement is used, the gross proceeds generally will be the same amount as the contract sales price properly shown on that statement. In the case of multiple transferors, the allocation of gross proceeds to each transferor is the amount reported.
- (F) **An indication whether the transferor received (or will, or may, receive) property or services as part of the consideration for the transaction.**
- (G) **The reporting person's name, address, telephone number and TIN or EIN** (Employer Identification Number, if a business entity). Pursuant to section M of the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G (www.irs.gov/pub/irs-pub/i1099gi.pdf), the telephone number must provide direct access to an individual who can answer questions about the statement.
- (H) Any other information required by the Form 1099-S or its instructions (www.irs.gov/pub/irs-pub/i1099s.pdf), such as an account number and the buyer's part of real estate tax. The account number may be any number assigned to the payee that is unique and will distinguish the specific account. An account number is required if there are multiple accounts for a recipient for whom you are filing more than one Form 1099-S. For a real estate transaction involving a residence, the buyers' part of real estate tax is that portion of the real estate tax paid in advance by the seller but that is the liability of the buyer for the tax period extending beyond the closing date. This amount is shown as a credit to the seller in the 400 section, of the Uniform Settlement Statement, or a comparable form, provided at closing. There is no reporting requirement for the amount allocable to the buyer for real estate taxes paid in arrears. Typically, but not always, real estate transactions with a closing date of November 1st or later will

have an amount allocable to the buyer which must be included on the Form 1099-S.

When must the information be reported?

Form 1099-S is due to the IRS by February 28th. The requirement to file will be met if the form is properly addressed and mailed on or before the due date. If the regular due date falls on a Saturday, Sunday, or legal holiday, filing must be by the next business day. A business day is any day that is not a Saturday, Sunday, or legal holiday. If filing electronically to the IRS, the due date is March 31st. Publication 1220 of the IRS (www.irs.gov/pub/irs-pdf/p1220.pdf) provides the procedures for reporting electronically. Electronic filing is required when reporting 250 or more information returns, less than 250 information returns can be filed on paper but may also be filed electronically. If filed electronically, do not file the same returns on paper.

In those transactions where a reporting person is required to file Form 1099-S, they must also provide a statement containing the same information to the transferor. This may be accomplished in person, by mail, or electronically, at or after closing but by January 31 of the following year. Copy B of the official IRS Form 1099-S, a Uniform Settlement Statement (under RESPA) that has been conformed to include the legend and information shown on Form 1099-S or an acceptable substitute statement which complies with format and content requirements specified in Publication 1179 of the IRS (www.irs.gov/pub/irs-pdf/p1179.pdf) can be used. A reporting person may not separately charge any person involved in a real estate transaction for complying with Form 1099-S reporting requirements. 26 C.F.R., Sec. 1.6045-4(o).

What makes a real estate transactions exempt from reporting?

In addition to the exempt real estate transactions already mentioned, section 6045(e) of the Code was amended effective after May 6, 1997, to except any sale or exchange of reportable real estate from the reporting requirements if the seller provides a certification setting forth certain written assurances including, an assurance that the residence has been owned and used by the seller as their principal residence and that the full amount of the gain on the sale or exchange of the principal residence is excludable from gross income under 26 U.S.C 121. Section 121, as amended, excludes from gross income up to \$250,000 (\$500,000 if married and

either or both spouses meet the ownership and use requirements) of the gain on the sale or exchange of a principal residence. This exclusion may also apply to the sale or exchange of stock held by a person who is a stockholder in a cooperative housing corporation as defined in 26 U.S.C. 216. However, this exclusion does not apply for the gain on the sale or exchange if the principal residence was acquired by the tax payer in a like-kind exchange in which any gain was not recognized under 26 U.S.C. 1031. For additional information on the treatment of the gain on the sale or exchange of a principal residence in a like-kind exchange under 26 U.S.C. 1031, see "Recent Changes to Section 121 May Affect Property in a Like-Kind Exchange," 40 *Fund Concept* 112 (Dec. 2008).

In order for the sale or exchange to be exempt from the reporting requirements of Form 1099-S, the real estate reporting person must obtain from the seller a written certification, signed by the seller under penalties of perjury that, (1) the seller owned or used the residence as seller's principal residence for two of the last five years ending on the date of closing, (2) the seller has not sold or exchanged another principal residence during the two year period, (3) no portion of the residence has been used for business or rental purposes after May 6, 1997, (4) the sales price, gain on sale or exchange, marital status and filing requirements have been met, (5) the seller did not acquire the residence in an exchange to which Sec. 1031 of the Code applied and (6) if the seller acquired the residence in an exchange to which section 1031 applied, the exchange occurred more than five years prior to the present date of closing. A sample certification can be found in the documents module of the Funds' DoubleTime system under *Certification in Lieu of 1099-S* or can be obtained at www.irs.gov/pub/irs-irbs/irb07-04.pdf. A substitute certification form can be used provided the wording and content of the certification meet the IRS information requirements. The certification can be obtained at any time on or before January 31 of the year following the sale or exchange and must be retained for four years. A reporting person who relies on the certification will not be

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subject to penalties for failure to file an information return or failure to furnish a statement to the seller unless the reporting person has actual knowledge that any of the assurances contained in the certification is incorrect.

Conclusion

Although there are many types of, and circumstances surrounding real estate transactions, the basic Who, What and When is needed to aid Fund Agents in complying with the requirements of Form 1099-S reporting. The IRS also provides an information reporting customer service site at 1-866-455-7438 to answer most questions that may arise in the preparation and inclusion of information needed for Form 1099-S reporting.

Agents who fail to comply with the basic reporting requirements leave themselves open to incurring unnecessary penalties for failure to furnish information they already had or easily obtain. □



MARKETING

Business Development Boost for REC Members

By Michael Hammond, Fund Senior Vice President, Marketing Services

In the face of some of the most challenging conditions in decades, businesses of all kinds are forced to change. Like any business person, the real estate attorney who focuses on marketing and business development will thrive when the market recovers, taking advantage of their competitive edge and maximizing their potential.

Building on the marketing support it already offers through the statewide network of Real Estate Councils (RECs), THE FUND is pleased to facilitate providing REC members with access to more proven marketing and business development resources via teleconference calls, articles, blogs, audio courses, and eventually a structured marketing program, all designed to help real estate attorneys capture more business now. Then, as the market recovers, the program positions you to take full advantage of the market upturn. These resources

and programs are developed by Atticus, a long-time strategic partner of THE FUND, and the nation's leading premier practice management education and training organization for real estate attorneys.

These programs offer REC members marketing education to support them through this challenging time and to prepare them for the upturn by strengthening their marketing skills. The partnership will unfold in two key phases:

The program will launch in early 2009, offering free, high-value, live teleconference calls focused on topics such as:

- Internet Marketing Strategies for the Real Estate Attorney
- Generating Referrals through Public Relations Efforts
- Referral Marketing Systems to Drive New Closings

In addition to the teleconferences, Atticus will provide a syndicated marketing column each month for RECs to share with their members, access to archived articles, as well as recorded audio courses on a wide variety of marketing topics.

Look for more information from your local REC leadership on how to take advantage of these new marketing opportunities.

Atticus (www.atticusonline.com) is familiar to The Fund's membership — nearly 1,000 member agents have benefited from Atticus's programs, responding with strong, positive feedback regarding the efficacy of the programs in helping them develop more efficient, cost-effective and profitable real estate practices. Over the years, Atticus has demonstrated its success in helping real estate attorneys grow their business. For more information on Atticus, log onto www.atticusonline.com.

As the program launches, you will hear more from your Fund Member Account Executives, REC leaders and THE FUND regarding the program benefits available to you.



IN YOUR BEST INTEREST

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1099-S Reporting: Practical Tips for Frequently Encountered Situations

By John Benson, Fund Underwriting Counsel

As we approach the end of the year, we are reminded of the requirement for reporting real estate transactions using the 1099-S reporting form. *Form 1099-S, Proceeds From Real Estate Transactions*, is required to be filed for reporting information regarding a real estate transaction pursuant to 26 C.F.R., Sec. 1.6045-4 and 26 U.S.C., Sec. 6045(e). This reporting requirement applies for all real estate transactions with dates of closing that occurred on or after Jan.1, 1991. Although there may be other persons involved in a real estate transaction, only the real estate "reporting person" must file the return with respect to a real estate transaction. Under Sec. 6045(e) the "reporting person" is the person responsible for closing the transaction. Where a Uniform Settlement Statement prescribed under the Real Estate Settlement Procedures Act is used, the person listed as settlement agent is considered the person responsible for closing the transaction. Sometimes however, a situation arises in which the reporting person is not sure whether a 1099-S form should be issued in their real estate transaction. This article will identify some frequently encountered situations that were presented to underwriting counsel for the determination of whether a 1099-S reporting form was required.

Subsequent Sale of Property by an Institutional Lender After Acquisition by Certificate of Title in a Foreclosure Action. For completing the closing transaction process, does a Form 1099-S need to be filed when an institutional lender acquires a property by certificate of title through a properly completed foreclosure action and subsequently sells to a bona fide purchaser?

An institutional lender is not automatically exempt under filing requirements for Form 1099-S reporting, however they may fall under those entities that are exempt from reporting under Form 1099-S. Corporations, governmental units and corporations are considered exempt from the reporting requirements for the 1099-S form. An institutional lender does not typically fall under a governmental unit or volume transferor but may very well fall under a corporation. To be treated as a corporation, the name must contain an unambiguous expression of corporate status or the transfer or loan documents clearly indicate the corporate status of the lender. If a Fund Member is unsure as to the status of the institutional lender, they should obtain a W-9 form from the bank to confirm if they are incorporated. If so, no Form 1099-S is required. If the W-9 form does not give an indication, then a Form 1099-S should be completed and submitted by the reporting person. It is important to note that where the lender/seller is a partnership or a limited liability company (LLC), these entities are not considered exempt

(Continued on page 108)

In This Issue

- Current Status of NAIC Plan 109
- UPDATE - Condo and Timeshares Liens .. 110
- Winners - 2010 Law Student Awards..111

1099-S Reporting...*continued from page 105*

and a Form 1099-S is required on the sale or exchange of reportable real estate using the entity's Employer Identification Number (EIN). Even if the general partner or the member of the LLC is a corporation, a return of information using a Form 1099-S is still required.

An Exchange of Real Property Pursuant to a Marital Settlement Agreement or Other Settlement Stipulation in a Dissolution of Marriage Action. Where a former husband and wife are divorced and as part of their settlement stipulation, the former husband's interest in the real property is being transferred to the former wife in exchange for forgiveness of the back child support payments owed by the former husband, is a Form 1099-S issued representing the value of the conveyance in exchange for the forgiveness of the back child support payments?

A Form 1099-S is required to be filed for reporting information regarding a real estate transaction *"consisting, in whole or in part, of the sale or exchange of reportable real estate for money, indebtedness, property other than money, or services."* An exchange of the property as forgiveness of back child support payments may be considered an exchange of reportable real estate for indebtedness. However, an exchange of real property *incident to a divorce* is considered a gift under 26 U.S.C., Sec. 1041. As a "gift" under paragraph 3 of exceptions set forth in the instructions for Form 1099-S, the transaction is not a reportable transaction for 1099-S reporting requirements. Note that a transfer is considered *incident to divorce* under section 1041 if such transfer (1) occurs within one year after the date on which the marriage ceases, or (2) is related to the cessation of the marriage. Where a transfer occurs between former spouses which does not meet (1) or (2) above, it would be a reportable transaction and on the 1099-S form, Box 4 would be checked which indicates something other than cash was received in exchange for the transfer.

The Settlement Statement (HUD-1) Reflects a Purchase Price Value for the Real Property and a Separate Line Item for Personal Property Sold as Part of the Transaction. Where the total amount paid in a real estate transaction includes both a purchase price for the real property and a separate

price for the personal property (furniture, etc.), what amount needs to be reported as the gross proceeds for purposes of Form 1099-S reporting?

The general instructions published by the Internal Revenue Service for Form 1099-S on page 3 under "Multiple Assets Sold" appear to indicate that all assets, both real and other are to be included in the amount for reporting of gross proceeds, *"if real estate is sold or exchanged and other assets are sold or exchanged in the same transaction, report the total gross proceeds from the entire transaction on Form 1099-S."* However on page 4 of those same instructions, under "Box 2 Gross Proceeds" appear to indicate that any personal property is not to be included, *"Gross proceeds do not include the value of property or services received or to be received by, or on behalf of, the transferor or separately stated cash received for personal property, such as draperies, rugs, or a washer and dryer."* These apparent inconsistencies were clarified by the Internal Revenue Service in that the term "multiple assets" on page 3 of the Instructions for 1099-S includes any property included within the HUD-1 statement and therefore would include both real and personal even if a separate line item was shown on the HUD-1 for personal property. All would be included in the gross proceeds for 1099-S reporting purposes. Property exempt from reporting under the instructions on page 4 under "Box 2 Gross Proceeds" indicating separately stated cash for personal property are meant for transactions separate from and not included on the HUD-1 statement such as a separate agreement for purchase of furnishings which are not included for purposes of 1099-S reporting.

Duplicate Form 1099-S Returns Are Sent for the Same Real Estate Transaction. How is a duplicate Form 1099-S return corrected when inadvertently sent for the same real estate transaction?

Unless steps are taken to correct the duplication, the Internal Revenue Service will treat the real estate transaction as two separate transactions, even where the information is identical for the seller. Fortunately, the *General Instructions for Certain Information Returns (including Forms 1099)* provides a procedure to correct a return which was filed when one should not have been filed on page 7 of the General Instructions. The Form 1099-S has at the top of

the form a box to check as "Corrected." Enter an "X" at the top of the Form and correct any information such as money amounts, by placing \$0.00 in the Form such as under Box 2 "Gross Proceeds." Report other information as per the original return. It is important to note that the same form for the year filed must be used when issuing a corrected form. A 2010 Form 1099-S will not be accepted for purposes of correcting a 2009 Form 1099-S.

There are many other situations that arise in the closing of real estate transactions. These frequently encountered situations are only a few of the multitude of situations that may occur in a real estate transaction and the reporting requirements necessary under Form 1099-S. The Internal Revenue Service provides an information reporting customer service site at 1-866-455-7438 to answer most questions regarding the need for a Form 1099-S and the information necessary for Form 1099-S reporting. When contacting the service site, Fund Members are forewarned that the wait for a real live person can be lengthy but worth the wait in the information received. Should you have any questions or need further assistance, Fund underwriting counsel are also available to assist you. □



Current Status of NAIC Title Agent Statistical Plan

By R. Norwood Gay III, Fund Sr. Vice President and Chief Legal Officer

The National Association of Insurance Commissions has adopted its version of a model title agent data call. The questions and specific instructions for the NAIC's data call can be found on its website (www.naic.org). Attorney agents have different instructions than non-attorney agents and regulators, to some extent, recognize the differences in business practices. One of the difficulties faced by attorney agents is allocation of expenses between title insurance and closings, and the practice of law.

Although not yet clearly stated in the specific instructions, it would appear that the NAIC is thinking along the lines of allocating expenses based on the ratio of law-practice income to title-insurance and closings income. It has been pointed out that this is not an altogether satisfactory solution, introducing some skewing of attorney-agent data, but one could argue that such data skewing would be minimal and having the data contributes to the ultimate purpose of the data call more than it detracts. Non-lawyer title agencies, of course, will not have such data skewing to contend with. In Florida, the entire issue of attorney agent data skewing may well be moot because of the ruling of the First District Court in *State, Dept. of Ins. v. Keys Title and Abstract Co., Inc.*, 741 So.2d 599 (Fla. 1st DCA 1999), in which the court said attorney agents were not required to submit information for a data call attempted by the former insurance commissioner.

Florida regulators participated in the data-call discussions. The NAIC continues to work on developing implementation tips. A survey of states was taken to determine if they need to take legislative or regulatory action to adopt the data call. Florida now says it has the requisite regulatory authority. States were also asked if they would likely adopt a data call using the format now approved by the NAIC Working Group. Twelve states indicated an interest – not exactly an overwhelming showing of support. Under NAIC rules, this modest response precludes the drafting and adoption of a model act for an Agent Statistical Plan.

ALTA is encouraging state land title associations to develop a strategy to engage with their regulators so that any changes the industry seeks will be included in the state's plan. FLTA needs to stay with this issue in case our regulators do indeed decide to go forward with developing their own statistical report. Perhaps the most important area of focus will be in the instructions for completing the report by the agent.

Two significant outstanding issues are whether the state can keep collected information confidential and whether the state will exempt smaller agents from reporting requirements.

A final note: the Statistical Plan fails utterly to capture the risk reduction expense that goes into every title policy issued, thus making it appear that

agreement with the plan administrator. This lien agreement is typically recorded in the official records and may be entitled "agreement," "memorandum," "financing agreement," or "notice of lien" and will reference that the agreement is part of the PACE program. The repayment period can be up to 20 years.

As the properties that are subject to PACE liens are sold and refinanced, Fund Members will have to deal with these loans on several levels. Buyers may assume the lien if the lien is not paid off in advance of closing. It is recommended that buyers and sellers negotiate this matter at the time of the contract. If the PACE lien obligation is not negotiated in advance of contract execution, adjustment to the purchase price to account for the value of the unpaid improvements (which may not have been factored in to the contract sale price) may be requested by the buyer. The adjustment will likely have to be addressed by an addendum to the contract as the current FR/Bar and Florida Realtors versions do not specifically address PACE financed improvements. Also, as stated above, new financing may be delayed if the lender objects to the existence of the PACE lien or has additional conditions to approve a mortgage.

Insuring Requirements

Even though PACE liens are treated as special assessment liens, are fully assumable, and are collected in the real property tax bill, because of their unique nature and for insuring purposes, The Fund will call for the satisfaction of a recorded PACE lien prior to insuring.

Fund Members who receive branch-prepared commitments will see the following requirement (and Fund Members who prepare their own commitments should use the same):

Record satisfaction of that certain [type of lien] dated _____, duly recorded _____, in O.R. _____, Page _____, and/or Instrument No. _____. Alternatively, record release of the lien of such [type of lien] as to the subject property.

For Fund Members who do their own searches using ATIDS, PACE agreements are coded in ATIDS as an LN. Some PACE agreements may have been coded in

ATIDS as an AGR or other instrument code. The Fund is working to recode all PACE instruments as LN; however, Fund Members may find one under a different instrument code. As always, Fund Members should examine every document in their search to determine its effect on title and not rely upon an instrument type designation.

Conclusion

As additional counties implement PACE programs and more property owners take advantage of the ability to finance energy efficient improvements in this manner, it is anticipated that Fund Members will more frequently encounter PACE liens on real property. Fund Members should become familiar with these liens and consider counseling their buyer and seller clients concerning addressing these liens in their purchase and sale contracts. □

THE CATCH-22 OF FOREIGN SELLERS AND THE FORM 1099-S

BY LINDA MONACO, FUND LEGAL EDUCATION ATTORNEY

Transactions involving a foreign seller can bring complications for the settlement agent, but it does not need to be that way. In order to make the closing process go more smoothly, determine if the transaction is subject to Foreign Investment in Real Property Tax Act (FIRPTA) withholding. If so, withhold the proper amount, usually 15 percent, fill in the simple Internal Revenue Service (IRS) Forms 8288 and 8288-A, and submit the forms and funds to the IRS within 20 days of closing. Transactions which are subject to FIRPTA withholding still require the issuance of an IRS Form 1099-S to the seller and reporting to the IRS.

The IRS released a new Form 1099-S earlier this year. The new form has added a numbered "checkbox" for foreign sellers. The checkbox, in line number five, states "[c]heck here if the transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust)." The Form 1099-S consists of three parts, Copy A for the IRS which is filed with the report, Copy B for the transferor, and Copy C for the filer.

Form 1099-S requires the taxpayer identification number (TIN). Sometimes this is not a problem; however, many foreign sellers do not have a TIN. Since 2003, all foreign buyers have been required to obtain a TIN; however, many still do not apply for it. Additionally, reporting a Form 1099-S without a TIN can subject the reporter (i.e., the settlement agent) to a minimum penalty of \$50 per form. Since one cannot report information that does not exist, the IRS

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	OMB No. 1545-0097
		2 Gross proceeds	2017 Proceeds From Real Estate Transactions Form 1099-S
FILER'S federal identification number	TRANSFEROR'S identification number	3 Address or legal description (including city, state, and ZIP code)	
TRANSFEROR'S name		4 Check here if the transferor received or will receive property or services as part of the consideration <input type="checkbox"/>	
Street address (including apt. no.)		5 Check here if the transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) <input type="checkbox"/>	
City or town, state or province, country, and ZIP or foreign postal code		6 Buyer's part of real estate tax	
Account or escrow number (see instructions)		\$	

Form **1099-S** Cat. No. 64292E www.irs.gov/form1099s Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

For example:

On Jan. 6, 2017 at 1:38 p.m., I contacted Solo Foreignseller. I requested his TIN. I stated that this information is required to be furnished under authority of law. Mr. Foreignseller did not provide me with his TIN. The transaction closed on Jan. 31, 2017.

The IRS states that this affidavit should be attached to the transmittal document forwarding the Form 1099-S returns. However, at the current time, there is no method to submit the affidavit with magnetic or electronic Form 1099-S submissions. Therefore, the IRS further advises keeping the affidavit in the settlement agent's files and submitting the affidavit only in response to a letter from the IRS proposing a penalty.

DoubleTime users can leave the TIN blank if the TIN is unknown. Even though DoubleTime provides the following error: "missing seller tax identification number (TIN)," Fund Members may print or email the Form 1099-S without a TIN. The year-end summary of Forms 1099-S will show all errors including those with missing TINs. If TIN information has not yet been received, leave the TIN blank.

