



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR ASSISTANT DISTRICT COUNSEL,
PENNSYLVANIA DISTRICT, PHILADELPHIA
CC:NER:PEN:PHI

FROM: Acting Assistant Chief Counsel
(Income Tax & Accounting)
CC:DOM:IT&A

SUBJECT: Significant Service Center Advice

This responds to your request for Significant Advice dated November 30, 1999, in connection with an inquiry you received from the Centralized Quality Review Site. You have requested significant advice in light of the national oversight responsibilities of the Centralized Quality Review Site. The Centralized Quality Review Site requested guidance with respect to an individual's gross income filing requirements under section 6012(a) of the Internal Revenue Code.

Issue

Whether a taxpayer whose gross proceeds from the sale of property reported on Form 1099-B exceed the § 6012(a) gross income filing requirements is required to file an individual income tax return if the gain from the sale of property is less than the § 6012(a) gross income filing requirements.

Conclusion

Assuming that the taxpayer's income does not otherwise exceed the § 6012(a) filing requirements, a taxpayer is not required to file an income tax return if the gross income for the year is a gain from the sale of property which is less than the gross income threshold for filing an income tax return regardless of the amount of proceeds reported on Form 1099-B.

Facts

A taxpayer receives a Form 1099-B for the sale of stock showing gross proceeds of \$100,000. The taxpayer states that this is the only income for the year. The taxpayer states that the basis in the stock is \$98,000. The taxpayer inquires whether a Form 1040 must be filed for the year of sale.

It should be noted that Publication 17, Your Federal Income Tax for Individuals, for 1999 returns, states under the subheading "Sales and Trades" under the heading "Sale of Property" at page 100:

If you sold property such as stocks, bonds, or certain commodities through a broker during the year, you should receive, for each sale, a **Form 1099-B, Proceeds From Broker and Barter Exchange Transactions**, or an equivalent statement from the broker. You should receive the statement by January 31 of the next year. It will show the gross proceeds from the sale. The IRS will also get a copy of Form 1099-B from the broker.

If you receive a Form 1099-B or equivalent statement, you must complete Schedule D of Form 1040.

Legal Analysis

Income tax filing requirements are set forth in section 6012 of the Code. An individual must file an income tax return if he has gross income that equals or exceeds the sum of the exemption amount plus the applicable standard deduction. I.R.C. § 6012(a)(1).

Gross income has been defined broadly. I.R.C. § 61; Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955), 1955-1 C.B. 207. Gross income includes "gains derived from dealings in property." I.R.C. § 61(a)(3). Treas. Reg. § 1.61-6(a) provides, in general, that the gain realized from the sale or exchange of property is included in gross income. The regulation further provides that generally, the gain is the excess of the amount realized over the unrecovered cost or other basis for the property sold or exchanged. The regulation imports the computation rules of section 1001.

Section 1001(a) provides that the determination of gain from the sale or other disposition of property is the excess of the amount realized for the property over the adjusted basis of the property. The amount realized is the sum of money received or the fair market value of property other than money received. I.R.C. § 1001(b). Generally, the basis of property is its cost. I.R.C. § 1012. Section 1011 provides that the basis of property for determining gain or loss on the sale or other disposition of property is its cost as adjusted under section 1016. Under

section 1016, basis is adjusted for items properly chargeable to capital account, such as the cost of any improvements.

The filing requirement is triggered by gross income. Gross income includes all gains and profits from any source whatever but before any allowable deductions for expenses incurred in getting the income and before any losses are offset against such income. Gooch v. Commissioner, 21 T.C. 481 (1954); and Ryweck v. Commissioner, T.C. Memo. 1954-304. Gross income is, however, arrived at by reducing gross receipts by the cost of goods sold and other costs that represent a return of capital. Siravo v. United States, 377 F.2d 469 (1967)(manufacturing).

Treas. Reg. § 1.61-6(a) specifically provides that gross income from dealings in property is the amount realized in excess of basis. Once the computation has been completed, and the gross income has been determined from the dealings in property, one can ascertain whether the amount equals or exceeds the sum of the exemption amount plus the applicable standard deduction and determine whether one has a filing requirement. A taxpayer need not file a return unless the "gross income" exceeds the sum of the exemption amount plus the applicable standard deduction.

A Form 1099-B shows gross proceeds. Publication 517 instructs taxpayers to complete Schedule D of Form 1040 if they receive a Form 1099-B or equivalent statement. The conclusion that a taxpayer need not file a return unless the "gross income" exceeds the sum of the exemption amount plus the applicable standard deduction conflicts with these instructions. Consequently, we will coordinate with Forms and Publications to resolve this conflict.

We understand that your inquiry comes from Customer Service. Customer Service may want to know more than just the technical answer, which is that a taxpayer would not have a filing requirement. To provide greater assistance to a taxpayer, Customer Service should explain to the taxpayer that when the Service receives the Form 1099-B from the taxpayer's broker and a return is not filed, it will likely trigger an audit of some type. So if the taxpayer wants to head off any questions from the Service regarding the gross proceeds from the Form 1099-B, he or she could file a return that would show that no tax is due because of taxpayer's offsetting basis.

If you have any questions or concerns regarding this advice, please contact Andrea Tucker at (202) 622-4940.

HEATHER C. MALOY

By: _____
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Chief, Branch 4