



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

CHIEF COUNSEL

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Dear 

This letter responds to your letter dated February 19, 2002, requesting the application of information reporting requirements under the Internal Revenue Code ("Code").

In your letter you stated that Congress passed the Department of Interior and Related Agencies Appropriation Act ("Act") on October 11, 2000. Under Title IV, Wildland Fire Emergency Appropriations, the Act provided federal funds for community and private land fire assistance to mitigate the impact of wildfires that occurred on state and private lands in the summer of 2000. In particular, the legislation provided the Secretary of Agriculture up to \$9,000,000 for direct lump sum payments to reimburse eligible individuals and businesses for the replacement value of fences that were destroyed by fire. Eligible individuals and businesses apply for the payments by submitting an application form to the United States Department of Agriculture and attaching a receipt for the cost of the replacement fence.

Your letter continues that Congress provides these funds because of the recognition that the wildfires on State and private lands have a serious impact. You asked: 1) whether these payments are subject to Form 1099 reporting; 2) what are the tax consequences of the reimbursements; and 3) what to do when a Form 1099 has been issued in error.

Section 6041(a) of the Code provides that all persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year, shall render a true and accurate return setting forth the amount of such gains, profits, and income, and the name and address of the recipient.

Section 6041(d) provides that every person required to make a return under subsection (a) shall furnish to each person with respect to whom such a return is required a written statement.

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Section 1.6041-1(c) of the Income Tax Regulations (“regulations”) states that payments are fixed when they are paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained.

Section 61(a) provides generally that gross income means all income from whatever source derived. In *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955), 1955-1 C.B. 207, the Supreme Court of the United States held that the concept of gross income encompassed accessions to wealth, clearly realized, over which taxpayers have complete dominion. The amount of the compensation received under the Act clearly falls within the § 61(a) and *Glenshaw Glass* definition of income, and generally is includible in the recipient’s gross income, except to the extent an exclusion or nonrecognition provision applies.

Section 1001(a) provides generally that gain or loss from the sale or other disposition of property is measured by the difference between the amount realized on the disposition and the property’s adjusted basis. Section 1001(c) provides that the entire gain or loss shall be recognized except as otherwise provided. One exception to the recognition of gain required by § 1001(c) is § 1033.

Section 1033 allows for the nonrecognition of gain when property is compulsorily or involuntarily converted. An involuntary conversion may be the result of the destruction of property in whole or in part, the theft of property, the seizure of property, requisition or condemnation of property, or the threat or imminence of requisition or condemnation of property. Destruction of property by fire is one example of an involuntary conversion.

An involuntary conversion may include a conversion into money. Section 1033(a)(2)(A) provides that if property, as a result of its destruction in whole or in part, is involuntarily converted into money, the gain, if any, shall be recognized except to the extent that the electing taxpayer (within the period specified in § 1033(a)(2)(B)) purchases qualified replacement property (property similar or related in service or use to the converted property). In that event, the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of the replacement property.

Section 1033(b)(2) provides that if property is converted into money, and the taxpayer purchases qualified replacement property and elects nonrecognition of gain under § 1033(a)(2), then the basis of the replacement property shall be the cost of such property decreased by the amount of gain not recognized.

Section 1.1033(b)-1(b) of the regulations provides an example: A taxpayer realized \$22,000 from the involuntary conversion of his barn in 1955. The barn’s adjusted basis was \$10,000. In the same year the taxpayer spent \$20,000 for a new barn, resulting in the nonrecognition of \$10,000 of the \$12,000 gain. The basis of the new barn is

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\$10,000, i.e., the cost of the new barn (\$20,000) less the amount of the gain not recognized on the conversion (\$10,000).

Here, the Act provides compensation for the replacement value of fences damaged by wildfires in the western United States. An amount received as compensation for damage to real or personal property qualifies under § 1033. Thus, recipients may avoid recognition of gain realized on the subject payments if they otherwise comply with the provisions of § 1033.

In addition, as used in § 6041, the phrase "gains, profits, and income" means gross income and not the gross amount paid. A payor is not required to make a return under § 6041 for payments that are not includible in the recipient's income, nor is a payor required to make a return if the income is not fixed or determinable. If the payor does not have a basis to determine the amount of gross income then the payment is not fixed or determinable. See Rev. Rul. 80-22, 1980-1 C.B. 286, amplified by Rev. Rul. 82-93, 1982 - 1 C.B. 196. As a result, such payments would not be subject to the reporting requirements of § 6041.

If you file an incorrect Form 1099 with the Internal Revenue Service, you must correct it as soon as possible. In addition, you must provide statements to the recipients showing the corrections. See the instructions for Form 1099 for the procedures for filing a corrected return.

This letter is a general information letter only and intended only to provide you with general guidance for determining how to comply with applicable law. It describes well established interpretations or principles of tax law without applying them to a specific set of facts. It is advisory only and has no binding effect. If you would like a ruling based on your specific facts, please submit a request pursuant to Rev. Proc. 2002-1, 2001-1 I.R.B. 1.

If you have any further questions, please call (202) 622-4910.

Sincerely,
James C. Gibbons
Chief, Branch 1
Office of the Assistant Chief Counsel
Administrative Provisions and Judicial Practice