Next year, prior to the due date, generate the yearly report for filing electronically (for reporting more than 250 Forms 1099-S per year) or paper filing (for reporting 250 or fewer Forms 1099-S per year). Send this report to the IRS with Copy A of each Form 1099-S. This report will include all uncorrected errors in the Forms 1099-S. So, if a Form 1099-S has no TIN, the IRS will receive that Form 1099-S with no TIN. If the report is filed by mail and not electronically, include the affidavit with all TIN requests detailed with the report.

If the report is electronically submitted and later the IRS sends a letter with a proposed penalty for failure to include the TIN, send the IRS a copy of the TIN request letter with a copy of the affidavit prepared giving all of the details of each request.

Although it may seem the filing of a Form 1099-S for a foreign seller is a difficult path to navigate and a Catch-22, with proper planning and documentation, it will be smooth sailing.

has given some guidance in this area.

On every reportable transaction, the settlement agent should request the TIN from the seller. This request may be in person or by regular or electronic mail; the request may be part of a request for other items. There is no need for a special or separate request. The request must be made no later than the time of closing. It is better to make this request early in the transaction to allow time for the seller to also meet their FIRPTA requirements, if necessary. The closing table is not the time to find out that the seller is a foreigner subject to FIRPTA. Notate the date and time of the request in the file.

The IRS has provided a sample request:

You are required by law to provide Sally Settlementagent with your correct taxpayer identification number. If you do not provide Sally Settlementagent with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.

If the above request is in writing, add spaces for each seller's name, address, and TIN. Below that information, add a certification which should be similar to this example as provided by the IRS:

Under penalties of perjury, I certify that I am a U.S. person or U.S. resident alien and the number shown on this statement is my correct taxpayer identification number.

The details of each request, when the seller did not provide a TIN, must be included in an affidavit submitted by the settlement agent during the annual Form 1099-S reporting period. A single affidavit for all such requests for the year is all that the IRS requires at this time. The beginning of the affidavit should be the same as all other affidavits. Then, each entry will list the details of each request. The details should include the name of the foreign person who did not provide a TIN, the date and time (if available) of the request, and the date the transaction occurred.



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

United States Code Annotated

Title 26. Internal Revenue Code (Refs & Annos)

Subtitle F. Procedure and Administration (Refs & Annos)

Chapter 61. Information and Returns

Subchapter A. Returns and Records (Refs & Annos)

Part III. Information Returns (Refs & Annos)

Subpart B. Information Concerning Transactions with Other Persons (Refs & Annos)

26 U.S.C.A. § 6045, I.R.C. § 6045

§ 6045. Returns of brokers

Effective: November 15, 2021

[Currentness](#)

(a) General rule.--Every person doing business as a broker shall, when required by the Secretary, make a return, in accordance with such regulations as the Secretary may prescribe, showing the name and address of each customer, with such details regarding gross proceeds and such other information as the Secretary may by forms or regulations require with respect to such business.

(b) Statements to be furnished to customers.--Every person required to make a return under subsection (a) shall furnish to each customer whose name is required to be set forth in such return a written statement showing--

- (1)** the name, address, and phone number of the information contact of the person required to make such return, and
- (2)** the information required to be shown on such return with respect to such customer.

The written statement required under the preceding sentence shall be furnished to the customer on or before February 15 of the year following the calendar year for which the return under subsection (a) was required to be made. In the case of a consolidated reporting statement (as defined in regulations) with respect to any customer, any statement which would otherwise be required to be furnished on or before January 31 of a calendar year with respect to any item reportable to the taxpayer shall instead be required to be furnished on or before February 15 of such calendar year if furnished with such consolidated reporting statement.

(c) Definitions.--For purposes of this section--

(1) Broker.--The term “broker” includes--

- (A)** a dealer,

(B) a barter exchange,

(C) any person who (for consideration) regularly acts as a middleman with respect to property or services, and

(D) any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.

A person shall not be treated as a broker with respect to activities consisting of managing a farm on behalf of another person.

(2) Customer.--The term “customer” means any person for whom the broker has transacted any business.

(3) Barter exchange.--The term “barter exchange” means any organization of members providing property or services who jointly contract to trade or barter such property or services.

(4) Person.--The term “person” includes any governmental unit and any agency or instrumentality thereof.

(d) Statements required in case of certain substitute payments.--If any broker--

(1) transfers securities of a customer for use in a short sale or similar transaction, and

(2) receives (on behalf of the customer) a payment in lieu of--

(A) a dividend,

(B) tax-exempt interest, or

(C) such other items as the Secretary may prescribe by regulations,

during the period such short sale or similar transaction is open, the broker shall furnish such customer a written statement (in the manner as the Secretary shall prescribe by regulations) identifying such payment as being in lieu of the dividend, tax-exempt interest, or such other item. The written statement required under the preceding sentence shall be furnished on or before February 15 of the year following the calendar year in which the payment was made. The Secretary may prescribe regulations which require the broker to make a return which includes the information contained in such written statement.

(e) Return required in the case of real estate transactions.--

(1) In general.--In the case of a real estate transaction, the real estate reporting person shall file a return under subsection (a) and a statement under subsection (b) with respect to such transaction.

(2) Real estate reporting person.--For purposes of this subsection, the term “real estate reporting person” means any of the following persons involved in a real estate transaction in the following order:

(A) the person (including any attorney or title company) responsible for closing the transaction,

(B) the mortgage lender,

(C) the seller's broker,

(D) the buyer's broker, or

(E) such other person designated in regulations prescribed by the Secretary.

Any person treated as a real estate reporting person under the preceding sentence shall be treated as a broker for purposes of subsection (c)(1).

(3) Prohibition of separate charge for filing return.--It shall be unlawful for any real estate reporting person to separately charge any customer for complying with any requirement of paragraph (1). Nothing in this paragraph shall be construed to prohibit the real estate reporting person from taking into account its cost of complying with such requirement in establishing its charge (other than a separate charge for complying with such requirement) to any customer for performing services in the case of a real estate transaction.

(4) Additional information required.--In the case of a real estate transaction involving a residence, the real estate reporting person shall include the following information on the return under subsection (a) and on the statement under subsection (b):

(A) The portion of any real property tax which is treated as a tax imposed on the purchaser by reason of [section 164\(d\)\(1\)\(B\)](#).

(B) Whether or not the financing (if any) of the seller was federally-subsidized indebtedness (as defined in [section 143\(m\)\(3\)](#)).

(5) Exception for sales or exchanges of certain principal residences.--

(A) **In general.**--Paragraph (1) shall not apply to any sale or exchange of a residence for \$250,000 or less if the person referred to in paragraph (2) receives written assurance in a form acceptable to the Secretary from the seller that--

(i) such residence is the principal residence (within the meaning of [section 121](#)) of the seller,

(ii) if the Secretary requires the inclusion on the return under subsection (a) of information as to whether there is federally subsidized mortgage financing assistance with respect to the mortgage on residences, that there is no such assistance with respect to the mortgage on such residence, and

(iii) the full amount of the gain on such sale or exchange is excludable from gross income under [section 121](#).

If such assurance includes an assurance that the seller is married, the preceding sentence shall be applied by substituting “\$500,000” for “\$250,000”. The Secretary may by regulation increase the dollar amounts under this subparagraph if the Secretary determines that such an increase will not materially reduce revenues to the Treasury.

(B) Seller.--For purposes of this paragraph, the term “seller” includes the person relinquishing the residence in an exchange.

(f) Return required in the case of payments to attorneys.--

(1) In general.--Any person engaged in a trade or business and making a payment (in the course of such trade or business) to which this subsection applies shall file a return under subsection (a) and a statement under subsection (b) with respect to such payment.

(2) Application of subsection.--

(A) In general.--This subsection shall apply to any payment to an attorney in connection with legal services (whether or not such services are performed for the payor).

(B) Exception.--This subsection shall not apply to the portion of any payment which is required to be reported under [section 6041\(a\)](#) (or would be so required but for the dollar limitation contained therein) or [section 6051](#).

(g) Additional information required in the case of securities transactions, etc.--

(1) In general.--If a broker is otherwise required to make a return under subsection (a) with respect to the gross proceeds of the sale of a covered security, the broker shall include in such return the information described in paragraph (2).

(2) Additional information required.--

(A) In general.--The information required under paragraph (1) to be shown on a return with respect to a covered security of a customer shall include the customer's adjusted basis in such security and whether any gain or loss with respect to such security is long-term or short-term (within the meaning of [section 1222](#)).

(B) Determination of adjusted basis.--For purposes of subparagraph (A)--

(i) In general.--The customer's adjusted basis shall be determined--

(I) in the case of any security (other than any stock for which an average basis method is permissible under [section 1012](#)), in accordance with the first-in first-out method unless the customer notifies the broker by means of making an adequate identification of the stock sold or transferred, and

(II) in the case of any stock for which an average basis method is permissible under [section 1012](#), in accordance with the broker's default method unless the customer notifies the broker that he elects another acceptable method under [section 1012](#) with respect to the account in which such stock is held.

(ii) Exception for wash sales.--Except as otherwise provided by the Secretary, the customer's adjusted basis shall be determined without regard to [section 1091](#) (relating to loss from wash sales of stock or securities) unless the transactions occur in the same account with respect to identical securities.

(iii) Treatment of uncorrected de minimis errors.--Except as otherwise provided by the Secretary, the customer's adjusted basis shall be determined by treating any incorrect dollar amount which is not required to be corrected by reason of [section 6721\(c\)\(3\)](#) or [section 6722\(c\)\(3\)](#) as the correct amount.

(3) Covered security.--For purposes of this subsection--

(A) In general.--The term “covered security” means any specified security acquired on or after the applicable date if such security--

(i) was acquired through a transaction in the account in which such security is held, or

(ii) was transferred to such account from an account in which such security was a covered security, but only if the broker received a statement under [section 6045A](#) with respect to the transfer.

(B) Specified security.--The term “specified security” means--

(i) any share of stock in a corporation,

(ii) any note, bond, debenture, or other evidence of indebtedness,

(iii) any commodity, or contract or derivative with respect to such commodity, if the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection,

(iv) any digital asset, and

(v) any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection.

(C) Applicable date.--The term “applicable date” means--

(i) January 1, 2011, in the case of any specified security which is stock in a corporation (other than any stock described in clause (ii)),

(ii) January 1, 2012, in the case of any stock for which an average basis method is permissible under [section 1012](#),

(iii) January 1, 2023, in the case of any specified security which is a digital asset, and

(iv) January 1, 2013, or such later date determined by the Secretary in the case of any other specified security.

(D) Digital asset.--Except as otherwise provided by the Secretary, the term “digital asset” means any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

(4) Treatment of S corporations.--In the case of the sale of a covered security acquired by an S corporation (other than a financial institution) after December 31, 2011, such S corporation shall be treated in the same manner as a partnership for purposes of this section.

(5) Special rules for short sales.--In the case of a short sale, reporting under this section shall be made for the year in which such sale is closed.

(6) Special rule for certain stock held in connection with dividend reinvestment plan.--For purposes of this subsection, stock acquired before January 1, 2012, in connection with a dividend reinvestment plan shall be treated as stock described in clause (ii) of paragraph (3)(C) (unless the broker with respect to such stock elects not to have this paragraph apply with respect to such stock).

(h) Application to options on securities.--

(1) Exercise of option.--For purposes of this section, if a covered security is acquired or disposed of pursuant to the exercise of an option that was granted or acquired in the same account as the covered security, the amount received with respect to the grant or paid with respect to the acquisition of such option shall be treated as an adjustment to gross proceeds or as an adjustment to basis, as the case may be.

(2) Lapse or closing transaction.--In the case of the lapse (or closing transaction (as defined in [section 1234\(b\)\(2\)\(A\)](#))) of an option on a specified security or the exercise of a cash-settled option on a specified security, reporting under subsections

(a) and (g) with respect to such option shall be made for the calendar year which includes the date of such lapse, closing transaction, or exercise.

(3) Prospective application.--Paragraphs (1) and (2) shall not apply to any option which is granted or acquired before January 1, 2013.

(4) Definitions.--For purposes of this subsection, the terms “covered security” and “specified security” shall have the meanings given such terms in subsection (g)(3).

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 747; [Pub.L. 94-455, Title XIX, § 1906\(b\)\(13\)\(A\)](#), Oct. 4, 1976, 90 Stat. 1834; [Pub.L. 97-248, Title III, § 311\(a\)\(1\)](#), Sept. 3, 1982, 96 Stat. 600; [Pub.L. 98-369, Div. A, Title I, § 150\(a\)](#), Title VII, § 714(e)(1), July 18, 1984, 98 Stat. 690, 961; [Pub.L. 99-514, Title XV, §§ 1501\(c\)\(4\), 1521\(a\)](#), Oct. 22, 1986, 100 Stat. 2737, 2746; [Pub.L. 100-647, Title I, § 1015\(e\)\(1\)\(A\), \(2\)\(A\), \(3\)](#), Title IV, § 4005(g)(3), Nov. 10, 1988, 102 Stat. 3569, 3570, 3650; [Pub.L. 101-239, Title VII, § 7814\(c\)\(1\)](#), Dec. 19, 1989, 103 Stat. 2413; [Pub.L. 101-508, Title XI, § 11704\(a\)\(25\)](#), Nov. 5, 1990, 104 Stat. 1388-519; [Pub.L. 102-486, Title XIX, § 1939\(a\)](#), Oct. 24, 1992, 106 Stat. 3034; [Pub.L. 104-168, Title XII, § 1201\(a\)\(5\)](#), July 30, 1996, 110 Stat. 1469; [Pub.L. 104-188, Title I, § 1704\(o\)\(1\)](#), Aug. 20, 1996, 110 Stat. 1886; [Pub.L. 105-34, Title III, § 312\(c\)](#), Title X, § 1021(a), Aug. 5, 1997, 111 Stat. 839, 922; [Pub.L. 109-135, Title IV, § 412\(xx\)](#), Dec. 21, 2005, 119 Stat. 2640; [Pub.L. 110-343, Div. B, Title IV, § 403\(a\)](#), Oct. 3, 2008, 122 Stat. 3854; [Pub.L. 113-295, Div. A, Title II, § 210\(f\)\(4\)](#), Dec. 19, 2014, 128 Stat. 4032; [Pub.L. 114-113, Div. Q, Title II, § 202\(c\)](#), Dec. 18, 2015, 129 Stat. 3077; [Pub.L. 117-58, Div. H, Title VI, § 80603\(a\), \(b\)\(1\)](#), Nov. 15, 2021, 135 Stat. 1339.)

Notes of Decisions (1)

26 U.S.C.A. § 6045, 26 USCA § 6045

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

Code of Federal Regulations
Title 26. Internal Revenue
Chapter I. Internal Revenue Service, Department of the Treasury
Subchapter A. Income Tax
Part 1. Income Taxes (Refs & Annos)
Procedure and Administration
Information and Returns
Returns and Records (Refs & Annos)
Information Returns

26 C.F.R. § 1.6045–4, Treas. Reg. § 1.6045–4

§ 1.6045–4 Information reporting on real estate transactions
with dates of closing on or after January 1, 1991.

Effective: February 23, 2023

[Currentness](#)

(a) Requirement of reporting. Except as otherwise provided in paragraphs (c) and (d) of this section, a real estate reporting person (“reporting person”) must make an information return with respect to a real estate transaction and, under paragraph (m) of this section, must furnish a statement to the transferor. A reporting person may also report with respect to transactions otherwise excepted in paragraphs (c) and (d) of this section. However, if the reporting person so elects, the return must be filed and the statement furnished in accordance with the provisions of this section. For the definition of a real estate transaction for purposes of these reporting requirements, see paragraph (b) of this section. For rules for determining the reporting person with respect to a real estate transaction, see paragraph (e) of this section.

(b) Definition of real estate transaction—(1) In general. A transaction is a “real estate transaction” under this section if the transaction consists in whole or in part of the sale or exchange of “reportable real estate” (as defined in paragraph (b)(2) of this section) for money, indebtedness, property other than money, or services. The term “sale or exchange” shall include any transaction properly treated as a sale or exchange for Federal income tax purposes, whether or not the transaction is currently taxable. Thus, for example, a sale or exchange of a principal residence is a real estate transaction under this section even though the transferor is entitled to defer recognition under [section 1034](#) (relating to rollover of gain on sale of principal residence), or the transferor is entitled to the special one-time exclusion of gain from the sale of a principal residence provided by [section 121](#) to certain persons who have attained age 55.

(2)(i) Definition of reportable real estate. Except as otherwise provided in paragraph (c)(2) of this section, the term “reportable real estate” means any present or future ownership interest in—

- (A) Land (whether improved or unimproved), including air space;
- (B) Any inherently permanent structure, including any residential, commercial or industrial building;
- (C) Any condominium unit, including appurtenant fixtures and common elements (including land); or

(D) Any stock in a cooperative housing corporation (as defined in [section 216](#)).

(E) Any non-contingent interest in standing timber.

(ii) For purposes of this section, the term “ownership interest” includes fee simple interests, life estates, reversions, remainders, and perpetual easements. In addition, the term “ownership interest” includes any previously created rights to possession or use for all or a portion of any particular year (i.e., a leasehold, easement, or “timeshare”), with a remaining term of at least 30 years, including any period for which such rights may be renewed at the option of the holder of the rights, as determined on the date of closing (as defined in paragraph (h)(2)(ii) of this section). Thus, for example, a pre-existing leasehold on a building with an original term of 99 years is an ownership interest in real estate for purposes of this section if it has a remaining term of 35 years as of the date of closing, but not if it has a remaining term of only 10 years as of the date of closing. However, the term “ownership interest” does not include an option to acquire otherwise reportable real estate. Further, the term “ownership interest” includes any contractual interest in a sale or exchange of standing timber for a lump-sum payment that is fixed and not contingent.

(c) Exception for certain exempt transactions—(1) Certain transfers. No return of information is required with respect to—

(i) A transaction that is not a sale or exchange (such as a gift (including a transaction treated as a gift under [section 1041](#)) or bequest, or a financing or refinancing that is not related to the acquisition of reportable real estate), even if the transaction involves reportable real estate, as defined in paragraph (b)(2) of this section;

(ii) A transfer in full or partial satisfaction of any indebtedness secured by the property so transferred including a foreclosure, a transfer in lieu of foreclosure or an abandonment; or

(iii) A transaction (a “de minimis transfer”) in which it can be determined with certainty that the total consideration (in money, services and property), received or to be received in connection with the transaction is less than \$600 in value (determined without regard to any allocation of gross proceeds among multiple transferors under paragraph (i)(5) of this section) as of the date of the closing (as defined in paragraph (h)(2)(ii) of this section), even if the transaction involves reportable real estate. Thus, for example, if a contract for sale of reportable real estate recites total consideration of “\$1.00 plus other valuable consideration,” the transfer is not a de minimis transfer unless the reporting person can determine that the “other valuable consideration” received or to be received is less than \$599 in value as measured on the date of closing.

(2) Certain property. Notwithstanding the provisions of paragraph (b)(2) of this section, no return of information is required with respect to a sale or exchange of an interest in any of the following property—provided the sale or exchange of such property is not related to the sale or exchange of reportable real estate—

(i) An interest in surface or subsurface natural resources (for example, water, ores, and other natural deposits) or crops, whether or not such natural resources or crops are severed from the land. For purposes of this section, the terms “natural resources” and “crops” do not include standing timber.

(ii) A burial plot or vault; or

(iii) A manufactured structure used as a dwelling that is manufactured and assembled at a location different from that where it is used, but only if such structure is not affixed, at the date of closing (as defined in paragraph (h)(2)(ii) of this section), to a foundation. Thus, a transfer of an unaffixed mobile home that is unrelated to the sale or exchange of reportable real estate is excepted from the reporting requirements of this section.

(d) Exception for certain exempt transferors—(1) General rule. No return of information is required with respect to a transferor that is a corporation under [section 7701\(a\)\(3\)](#) or [section 7704\(a\)](#) or is considered under paragraph (d)(2) of this section to be—

(i) A corporation;

(ii) A governmental unit; or

(iii) An exempt volume transferor.

In the case of a real estate transaction with respect to which there is one or more exempt transferor(s) and one or more non-exempt transferor(s), the reporting person is required to report with respect to any non-exempt transferor. The special rule for allocation of gross proceeds, as provided in paragraph (i)(5) of this section, applies to such a transaction.

(2) Treatment as exempt transferor. Absent actual knowledge to the contrary, a reporting person may treat a transferor as—

(i) A corporation if—

(A) The name of the transferor contains an unambiguous expression of corporate status, such as Incorporated, Inc., Corporation, Corp., or P.C. (but not Company or Co.);

(B) The name of the transferor contains the term “insurance company,” “reinsurance company,” or “assurance company”; or

(C) The transfer or loan documents clearly indicate the corporate status of the transferor;

(ii) A governmental unit if the transferor is—

(A) The United States or a state, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; or

(B) A foreign government, a political subdivision thereof, an international organization, as defined in [section 7701\(a\)\(18\)](#), or any wholly-owned agency or instrumentality of the foregoing; or

(iii) An exempt volume transferor if, and only if, the reporting person receives a certification of exempt status under paragraph (d)(3) of this section.

