



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

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MEMORANDUM FOR DIRECTOR, FORMS AND PUBLICATIONS DIVISION
OP:FS:FP

FROM: Michael J. Montemurro
Senior Technician Reviewer
Branch 2

SUBJECT: Technical Coordination Report from
Regional Chief Compliance Officer CCO:EX:BAS
Northeast Region

The above-captioned technical coordination report dated September 17, 1999, recommends that you revise the instructions to Form 1099-B to state that a corporation directly making some purchases of its own stock is required to issue its shareholders a Form 1099-B. We have not evaluated the merits of the recommendation, other than to consider its implementation under **existing** law. Your office has advised that a copy of this advisory memorandum will be provided to the field.

Conclusion. We advise you not to make the recommended changes to the instructions for Form 1099-B. The current instructions state that "[a] corporation is a broker if it regularly stands ready to redeem its stock or retire its debt. However, if there are no facts that indicate otherwise, a corporation that purchases odd-lot shares from its stockholders is not a broker." In our opinion, the instructions correctly summarize the proper interpretation of the law.

Facts. In the tax years 1995 and 1996, the taxpayer purchased outstanding shares of its stock from numerous shareholders. A stock transfer agent handled the majority of these purchases and issued Forms 1099-B. However, the corporation purchased some of its own stock directly from some of its shareholders. The Revenue Agent determined that the corporation was not required to issue Forms 1099-B.¹

Issue. Whether a corporation directly making purchases of its own stock is acting as a

¹ No opinion was requested and none is expressed regarding the agent's conclusion that the corporation was not required to issue Forms 1099-B.

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broker in every situation and therefore, under § 6045 of the Internal Revenue Code, should be required to issue its shareholders Forms 1099-B?

Law and Analysis. Section 6045, which requires that every person doing business as a broker shall, when required by the Secretary, make an information return (currently on the Form 1099-B), has been the law for roughly 83 years, having had its genesis in section 1211 of the Revenue Act of 1917. For its first 65 years, the law required brokers to report profits and losses. Eighteen years ago the law was amended to require that brokers report the gross proceeds from the transaction. Section 311 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, 96 Stat. 600, reprinted at 1982-2 C.B. 462, 560. The TEFRA bill also “clarifie[d] the definition of broker to explicitly include persons such as dealers, barter exchanges, and others who (for consideration) regularly act as middlemen with respect to property or services.” S. Rep. No. 494, 97th Cong., 2d Sess. 245. That amendment is codified in § 6045(c), but Congress has not otherwise defined the term “broker.”

Revenue Ruling 86-21, 1986-1 C.B. 349 (copy attached), first announced that “a corporation purchasing odd-lot shares from its stockholders on an irregular basis is not a broker for purposes of section 6045(a) of the Code, where, as here, there are no additional facts that indicate otherwise. On the other hand, a corporation is a broker for purposes of section 6045(a) if it regularly stands ready to redeem its stock ...” (emphasis added).² The Treasury Department concurred with this result, and this interpretation of the scope of the broker reporting rules is codified in § 1.6045-1(a)(1) in the Income Tax Regulations, effective January 1, 2001 (NPRM INTL-52-86, 1988-1 C.B. 892, 898; re-proposed and re-printed at 1996-19 I.R.B. 26, 76; finalized as T.D. 8734, 1997-44 I.R.B. 5, 103).

Nothing in our subsequent research leads us to conclude that the broker reporting rules should be amended (and the instructions to Form 1099-B revised) to the contrary. Should you have any questions, please do not hesitate to call A. Kathie Kiss of my staff at (202) 622-4920.

Attachments (2)

²However, that was not the first time we had examined the scope of the broker reporting rules. For example, in 1981, the Interpretative Division of the Office of Chief Counsel indicated that the pre-TEFRA version of § 6045(a) should not be used as a “catch-all” reporting vehicle. Information Returns for Interest Paid on Bearer Bonds, GCM 38,808, I-278-81, (November 13, 1981) (copy attached).