



ESCROW INSTITUTE OF CALIFORNIA

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May 19, 2017

Ms. Laurie Brimmer
Internal Revenue Service
Room 6526y
111 Constitution Avenue
Washington, D.C. 20219

By USPS First Class Mail and by email transmission to Laurie.E.Brimmer@irs.gov
Re: OMB Control Number 1545-0997
Proposed Collection, response to request for comments

Dear Ms. Brimmer,

The Escrow Institute of California represents the 695 independent escrow companies in California – these are licensed settlement agents regulated by the Department of Business Oversight.

We are writing on behalf of our membership in response to the Notice and Request for Comments of March 23, 2017 at 82 FR 14941. This concerns changes to Form 1099-S (OMB control number 1545-0997) with the addition of box 5: "If checked, transferor is a foreign person (non-resident alien, foreign partnership, foreign estate, or foreign trust.)"

Here are our concerns:

The 1099-S form is to be prepared and transmitted to the Internal Revenue Service and submitted to transferors of real property by settlement agents under IRC §6045(e). The settlement agent also is known as the real estate reporting person.

The 1099-S is a form between the settlement agent and the transferor (also referred to as the seller in the transaction). There are certain rules that exempt reporting. The buyer is not a party to the reporting.

The adding of box 5 is troubling for various reasons including but not limited to:

- 1) The form was released for immediate use without a comment period
- 2) The form puts a responsibility on the settlement agent to determine the foreign status of the seller
- 3) Does the use of the box indicate that the transaction is subject to FIRPTA reporting
- 4) The implementation of the new form requires software changes that will be costly not only for reprogramming costs going forward but also considering that many settlement agents already have submitted closings from prior to the known release date before their software providers were aware of the change to the form

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. Form 1099-S is different than other forms in the 1099 series in that it is not subject to back-up withholding rules even though the form has a solicitation process. Form 1099-S is different relative to foreign sellers in that it is very common that foreign sellers do not have TINs.

Checking box 5 could create, intended or not, a linkage to FIRPTA (Foreign Investment in Real Property Tax Act of 1980). This is a difficult possible interaction because:

1. The settlement agent has no responsibility of doing withholding on foreign sellers but now has responsibility to determine a foreign seller for 1099-S reporting
2. The buyer is the responsible party in a FIRPTA transaction but has no responsibility or involvement in determining if box 5 should be checked on Form 1099-S
3. The definition of a foreign seller for 1099-S box 5 is different from the definition of a foreign seller for FIRPTA in that foreign corporations are not included in the definition for box 5
4. If a 1099-S has box 5 checked will the IRS look to the buyer to see if a FIRPTA transaction was reported and if it was not will the IRS pursue the buyer to find out why not

The time estimate in the Notice is too low considering software updating time, TIN solicitation time, and the time necessary to determine if the transaction is subject to or is exempt from 1099-S reporting. In addition, now the settlement agent has to deal with two foreign seller certifications. One for FIRPTA and one for 1099-S reporting because the definition of a foreign seller is different for both.

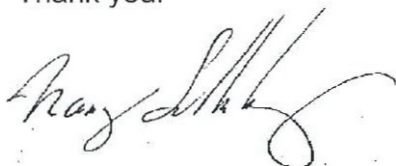
It respectfully is requested that the newly released Form 1099-S be withdrawn as it:

1. Puts a new burden on settlement agents in imposing a responsibility to determine if there is a foreign status of a seller.
2. Creates an incongruent overlap between the real estate reporting rules (IRC §6045(e)) and the FIRPTA withholding rules (IRC 1445).
3. Puts a cost and time burden on implementing the change as settlement agents already have been processing Form 1099-S in its previous version.

Or, as an alternative, it is respectfully requested that the effective date be moved to January 1, 2018 and a complete set of instructions accompany the form so as to reduce any potential liability to the real estate reporting person for misinterpreting the appropriate application of box 5.

Thank you for the opportunity to offer comments on behalf of the independent settlement agent professionals of California.

Thank you.



Nancy B. Silberberg
President
Escrow Institute of California