(3) **Certification of exempt status—(i) In general.** A certification of exempt status must contain—

(A) The name, address, and taxpayer identification number of the transferor (the address must be that of the permanent residence (in the case of an individual), that of the principal office (in the case of a corporation or partnership), or that of the permanent residence or principal office of any fiduciary (in the case of a trust or estate));

(B) Sufficient information to identify any otherwise reportable real estate not reported by virtue of the exempt status of the transferor; and

(C) A declaration that the transferor has sold or exchanged during either of the prior two calendar years, or previously sold or exchanged during the current calendar year, or, as of the date of closing (as defined in paragraph (h)(2)(ii) of this section), reasonably expects to sell or exchange during the current calendar year at least 25 separate items of reportable real estate (as defined in paragraph (b)(2) of this section) to at least 25 separate transferees, and that each such item, at the date of closing of the sale of such item was or will be held primarily for sale or resale to customers in the ordinary course of a trade or business. For example, the declaration may be worded as follows:

.....

[Insert name of transferor]

[check one or more]:

(1) ___ has sold or exchanged during either of the prior two calendar years,

(2) ___ previously sold or exchanged during the current calendar year,

(3) ___ on the date of closing expects to sell or exchange during the current calendar year,

at least 25 separate items of reportable real estate to at least 25 separate transferees and each such item, at the date of closing of such item was or will be held primarily for sale or resale to customers in the ordinary course of a trade or business.

(ii) **Additional requirements.** A certification of exempt status must be—

(A) Signed under penalties of perjury by the transferor or any person who is authorized to sign a declaration under penalties of perjury in behalf of the transferor as described in [section 6061](#) and the regulations thereunder;

(B) Received by the reporting person no later than the time of closing; and

(C) Retained by the reporting person for four years following the close of the calendar year in which the date of closing (as determined under paragraph (h)(2)(ii) of this section) occurs.

(iii) Reporting person may accept or disregard certification. A reporting person may solicit or merely accept a certification of exempt status. Moreover, notwithstanding a transferor's furnishing of such certification, a reporting person may disregard the certification and, instead, report with respect to the transaction. See paragraph (a) of this section for the requirement that such elective reporting must be in compliance with the provisions of this section.

(e) Person required to report—(1) In general. Although there may be other persons involved in a real estate transaction, only the reporting person is required to report with respect to any real estate transaction. Except as provided in a designation agreement under paragraph (e)(5) of this section, the reporting person with respect to a real estate transaction is—

(i) The person responsible for closing the transaction, as defined in paragraph (e)(3) of this section; or

(ii) If there is no person responsible for closing the transaction, the person determined to be the reporting person under paragraph (e)(4) of this section.

A person may be the reporting person with respect to a transaction whether or not such person performs or is licensed to perform real estate brokerage services for a commission or fee.

(2) Employees, agents, and partners. For purposes of this paragraph (e), if an employee, agent, or partner (other than an employee, agent, or partner of the transferor or the transferee) acting within the scope of such person's employment, agency, or partnership participates in a real estate transaction—

(i) Such participation shall be attributed to such person's employer, principal, or partnership; and

(ii) Only the employer, principal, or partnership (and not such person) may be the reporting person with respect to such transaction as a result of such participation.

However, the participation of a person described in paragraph (e)(3)(i) of this section (i.e., a person listed on the Uniform Settlement Statement as the settlement agent) acting as an agent of another is not attributed to the principal.

(3) Person responsible for closing the transaction—(i) Uniform Settlement Statement used. If a Uniform Settlement Statement prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA), [12 U.S.C. 2601 et seq.](#) (a “Uniform Settlement Statement”), is used with respect to the real estate transaction and a person is listed as settlement agent on the statement, such person is the person responsible for closing the transaction. For purposes of this section, a Uniform Settlement Statement shall include any amendments or variations thereto, or substitutions therefore that may hereafter be prescribed under RESPA, provided that any such amended, varied, or substituted form requires disclosure of the parties to the transaction, the application of the proceeds of the transaction, and the identity of the settlement agent or other person responsible for preparing the form.

(ii) Other closing statement used. If a Uniform Settlement Statement is not used, or if a Uniform Settlement Statement is used, but no person is listed as settlement agent, the person responsible for closing the transaction is the person who prepares a closing statement presented to the transferor and transferee at, or in connection with, the closing of the real estate transaction. For purposes of this section, a closing statement is any closing statement, settlement statement (including a Uniform Settlement Statement), or other written document that identifies the transferor and transferee, reasonably identifies the transferred real estate, and describes the manner in which the proceeds payable to the transferor are to be (or were) disbursed at, or in connection with, the closing.

(iii) No closing statement used or multiple closing statements used. If no closing statement is used or multiple closing statements are used, the person responsible for closing the transaction is the first-listed of the persons that participate in the transaction as—

(A) The attorney for the transferee who is present at the occasion of the delivery of either the transferee's note or a significant portion of the cash proceeds to the transferor, or who prepares or reviews the preparation of the document(s) transferring legal or equitable ownership of the real estate;

(B) The attorney for the transferor who is present at the occasion of the delivery of either the transferee's note or a significant portion of the cash proceeds to the transferor, or who prepares or reviews the preparation of the document(s) transferring legal or equitable ownership of the real estate; or

(C) The disbursing title or escrow company that is most significant in terms of gross proceeds disbursed.

If more than one attorney would be the person responsible for closing the transaction under the preceding sentence, the person among such attorneys who is considered responsible for closing the transaction under this paragraph (e)(3)(iii) is the person whose involvement in the transaction is most significant.

(4) Determination of the real estate reporting person in the absence of a person responsible for closing the transaction. If no person is responsible for closing the transaction (within the meaning of paragraph (e)(3) of this section), the reporting person with respect to the real estate transaction is the person first-listed below of the persons that participate in the transaction as—

(i) The mortgage lender (as defined in paragraph (e)(6)(i) of this section);

(ii) The transferor's broker (as defined in paragraph (e)(6)(ii) of this section);

(iii) The transferee's broker (as defined in paragraph (e)(6)(iii) of this section); or

(iv) The transferee (as defined in paragraph (e)(6)(iv) of this section).

(5) Designation agreement—(i) In general. If a written designation agreement executed at or prior to the time of closing designates one of the persons described in paragraph (e)(5)(ii) of this section as the reporting person with respect to the

transaction and the designated person is a party to the agreement, the designated person is the reporting person with respect to the transaction. It is not necessary that all parties to the transaction (or that more than one party) be parties to the agreement.

(ii) Persons eligible. A person may be designated as the reporting person under this paragraph (e)(5) only if the person is—

(A) The person responsible for closing the transaction (as defined in paragraph (e)(3) of this section);

(B) A person described in paragraph (e)(3)(iii) (A), (B) or (C) of this section (whether or not such person is responsible for closing the transaction); or

(C) The mortgage lender (as defined in paragraph (e)(6)(i) of this section).

(iii) Form of designation agreement. A designation agreement may be in any form that is consistent with the requirements of this paragraph (e)(5), and may be included on a closing statement with respect to the transaction. The designation agreement must, however, include the name and address of the transferor and transferee and the address and any additional information necessary to identify the real estate transferred. The agreement must identify, by name and address, the person designated as the reporting person with respect to the transaction, and all other parties (if any) to the agreement. All parties to the agreement must date and sign the agreement and must retain the agreement for four years following the close of the calendar year in which the date of closing (as determined under paragraph (h)(2)(ii) of this section) occurs. Upon request by the Internal Revenue Service, or any person involved in the transaction who did not participate in the designation agreement, the agreement must be made available for inspection.

(6) Meaning of terms—(i) Mortgage lender. For purposes of this paragraph (e), the term “mortgage lender” means the person who lends new funds in connection with the transaction, but only if the repayment of such funds is secured in whole or in part by the real estate transferred. If new funds are advanced by more than one person, the mortgage lender is the person who advances the largest amount of new funds. If two or more persons advance equal amounts of new funds and no other person advances a greater amount of new funds, the mortgage lender among the persons advancing such equal amounts is the person with the security interest that is most senior in terms of priority. For purposes of this paragraph (e)(6)(i), any amounts advanced by the transferor are not treated as new funds.

(ii) Transferor's broker. For purposes of this paragraph (e), the term “transferor's broker” means only the broker that contracts with the transferor and is compensated in connection with the transaction.

(iii) Transferee's broker. For purposes of this paragraph (e), the term “transferee's broker” means only the broker that participates to a significant extent in the preparation of the transferee's offer to acquire the real estate or that presents such offer to the transferor. If more than one person is so described, the transferee's broker is the person whose participation in the preparation of the transferee's offer to acquire the real estate is most significant or, in the event there is no such person, the person whose participation in the presentation of the offer is most significant.

(iv) Transferee. For purposes of this paragraph (e), the term “transferee” means the person who acquires the greatest interest in the real estate. If there is no such person, the transferee is the person listed first on the document(s) transferring legal or equitable ownership of the real estate.

(f) Multiple transferors—(1) General rule. In the case of multiple transferors, each of which transfers an interest in the same reportable real estate, the reporting person shall make a separate information return with respect to each transferor. Paragraph (i)(5) of this section provides rules for the determination of gross proceeds to be reported in the case of multiple transferors.

(2) Rules for spouses. Transferors who are husband and wife at the time of closing and hold the reportable real estate as tenants in common, joint tenants, tenants by the entirety, or community property are treated as a single transferor for purposes of paragraphs (f)(1), (h)(1)(i), (i)(5) and (l)(1)(i) of this section, unless the reporting person receives, at or prior to the time of closing, an uncontested allocation of gross proceeds between them. In the case of a husband and wife treated as a single transferor, the reporting person may treat either as the transferor for purposes of paragraphs (h)(1)(i) and (l)(1)(i) of this section, relating to reporting and soliciting taxpayer identification numbers.

(g) Prescribed form. Except as otherwise provided in paragraph (k) of this section, the information return required by paragraph (a) of this section shall be made on Form 1099.

(h) Information required—(1) In general. The following information must be set forth on the Form 1099 required by this section:

(i) The name, address, and taxpayer identification number (TIN) of the transferor (see also paragraph (f)(2) of this section);

(ii) A general description of the real estate transferred (in accordance with paragraph (h)(2)(i) of this section);

(iii) The date of closing (as defined in paragraph (h)(2)(ii) of this section);

(iv) To the extent required by the Form 1099 and its instructions, the entire gross proceeds with respect to the transaction (as determined under the rules of paragraph (i) of this section), and, in the case of multiple transferors, the gross proceeds allocated to the transferor (as determined under paragraph (i)(5) of this section);

(v) To the extent required by the Form 1099 and its instructions, an indication that the transferor—

(A) Received (or will, or may, receive) property (other than cash and consideration treated as cash in computing gross proceeds) or services as part of the consideration for the transaction,

(B) May receive property (other than cash) or services in satisfaction of an obligation having a stated principal amount, or

(C) May receive, in connection with a contingent payment transaction, an amount of gross proceeds that cannot be determined with certainty using the method described in paragraph (i)(3)(iii) of this section and is therefore not included in gross proceeds under paragraphs (i)(3)(i) and (i)(3)(iii) of this section;

(vi) The real estate reporting person's name, address, and TIN;

(vii) [Reserved]; and

(viii) Any other information required by the Form 1099 or its instructions.

(2) Meaning of terms—(i) General description of the real estate transferred. A general description of the real estate transferred includes the complete address of the property. If the address would not sufficiently identify the property, a general description of the real estate also includes a legal description (e.g., section, lot, and block) of the property.

(ii) Date of closing. In the case of a real estate transaction with respect to which a Uniform Settlement Statement is used, the date of closing shall be the date (if any) properly described as the “Settlement Date” on such statement. In all other cases, the date of closing shall be the earlier of the date on which title is transferred or the date on which the economic burdens and benefits of ownership of the real estate shift from the transferor to the transferee.

(i) Gross proceeds—(1) In general. Except as otherwise provided in this paragraph (i), the term “gross proceeds” means the total cash received or to be received by or on behalf of the transferor in connection with the real estate transaction. For purposes of this paragraph (i), the following amounts are treated as cash received or to be received by or on behalf of the transferor in connection with the real estate transaction:

(i) The stated principal amount of any obligation to pay cash to or for the benefit of the transferor in the future (including any obligation having a stated principal amount that may be satisfied by the delivery of property (other than cash) or services);

(ii) The amount of any liability of the transferor assumed by the transferee as part of the consideration for the transfer or of any liability to which the real estate acquired is subject (whether or not the transferor is personally liable for the debt); and

(iii) In the case of a contingent payment transaction, as defined in paragraph (i)(3)(ii) of this section, the maximum determinable proceeds, as defined in paragraph (i)(3)(iii) of this section.

Gross proceeds does not include the value of any property (other than cash and consideration treated as cash) or services received by, or on behalf of, the transferor in connection with the real estate transaction. See paragraph (h)(1)(v) of this section for the information that must be included on the Form 1099 required by this section in cases in which the transferor receives (or will, or may, receive) property (other than cash and consideration treated as cash) or services as part of the consideration for the transfer.

(2) Treatment of sales commissions and similar expenses. In computing gross proceeds, the total cash received or to be received by or on behalf of the transferor shall not be reduced by expenses borne by the transferor (such as sales commissions, expenses of advertising the real estate, expenses of preparing the deed, and the cost of legal services in connection with the transfer).

(3) Special rules for contingent payments—(i) In general. If a real estate transaction is a contingent payment transaction, gross proceeds consist of the maximum determinable proceeds, if any.

(ii) Contingent payment transaction. For purposes of this section, the term “contingent payment transaction” means a real estate transaction with respect to which the receipt, by or on behalf of the transferor, of cash or consideration treated as cash under paragraph (i)(1)(i) of this section is subject to a contingency.

(iii) Maximum determinable proceeds. For purposes of this section, the term “maximum determinable proceeds” means the gross proceeds determined by assuming that all of the contingencies contemplated by the documents available at closing are met or otherwise resolved in a manner that will maximize the gross proceeds. If the maximum amount of gross proceeds cannot be determined with certainty using this method, the maximum determinable proceeds are the greatest amount that can be determined with certainty using this method. See paragraph (h)(1)(v)(C) of this section for the information that must be included on the Form 1099 required by this section in cases in which the maximum amount of gross proceeds cannot, by using the method described in this paragraph (i)(3)(iii), be determined with certainty.

(4) Uniform Settlement Statement used. If a Uniform Settlement Statement is used with respect to a real estate transaction involving a transfer of reportable real estate solely for cash and consideration treated as cash in computing gross proceeds, the gross proceeds generally will be the same amount as the contract sales price properly shown on that statement.

(5) Special rules for multiple transferors—(i) General rules. In the case of multiple transferors (within the meaning of paragraph (f) of this section) each of which transfers an interest in the same reportable real estate, the reporting person must request the transferors to provide an allocation of the gross proceeds among the transferors. The request must be made at or before the time of closing. Neither the request nor the response is required to be in writing. The reporting person must make a reasonable effort to contact all transferors of whom the reporting person has actual knowledge. The reporting person may, however, rely on the unchallenged response of any transferor and need not make additional efforts to contact other transferors after at least one complete allocation (whether or not contained in a single response) is received. Except as otherwise provided in this paragraph (i)(5), the reporting person shall report the gross proceeds in accordance with any allocation received at or before the time of closing. The reporting person may (but is not required to) report the gross proceeds in accordance with any allocation received after the time of closing and before the date (determined without regard to extensions) the Forms 1099 are required to be filed. The reporting person may not report the gross proceeds in accordance with any allocation received on or after the date (determined without regard to extensions) the Forms 1099 are required to be filed. If no gross proceeds are allocated to a transferor because no allocation or an incomplete allocation is received by the reporting person, the reporting person shall report the entire unallocated gross proceeds (if any) on the return of information made with respect to such transferor. If the reporting person receives conflicting allocations from the transferors, the reporting person shall report the entire gross proceeds on each return of information made with respect to the transaction.

(ii) Rules for spouses. The reporting person need not request an allocation of gross proceeds if the only transferors are husband and wife at the time of closing. If there are other transferors, the reporting person need only make a reasonable effort to contact either the husband or wife in connection with the request for an allocation. See paragraph (f)(2) of this section for rules that treat a husband and wife as multiple transferors if an uncontested allocation of gross proceeds is received by the reporting person at or prior to the time of closing.

(6) Multiple asset transactions. In the case of a real estate transaction reportable under this section that involves the transfer of reportable real estate and other assets, the amount attributable to both the real estate and other assets is treated as the gross proceeds with respect to that real estate transaction. No allocation of gross proceeds is made among the assets.

(j) Time and place for filing. A reporting person shall file the information returns required by this section with respect to a real estate transaction after December 31 of the calendar year that includes the date of closing (as determined under paragraph (h)(2)(ii) of this section) and on or before February 28 (March 31 if filed electronically) of the following calendar year. The returns shall be filed with the appropriate Internal Revenue Service Center at the address listed in the Instructions to Form 1099.

(k) [Reserved by 88 FR 11764]

(l) Requesting taxpayer identification numbers (TINS)—(1) Solicitation—(i) General requirements. A reporting person who is required to make an information return with respect to a real estate transaction under this section must solicit a TIN from the transferor at or before the time of closing. The solicitation may be made in person or in a mailing that includes other items. Any person whose TIN is solicited under this paragraph (l) must furnish such TIN to the reporting person and certify that the TIN is correct. See paragraph (f)(2) of this section for rules that treat a husband and wife as a single transferor (and provide for the TIN solicitation of either) in the absence of an allocation of gross proceeds under paragraph (i)(5) of this section.

(ii) Content of solicitation. The solicitation shall be made by providing to the person from whom the TIN is solicited a written statement that the person is required by law to furnish a correct TIN to the reporting person, and that the person may be subject to civil or criminal penalties for failing to furnish a correct TIN. For example, the solicitation may be worded as follows:

You are required by law to provide [insert name of reporting person] with your correct taxpayer identification number. If you do not provide [insert name of reporting person] with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.

The solicitation shall contain space for the name, address, and TIN of the person from whom the TIN is solicited and for the person to certify under penalties of perjury that the TIN furnished is that person's correct TIN. The wording of the certification must be substantially similar to the following: "Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number." The requirements of this paragraph (l)(1)(ii) may be met by providing to the transferor a copy of Form W-9. In the case of a real estate transaction for which a Uniform Settlement Statement is used, the requirements of this paragraph (l)(1)(ii) may be met by providing to the transferor a copy of such statement that is modified to conform to the requirements of this paragraph (l)(1)(ii).

(iii) Retention requirement. The solicitation shall be retained by the reporting person for four years following the close of the calendar year that includes the date of closing (as determined under paragraph (h)(2)(ii) of this section). Such solicitation must be made available for inspection upon request by the Internal Revenue Service.

(2) No TIN provided. A reporting person that does not receive the transferor's TIN will not be subject to any penalty cross-referenced in paragraph (n) of this section by reason of failure to report such TIN if the reporting person has complied with the requirements of paragraph (l)(1) of this section in good faith (determined with proper regard for a course of conduct and the overall results achieved for the year).

(m) Furnishing statements to transferors—(1)(i) Requirement of furnishing statements. A reporting person who is required to make a return of information under paragraph (a) of this section shall furnish to the transferor whose TIN is required to be shown on the return a written statement of the information required to be shown on such return. The written statement must bear either the legend shown on the recipient copy of Form 1099 or the following: “This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.”

(ii) This requirement may be satisfied by furnishing to the transferor a copy of a completed Form 1099 (or substitute Form 1099 that complies with current revenue procedures). An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number of the transferor in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see § 301.6109-4 of this chapter (Procedure and Administration Regulations).

(iii) In the case of a real estate transaction for which a Uniform Settlement Statement is used, this requirement also may be satisfied by furnishing to the transferor a copy of a completed statement that is modified to comply with the requirements of this paragraph (m), and by designating on the Uniform Settlement Statement the items of information (such as gross proceeds or allocated gross proceeds) required to be set forth on the Form 1099. For purposes of this paragraph (m), a statement shall be considered furnished to a transferor if it is given to the transferor in person, either at the closing or thereafter, or is mailed to the transferor at the transferor's last known address.

(2) Time for furnishing statement. The statement required under this paragraph (m) must be furnished to the transferor on or after the date of closing and on or before February 15 of the following calendar year.

(3) Consolidated reporting. (i) The term **consolidated reporting statement** means a grouping of statements the same reporting person furnishes to the same transferor or group of transferors on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of reporting person to transferor as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

(n) Cross-reference to penalties. See the following sections regarding penalties for failure to comply with the requirements of section 6045(e) and this section:

(1) Section 6721 for failure to file a correct information return;

(2) Section 6722 for failure to furnish a correct statement to the transferor;

(3) Section 6723 for failure to comply with other information reporting requirements (including the requirement to furnish a TIN);

(4) [Section 6724](#) for definitions and rules relating to waiver and payment; and

(5) [Section 7203](#) for willful failure to supply information (including a taxpayer identification number).

(o) **No separate charge.** A reporting person may not separately charge any person involved in a real estate transaction for complying with any requirements of this section.

(p) **Backup withholding requirements.** [Reserved]

(q) **Federally-subsidized indebtedness.** [Reserved]

(r) **Examples.** The following examples illustrate the application of this section:

Example 1. Sale or exchange. (i) On June 1, 1991, A, an individual, buys a house from B, an individual, for \$200,000. The entire \$200,000 is financed by B under an “installment land contract,” whereby A takes possession and assumes all significant economic benefits and burdens of ownership of the house, and B retains legal title to the property until A fully performs under the contract. On June 1, 1994, A refinances his purchase of the house with Z, a financial institution. The balance owed to B is repaid and B relinquishes title to the house. A retains possession and the benefits and burdens of ownership of the house.

(ii) For federal income tax purposes, the transaction occurring on June 1, 1991 is considered a sale of the house by B, notwithstanding his retention of legal title to the property. B's sale is subject to information reporting under this section. However, the transaction occurring on June 1, 1994 is not a sale or exchange for federal income tax purposes, and notwithstanding the change in legal title upon the deeding over of the property, that transaction is not subject to information reporting under this section.

