

§ 1.6045-4

26 CFR Ch. I (4-1-10 Edition)

§ 1.6043-4(d) (substantial change in capital structure) shall file a return of information with respect to the customer, unless the customer is an exempt recipient as defined in paragraph (b) of this section.

(b) *Exempt recipients.* A broker is not required to file a return of information under this section with respect to the following customers:

(1) Any customer who receives only cash in exchange for its stock in the corporation, which must be reported by the broker pursuant to § 1.6045-1.

(2) Any customer who is an exempt recipient as defined in § 1.6043-4(b)(5) or § 1.6045-1(c)(3)(i).

(c) *Form, manner and time for making information returns.* The return required by paragraph (a) of this section must be on Forms 1096, “Annual Summary and Transmittal of U.S. Information Returns,” and 1099-B, “Proceeds from Broker and Barter Exchange Transactions,” or on an acceptable substitute statement. Such forms must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(d) *Contents of return.* A separate Form 1099-B must be prepared for each customer. The Form 1099-B will request information with respect to the following and such other information as may be specified in the instructions:

(1) The name, address and taxpayer identification number (TIN) of the customer;

(2) The name of the corporation which engaged in the transaction described in § 1.6043-4(c) or (d);

(3) The number and class of shares in the corporation exchanged by the customer; and

(4) The aggregate amount of cash and the fair market value of any stock or other property provided to the customer in exchange for its stock.

(e) *Furnishing of forms to customers.* The Form 1099-B prepared for each customer must be furnished to the customer on or before January 31 of the year following the calendar year in which the customer receives stock, cash or other property.

(f) *Single Form 1099.* If a broker is required to file a Form 1099-B with re-

spect to a customer under §§ 1.6045-3 and 1.6045-1(c) with respect to the same transaction, the broker may satisfy the requirements of both sections by filing and furnishing one Form 1099-B that contains all the relevant information, as provided in the instructions to Form 1099-B.

(g) *Effective date.* This section applies with respect to any acquisition of control and any substantial change in capital structure occurring after December 5, 2005.

[T.D. 9230, 70 FR 72380, Dec. 5, 2005]

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

(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 agree-

ment 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) 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) *Use of magnetic media and substitute forms—(1) Magnetic media—(i) General rule.* A reporting person that is

required to make a return of information under this section shall, except as otherwise provided in paragraph (k)(1)(ii) or (iii) of this section, submit the information required by this section on magnetic media (within the meaning of 26 CFR 301.6011-2). Returns on magnetic media shall be made in accordance with 26 CFR 301.6011-2) and applicable revenue procedures.

(ii) *Exception for low-volume filers.* For rules allowing a reporting person to make the information returns required by this section on the prescribed paper Form 1099 if the reporting person is required by this section to file fewer than 250 returns during the calendar year, see section 6011(e) and guidance issued by the Internal Revenue Service thereunder.

(iii) *Undue hardship.* The Commissioner may authorize a reporting person to file information returns on the prescribed paper Form 1099 instead of on magnetic media if undue hardship is shown either on Form 8508, Request for Waiver From Filing Information Returns on Magnetic Media, or on a written statement requesting a waiver for undue hardship filed with the Martinsburg Computing Center, Martinsburg, West Virginia in accordance with applicable revenue procedures.

(2) *Substitute forms.* A reporting person that is described in paragraph (k)(1)(ii) of this section or that receives permission to file returns on the prescribed paper Form 1099 under paragraph (k)(1)(iii) of this section may prepare and use a form that contains provisions identical with those of Form 1099 if the reporting person complies with all applicable revenue procedures relating to substitute Form 1099, including any requirement relating to the use of machine-readable paper forms.

(1) *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 (1) 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 (1)(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 (1)(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 (1)(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 (1)(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) *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.

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). 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) shall be furnished to the transferor on or after the date of closing and before February 1 of the following calendar year.

(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 the 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

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cannot be determined with certainty. See paragraph (h)(1)(iv)(C) of this section.

(s) *Effective/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. The amendments to paragraphs (b)(2)(i)(E), (b)(2)(ii) and (c)(2)(i) of this section shall apply to sales or exchanges of standing timber for lump-sum payments completed after May 28, 2009.

[T.D. 8323, 55 FR 51284, Dec. 13, 1990; 56 FR 559, Jan. 7, 1991; 56 FR 3419, Jan. 30, 1991; T.D. 8895, 65 FR 50407, Aug. 18, 2000; T.D. 9450, 74 FR 25430, May 28, 2009]

§ 1.6045-5 Information reporting on payments to attorneys.

(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.* 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. The written statement must be furnished to the attorney on or before January 31 of the year following the calendar year in which the payment was made.

(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 non-attorney.* 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