Example 2. Sale or exchange. On August 10, 1991, C, an individual, accepts an offer from Y, a corporation that acts on behalf of T (C's employer) to facilitate moves of T's transferred employees from one part of the country to another. Under the offer, C transfers his residence to Y for \$250,000 by executing a deed to the property in blank and giving Y a power of attorney to dispose of the residence. C also immediately vacates the residence, whereupon Y begins paying all costs associated with the residence and is entitled to all income from the residence, including sales proceeds. On October 1, 1991, Y sells the residence to D and inserts C's name in the deed previously executed by C. Thus, neither Y nor T ever become record owners of the residence. C's transfer of the residence to Y on August 10, 1991 is a sale of reportable real estate and is subject to information reporting under this section; however, the sale on October 1, 1991 is not required to be reported because Y (the transferor in that sale) is a corporation. See paragraph (d) of this section.

Example 3. Definition of ownership interest. E, an individual, owns a perpetual timeshare interest in a residential unit of real property at an oceanfront resort. For consideration, on November 15, 1991, E sells her rights in the property for the period January 1, 1992 through December 31, 1992 to F. The transfer of E's property interest is not the transfer of an ownership interest, as defined in paragraph (b)(2) of this section and therefore is not reportable real estate under paragraph (b)(2) of this section. Accordingly, the transfer is not a real estate transaction under section (b)(1) of this section, and no return of information is required with respect to E's property transfer.

Example 4. Gross proceeds (exchange). (i) G, an individual, agrees to transfer Blackacre, which has a fair market value of \$100,000, plus \$10,000 cash to H, an individual, in exchange for Whiteacre, which has a fair market value of \$120,000 and is

encumbered by a \$10,000 liability (which is assumed by G). No other liabilities are involved in the transaction. P is the reporting person with respect to both sides of the transaction.

(ii) With respect to the transfer of Blackacre by G to H, P must report gross proceeds of \$-0- (even though the exchange agreement may recite total exchange value of \$120,000). See paragraph (i)(1) of this section. In addition, (to the extent required by the Form 1099 and its instructions) P must indicate that G will receive property as part of the consideration for the transaction. See paragraph (h)(v)(A) of this section.

(iii) With respect to the transfer of Whiteacre by H to G, P must report gross proceeds of \$20,000 (the amount received by H consisting of cash (\$10,000) and consideration treated as cash (\$10,000) under paragraph (i) of this section). No other amount is reported under paragraph (i)(1) of this section even though the exchange agreement may recite total exchange value of \$120,000. In addition, (to the extent required by the Form 1099 and its instructions) P must indicate that H will receive property as part of the consideration for the transaction. See paragraph (h)(v)(A) of this section.

Example 5. Gross proceeds (deferred exchange). [Reserved]

Example 6. Gross proceeds (contingencies). K, an individual, sells an unencumbered apartment building to L for \$500,000, payable at closing, plus an amount equal to 2% of gross rents from the apartment building for each of the next 5 years, the contingent payments to be made annually with adequate stated interest. The agreement provides that the maximum amount K may receive (including the downpayment but excluding the interest) is \$600,000. Under paragraph (i)(3)(ii) of this section the real estate transaction is a “contingent payment transaction.” Under paragraph (i)(3)(iii) of this section, the maximum amount of gross proceeds determined by assuming all contingencies are satisfied is \$600,000. Thus, \$600,000 is the “maximum determinable proceeds” and is the amount reported.

Example 7. Gross proceeds (contingencies). The facts are the same as in example (6), except that the agreement does not provide for adequate stated interest. The result is the same as in example (6).

Example 8. Gross proceeds (contingencies). The facts are same as in example (6), except that no maximum amount is stated in the agreement (or any other document available at closing). Under paragraph (i)(3)(iii) of this section, assuming all contingencies are satisfied, the maximum amount of gross proceeds cannot be determined with certainty. The greatest amount that can be determined with certainty at the time of the closing, assuming all contingencies are satisfied, is \$500,000, the cash downpayment. Therefore, \$500,000 is the “maximum determinable proceeds” under paragraph (i)(3)(iii) of this section and is the amount reported. In addition, (to the extent required by the Form 1099 and its instructions) the reporting person must indicate that the gross proceeds cannot be determined with certainty. See paragraph (h)(1)(iv)(C) of this section.

Example 9. Gross proceeds (contingencies). The facts are the same as in example (8), except that the agreement provides that the minimum amount K will receive (including the downpayment) is \$570,000. Thus, under paragraph (i)(3)(iii) of this section, assuming all contingencies are satisfied, the maximum amount of gross proceeds cannot be determined with certainty. The greatest amount that can be determined with certainty at the time of the closing, assuming all contingencies are satisfied, is \$570,000, the minimum amount stated in the agreement. Therefore, \$570,000 is the “maximum determinable proceeds” under paragraph (i)(3)(iii) of this section and is the amount reported. In addition, (to the extent required by the Form 1099 and its instructions) the reporting person must indicate that the gross proceeds cannot be determined with certainty. See paragraph (h)(1)(iv)(C) of this section.

(s) Applicability date. This section applies for real estate transactions with dates of closing (as determined under paragraph (h)(2)(ii) of this section) that occur on or after January 1, 1991. Section 1.6045-4(b)(2)(i)(E), (b)(2)(ii), and (c)(2)(i) (as contained in 26 CFR part 1, revised May 28, 2009) applies to sales or exchanges of standing timber for lump-sum payments completed after May 28, 2009. Section 1.6045-4(m)(1) (as contained in 26 CFR part 1, revised July 15, 2014) applies to payee statements due after December 31, 2014. For payee statements due before January 1, 2015, § 1.6045-4(m)(1) (as contained in 26 CFR part

1, revised April 2013) applies. The removal of paragraph (k) of this section applies for information returns required to be filed during calendar years beginning after December 31, 2023.

Credits

[T.D. 8323, 55 FR 51284, Dec. 13, 1990; T.D. 8323, 56 FR 559, Jan. 7, 1991; T.D. 8323, 56 FR 3419, Jan. 30, 1991; T.D. 8895, 65 FR 50407, Aug. 18, 2000; T.D. 9450, 74 FR 25430, May 28, 2009; T.D. 9504, 75 FR 64097, Oct. 18, 2010; T.D. 9675, 79 FR 41130, July 15, 2014; 82 FR 46672, Oct. 6, 2017; T.D. 9972, 88 FR 11764, Feb. 23, 2023]

SOURCE: Sections 1.6001-1 to 1.6091-4 contained in T.D. 6500, 25 FR 12108, Nov. 26, 1960; T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, unless otherwise noted.

AUTHORITY: Section 1.6033–4 also issued under 26 U.S.C. 6033.; Section 1.6037–2 also issued under 26 U.S.C. 6037.

Current through March 10, 2023, 88 FR 15171. Some sections may be more current. See credits for details.

End of Document

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Proposed Legislation

United States Code Annotated

Title 26. Internal Revenue Code (Refs & Annos)

Subtitle A. Income Taxes (Refs & Annos)

Chapter 1. Normal Taxes and Surtaxes (Refs & Annos)

Subchapter B. Computation of Taxable Income

Part III. Items Specifically Excluded from Gross Income (Refs & Annos)

26 U.S.C.A. § 121, I.R.C. § 121

§ 121. Exclusion of gain from sale of principal residence

Effective: December 22, 2017

[Currentness](#)

(a) Exclusion.--Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more.

(b) Limitations.--

(1) In general.--The amount of gain excluded from gross income under subsection (a) with respect to any sale or exchange shall not exceed \$250,000.

(2) Special rules for joint returns.--In the case of a husband and wife who make a joint return for the taxable year of the sale or exchange of the property--

(A) \$500,000 limitation for certain joint returns.--Paragraph (1) shall be applied by substituting "\$500,000" for "\$250,000" if--

(i) either spouse meets the ownership requirements of subsection (a) with respect to such property;

(ii) both spouses meet the use requirements of subsection (a) with respect to such property; and

(iii) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).

(B) Other joint returns.--If such spouses do not meet the requirements of subparagraph (A), the limitation under paragraph (1) shall be the sum of the limitations under paragraph (1) to which each spouse would be entitled if such spouses had not been married. For purposes of the preceding sentence, each spouse shall be treated as owning the property during the period that either spouse owned the property.

(3) Application to only 1 sale or exchange every 2 years.--Subsection (a) shall not apply to any sale or exchange by the taxpayer if, during the 2-year period ending on the date of such sale or exchange, there was any other sale or exchange by the taxpayer to which subsection (a) applied.

(4) Special rule for certain sales by surviving spouses.--In the case of a sale or exchange of property by an unmarried individual whose spouse is deceased on the date of such sale, paragraph (1) shall be applied by substituting "\$500,000" for "\$250,000" if such sale occurs not later than 2 years after the date of death of such spouse and the requirements of paragraph (2)(A) were met immediately before such date of death.

(5) Exclusion of gain allocated to nonqualified use.--

(A) In general.--Subsection (a) shall not apply to so much of the gain from the sale or exchange of property as is allocated to periods of nonqualified use.

(B) Gain allocated to periods of nonqualified use.--For purposes of subparagraph (A), gain shall be allocated to periods of nonqualified use based on the ratio which--

- (i) the aggregate periods of nonqualified use during the period such property was owned by the taxpayer, bears to
- (ii) the period such property was owned by the taxpayer.

(C) Period of nonqualified use.--For purposes of this paragraph--

(i) In general.--The term "period of nonqualified use" means any period (other than the portion of any period preceding January 1, 2009) during which the property is not used as the principal residence of the taxpayer or the taxpayer's spouse or former spouse.

(ii) Exceptions.--The term "period of nonqualified use" does not include--

(I) any portion of the 5-year period described in subsection (a) which is after the last date that such property is used as the principal residence of the taxpayer or the taxpayer's spouse,

(II) any period (not to exceed an aggregate period of 10 years) during which the taxpayer or the taxpayer's spouse is serving on qualified official extended duty (as defined in subsection (d)(9)(C)) described in clause (i), (ii), or (iii) of subsection (d)(9)(A), and

(III) any other period of temporary absence (not to exceed an aggregate period of 2 years) due to change of employment, health conditions, or such other unforeseen circumstances as may be specified by the Secretary.

(D) Coordination with recognition of gain attributable to depreciation.--For purposes of this paragraph--

(i) subparagraph (A) shall be applied after the application of subsection (d)(6), and

(ii) subparagraph (B) shall be applied without regard to any gain to which subsection (d)(6) applies.

(c) Exclusion for taxpayers failing to meet certain requirements.--

(1) In general.--In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a), and subsection (b)(3), shall not apply; but the dollar limitation under paragraph (1) or (2) of subsection (b), whichever is applicable, shall be equal to--

(A) the amount which bears the same ratio to such limitation (determined without regard to this paragraph) as

(B)(i) the shorter of--

(I) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence; or

(II) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange, bears to

(ii) 2 years.

(2) Sales and exchanges to which subsection applies.--This subsection shall apply to any sale or exchange if--

(A) subsection (a) would not (but for this subsection) apply to such sale or exchange by reason of--

(i) a failure to meet the ownership and use requirements of subsection (a), or

(ii) subsection (b)(3), and

(B) such sale or exchange is by reason of a change in place of employment, health, or, to the extent provided in regulations, unforeseen circumstances.

(d) Special rules.--

(1) Joint returns.--If a husband and wife make a joint return for the taxable year of the sale or exchange of the property, subsections (a) and (c) shall apply if either spouse meets the ownership and use requirements of subsection (a) with respect to such property.

(2) Property of deceased spouse.--For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, the period such unmarried individual owned and used such property shall include the period such deceased spouse owned and used such property before death.

(3) Property owned by spouse or former spouse.--For purposes of this section--

(A) Property transferred to individual from spouse or former spouse.--In the case of an individual holding property transferred to such individual in a transaction described in [section 1041\(a\)](#), the period such individual owns such property shall include the period the transferor owned the property.

(B) Property used by former spouse pursuant to divorce decree, etc.--Solely for purposes of this section, an individual shall be treated as using property as such individual's principal residence during any period of ownership while such individual's spouse or former spouse is granted use of the property under a divorce or separation instrument.

(C) Divorce or separation instrument.--For purposes of this paragraph, the term "divorce or separation instrument" means--

(i) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

(ii) a written separation agreement, or

(iii) a decree (not described in clause (i)) requiring a spouse to make payments for the support or maintenance of the other spouse.

(4) Tenant-stockholder in cooperative housing corporation.--For purposes of this section, if the taxpayer holds stock as a tenant-stockholder (as defined in [section 216](#)) in a cooperative housing corporation (as defined in such section), then--

(A) the holding requirements of subsection (a) shall be applied to the holding of such stock, and

(B) the use requirements of subsection (a) shall be applied to the house or apartment which the taxpayer was entitled to occupy as such stockholder.

(5) Involuntary conversions.--

(A) In general.--For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of such property.

(B) Application of section 1033.--In applying section 1033 (relating to involuntary conversions), the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to this section.

(C) Property acquired after involuntary conversion.--If the basis of the property sold or exchanged is determined (in whole or in part) under section 1033(b) (relating to basis of property acquired through involuntary conversion), then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

(6) Recognition of gain attributable to depreciation.--Subsection (a) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after May 6, 1997, in respect of such property.

(7) Determination of use during periods of out-of-residence care.--In the case of a taxpayer who--

(A) becomes physically or mentally incapable of self-care, and

(B) owns property and uses such property as the taxpayer's principal residence during the 5-year period described in subsection (a) for periods aggregating at least 1 year,

then the taxpayer shall be treated as using such property as the taxpayer's principal residence during any time during such 5-year period in which the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or political subdivision to care for an individual in the taxpayer's condition.

(8) Sales of remainder interests.--For purposes of this section--

(A) In general.--At the election of the taxpayer, this section shall not fail to apply to the sale or exchange of an interest in a principal residence by reason of such interest being a remainder interest in such residence, but this section shall not apply to any other interest in such residence which is sold or exchanged separately.

(B) Exception for sales to related parties.--Subparagraph (A) shall not apply to any sale to, or exchange with, any person who bears a relationship to the taxpayer which is described in section 267(b) or 707(b).

(9) Uniformed services, Foreign Service, and intelligence community.--

(A) In general.--At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving on qualified official extended duty--

(i) as a member of the uniformed services,

(ii) as a member of the Foreign Service of the United States, or

(iii) as an employee of the intelligence community.

(B) Maximum period of suspension.--The 5-year period described in subsection (a) shall not be extended more than 10 years by reason of subparagraph (A).

(C) Qualified official extended duty.--For purposes of this paragraph--

(i) In general.--The term “qualified official extended duty” means any extended duty while serving at a duty station which is at least 50 miles from such property or while residing under Government orders in Government quarters.

(ii) Uniformed services.--The term “uniformed services” has the meaning given such term by [section 101\(a\)\(5\) of title 10, United States Code](#), as in effect on the date of the enactment of this paragraph.

(iii) Foreign Service of the United States.--The term “member of the Foreign Service of the United States” has the meaning given the term “member of the Service” by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980, as in effect on the date of the enactment of this paragraph.

(iv) Employee of intelligence community.--The term “employee of the intelligence community” means an employee (as defined by [section 2105 of title 5, United States Code](#)) of--

(I) the Office of the Director of National Intelligence,

(II) the Central Intelligence Agency,

(III) the National Security Agency,

(IV) the Defense Intelligence Agency,

(V) the National Geospatial-Intelligence Agency,

(VI) the National Reconnaissance Office,

(VII) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs,

(VIII) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, and the Coast Guard,

(IX) the Bureau of Intelligence and Research of the Department of State, or

(X) any of the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.

(v) **Extended duty.**--The term "extended duty" means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

(D) Special rules relating to election.--

(i) **Election limited to 1 property at a time.**--An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

(ii) **Revocation of election.**--An election under subparagraph (A) may be revoked at any time.

(10) Property acquired in like-kind exchange.--If a taxpayer acquires property in an exchange with respect to which gain is not recognized (in whole or in part) to the taxpayer under subsection (a) or (b) of section 1031, subsection (a) shall not apply to the sale or exchange of such property by such taxpayer (or by any person whose basis in such property is determined, in whole or in part, by reference to the basis in the hands of such taxpayer) during the 5-year period beginning with the date of such acquisition.

[(11) Repealed. Pub.L. 111-312, Title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300]

(12) Peace Corps.--

(A) In general.--At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving outside the United States--

(i) on qualified official extended duty (as defined in paragraph (9)(C)) as an employee of the Peace Corps, or

(ii) as an enrolled volunteer or volunteer leader under section 5 or 6 (as the case may be) of the Peace Corps Act (22 U.S.C. 2504, 2505).

(B) Applicable rules.--For purposes of subparagraph (A), rules similar to the rules of subparagraphs (B) and (D) of paragraph (9) shall apply.

(e) Denial of exclusion for expatriates.--This section shall not apply to any sale or exchange by an individual if the treatment provided by [section 877\(a\)\(1\)](#) applies to such individual.

(f) Election to have section not apply.--This section shall not apply to any sale or exchange with respect to which the taxpayer elects not to have this section apply.

(g) Residences acquired in rollovers under [section 1034](#).--For purposes of this section, in the case of property the acquisition of which by the taxpayer resulted under [section 1034](#) (as in effect on the day before the date of the enactment of this section) in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, in determining the period for which the taxpayer has owned and used such property as the taxpayer's principal residence, there shall be included the aggregate periods for which such other residence (and each prior residence taken into account under [section 1223\(6\)](#) in determining the holding period of such property) had been so owned and used.

CREDIT(S)

(Added [Pub.L. 88-272, Title II, § 206\(a\)](#), Feb. 26, 1964, 78 Stat. 38; amended [Pub.L. 94-455, Title XIV, § 1404\(a\)](#), [Title XIX, § 1906\(b\)\(13\)\(A\)](#), Oct. 4, 1976, 90 Stat. 1733, 1834; [Pub.L. 95-600, Title IV, § 404\(a\)](#) to (c)(2), Nov. 6, 1978, 92 Stat. 2869, 2870; [Pub.L. 97-34, Title I, § 123\(a\)](#), Aug. 13, 1981, 95 Stat. 197; [Pub.L. 100-647, Title VI, § 6011\(a\)](#), Nov. 10, 1988, 102 Stat. 3691; [Pub.L. 105-34, Title III, § 312\(a\)](#), Aug. 5, 1997, 111 Stat. 836; [Pub.L. 105-206, Title VI, § 6005\(e\)\(1\), \(2\)](#), July 22, 1998, 112 Stat. 805; [Pub.L. 107-16, Title V, § 542\(c\)](#), June 7, 2001, 115 Stat. 84; [Pub.L. 108-121, Title I, § 101\(a\)](#), Nov. 11, 2003, 117 Stat. 1336; [Pub.L. 108-357, Title VIII, § 840\(a\)](#), Oct. 22, 2004, 118 Stat. 1597; [Pub.L. 109-135, Title IV, §§ 402\(a\)\(3\), 403\(ee\)](#), Dec. 21, 2005, 119 Stat. 2610, 2631; [Pub.L. 109-432, Div. A, Title IV, § 417\(a\) to \(d\)](#), Dec. 20, 2006, 120 Stat. 2965; [Pub.L. 110-142, § 7\(a\)](#), Dec. 20, 2007, 121 Stat. 1806; [Pub.L. 110-172, § 11\(a\)\(11\)\(A\)](#), Dec. 29, 2007, 121 Stat. 2485; [Pub.L. 110-245, Title I, §§ 110\(a\), 113\(a\), \(b\)](#), June 17, 2008, 122 Stat. 1633, 1635; [Pub.L. 110-289, Div. C, Title III, § 3092\(a\)](#), July 30, 2008, 122 Stat. 2911; [Pub.L. 111-312, Title III, § 301\(a\)](#), Dec. 17, 2010, 124 Stat. 3300; [Pub.L. 113-295, Div. A, Title II, §§ 212\(c\), 213\(c\)\(1\), 221\(a\)\(20\)](#), Dec. 19, 2014, 128 Stat. 4033, 4040; [Pub.L. 115-97, Title I, § 11051\(b\)\(3\)\(A\)](#), Dec. 22, 2017, 131 Stat. 2089.)

Notes of Decisions (12)

26 U.S.C.A. § 121, 26 USCA § 121

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

Code of Federal Regulations
Title 26. Internal Revenue
Chapter I. Internal Revenue Service, Department of the Treasury
Subchapter A. Income Tax
Part 1. Income Taxes (Refs & Annos)
Procedure and Administration
Information and Returns
Returns and Records (Refs & Annos)
Information Returns

26 C.F.R. § 1.6045–5, Treas. Reg. § 1.6045–5

§ 1.6045–5 Information reporting on payments to attorneys.

Effective: July 15, 2014

[Currentness](#)

(a) Requirement of reporting—(1) In general. Except as provided in paragraph (c) of this section, every payor engaged in a trade or business who, in the course of that trade or business, makes payments aggregating \$600 or more during a calendar year to an attorney in connection with legal services (whether or not the services are performed for the payor) must file an information return for such payments. The information return must be filed on the form and in the manner required by the Commissioner. For the time and place for filing the form, see [§ 1.6041–6](#). For definitions of the terms under this section, see paragraph (d) of this section. The requirements of this paragraph (a)(1) apply whether or not—

(i) A portion of a payment is kept by the attorney as compensation for legal services rendered; or

(ii) Other information returns are required with respect to some or all of a payment under other provisions of the Internal Revenue Code and the regulations thereunder.

(2) Information required. The information return required under paragraph (a)(1) of this section must include the following information:

(i) The name, address, and taxpayer identifying number (TIN) (as defined in [section 7701\(a\)](#)) of the payor;

(ii) The name, address, and TIN of the payee attorney;

(iii) The amount of the payment or payments (as defined in paragraph (d)(5) of this section); and

(iv) Any other information required by the Commissioner in forms, instructions or publications.

(3) Requirement to furnish statement—(i) General requirements. A person required to file an information return under paragraph (a)(1) of this section must furnish to the attorney a written statement of the information required to be shown on the return. This requirement may be met by furnishing a copy of the return to the attorney. An IRS truncated taxpayer identifying number (TTIN) may be used as the identifying number of the attorney in lieu of the identifying number appearing on the information return filed with the Internal Revenue Service. For provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations). The written statement must be furnished to the attorney on or before February 15 of the year following the calendar year in which the payment was made.

(ii) Consolidated reporting. (A) The term **consolidated reporting statement** means a grouping of statements the same payor furnishes to the same payee or group of payees on the same date for the same reporting year that includes a statement required under this section. A consolidated reporting statement is limited to statements based on the same relationship of payor to payee as the statement required to be furnished under this section.

(B) A consolidated reporting statement must be furnished on or before February 15 of the year following the calendar year reported. Any statement that otherwise must be furnished on or before January 31 must be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

(b) Special rules—(1) Joint or multiple payees—(i) Check delivered to one payee attorney. If more than one attorney is listed as a payee on a check, an information return must be filed under paragraph (a)(1) of this section with respect to the payee attorney to whom the check is delivered.

(ii) Check delivered to payee nonattorney. If an attorney is listed as a payee on a check but the check is delivered to a nonattorney who is a payee on the check, an information return must be filed under paragraph (a)(1) of this section with respect to the payee attorney listed on the check. If more than one attorney is listed as a payee on a check but the check is delivered to a nonattorney who is a payee on the check, the information return must be filed with respect to the first-listed payee attorney on the check.

(iii) Check delivered to nonpayee. If two or more attorneys are listed as payees on a check, but the check is delivered to a person who is not a payee on the check, an information return must be filed under paragraph (a)(1) of this section with respect to the first-listed payee attorney on the check.

(2) Attorney required to report payments made to other attorneys. If an information return is required to be filed with respect to a payee attorney under paragraph (b)(1) of this section, the attorney with respect to whom the information return is required to be filed (tier-one attorney) must file an information return under this section for any payment that the tier-one attorney makes to other payee attorneys with respect to that check, regardless of whether the tier-one attorney is a payor under paragraph (d)(3) of this section.

(c) Exceptions. Notwithstanding paragraphs (a) and (b) of this section, a return of information is not required under [section 6045\(f\)](#) with respect to the following payments:

(1) Payments of wages or other compensation paid to an attorney by the attorney's employer.

(2) Payments of compensation or profits paid or distributed to its partners by a partnership engaged in providing legal services.

(3) Payments of dividends or corporate earnings and profits paid to its shareholders by a corporation engaged in providing legal services.

(4) Payments made by a person to the extent that the person is required to report with respect to the same payee the payments or portions thereof under [section 6041\(a\)](#) and [§ 1.6041–1\(a\)](#) (or would be required to so report the payments or portions thereof but for the dollar amount limitation contained in [section 6041\(a\)](#) and [§ 1.6041–1\(a\)](#)).

(5) Payments made to a nonresident alien individual, foreign partnership, or foreign corporation that is not engaged in trade or business within the United States, and does not perform any labor or personal services in the United States, in the taxable year to which the payment relates. For how a payor determines whether a payment is subject to this exception, see [§ 1.6041–4\(a\)\(1\)](#).

(6) Payments made to an attorney in the attorney's capacity as the person responsible for closing a transaction within the meaning of [§ 1.6045–4\(e\)\(3\)](#) for the sale or exchange or financing of any present or future ownership interest in real estate described in [§ 1.6045–4\(b\)\(2\)\(i\)](#) through (iv).

(7) Payments made to an attorney in the attorney's capacity as a trustee in bankruptcy under title 11, United States Code.

(d) Definitions. The following definitions apply for purposes of this section:

(1) Attorney means a person engaged in the practice of law, whether as a sole proprietorship, partnership, corporation, or joint venture.

(2) Legal services means all services related to, or in support of, the practice of law performed by, or under the supervision of, an attorney.

(3) Payor means a person who makes a payment if that person is an obligor on the payment, or the obligor's insurer or guarantor. For example, a payor includes—

(i) A person who pays a settlement amount to an attorney of a client who has asserted a tort, contract, violation of law, or workers' compensation claim against that person; and

(ii) The person's insurer if the insurer pays the settlement amount to the attorney.

(4) Payments to an attorney include payments by check or other method such as cash, wire or electronic transfer. Payment by check to an attorney means a check on which the attorney is named as a sole, joint, or alternative payee. The attorney is the payee on a check written to the attorney's client trust fund. However, the attorney is not a payee when the attorney's

name is included on the payee line as “in care of,” such as a check written to “client c/o attorney,” or if the attorney's name is included on the check in any other manner that does not give the attorney the right to negotiate the check.

(5) Amount of the payment means the amount tendered (*e.g.*, the amount of a check) plus the amount required to be withheld from the payment under [section 3406\(a\)\(1\)](#), because a condition for withholding exists with respect to the attorney for whom an information return is required to be filed under paragraph (a)(1) of this section.

(e) Attorney to furnish TIN. A payor that is required to file an information return under this section must solicit a TIN from the attorney at or before the time the payor makes a payment to the attorney. The attorney must furnish the correct TIN to the payor, but is not required to certify the TIN. A payment for which a return of information is required under this section is subject to backup withholding under [section 3406](#) and the regulations thereunder.

(f) Examples. The following examples illustrate the provisions of this section. The examples assume that P is not a payor with respect to A, the attorney, under [section 6041](#). See [section 6041](#) and the regulations thereunder for rules regarding whether P is required under [section 6041](#) to file information returns with respect to C. The examples are as follows:

Example 1. One check—joint payees—taxable to claimant. Employee C, who sues employer P for back wages, is represented by attorney A. P settles the suit for \$300,000. The \$300,000 represents taxable wages to C under existing legal principles. P writes a settlement check payable jointly to C and A in the amount of \$200,000, net of income and FICA tax withholding with respect to C. P delivers the check to A. A retains \$100,000 of the payment as compensation for legal services and disburses the remaining \$100,000 to C. P must file an information return with respect to A for \$200,000 under paragraph (a)(1) of this section. P also must file an information return with respect to C under sections 6041 and 6051, in the amount of \$300,000. See §§ 1.6041–1(f) and 1.6041–2.

Example 2. One check—joint payees—excludable to claimant. C, who sues corporation P for damages on account of personal physical injuries, is represented by attorney A. P settles the suit for a \$300,000 damage payment that is excludable from C's gross income under section 104(a)(2). P writes a \$300,000 settlement check payable jointly to C and A and delivers the check to A. A retains \$120,000 of the payment as compensation for legal services and remits the remaining \$180,000 to C. P must file an information return with respect to A for \$300,000 under paragraph (a)(1) of this section. P does not file an information return with respect to tax-free damages paid to C.

Example 3. Separate checks—taxable to claimant. C, an individual plaintiff in a suit for lost profits against corporation P, is represented by attorney A. P settles the suit for \$300,000, all of which will be includible in C's gross income. A requests P to write two checks, one payable to A in the amount of \$100,000 as compensation for legal services and the other payable to C in the amount of \$200,000. P writes the checks in accordance with A's instructions and delivers both checks to A. P must file an information return with respect to A for \$100,000 under paragraph (a)(1) of this section. Pursuant to § 1.6041–1(a) and (f), P must file an information return with respect to C for the \$300,000.

Example 4. Check made payable to claimant, but delivered to nonpayee attorney. Corporation P is a defendant in a suit for damages in which C, the plaintiff, has been represented by attorney A throughout the proceeding. P settles the suit for \$300,000. Pursuant to a request by A, P writes the \$300,000 settlement check payable solely to C and delivers it to A at A's office. P is not required to file an information return under paragraph (a)(1) of this section with respect to A, because there is no payment to an attorney within the meaning of paragraph (d)(4) of this section.

Example 5. Multiple attorneys listed as payees. Corporation P, a defendant, settles a lost profits suit brought by C for \$300,000 by issuing a check naming C's attorneys, Y, A, and Z, as payees in that order. Y, A, and Z do not belong to the same law firm. P delivers the payment to A's office. A deposits the check proceeds into a trust account and makes payments by separate

checks to Y of \$30,000 and to Z of \$15,000, as compensation for legal services, pursuant to authorization from C to pay these amounts. A also makes a payment by check of \$155,000 to C. A retains \$100,000 as compensation for legal services. P must file an information return for \$300,000 with respect to A under paragraphs (a)(1) and (b)(1)(i) of this section. A, in turn, must file information returns with respect to Y of \$30,000 and to Z of \$15,000 under paragraphs (a)(1) and (b)(2) of this section because A is not required to file information returns under section 6041 with respect to A's payments to Y and Z because A's role in making the payments to Y and Z is merely ministerial. See § 1.6041–1(e)(1), (e)(2) and (e)(5) Example 7 for information reporting requirements with respect to A's payments to Y and Z. As described in Example 3, P must also file an information return with respect to C, pursuant to § 1.6041–1(a) and (f).

Example 6. Amount of the payment—attorney does not provide TIN. (i) Corporation P, a defendant, settles a suit brought by C for \$300,000 of damages. P will pay the damages by a joint check to C and his attorney, A. A failed to furnish P with A's TIN. P is required to deduct and withhold 28 percent tax from the \$300,000 under section 3406(a)(1)(A) and paragraph (e) of this section. P writes the check to C and A as joint payees, in the amount of \$216,000. P also must file an information return with respect to A under paragraph (a)(1) of this section in the amount of \$300,000, as prescribed in paragraph (d)(5) of this section. If the damages are reportable under section 6041 because they are not excludable from gross income under existing legal principles, and are not subject to any exception under section 6041, P must also file an information return with respect to C pursuant to § 1.6041–1(a) and (f) in the amount of \$300,000.

(ii) Rather than paying by joint check to C and A, P will pay the damages by a joint check to C and F, A's law firm. F failed to furnish its TIN to P. P is required to deduct and withhold 28 percent tax from the \$300,000 under section 3406(a)(1)(A) and paragraph (e) of this section. P writes the check to C and F as joint payees, in the amount of \$216,000. P also must file an information return with respect to F under paragraph (a)(1) of this section in the amount of \$300,000, as prescribed in paragraph (d)(5) of this section. If the damages are reportable under section 6041 because they are not excludable from gross income under existing legal principles, and are not subject to any exception under section 6041, P must also file an information return with respect to C pursuant to § 1.6041–1(a) and (f) in the amount of \$300,000.

Example 7. Home mortgage lending transaction. (i) Individual P agrees to purchase a house that P will use solely as a residence. P obtains a loan from lender L to finance a portion of the cost of acquiring the house. L disburses loan proceeds of \$300,000 to attorney A, who is the settlement agent, by a check naming A as the sole payee. A, in turn, writes checks from the loan proceeds and from other funds provided by P to the persons involved in the purchase of the house, including a check for \$800 to attorney B, whom P hired to provide P with legal services relating to the closing.

(ii) P, not L, is the payor of the payment to A under paragraph (d)(3) of this section. P, however, is not required to file an information return with respect to A under paragraph (a)(1) of this section because the payment was not made in the course of P's trade or business. Even if P made the payment in the course of P's trade or business, P would not be required to file an information return under section 6045(f) with respect to A because P is excepted under paragraph (c)(6) of this section.

(iii) A is not required to file an information return under paragraph (a)(1) of this section with respect to the payment to B because A is not the payor as that term is defined under paragraph (d)(3) of this section. A is not required to file an information return under paragraph (b)(2) with respect to the payment to B because A was listed as sole payee on the check it received from P. See section 6041 and § 1.6041–1(e) for whether A or L must file information returns under that section. See section 6045(e) and § 1.6045–4 for whether A is required to file an information return under that section.

Example 8. Business mortgage lending transaction. The facts are the same as in Example 7 except that P buys real property that P will use in a trade or business. P, not L, is the payor of the payment to A under paragraph (d)(3) of this section. P, however, is not required to file an information return under section 6045(f) with respect to A because P is excepted under paragraph (c)(6) of this section. A is not required to file an information return under paragraphs (a) or (b)(2) of this section with respect to the payment to B. See section 6041 and § 1.6041–1(e) to determine whether P or L must file an information return under that

section with respect to the payment to A, and whether P or A must file a return with respect to the payment to B. See section 6045(e) for rules regarding whether A is required to file information returns under that section.

Example 9. Qualified settlement fund. Corporation P agrees to settle for \$300,000 a class action lawsuit brought by attorney A on behalf of a claimant class. Pursuant to the settlement agreement and a preliminary order of approval by a court, A establishes a bank account in the name of Q Settlement Fund, which is a qualified settlement fund (QSF) under § 1.468B–1. A is also designated by the court as the administrator of the QSF. Corporation P transfers \$300,000 by wire in Year 1 to A, who deposits the funds into the Q Settlement Fund. In Year 2, the court approves an award of attorney's fees of \$105,000 for A. In Year 2, Q Settlement Fund delivers \$105,000 to A. P is required to file an information return under paragraph (a) of this section with respect to A for Year 1 for the \$300,000 payment it made to A. The Q Settlement Fund is required to file an information return under section 6041(a) and § 1.468B–2(l)(2) with respect to A for Year 2 for the \$105,000 payment it made to A.

(g) Cross reference to penalties. See the following sections regarding penalties for failure to comply with the requirements of section 6045(f) and this section:

- (1) [Section 6721](#) for failure to file a correct information return.
- (2) [Section 6722](#) for failure to furnish a correct payee statement.
- (3) [Section 6723](#) for failure to comply with other information reporting requirements (including the requirement to furnish a TIN).
- (4) [Section 7203](#) for willful failure to supply information (including a TIN).

(h) Effective/applicability date. The rules in this section apply to payments made on or after January 1, 2007. The amendments to paragraph (a)(3)(i) apply to payee statements due after December 31, 2014. For payee statements due before January 1, 2015, § 1.6045–5(a)(3)(i) (as contained in 26 CFR part 1, revised April 2013) shall apply.

Credits

[T.D. 9270, [71 FR 39551](#), July 13, 2006; [71 FR 47080](#), Aug. 16, 2006; T.D. 9504, [75 FR 64097](#), Oct. 18, 2010; T.D. 9675, [79 FR 41130](#), July 15, 2014]

SOURCE: Sections 1.6001-1 to 1.6091-4 contained in T.D. 6500, [25 FR 12108](#), Nov. 26, 1960; T.D. 6500, [25 FR 11402](#), Nov. 26, 1960; [25 FR 14021](#), Dec. 21, 1960, unless otherwise noted.

Current through March 10, 2023, 88 FR 15171. Some sections may be more current. See credits for details.

2012 WL 6604712

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.UNPUBLISHED
Court of Appeals of Michigan.

Daryl HACKER, a/k/a Daryl
Stevenshacker, Plaintiff,
and
Penny HACKER, a/k/a Penny
Stevens–Hacker, Plaintiff–Appellee,
v.
Larry J. Hacker and Nancy A.
Hacker, Defendants–Appellants.

Docket No. 304743.

I

Dec. 18, 2012.

Berrien Circuit Court; LC No.2008–000284–CH.

Before: **SERVITTO**, P.J., and **MARKEY** and **MURRAY**, JJ.**Opinion**

PER CURIAM.

*1 In this property dispute between plaintiffs, Daryl¹ and Penny Hacker, and defendants, Larry and Nancy Hacker, defendants appeal as of right from the June 1, 2011, order denying their request for attorney fees and costs. On appeal, defendants primarily raise issues related to a settlement agreement between the parties and the enforcement thereof. Those issues were not properly before this Court by way of defendants' appeal of right from the June 1, 2011, order. Nonetheless, on this Court's own motion, we treated defendants' claim of appeal as an application for leave to appeal those issues and granted leave to appeal. *Daryl Hacker v. Larry Hacker*, unpublished order of the Court of Appeals, entered September 5, 2012 (Docket No. 304743). For the reasons set forth in this opinion, we affirm the trial court's June 1, 2011, order, as well as its order enforcing the settlement agreement between the parties.

This case involves a family conflict over the sale of farmland and the potential future tax consequences thereof. Daryl was Larry's younger brother. Plaintiffs owned and farmed two properties; one in the Township of Paw Paw (Paw Paw farm), and the other in Bainbridge Township (Napier farm). The Paw Paw farm was mortgaged through a bank while the Napier farm was purchased through a land contract. In 1998, plaintiffs encountered financial difficulties and the mortgagee on the Paw Paw farm threatened foreclosure. Defendants offered to refinance the Paw Paw farm under their own name and, after the bank required additional collateral, added the Napier property to the deal as well. In July 1998, plaintiffs executed a warranty deed and conveyed their properties to defendants for the sum of \$1; defendants were also required to pay the existing mortgage and land contract in full. Subsequently, defendants mortgaged both properties in their own names. Plaintiffs were to pay the mortgages and taxes and were to continue their farming operations on the properties. Defendants later took out additional mortgages on the properties for their own use and without plaintiffs' consent.

In July 2008, plaintiffs filed suit and sought a ruling that the transfer of the farms to defendants created a constructive trust. They also sought an order transferring the property back to them while also assuming the remaining debt on the original mortgage. Additionally, they sought injunctive relief to prevent defendants from claiming disaster relief money on the property and to compel defendants to certify that plaintiffs farmed the land in 2007.

In May 2009, plaintiffs filed an amended complaint, reiterating their earlier allegations against defendants and adding additional claims of wrongdoing by defendants. Defendants amended their pleadings to include a counterclaim against plaintiffs. In the counterclaim, defendants contended that plaintiffs owed certain monies to defendants for expenditures on the properties and that one of the additional mortgages taken out on the properties was defendants' attempt to reimburse themselves for these expenditures. The parties eventually reached a settlement agreement—the terms of which form the basis of several issues raised by defendants on appeal.

*2 The written settlement agreement provided that the parties would execute a purchase agreement by December 31, 2010. The purchase agreement would transfer both farms back to plaintiffs and would require plaintiffs to assume responsibility for both the first and second additional

mortgages that defendants took out on the properties. The purchase price under the agreement was set at the payoff amounts on the mortgages at the date of closing plus the sum of \$1. The parties agreed that the property could not be encumbered with further debt before the closing date. Additionally, they agreed that plaintiffs were to give defendants 30 days, or reasonable advanced notice of the closing date. Until the closing date, plaintiffs remained responsible for mortgage payments, insurance, taxes, and other debts on the farms. They also had the right to manage and cultivate the farms until closing and to receive the profits from any farming operations. Further, the settlement agreement ordered disaster relief funds that were in dispute to be held in escrow. Finally, the settlement agreement provided that if closing did not occur before December 31, 2010, defendants were to retain ownership of the two farms.²

The parties continued to have disputes after the settlement agreement was entered. In April 2010, defendants asked plaintiffs to pay an additional \$62,380 at closing. Additionally, plaintiffs ran into financial difficulties and were unable to make the July 2010 mortgage payments, and ultimately filed for Chapter 12 bankruptcy that same month. Plaintiffs found a substitute purchaser for the Napier farm and proposed a sale from defendants to the proposed purchaser. The purchase price was to cover the indebtedness for both farms. Further, plaintiffs were to pay defendants \$1 and would receive title to the Paw Paw farm. Plaintiffs proposed this plan in bankruptcy court, but defendants refused to approve the plan.

Back in circuit court plaintiffs moved the trial court for an injunction, a temporary restraining order, and to enforce the settlement agreement. They again proposed a plan to have a substitute purchaser acquire the Napier farm. Later, plaintiffs indicated that they intended to purchase both properties on their own after obtaining financing from a third party. At a hearing held on November 30, 2010, defendants' counsel stated that defendants would appear at closing on December 12, 2010, to sign warranty deeds conveying both farms to plaintiffs.

Despite the assertion by defendants' counsel, the parties did not close on December 12, 2010. Initially, the parties were delayed by the filing of liens against the Napier property. These liens were released before the scheduled closing date and on December 10, 2010, plaintiffs' counsel notified defendants' counsel that closing would then take place on

December 13, 2010. However, neither defendants nor their attorney appeared for closing on December 13, 2010.

In addition to those difficulties, the parties disagreed over the issuance of a 1099 tax form. Plaintiffs averred that they acquiesced to all of defendants' closing demands in December 2010 with the exception of a tax issue related to a 1099 form. The title company refused to close the sale without filing a 1099 form that included the purchase price of the sale, which according to the settlement agreement, was "\$1.00 and the payoff of the indebtedness of the property as of the date of closing." Defendants confirmed that they refused to accept a 1099 that listed the purchase price agreed to in the settlement agreement. They contended that they were not supposed to receive a 1099 form because the sale was for the de minimis amount of \$1. As a result, the parties ultimately failed to close by the December 31, 2010, deadline. Subsequently, in January 2011, plaintiffs moved the trial court to enforce the settlement agreement. Defendants responded by moving the trial court for repayment of certain funds allegedly owed by plaintiff, and for their attorney fees related to the bankruptcy proceedings and plaintiffs' numerous motions related to their proposed sale to a third party.

***3** On May 18, 2011, the trial court issued an oral decision, finding that both parties bore some responsibility for impeding the closing. In particular, it found that plaintiffs failed to have all of the requisite documents in reasonable order to close. It also found that defendants were unreasonable in refusing to accept the required 1099 document as a part of closing. In constructing a remedy, the trial court did not void the settlement agreement, but instead specified that closing was to occur at a later date at First American Title Company. Plaintiffs were ordered to be responsible for all closing costs. If plaintiffs were unable to close on the specified date, the property was to remain with defendants. Conversely, if the transaction did not close when the plaintiffs were ready, willing, and able, the property was to be transferred via an order to be issued from the court. The trial court also declined to award attorney fees to either party.

The first issue raised by defendants relates to the trial court's decision not to award attorney fees and costs to defendants. A trial court's decision to award attorney fees and costs is reviewed for an abuse of discretion. *Smith v. Khouri*, 481 Mich. 519, 526; 751 NW2d 472 (2008). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Id.* Turning first to this issue, we conclude that defendants have

abandoned their claim. Their minimal references to attorney fees and costs lack even a single citation to legal authority in support of their claim.

It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. [*Yee v. Shiawassee Co Bd of Comm'rs*, 251 Mich.App 379, 406; 651 NW2d 756 (2002), quoting *Mitcham v. Detroit*, 355 Mich. 182, 203; 94 NW2d 388 (1959).]

Having failed to provide any legal authority to support their argument, defendants have abandoned their claim for attorney fees and costs. *Yee*, 251 Mich.App at 406.

Next, we turn to defendants' arguments concerning the enforcement of the settlement agreement. Settlement agreements and judgments entered pursuant to the agreements of the parties are contracts. *Gramer v. Gramer*, 207 Mich.App 123, 125; 523 NW2d 861 (1994). As such, they are to be construed and applied as contracts. *Id.* See also *Kloian v. Domino's Pizza LLC*, 273 Mich.App 449, 452; 733 NW2d 766 (2006). "The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties." *Shay v. Aldrich*, 487 Mich. 648, 660; 790 NW2d 629 (2010) (quotation marks and citation omitted). "An unambiguous contractual provision reflects the parties' intent as a matter of law, and '[i]f the language of the contract is unambiguous, we construe and enforce the contract as written.'" *Holland v. Trinity Health Care Corp*, 287 Mich.App 524, 527; 791 NW2d 724 (2010), quoting *Quality Prod & Concepts Co v. Nagel Precision, Inc*, 469 Mich. 362, 375; 666 NW2d 251 (2003).

*4 Defendants essentially ask this Court to enforce the terms of the settlement agreement which provide that "[i]f closing does not take place on or before December 31, 2010, then the two farms shall remain in the ownership of the Defendants." Because closing did not take place on or before December 31, 2010, defendants argue they are entitled to retain ownership of the farms. In deciding otherwise, the trial court concluded that both plaintiffs and defendants had a mutual obligation to proceed to closing and that both parties failed under the terms of the settlement agreement. The trial court's decision is supported by the plain language of the settlement agreement which clearly provided that: "Defendants will sell the two farms, and any assets indebted by the mortgages, that are

the subject of this litigation, identified as the Napier farm and the Paw Paw Township farm." The settlement agreement provided that closing shall be held on or before December 31, 2010. However, contrary to defendants' argument, it placed no obligation on plaintiffs to ensure the closing took place nor did it excuse defendants from cooperating to ensure the sale of the property took place. Indeed, under the plain language of the settlement agreement, defendants were clearly obligated to sell the properties to plaintiffs for a purchase price of "\$1.00 and the payoff of the indebtedness of the property as of the date of closing." Rather than selling the property, defendants breached their obligation under the settlement agreement by attempting to change the purchase price from "\$1.00 and the payoff of the indebtedness" to simply \$1 and by expressly refusing to sell the property if a form 1099 would be issued. Having breached the contract, defendants cannot now seek to maintain an action based on plaintiffs' failure to perform. *Able Demolition v. City of Pontiac*, 275 Mich.App 577, 585; 739 NW2d 696 (2007). In other words, given their breach, defendants may not now claim continued ownership of the farms as a remedy for plaintiffs' failure to perform. *Id.*

Defendants contend that they did not breach the settlement agreement. Central to defendants' argument is their claim that they were not required to accept a 1099 form and, as such, they did not breach their obligation to sell by refusing to close if a 1099 form would result. Contrary to defendants' argument, under 26 USC 6045(e)(1), the "real estate reporting person shall file a return" with the IRS related to a real estate transaction. (Emphasis added.) By statute, the "real estate reporting person" is the "person" responsible for the closing, which can include a title company. 26 USC 6045(e)(2). A "real estate transaction" occurs if "the transaction consists in whole or in part of the sale or exchange of 'reportable real estate' ... for money, indebtedness, property other than money, or services." 26 CFR 1.6045-4(b)(1); see also IRS Instructions for Form 1099-S (2012), p 1. Here, there can be no dispute that the settlement agreement provided for the sale of the properties from defendants to plaintiffs. It is also undisputed that defendants owned, and were selling, a fee simple interest in the properties. In exchange, they were receiving money, namely \$1 and the payoff amount of the loans. As such, this was a real estate transaction that was required to be reported to the IRS. 26 USC 6045(e)(1). As the transferors, defendants were required to furnish their taxpayer identification number and other basic information in order to enable the real estate reporting person to make a proper report to the IRS. 26 CFR 1.6045-4(h); see also IRS Instructions for Form 1099-S (2012), p 3. There is no merit to defendants'

assertion that a 1099 form was not legally required and that plaintiffs prevented the sale by attempting to close with a reputable title company who intended to properly issue a 1099 form.

*5 In a related argument, defendants also contest the receipt of a 1099 form on the grounds that the consideration involved in the transaction was only \$1. Although it is true that de minimis transactions need not be reported to the IRS, 26 CFR 1.6045-4(c)(iii), the current transaction did not involve a de minimis amount. In making their argument, defendants attempt to rewrite the plain language of the settlement agreement to provide that the consideration for the sale was \$1. In actuality, the plain language of the agreement clearly reads, “[t]he purchase price for the two farms is \$1.00 and the payoff of the indebtedness of the property as of the date of closing.” There is no merit to defendants’ claim that this was a de minimis transaction.³

Additionally, insofar as defendants ask us to make a determination relating to the potential federal taxes that could result from the sale of the property, we note that, under the Anti-Injunction Act, a state court lacks jurisdiction to enjoin the assessment or collection of federal taxes. 26 USC 7421; *Dickens v. United States*, 671 F.2d 969, 971 (CA 6, 1982). This includes interference with “activities which are intended to or may culminate in the assessment or collection of taxes.” *Id.* (quotation marks and citations omitted). Because defendants requested relief that would interfere with the

assessment of a federal tax, we decline to consider their arguments related to the potential federal taxes that could result from the sale of the property.

Next, defendants attack the trial court’s order and enforcement of the settlement order on the grounds that plaintiffs did not have “clean hands” in light of their numerous breaches of the settlement agreement. Defendants provide no legal authority to support their arguments, and so have abandoned these arguments. *Yee*, 251 Mich.App at 406. Moreover, we have reviewed the arguments and determined that they lack merit because many of defendants’ arguments fail to establish a breach by plaintiffs. And, to the extent defendants establish breaches by plaintiffs, none of the breaches are substantial such that they would have excused defendants’ performance. *Able Demolition*, 275 Mich.App at 585 (quotation marks and citations omitted) (the rule that “one who first breaches a contract cannot maintain an action against the other contracting party for his subsequent breach or failure to perform ... only applies if the initial breach was substantial.”).

Affirmed.

No costs to either party. MCR 7.219(A).

All Citations

Not Reported in N.W.2d, 2012 WL 6604712

Footnotes

- 1 Daryl passed away in August 2011 and his appeal was subsequently dismissed by order of this Court.
- 2 The settlement also resolved three other small claims between the parties, none of which are pertinent to our analysis.
- 3 To the extent defendants argue that their claim is analogous to undoing a sale completed within a year, which need not be reported, their reliance on IRS Publication 544 is misplaced. Despite defendants’ insistence to the contrary, this current transaction was not the “canceling” of the 1998 transaction. Defendants altered the arrangement by taking out an additional mortgage on the property, a mortgage that plaintiffs agreed to take on as part of the current transaction. Accordingly, this was not a simple undoing of a previous transaction; there were added elements.

2018 WL 4288659 (N.J.Tax)

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Tax Court of New Jersey.

Re: COMMUNITY BANK
OF BERGEN COUNTY

v.

BOROUGH OF MAYWOOD

Docket Nos. 000961-2015;
001225-2016 and 005776-2017

I

September 7, 2018

Attorneys and Law Firms

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Opinion

JONATHAN A. ORSEN JUDGE

*1 Dear Counsel:

This letter constitutes the court's decision with respect to plaintiff Community Bank of Bergen County's motion to enforce litigant's rights under R. 1:10-3. Such motion requests relief to direct the defendant Borough of Maywood to transmit to plaintiff's attorney, Mr. Richard Nashel, Esq. of Nashel and Nashel LLC, a refund check made payable to 'Nashel and Nashel LLC Trust Account' as part of a property tax appeal settlement without requiring plaintiff's counsel to furnish its taxpayer identification number ("TIN"). Plaintiff maintains that the proper TIN is that of plaintiff which was submitted to defendant for payment. Defendant opposes and argues that Nashel and Nashel LLC's TIN must be provided, because defendant is obligated to issue tax information returns (Forms 1099) which mandates inclusion of such TIN. Defendant further asserts it met all of its responsibilities pursuant to the Stipulation of Settlement and that the only reason for the non-issuance of the refund check is because of Nashel and Nashel LLC's missing TIN.

Based on the moving papers, the court denies plaintiff's motion due to the necessity to adhere to state and federal reporting requirements. If plaintiff wants to be refunded in full satisfaction, then either (1) Nashel and Nashel LLC must provide its TIN to defendant so that the refund check can be issued to 'Nashel and Nashel LLC Trust Account' in conformance with the terms of the Stipulation of Settlement as written; or (2) the parties must agree to an alternative payment method consistent with law and advise the court within 30 days.

FACTS

The following findings of facts and conclusions of law are based on the certifications and exhibits summarized in support of the parties' pleadings.

Plaintiff filed respective complaints contesting the 2015, 2016 and 2017 tax years on the grounds that defendant assessed plaintiff's properties in excess of the true or assessable value of the property. The subject properties are located at 111 West Pleasant Avenue, Maywood, New Jersey, otherwise known as Block 70, Lot 16, and 119-139 West Pleasant Avenue, Maywood, New Jersey, otherwise known as Block 70, Lot 17, for the taxable years at issue.

Both parties engaged in discussions and came to a global tax appeal settlement on or about May 5, 2017. Subsequently, the parties filed a Stipulation of Settlement for the respective tax years. The Tax Court entered a judgment for each tax year on July 11, 2017 reflecting the agreed upon assessments of the subject properties.

In the Stipulation of Settlement, the parties additionally agreed that the plaintiff waive any interest payable on any refund (provided the refund was paid within 60 days from the judgment date), and that any refund payable to the plaintiff be settled under Paragraph 7, which states that:

"Refunds as a result of the settlement as set forth herein shall be made payable to 'Nashel and Nashel LLC Trust Account' and delivered to Richard B. Nashel, Esq., Nashel and Nashel LLC, 415 60th Street, West New York, NJ 07093."

*2 Before issuing the refund, the Tax Collector of the defendant, Ashley Morrone ("Collector"), requested on September 5, 2017, that plaintiff's attorney furnish the law firm's TIN, explaining that since the refund was negotiated

to be made payable to the 'Nashel and Nashel LLC Trust Account,' the law firm becomes the vendor in accordance with the defendant's Finance Office procedures. In following these procedures, defendant requires a Form W-9 and New Jersey Business Registration Certificate of all current and future vendors before releasing payment. It was further explained by the Collector that these procedures parallel the State of New Jersey's compliance with federal reporting requirements in issuing a Form 1099 for reporting and taxation. Plaintiff's attorney refused to supply the law firm's TIN.

On September 8, 2017, plaintiff's attorney requested clear, written authority - *whether statute, regulation, or official public notice from a governmental agency* - in support of defendant requesting the law firm's TIN for reporting requirements. Plaintiff's attorney claimed that since the law firm was not entitled to the refund, any Form 1099 issued by defendant showing the firm as the recipient of a refund for State of New Jersey and federal income tax reporting purposes would be incorrect.

Plaintiff then filed the instant Motion to Enforce Litigant's Rights pursuant to R. 1:10-3, directing defendant to forward the refund check payable to 'Nashel and Nashel LLC Trust Account' and use plaintiff's TIN on Form 1099. Defendant responded on November 10, 2017, explaining that in accordance with State of New Jersey and federal tax and reporting requirements, the issuance of any refund check would require that they receive the TIN for Nashel and Nashel LLC. Clarifying, defendant outlined its procedural issuance of refunds checks: where the check is being issued to an attorney's trust account for further disbursement to the taxpayer, defendant requires that the attorney submit their TIN for the purchase order of the refund check. Defendant additionally explained that most municipalities in New Jersey use this standard process when issuing refund checks to attorney trust accounts.

After having an opportunity to examine Internal Revenue Code ("I.R.C.") § 6045(f) and Treas. Reg. § 1.6045-5, plaintiff's attorney advised the court on November 14, 2017, explaining that because the law firm's trust account is not a payee attorney, it does not have a TIN. Further, plaintiff's attorney clarified that pursuant to the Stipulation of Settlement, the refund payment is to be paid directly to the trust account and not to the law firm. Plaintiff's attorney also suggested that the defendant designate the check payee as "Nashel and Nashel Attorneys Trust Account/FBO

Community Bank of Bergen County" in response to the requirements of Treas. Reg. § 1.6045-5.

Defendant submitted a Second Response to the Taxpayer's Motion to Enforce Settlement on November 30, 2017, explaining that defendant's practice of issuing a check payable directly to attorneys and law firms, as custodians or trustees on behalf of their respective clients in connection with tax appeal matters, falls squarely within I.R.C. § 6045(f). Accordingly, defendant argues that I.R.C. § 6045(f) presents a bright line rule and clearly defines defendant's reporting requirement and plaintiff's attorney's obligation in providing the firm's TIN where the refund check is being issued to an attorney's client trust fund.

After further discussions, the parties subsequently came to an impasse and both parties asked the court to rule on the pending motion based on the submitted filings.

ANALYSIS

A. Jurisdiction

Although not raised by the parties, we begin our review by first confirming that this court has jurisdiction to address plaintiff's motion. The Tax Court is a court of limited jurisdiction, created by statute in 1978 in accordance with the Legislature's constitutional authority to establish, alter or abolish by law courts of limited jurisdiction. N.J. Const. art. VI, § 1, ¶ 1; N.J.S.A. 2B:13-1; McMahon v. City of Newark, 195 N.J. 526, 546 (2008). The Tax Court can constitutionally exercise only that jurisdiction conferred upon it by the Legislature and is constricted by its enabling statutes. Prime Accounting Dept. v. Twp. of Carney's Point, 212 N.J. 493, 505 (2013); Exxon Corp. v. East Brunswick Twp., 192 N.J. Super. 329, 335 (App. Div. 1983).

***3** N.J.S.A. 2B:13-2 establishes the Tax Court's jurisdiction as follows:

- a. The Tax Court shall have jurisdiction to review actions or regulations with respect to a tax matter of the following:
 - (1) Any state agency or official;
 - (2) A county board of taxation;
 - (3) A county or municipal official.
- b. The Tax Court shall have jurisdiction over actions cognizable in the Superior Court which raises issues

as to which expertise in matters involving taxation is desirable, and which have been transferred to the Tax Court pursuant to the Rules of the Supreme Court.

- c. The Tax Court shall have jurisdiction over any matters as may be provided by statute.
- d. The Tax Court jurisdiction shall include any powers that may be necessary to effectuate its decisions, judgments and orders.

In this case, judgment was entered upon stipulation of the parties pursuant to R. 8:9-5. The instant motion for review before this court is with respect to the effectuation of this judgment, and in connection with the defendant's obligation to file an information tax return under State of New Jersey and federal income tax laws. Thus, the court must determine the applicability of the authority that governs information returns to effectuate the Tax Court's entered judgment. Consequently, the court finds that it has jurisdiction to hear this motion regarding the relevant reporting requirements.

B. Information Reporting Requirements

The determination whether to file a federal Form 1099 information return as it relates to payments to attorneys can be found in I.R.C. § 6045 and Treas. Reg. § 1.6045-5. Issuance of federal Forms 1099 is mandated by the I.R.C. and associated regulations. See I.R.C. §§ 6041, 6045, 6049.¹ Failure to issue a Form 1099 may result in penalties under I.R.C. § 6721. Moreover, if the payee fails to provide the payor with its TIN, the I.R.C. requires that any reportable payments to the payee be subject to backup withholding. I.R.C. § 3406.

The I.R.C. requires that any person who makes a payment to an attorney, regardless of whether the services are performed for the payor, report these payments to the Internal Revenue Service depending on how the payment is made. See I.R.C. § 6045(f); Treas. Reg. § 1.6045-5. Whether the defendant must issue a Form 1099 to only plaintiff, to only attorney, or to both the plaintiff and attorney, hinges on the specific circumstances of the payment. See Johnson v. LPL Fin. Servs., 517 F. Supp. 2d 1231, 1232-34 (S.D. Cal. 2007) (court provides a detailed analysis and procedure for issuing a Form 1099 to an attorney and plaintiff and outlines the options for payment with respect to a written settlement agreement).²

^{*4} Specifically, I.R.C. § 6045(f) provides in part,

(f) Return required in the case of payments to attorneys.

(1) In general. Any person engaged in a trade or business and making a payment (in the course of such trade or business) to which this subsection applies shall file a return under subsection (a) and a statement under subsection (b) with respect to such payment.

(2) Application of subsection.

(A) In general. This subsection shall apply to any payment to an attorney in connection with legal services (whether or not such services are performed for the payor).

(B) Exception. This subsection shall not apply to the portion of any payment which is required to be reported under section 6041(a) [26 USCS § 6041(a)] (or would be so required but for the dollar limitation contained therein) or section 6051 [26 USCS § 6051].

[I.R.C. § 6045(f).]

Information reporting on payments to attorneys is further clarified in Treas. Reg. § 1.6045-5 which states in part,

Except as provided in paragraph (c) of this section, every payor engaged in a trade or business who, in the course of that trade or business, makes payments aggregating \$ 600 or more during a calendar year to an attorney in connection with legal services (whether or not the services are performed for the payor) must file an information return for such payments.

[Treas. Reg. § 1.6045-5.]

With respect to the clarification of how checks payable to an attorney trust fund account are treated, Treas. Reg. § 1.6045-5(d)(4) sets forth in part,

Payment by check to an attorney means a check on which the attorney is named as a sole, joint, or alternative payee. **The attorney is the payee on a check written to the attorney's client trust fund.** However, the attorney is not a payee when the attorney's name is included on the payee line as "in care of," such as a check written to "client c/o attorney," or if the attorney's name is included on the check in any other manner that does not give the attorney the right to negotiate the check.

[Treas. Reg. § 1.6045-5(d)(4)] (emphasis added).

As a preliminary matter, a defendant is engaged in a trade or business if defendant performs any activity for gain or profit or is a non-profit organization under I.R.C. §§ 401(c), 501(d), or 521. The terms trade or business includes the performance of the functions of a public office. I.R.C. § 7701(a)(26). Here, the defendant issuing a payment pursuant to a settlement with respect to a real estate tax appeal, meets such requirement.

Pursuant to the Stipulation of Settlement, refunds as a result of the settlement had to be paid to, and checks in this regard, had to be made payable to the 'Nashel and Nashel LLC Trust Account.' Under Treas. Reg. § 1.6045-5(d)(4), since the attorney is considered the payee on a check written to such attorney's client trust fund, defendant is required to file an information return for such attorney. In this case, the Stipulation of Settlement clearly states that any refund be payable to 'Nashel and Nashel LLC Trust Account.' Thus, Nashel and Nashel LLC is considered the payee and defendant is required to issue a Form 1099 to Nashel and Nashel LLC.

*5 Plaintiff's attorney's concern whether the issuance of Form 1099 will be deemed income to the law firm for State of New Jersey and federal purposes may be alleviated by the clarification of the location for reporting the proceeds on the Form 1099. The manner of how the proceeds are reported on a Form 1099 are relevant with respect to the taxability and determination as income for State and federal income tax purposes.

As set forth on the Form 1099 Misc. Instructions,

Payments to attorneys. The term "attorney" includes a law firm or other provider of legal services. Attorneys' fees of \$600 or more paid in the course of your trade or business are reportable in box 7 of Form 1099-MISC, under section 6041A(a)(1). **Gross proceeds paid to attorneys.** Under section 6045(f), report in box 14 payments that:

- Are made to an attorney in the course of your trade or business in connection with legal services, but not for the attorney's services, for example, as in a settlement agreement;
- Total \$600 or more; and
- Are not reportable by you in box 7.

[Dept. of Treasury, Internal Revenue Service, 2018 Instructions for Form 1099-MISC.]³

Actual payments to attorneys for services rendered should be reported in box 7, "Nonemployee compensation," of Form 1099 which will indicate that the payment is income to the attorney rather than merely gross settlement proceeds from a judgment. *Id.* In the alternative, under I.R.C. § 6045(f), payments made to an attorney as settlement proceeds that are not necessarily reportable as income to the attorney are reported in box 14, "Gross proceeds paid to an attorney." I.R.C. § 6045(f); Instructions for Form 1099-MISC; *see also Johnson*, 517 F. Supp. 2d at 1232-34 (further clarifies instructions for location of payments to attorneys considered attorney's fees in box 7 or pursuant to a settlement agreement in box 14).

As represented by the parties, the proceeds at issue pursuant to the Stipulation of Settlement are to be paid for the benefit of the plaintiff. Provided that the check is made payable to 'Nashel and Nashel LLC Trust Account' consistent with the terms of the Stipulation of Settlement, such payment appears to be reportable in box 14, "Gross proceeds paid to an attorney," as clearly enumerated in the Instructions for Form 1099-MISC and related statutes and regulations.

As an alternative, plaintiff's attorney suggested that defendant issue a refund check made payable to "Nashel and Nashel Attorneys Trust Account/FBO Community Bank of Bergen County." However, Nashel and Nashel LLC is still required to provide its TIN to defendant since the law firm is still considered a payee. *Id.*

If the parties agreed, however, to issue a check made payable to plaintiff, "in care of" Nashel and Nashel LLC, or in a manner that the law firm is unable to negotiate the check but rather just receive the check, then defendant would not be required to provide the law firm with a Form 1099, as enumerated above. *See also Treas. Reg. § 1.6045-5(f)*, Example 4 (which provides that if a check is made payable solely to plaintiff but only delivered to a nonpayee attorney, then defendant is not required to file an information return with respect to the attorney).

C. Reporting Procedure

In order for a defendant to report payments to an attorney on Form 1099, a defendant must obtain the proper TIN(s). *See I.R.C. § 6109 (a)(1)* (a person required to "make a return"

under the provisions of the I.R.C. or the regulations “shall include in such return ... such identifying number as may be prescribed for securing proper identification of such person”); [Treas. Reg. § 1.6045-5\(a\)\(2\)\(ii\)](#) (the 1099 must include the “name, address, and TIN of the payee attorney”).⁴

*6 If payment is to be made by defendant, without receiving or verifying the proper TIN of the payee, the I.R.C. requires that any reportable gross proceeds paid are subject to backup withholding. [I.R.C. § 3406](#); [see also](#) [Treas. Reg. § 1.6045-5\(f\)](#), Example 6 (scenarios that with respect to a settlement payment to attorney or law firm and plaintiff, if attorney or law firm does not provide its TIN to payor-defendant, then the payor-defendant is required to withhold taxes in accordance with [I.R.C. § 3406](#)).

Since the parties carefully and precisely negotiated that “[r]efunds as a result of the settlement as set forth herein shall be made payable to ‘Nashel and Nashel LLC Trust Account,’ ” the defendant is required to use Nashel and Nashel LLC's TIN in accordance with the federal reporting requirements to reflect the settlement payment. If however, the parties are

willing to re-negotiate the method of payment, the defendant can issue the Form 1099 using plaintiff's TIN.

CONCLUSION

For the above stated reasons, plaintiff's motion is denied. In light of the foregoing, if plaintiff wants to be refunded in full satisfaction without being subject to backup withholding, Nashel and Nashel LLC's TIN must be provided to defendant so that defendant can issue the refund and the requisite Form 1099-MISC. Plaintiff's Attorney may also confer with its client and counsel for defendant, and should the parties agree to an alternative method of payment, then the court will entertain a motion to amend Paragraph 7 of the Stipulation of Settlement within 30 days to effectuate prompt refund payment.

Very truly yours,

Hon. Jonathan A. Orsen, J.T.C.

All Citations

2018 WL 4288659

Footnotes

- 1 The 1099 information returns are also required to be filed with the Director, New Jersey Division of Taxation, by payors of certain types of payments. [See generally](#) [N.J.A.C. 18:35-8.1](#).
- 2 As set forth in [Johnson](#), to determine what, if any, Forms 1099 a payor must issue to all parties with respect to a judgment or settlement payment, the court must determine: (1) whether the payor-defendant is engaged in a trade or business; (2) whether the payment is gross income to the payee-plaintiff; and (3) the manner of payment of the settlement. [Johnson](#), 517 F. Supp. 2d at 1233-38. The determination whether the settlement payment is income to plaintiff is beyond the scope of this motion as we are determining the information filing requirements of plaintiff's attorney's law firm and not plaintiff. Regardless of whether or not the settlement payment constitutes gross income to plaintiff, defendant is still required to issue Form 1099 to plaintiff's attorney's law firm for payments over \$600. [See](#) [I.R.C. § 6045\(f\)](#); [Treas. Reg. § 1.6045-5](#). However, the court would be remiss not to note that as stated in [Johnson](#), if some or all of a judgment or settlement payment is deemed gross income to plaintiff, and the check is made payable to only the attorney, the defendant is required to provide a Form 1099 to both the attorney and the plaintiff due to separate obligations under the I.R.C., and related regulations. [Johnson](#), 517 F. Supp. 2d at 1235-36; [I.R.C. § 6041](#); [Treas. Reg. § 1.6041-1\(a\)\(1\)\(i-iii\)](#); [I.R.C. § 6045\(f\)](#); [Treas. Reg. § 1.6045-5](#).
- 3 Accessible at <https://www.irs.gov/pub/irs-pdf/i1099msc.pdf> (last visited Sep. 5, 2018).
- 4 Pursuant to [I.R.C. § 7701\(a\)\(41\)](#), “TIN” is defined as “the identifying number assigned to a person under [section 6109](#).”

2014 WL 1302551

United States District Court,
S.D. Ohio,
Western Division.

Kenneth B. PITCHER, and
Michael Enders, Plaintiffs,

v.

Lawrence WALDMAN, and Waldman
& Company CPA's, P.S.C., Defendants.

No. 1:11-cv-148-HJW.

I

Filed March 28, 2014.

*ORDER**HERMAN J. WEBER*, Senior District Judge.

*1 This Court held a bench trial on July 16–17, 2013, at which the individual parties and several opinion (“expert”) witnesses testified. The plaintiffs and defendants have respectively filed “Proposed Findings of Fact and Conclusions of Law” (doc. nos.129, 130), as well as highlighted versions indicating any disputed facts and law (doc. nos.134, 135). They have also filed “Supplemental Proposed Findings” and “Second Supplemental Proposed Findings” (doc. nos.144, 145, 168–1). At the close of trial, the parties requested, and were granted, permission to submit additional closing briefs. The Court has carefully considered all of the trial testimony, the oral arguments of counsel, and the extensive written record, including the trial exhibits (doc. nos.177–180) and the additional closing briefs (doc. nos.184–186). Based on applicable authority and the evidence and testimony presented, the Court finds as follows:

I. Background

This case arises from the acrimonious break-up of the successful accounting firm Waldman, Pitcher, and Co., P.S.C. The individual parties in the present case were formerly partners in that firm. The break-up has spawned numerous related lawsuits, various audits by the Internal Revenue Service (“IRS”), numerous complaints of improper conduct to various professional oversight groups, and protracted contentious litigation of the present case.¹ The facts have

been exhaustively set forth by the parties in their briefs, in their competing versions of the proposed findings, in their “Supplemental Joint Final Pretrial Order” (doc. no. 141, stipulated facts), and at trial. The relevant facts will be summarized here as succinctly as possible.

Defendant Lawrence Waldman became a CPA in 1972, worked for a large firm for four years, and then founded his own firm “Waldman & Company, CPAs.” He hired Kenneth Pitcher and Michael Enders (“plaintiffs”) as associate accountants, respectively in 1985 and 1987. In time, both plaintiffs acquired ownership interests in the firm, which changed its name to “Waldman, Pitcher & Company, P.S.C.” In 2005, Waldman, Pitcher and Enders signed employment contracts with the firm. Those contracts included a formula for annual compensation, a schedule for deferred compensation upon termination of employment, and a “non-compete” clause that would preclude them from performing any accounting work for the firm's clients for three years after termination of employment. As of 2009, Pitcher had 25 shares in the firm, and Enders had 15 shares in the firm, out of a total of 97 shares (Plaintiff Ex. 21, W000791, 821). Together, Pitcher and Enders had a 41% stake in the firm.

Pitcher and Enders sought to leave the firm in 2009. Waldman, who had been having health issues and who had returned to work in September, did not agree to their proposed terms. Pitcher and Enders sued for dissolution in state court. *See Pitcher, et al v. Waldman, et al*, Case No. 09–CI–1491 (Campbell Cty. Circuit Ct.). Through counsel, the parties negotiated a settlement, and on October 22, 2009, entered into the “2009 Settlement and Stock Redemption Agreement” (Jt. Ex. I, “2009 Agreement”). They terminated the 2005 employment contracts, divided the client lists, and formed separate accounting firms.² The parties agreed that Pitcher and Enders would relinquish their stock in the original firm and that certain account receivables (“AR”) and work in progress (“WIP”) would be assigned to their new firm “KPE Services, Inc. (“KPE”). The amount of AR to be assigned to KPE was \$111,535 for Pitcher's clients and \$13,260 for Enders' clients (for a total of \$124,795). Defendants paid \$27,755.00 to KPE for amounts received from Pitcher and Enders' clients during October 6–21, 2009, and paid \$60,000.00 to plaintiffs' attorneys at Greenebaum (Plaintiff Ex. 21, W000792, 800, copies of checks). The 2009 Agreement specified that Waldman & Co. would pay Pitcher “a purchase price in the amount of \$833.00” for his shares and pay Enders “the amount of \$500.00” for his shares.

*2 In their state complaint, Pitcher and Enders had alleged that Waldman was “engaged in fraudulent, unethical, and illegal billing practices” and had been “overbilling” clients (Plaintiff Ex. 21, W000773 at ¶¶ 7–9). Waldman insists that this was untrue and was merely a ploy by the plaintiffs to obtain rescission of their 2005 employment contracts. In any event, the 2009 Agreement included a “non-disparagement” clause. Unfortunately, this settlement did not conclude matters between the parties, and the non-disparagement clause later became the subject of litigation between the parties. According to Waldman, Pitcher subsequently told a client (Gerald Robinson) that Waldman had been overbilling him. Waldman testified he was “pretty angry” and “intended to fight” because “no one pushes me around” (doc. no. 182 at 13, 18, Trial Transcript). Waldman told Robinson on December 30, 2009, that he was “going to war” (Plaintiff’s Ex. 35, transcript of audio recording played at trial).

In January 2010, Waldman & Co. issued 1099–MISC forms to Pitcher and Enders personally for tax year 2009, for non-employee compensation in the amount of \$111,535.00 for Pitcher and \$13,260.00 for Enders (Plaintiff Ex. 2–3). It is undisputed that Waldman and his company had not collected any of the AR/WIP money reflected on those 1099 forms (doc. no. 134, ¶¶ 18–19). Waldman was admittedly angry at Pitcher and Enders and has repeatedly characterized their departure as effectively “stealing” two million dollars from him. As a prominent and experienced CPA,³ Waldman was familiar with the matching program of the IRS and knew that issuing these 1099s to Pitcher and Enders personally would likely result in IRS audits of their personal income tax returns. Waldman & Co. benefitted by taking a corresponding tax deduction for the reported amounts. Plaintiffs did not declare any of the AR, WIP, or the \$60,000.00 payment to Greenebaum as income on their personal 2009 tax returns (doc. no. 141 at 8, ¶ o).

In February and March of 2010, Pitcher and Enders complained to the IRS’s Office of Professional Responsibility (“OPR”) that Waldman had issued 1099s containing information that Waldman knew to be inaccurate (Def.Ex.B–C). They asserted that Waldman had done this “to exact a revenge that he couldn’t otherwise exact during our negotiations” (doc. no. 135, ¶ 28). They filed similar complaints with the Accountancy Board of Ohio and Ohio Society of CPAs (Def.Exs.F–H, J, L). Those groups declined to take disciplinary action against Waldman.

Waldman countered by suing Pitcher and Enders in May 2010, alleging that they had “defamed” him by filing the complaints with those groups. *See Waldman, et al, v. Pitcher, et al*, Case No: A1004877 (Ct. of Comm. Pleas for Hamilton Cty., Ohio). He also alleged that Pitcher and Enders had violated the 2009 Agreement in various ways. He contended that the plaintiffs had improperly withheld certain contractual payments (i.e. “Robinson payments”) in order to offset costs the plaintiffs had incurred in connection with “due date monitoring” software (Plf. Ex. 21 at W000384). Plaintiffs counter-claimed, asserting that although Waldman had expressly agreed in Section 3.12 of the 2009 Agreement to make the software available to them, Waldman had refused to do so (W000403). The parties entered into a protective order prohibiting them from disclosing information designated “confidential” to third parties.

*3 In addition to the “defamation” suit, Waldman (individually and as Trustee) and his firm also filed suit against Pitcher as Co–Trustee, seeking to recover “excessive administrative costs” of \$810.52, plus attorney’s fees, for Pitcher’s administration of the firm’s 2002 Plan and Trust Agreement. *See Waldman, et al, v. Pitcher, et al*, Case No: 10–cv–7526 (Hamilton Cty. Mun.Ct.), removed to federal court on the basis of ERISA jurisdiction, as OHSD Case No. 1:10–cv–238 (J. DLott).⁴

On July 22, 2010, Waldman asked the IRS for an informational letter determining that his tax characterization of the 2009 transactions was correct (Plaintiff Ex. 21 at W000529). On August 23, 2010, he requested a “Determination Letter” as to whether the amounts paid to plaintiffs in the 2009 transactions were reportable on Form 1099–MISC or W–2. Waldman also asked the IRS to pursue action against the plaintiffs for allegedly engaging in a “tax avoidance scheme.” The IRS denied Waldman’s requests in November and December of 2010. The IRS informed Waldman that “issuance of a Determination Letter or an Information Letter is not an appropriate response to your request” (W000434), that his request was “being declined on the basis that it deals with issues which should have been submitted as a request for a Private Letter Ruling” (W000441, 448), and that “the fact that the return for the period in question has already been filed precludes this possibility” (W000434). Waldman acknowledges the IRS informed him that he was seeking a letter on “a closed transaction” and that the IRS would only provide such letters for “proposed transactions” (doc. no. 182 at 41). The IRS declined to give an opinion on how Waldman & Co. should

have reported the sums and advised that the issue now is “how the former employees should treat the compensation [on] their returns” (W000448).

Waldman then hired a tax attorney, Howard Richshafer, to review the 2009 transactions and offer an opinion on the manner in which Waldman & Co. had reported them to the IRS (doc. no. 182 at 44, advising that “I am planning to use your letter to justify part of my claim”). The record reflects that Waldman indicated to Richshafer that he did not need to consider the fair market value of the firm. Waldman's letter to Richshafer described “[w]hat I need from you to confirm my case” (*Id.* at 47). Based on the incomplete information and assumptions urged by Waldman, Richshafer indicated in a “limited” opinion that certain “income” should have been reported on W-2 forms to the plaintiffs.

In February 2011, Waldman & Co. issued “corrected” 2009 1099s to the plaintiffs, reflecting “zero” for their nonemployee compensation. At the same time, he issued “corrected” W-2s to Pitcher and Enders reflecting increased amounts in Box 1 (Jt.Exs.II–III). For Pitcher, an additional \$199,290.00 of reported income was included, reflecting the \$111,535.00 for the accounts receivable assigned to KPE, \$27,755 for the amount paid to KPE by Waldman & Co., and \$60,000.00 for attorney fees paid by Waldman & Co. to plaintiffs' attorneys at Greenebaum. For Enders, an additional \$13,260.00 was included, consisting of \$13,260.00 for the accounts receivable assigned to KPE. Waldman & Co. took a tax deduction for the increased amounts listed on the corrected W-2s, even though such returns indicated that no federal income taxes had been withheld. In a February 12, 2011 letter, Waldman sent plaintiffs copies of the Corrected 2009 1099s and W-2s and demanded payment for alleged back-taxes, interest, and penalties, amounting to approximately \$9,000.00, citing the indemnity clause of the 2009 Agreement.

*4 On February 17, 2011, Waldman filed a whistleblower complaint against Pitcher and Enders, asking the IRS to investigate matters including: 1) whether the treatment of AR and WIP and the assignment of “income” in the 2009 transactions was appropriate, 2) whether Pitcher and Enders had possible [I.R.C. § 409A](#) tax liability, 3) whether Pitcher and Enders had engaged in gross negligence with regard to the 2009 transactions, and 4) whether Pitcher and Enders had violated Treasury Dept. Circular 230 or were subject to penalties, censure, and disbarment. Waldman asserts that this IRS whistleblower complaint was based in part on the

“covered letter” tax opinion he had obtained from Richshafer. Such letter indicates on its face that it was only a “limited scope” tax opinion (doc. no. 182 at 7, 62–63).

On March 9, 2011, Pitcher and Enders filed the present action, *Pitcher et al. v. Waldman, et al.*, OHSD Case No. 1:11-cv-148, asserting that defendant Waldman and his firm had willfully filed fraudulent information returns to the plaintiffs in violation of [26 U.S.C. § 7434](#), resulting in adverse tax consequences and IRS audits of both plaintiffs.

On April 4, 2011, Waldman obtained a civil protection order against Pitcher for an allegedly threatening comment made at a deposition concluded two months earlier in conjunction with the then-ongoing state court litigation (doc. no. 182 at 74–77; Plf. Ex. 39).⁵ Waldman also filed a criminal complaint against the plaintiffs with the Treasury Department in the summer of 2011 (doc. no. 182 at 78). Pitcher and Enders were not prosecuted.

On January 31, 2012 (after three days of trial in state court), the parties settled their Hamilton County lawsuit (doc. no. 141 at 4, 9, ¶ aa; Plf. Ex. 11). This “2012 Agreement” provided that all future communications between the parties must be through their legal counsel and that Waldman would cause his insurer, Farmers Insurance Company (“Farmers”) to pay \$75,000.00 to plaintiffs' attorneys (Dinsmore & Shohl).

On February 28, 2012, Pitcher (individually and as Co-Trustee of “The Waldman, Pitcher and Co., CPA's Profit Sharing Trust”) filed suit against Waldman (as Trustee) and the Trust, after Waldman refused to indemnify him for fees and costs (which had allegedly risen to over \$45,000) incurred in successfully defending Waldman's “\$810 Trust Litigation.” *See Pitcher v. Waldman, et al.*, Case No: A1201601 (Ct. of Comm. Pleas for Hamilton Cty., Ohio), removed to federal court as OHSD Case No. 1:12-cv-215.⁶

After Pitcher and Enders learned that Waldman had voluntarily disclosed information designated as confidential to the IRS, they filed another suit against Waldman on October 5, 2012, alleging that Waldman had violated the non-disparagement clause of the 2009 Agreement and the confidentiality provisions of a Protective Order issued on August 20, 2010. *See Pitcher, et al. v. Waldman*, Case No: A1207858 (Ct. of Comm. Pleas for Hamilton Cty., Ohio).⁷

*5 During 2012, the IRS conducted audits of the 2009 personal tax returns of both Pitcher and Enders. On November

9, 2012, the IRS determined that, contrary to the information returns issued by Waldman & Co., the amounts reported on the 2009 1099s and corrected W-2s did *not* constitute “non-employee compensation” or “wages” (Def. Ex. N, IRS Audit Findings; see also, doc. no. 135, ¶ 50). The IRS characterized the amounts of AR and WIP assigned to KPE as “a stock distribution, reportable as capital gain income” to Pitcher and Enders. They paid the capital gains tax to the IRS (Def. Ex. N, copies of checks).

In January 2013, Waldman issued 1099s for tax year 2012 to each plaintiff, reflecting non-employee compensation in the amount of \$37,500.00 for each plaintiff (doc. 141 at 9, ¶ z). He sent them directly to plaintiffs and attached Post-It notes on which he wrote “tax cheat thief” to Pitcher and “you are going to hell” to Enders. Based on Farmer’s payment of \$75,000 to plaintiffs’ attorneys at Dinsmore, Waldman attributed \$37,500.00 to each plaintiff. After receiving these 2012 1099s, Pitcher and Enders asked defendants for an explanation of the basis for the 1099s, but defendants refused to explain. Plaintiffs then amended their complaint in the present case and asserted two additional violations of IRC § 7434 based on the 2012 1099s for \$37,500 issued to each plaintiff.

After contentious discovery, this case proceeded to trial in July of 2013. The individual parties all testified and spent considerable time disputing the proper characterization of the funds reported by defendants in the information returns. Both sides presented opinion witness testimony. Lynn Nichols, CPA, and Richard Ferguson, testified for the plaintiffs; tax attorney Howard Richshafer testified for the defense. Ferguson gave opinion testimony regarding economic valuation of the firm’s shares.

II. Issues Presented

The Court must determine whether Waldman and his company violated 26 U.S.C. § 7434 (“I.R.C. § 7434”) by willfully filing fraudulent information returns with respect to payments purported to be made to the plaintiffs. Specifically, the Court must determine whether the defendants are liable for separate violations of § 7434 based on their issuance of the 2009 1099s, corrected W-2s, and 2012 1099s. The parties primarily argue about whether the defendants had a duty to issue those information returns, whether the defendants were actually the “payor” of the amounts on the returns, and the various ways in which the returns were false.

III. Relevant Law

I.R.C. § 7434 is entitled “Civil damages for fraudulent filing of information returns” and was enacted in 1996 as part of the “Taxpayer Bill of Rights 2,” Pub.L. No. 104-168, 110 Stat. 1452. The Report of the House Committee on Ways and Means states that § 7434 was enacted to address the fact that “[s]ome taxpayers may suffer significant personal loss and inconvenience as the result of the IRS receiving fraudulent information returns, which have been filed by persons intent on either defrauding the IRS or harassing taxpayers.” H.R. Rep. 104-506, at 37, reprinted in 1996 U.S.C.C.A.N. 1143, at 1158 (Mar. 28, 1996). The Committee also cautioned that it did not intend “to open the door to unwarranted or frivolous actions or abusive litigation practices.” *Id.*

*6 Section § 7434(a) provides that “If any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return.” The parties agree that to establish a claim of tax fraud under 26 U.S.C. § 7434, plaintiffs must prove: (1) that the defendants issued “information returns”; (2) that the information returns were fraudulent; and (3) that defendants willfully issued fraudulent returns (see doc. no. 141 at 15, “Agreed Applicable Propositions of Law”); see also, *Richardson v. C.I.R.*, 509 F.3d 736 (6th Cir.2007); *Cavoto v. Hayes*, 2010 WL 2679973 (N.D.Ill.) (citing *Granado v. C.I.R.*, 792 F.2d 91 (7th Cir.1986)). The parties also agree that plaintiffs must prove each of these elements by clear and convincing evidence (doc. no. 141 at 16); see also, *Cavoto*, 2010 WL 2679973; *Smith v. C.I.R.*, 926 F.2d 1470, 1475 (6th Cir.1991) (fraud must be proven with clear and convincing evidence); *Rogers v. C.I.R.*, 111 F.2d 987, 989 (6th Cir.1940) (“Fraud cannot be lightly inferred, but must be established by clear and convincing proof”). Fraud may be proven by circumstantial evidence. *Traficant v. C.I.R.*, 884 F.2d 258 (6th Cir.1989) (citing *Biggs v. C.I.R.*, 440 F.2d 1, 5 (6th Cir.1971)).

With respect to the tax code, “willfulness” is generally defined as the voluntary, intentional violation of a known legal duty. *Cheek v. U.S.*, 498 U.S. 192, 201 (1991); *U.S. v. Pomponio*, 429 U.S. 10, 12 (1976). “[W]here willfulness is a statutory condition of civil liability, we have generally taken it to cover not only knowing violations of a standard, but reckless ones as well.” *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57 (2004) (observing that “[t]his construction reflects common law usage, which treated actions in ‘reckless disregard’ of the law as ‘willful’ violations”) (citing W. Keeton, D. Dobbs, R.

Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 34, p. 212 (5th ed.1984)).

IV. Discussion

A. Whether the Defendants Willfully Filed Fraudulent 2009 1099s and Corrected 2009 W-2s

Statutory interpretation “begins where all such inquiries must begin: with the language of the statute itself.” *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). Here, the language of I.R.C. § 6041 is plain and unambiguous, and “the sole function of the courts is to enforce [a statute] according to its terms.” *Id.* Courts generally give terms their “ordinary meaning.” See, e.g., *Ransom v. FIA Card Services*, 131 S.Ct. 716, 726 (2011) (indicating that such reading should be consistent with a statute's text, context, and purpose).

I.R.C. § 6041 and the corresponding regulation only require reporting of payments of salary, wages, or other compensation for services rendered. I.R.C. § 6041(a); Treas. Reg. § 1.6041-1(a)(1) (i)(A),(b)(1), (e). Although the defendants argue that they had a legal duty to issue the 2009 information returns, Form 1099-MISC is used primarily to report income, not stock redemptions. In its audit findings, the IRS determined that the AR and WIP sums assigned to KPE were stock distributions taxable to plaintiffs as capital gains, not as ordinary income. As Lynn Nichols, CPA, clearly and persuasively testified,⁸ the defendants had no duty to issue an information return for a minority shareholder stock redemption. In his testimony, he pointed out that defendants were confusing two separate issues, i.e. the statutory reporting requirements and the taxability of the amounts at issue. Although the plaintiffs ended up owing some capital gains tax, the defendants had no duty to issue the 2009 1099s and corrected W-2s under such statute and regulation. An experienced CPA like Waldman knew (or should have known) that he and his firm had no duty to issue the 2009 1099s to plaintiffs in connection with stock redemptions.

*7 Plaintiffs point out that, as confirmed by the IRS' audits of plaintiffs' 2009 tax returns and as explained by Nichols, the transactions under the 2009 Agreement were stock redemptions, and thus, defendants should not have characterized the \$111,535 for Pitcher and the \$13,260 for Enders as non-employee compensation. In doing so, the defendants misrepresented the nature of the transaction to the IRS. Defendants benefited because they were able to take a deduction for those amounts. Waldman acknowledged at trial that if the sums were characterized as compensation, he

could take a tax deduction (doc. no. 182 at 35). Waldman also knew he would create a matching problem for Plaintiffs in the IRS's matching program, and as intended, the IRS did in fact audit the plaintiffs' 2009 tax returns. Plaintiffs assert that the defendants issued the corrected W-2's in an attempt to retroactively legitimize their improper issuance of the 2009 1099s, retain an improper tax deduction, and continue harassing plaintiffs.

Although Waldman attempted to rely on Richshafer's limited tax opinion as evidence that he did not willfully file fraudulent 2009 information returns, plaintiffs point to evidence that Waldman had directed Richshafer toward a particular conclusion while withholding accurate information of the fair market value of Waldman & Co. at the time of the 2009 Agreement (doc. no. 184 at 16, fn.2, indicating a “Total Value Range” of \$1,492,964.25 to \$2,488,273.75 even though Waldman had discouraged Richshafer from investigating the firm's FMV). Waldman did this in order to steer his witness to the conclusion that the corrected W-2s were properly issued. In fact, Richshafer testified that with appropriate information, he would reach the same conclusion as Nichols and the IRS that the 2009 transactions were stock redemptions. Waldman knew the tax implications of the proper characterization (doc. no. 182 at 55, Q: [I]f Mr. Richshafer rendered an opinion to you that this was a stock redemption transaction, then Waldman & Co. would lose its deduction, correct? A. Correct.).⁹

While a mere mistake would not satisfy I.R.C. § 7434's prohibition of *willfully* filing *fraudulent* information returns, plaintiffs argue that Waldman's issuance of the corrected information returns in reliance on a “fraudulently obtained” legal opinion further confirms that the defendants knew they improperly issued the 2009 1099s (doc. no. 184 at 17).

Waldman has acknowledged that he *knew* it was incorrect to file the 2009 1099s. He testified he “put it on a 1099 because the negotiations were that I would not put it on W-2s, as demanded by Pitcher and Enders” (doc. no. 182 at 37). He testified that “Pitcher and Enders demanded in October 2009 that I not put it on a W-2 or they wouldn't sign the agreement ... So I had to go under Plan B” (*Id.* at 31-32, Q: So what you're telling me is you knew it was supposed to be a W-2 back in October of 2009, but you put it on something different because of what Ken and Mike told you to do? A: As a part of our negotiation.). As a CPA should well know, the “employer's obligation to report payments in excess of \$600 is imposed by law, not by agreement of the parties.” IRS

Information Letters, 2008–0041, 2008 WL 4378537 (IRS–INFO).

*8 “In our complex tax system, uncertainty often arises even among taxpayers who earnestly wish to follow the law, and it is not the purpose of the law to penalize frank difference of opinion or innocent errors made despite the exercise of reasonable care.” *U.S. v. Bishop*, 412 U.S. 346, 360–361 (1973) (quoting *Spies v. U.S.*, 317 U.S. 492, 496 (1943)) (internal marks omitted); *Rogers*, 111 F.2d at 989 (observing that “it is conceivable that ... owing to different or contradictory theories of tax computation, [taxpayers may] calculate returns which differ greatly in result”). Waldman cannot accurately justify the 2009 1099s and corrected W–2s as an innocent difference of opinion. He was a sophisticated tax professional who was well aware of the implications of his reporting on the information returns. He demonstrated great animosity toward his former partners (who likewise displayed great animosity toward him). Although Waldman testified to his belief that Pitcher and Enders “were attempting a tax fraud scheme” in the 2009 Agreement (doc. no. 182 at 31–32), this does not justify his own filing of information returns that he *knew* were incorrect and which mischaracterized the 2009 transactions. See *U.S. v. Aaron*, 590 F.3d 405, 408 (6th Cir.2009) (“a good-faith motive for willfully committing tax fraud has never constituted a proper defense”). Waldman filed a whistleblower suit and was aware of how to proceed in that manner.

B. Whether the Defendants Willfully Filed Fraudulent 2012 1099s

Section 6045 and its implementing regulation only require reporting by a person who *actually pays* an attorney for services rendered, unless that reporting would otherwise be covered under I.R.C. § 6041. I.R.C. § 6045(f); *Treas. Regs.* §§ 1.6041–1(a)(1)(ii)–(iii), 1.6045–5(a), (c)(4), (d). The regulation defines a “payor” as “a person *who makes a payment* if that person is an obligor on the payment.” *Treas. Reg.* § 1.6045–5(d)(3) (emphasis added). The regulation specifically defines a “payor” as “[a] person who pays a settlement amount” and “[that] person’s insurer if the insurer pays the settlement amount.” *Id.* § 1.6045–5(d)(3)(i)–(ii). Here, defendants’ insurer, Farmers Insurance Group f/b/o Assurance Company of America (“Farmers”) paid plaintiffs’ lawyers at Dinsmore & Shohl (“Dinsmore”). Farmers was the “payor” with the reporting obligation and did in fact submit the appropriate information return to Dinsmore. Although this concluded the reporting duty for that payment, Waldman issued 1099s for tax year 2012 to each plaintiff, reflecting

non-employee compensation in the amount of \$37,500.00 for each plaintiff (doc. 141 at 9, ¶ z). He attached Post–It notes on which he wrote “tax cheat thief” to Pitcher and “you are going to hell” to Enders.

The 2012 1099s issued by the defendants mischaracterized the nature of the \$75,000 payment made by Farmers because they do not accurately reflect what actually happened. By filing the 2012 1099s, the defendants represented to the IRS that they were “payors” of the payments and that each of the plaintiffs received a payment of \$37,500 (doc. no. 182 at 99; doc. 183 at 100). In fact, Farmers paid a single lump sum of \$75,000 to Dinsmore. Defendants had no duty to issue the 1099s for the payment by Farmers (doc. no. 182 at 107). Dinsmore alone had the right and duty to report it. Defendants did not actually make the payment and had no duty to issue the 2012 1099s under either statute or the regulations because defendants were not the “payor” of the attorneys fees. Although defendants contend that they could be deemed a “payor” because Waldman was an “obligor,” the Court rejects such argument because it contradicts the unambiguous statutory language.

*9 The 2012 1099s issued by the defendants mischaracterized to the IRS that they had paid \$37,500 to each of the plaintiffs. As to the stated amount, Richshafer acknowledged at trial that “it was probably not correct to split the \$75,000” and that “the amount should be correct.” Defendants admitted they never made any such payments to plaintiffs in 2012. As Nichols testified, Waldman did not qualify as “payor” because he did not pay anything. Farmers wrote the check with its own money, i.e. it was not a mere ministerial act. Plaintiffs have pointed out that the case was settled and no “indemnity” for a judgment was ever triggered.

In sum, the evidence establishes that the defendants filed false information returns with the IRS in order to harass the plaintiffs, not to meet a non-existent duty. As a result, the Court finds that the defendants willfully filed fraudulent 2012 1099s and are therefore liable for violation of I.R.C. § 7434.

C. Conclusion

Plaintiffs have shown that the defendants did not have a duty to issue any of the information returns in this case. As for whether the defendants “willfully” filed them, the evidence reflects that Waldman is an experienced, intelligent, sophisticated tax professional who harbored great animosity toward the plaintiffs. Given his education, knowledge, and business experience as a CPA, he could not have reasonably

believed that these information returns were proper to file. He filed these information returns “willfully” in order to obtain tax benefits and harass the plaintiffs. Despite having “settled” a previous lawsuit over the plaintiffs' departure from the firm, Waldman was dissatisfied and stubbornly believed the plaintiffs had “stolen” two million dollars from him by leaving his firm with clients. In taking on the role of whistleblower, he deliberately misused the IRS reporting system. While Waldman may have believed that the plaintiffs had under-stated their taxable income to the IRS, that was a matter for the IRS to determine.

When Waldman and/or his company issued the information returns to plaintiffs, defendants mischaracterized the nature of the transactions and benefited from mischaracterizing these transactions to the IRS. The Court finds that the defendants willfully filed fraudulent information returns, thereby violating [Section 7434\(a\)](#) with respect to each of the information returns at issue, i.e. the 2009 1099s, the corrected W-2s, and the 2012 1099s.

D. Damages

Having found the defendants liable, the Court must determine damages. [Section 7434\(b\)](#) provides that:

[T]he defendant shall be liable to the plaintiff in an amount equal to the greater of \$5,000 or the sum of—

(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing),

(2) the costs of the action, and

*10 (3) in the court's discretion, reasonable attorneys' fees.

[Section 7434\(e\)](#) also provides that “the decision of the court awarding damages in an action brought under subsection (a) shall include a finding of the correct amount which should have been reported in the information return.” Here, there is no “correct amount” that should have been reported, because the defendants had no duty to file the information returns in the first place.

The Court will impose the \$5,000 statutory penalty for each violation, as the evidence reflects that such amount is greater than the sum of [§ 7434\(b\)\(1–3\)](#) factors. The actual damages asserted by plaintiffs consist largely of their defense of the IRS audit triggered by the defendants' issuance of the 2009 information returns. Actual damages would also include plaintiffs' costs and, in the Court's discretion, attorneys fees in bringing this suit. Of course, the IRS audit of plaintiffs' 2009 returns concluded that although the plaintiffs were not taxable for the AR and WIP as “nonemployee compensation” or “wages,” the plaintiffs did in fact owe capital gains tax for their stock redemption (albeit at a lower tax rate than for ordinary income). The Court is not prepared to deem properly owed taxes as “damages,” as that would be an absurd result.

The statute provides the Court with discretion whether to award reasonable attorney fees. In light of the unusually hostile litigation history between the parties, the Court observes that plaintiffs have certainly played a significant role in creating the bitter circumstances of this case. This case has also been marked by needlessly contentious discovery battles, repetitive briefing, and unfortunate personal attacks. In view of the animosity between the parties, the Court in its discretion declines to award attorneys' fees to the plaintiffs. The Court is aware that, absent such an award, this may be a Pyrrhic victory for plaintiffs. Nonetheless, the Court is convinced that this is a just result under the unusual circumstances of this case.¹⁰

Accordingly, judgment is hereby *GRANTED* against the defendants in favor of plaintiff Kenneth B. Pitcher in the amount of \$15,000.00 and in favor of plaintiff Michael Enders in the amount of \$15,000.00, on their claims pursuant to [26 U.S.C. § 7434](#) for the defendants' issuance of the 2009 1099 forms, the “corrected” W-2 forms, and the 2012 1099 forms. The parties shall each bear their own costs of this action. In its discretion, the Court declines to award attorneys fees to plaintiffs.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.3d, 2014 WL 1302551, 113 A.F.T.R.2d 2014-1639, 2014-1 USTC P 50,241

Footnotes

- 1 The Court takes judicial notice of related litigation, which is relevant for purposes of context and to shed light on the parties' intent and state of mind.
- 2 Waldman, Pitcher & Company became "Waldman & Company, CPAs, PSC," and Pitcher and Enders formed a new firm known as "KPE Services, Inc., which later became "Pitcher, Enders & Drohan, CPAs, Inc." (doc. no. 141 at 7, ¶¶ d, e).
- 3 Waldman was selected as a "Top 100 CPA" by Money magazine (doc. no. 182 at 25).
- 4 Waldman complained that although he had demanded that Pitcher resign as trustee in November 2009, Pitcher had not resigned until February 24, 2010. Waldman later moved to voluntarily dismiss, indicating he had developed cancer which caused him to "reevaluate his resources and priorities." The Magistrate Judge recommended granting dismissal. Pitcher objected, contending that Waldman should pay Pitcher's attorneys fees of over \$30,000 as a condition of dismissal. The Court overruled the objections and dismissed the case without prejudice on September 15, 2011.
- 5 At trial, Waldman testified that Pitcher had said "I'm going to thump you" (doc. no. 182 at 76–77). The record reflects that when Waldman sought the civil protective order, the only example of a purportedly threatening comment was that Pitcher had allegedly said at deposition "I'm going to bust him."
- 6 In that case, the Court noted the "extreme" and "well-documented" level of personal animosity between the parties and pointed out that "the amount of attorney's fees expended by both parties in this case and the multitude of related cases quite obviously exceeds any type of benefit that could be achieved by either party, had either employed a cost-benefit analysis" (OHSD Case No. 1:12–cv–215, doc. no. 44 at 4, fn. 4).
- 7 Several related lawsuits were also filed by insurance companies drawn into the fray over the duty to defend the parties under commercial liability policies. See *Acuity Mutual Insurance Co. v. Waldman, et al*, OHSD Case No. 1:11–cv–913 (J. Beckwith); *Assurance Co. of Am. v. Waldman, et al*, OHSD Case No. 1:13–cv–179 (J. Beckwith) (case settled and dismissed with prejudice).
- 8 Nichols is a federal tax specialist with over 40 years of experience. He authors and teaches federal tax courses for CPAs on a national level (doc. 182 at 93–95).
- 9 Ferguson testified that the \$833 and \$500 were not the FMV of the shares repurchased by Waldman & Co. from plaintiffs, and that those shares had been worth an estimated \$614,000 to \$1,200,000 in 2009.
- 10 The term "Pyrrhic victory" refers to the ancient Greek King Pyrrhus, whose army suffered great losses while winning battles against the Romans in 279–280 BC during the Pyrrhic War. Given those losses, the "victory" was tantamount to defeat. See, e.g., *Beauharnais v. Illinois*, 343 U.S. 250, 275 (1952) (dissent by Justice Black, advising the prevailing parties to "consider the possible relevancy of this ancient remark: 'Another such victory and I am undone.'").

CERTIFICATION FOR NO INFORMATION REPORTING ON THE SALE OR EXCHANGE OF A PRINCIPAL RESIDENCE

This form may be completed by the seller of a principal residence. This information is necessary to determine whether the sale or exchange should be reported to the seller, and to the Internal Revenue Service on Form 1099-S, Proceeds From Real Estate Transactions. If the seller properly completes Parts I and III and makes a "true" response to assurances (1) through (7) in Part II (or a "not applicable" response to assurance (7)), no information reporting to the seller or to the Service will be required for that seller. The term "seller" includes each owner of the residence that is sold or exchanged. Thus, if a residence has more than one owner, a real estate reporting person must either obtain a certification from each owner (whether married or not) or file an information return and furnish a payee statement for any owner that does not make the certification.

Part I. Seller Information

1. Name: _____
2. Address or legal description (including city, state, and zip code) of residence being sold or exchanged:

3. Taxpayer Identification Number (TIN): _____

Part II. Seller Assurances

Check "true" or "false" for assurances 1 through 6, and "true," "false," or "not applicable" for assurance (7):

1. I owned and used the residence as my principal residence (as defined under Section 121 of the Internal Revenue Code) for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and there has been no period of nonqualified use (as that term is defined in section 121(b)(5)(C)) after December 31, 2008
2. I have not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the residence.
3. I (or my spouse or former spouse if I was married at any time during the period beginning May 6, 1997, and ending today) have not used any portion of the residence for business or rental purposes after May 6, 1997.
4. The full amount of the gain on such sale or exchange is excludable from gross income under section 121.
5. At least one of the following three statements applies:

The sale or exchange is of the entire residence for \$250,000 or less; or
I am married, the sale or exchange is of the entire residence for \$500,000 or less, and the gain on the sale or exchange of the entire residence is \$250,000 or less; or
I am married, the sale or exchange is of the entire residence for \$500,000 or less, and (a) I intend to file a joint return for the year of the sale or exchange, (b) my spouse also used the residence as his or her principal residence for periods aggregating 2 years or more during the 5-year period ending on the date of the sale or exchange of the residence, and (c) my spouse also has not sold or exchanged another principal residence during the 2-year period ending on the date of the sale or exchange of the principal residence.
6. During the 5-year period ending on the date of the sale or exchange of the residence, I did not acquire the residence in an exchange to which Section 1031 of the Internal Revenue Code applied.
7. If my basis in the residence is determined by reference to the basis in the hands of the person who acquired the residence in an exchange to which Section 1031 of the Internal Revenue Code applied, the exchange to which Section 1031 applied occurred more than 5 years prior to the date I sold or exchanged the residence.

Part III. Seller Certification

Under penalties of perjury, I certify that all the above information is true as of the end of the day of the sale or exchange.

(Signature of Seller)

(Date)



CERTIFICATE OF ATTENDANCE

Certified Paralegals are required to record evidence of 50 hours of continuing legal education hours to renew the CP credential every 5 years. CLE hours are recorded in CPs' accounts through the [NALA online portal](https://www.nala.org/certification/certtest2view). Of the 50 hours, 5 hours must be in legal ethics, and no more than 10 hours may be recorded in non-substantive areas. If attending a non-NALA sponsored educational event, this certificate may be used to obtain verification of attendance. Please be sure to obtain the required signatures for verification of attendance. The requirements to maintain the CP credential are available from NALA's web site at <https://www.nala.org/certification/certtest2view>. Please keep this certificate in the event of a CLE audit or further information is needed.

PLEASE COMPLETE THE SPACES BELOW AND ATTACH A PROGRAM

Session Length In Hours	Session Topics (Description and Speakers)	Validation of Attendance
1.0	A Closing Agent's Guide to the 1099-S / John St. Lawrence	<i>John St. Lawrence</i>

Name of CP (Please Print)			NALA Account Number (On Mailing Label)		
			149113		
Signature of CP			Name of Seminar/Program Sponsor		
			A Closing Agent's Guide to the 1099-S / ATFS, LLC		
Address			Authorized Signature of Sponsor Representative		
			<i>John St. Lawrence</i>		
			Date of Educational Event:		
City:		State (XX):			
Preferred e-mail address			Location:		
			Recorded Webinar		

For Office Use Only	
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Non-substantive hours	
Ethics	



FL BAR Reference Number: 2410231N

Title: A Closing Agent's Guide to the 1099-S

Level: Intermediate

Approval Period: 01/01/2025 - 07/31/2026

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