

Part III - Administrative, Procedural, and Miscellaneous

Certain Annual Tax Reporting Statements May be Furnished by February 16, 2010, Without Penalty

Notice 2010-9

PURPOSE

This notice provides additional time for furnishing certain annual tax reporting statements for reportable items from calendar year 2009.

BACKGROUND

Section 403 of the Energy Improvement and Extension Act of 2008, Div. B of Pub. L. No. 110-343, 122 Stat. 3765, enacted on October 3, 2008, amended section 6045(b) to change from January 31 to February 15 the deadline for furnishing to customers the information statements required by section 6045. These statements are Form 1099-B, "*Proceeds From Broker and Barter Exchange Transactions*"; Form 1099-S, "*Proceeds From Real Estate Transactions*"; and, when reporting payments to attorneys or substitute payments by brokers in lieu of dividends or interest, Form 1099-MISC, "*Miscellaneous Income*." Because February 15, 2010, is a Federal holiday, filers of these statements will meet the deadline under section 6045(b) for reportable items from calendar year 2009 if they furnish the statements by February 16, 2010. See

section 7503. Section 6722 imposes a penalty on any reporting entity that fails to furnish any required payee statement by its deadline.

The Act also added language to section 6045(b) to permit reporting entities, in the case of a “consolidated reporting statement (as defined in regulations),” to furnish by February 15 a statement that otherwise would be required by January 31. Because January 31, 2010, is a Sunday, information returns that are ordinarily due on January 31 will be timely if they are furnished by February 1, 2010. See section 7503. There is not yet a regulatory definition of the term “consolidated reporting statement.”

On February 2, 2009, the IRS published Notice 2009-11 (2009-5 I.R.B. 420) which provided that, for reportable items from calendar year 2008, brokers had until February 17, 2009, to report all items that they customarily reported on their annual composite form recipient statements. Notice 2009-11 applied to reportable items from calendar year 2008 only.

DEADLINE FOR REPORTING ITEMS FROM 2009

This notice applies to reporting entities that are required to furnish information statements under section 6045. This notice provides that such reporting entities have until February 16, 2010, to report any item that they would otherwise be required to report by February 1, 2010, if the reporting entity furnishes the reporting statement to the same recipient or same group of recipients on the same date as a statement reporting items required by section 6045 (regardless of whether the statements relate to the same or different accounts or transactions). This additional time applies only to items that a reporting entity must report to a recipient based on the same relationship

between the reporting entity and the recipient as the items required by section 6045 (for example, broker, payor, or real estate settlement agent to customer), and not as a result of any other relationship between the parties such as debtor to creditor or employer to employee.

Accordingly, the additional time provided by this notice applies to the following forms if the requirements of this notice are met: Form 1099-DIV, "*Dividends and Distributions*"; Form 1099-INT, "*Interest Income*"; Form 1099-MISC, "*Miscellaneous Income*"; Form 1099-OID, "*Original Issue Discount*"; Form 1099-PATR, "*Taxable Distributions Received From Cooperatives*"; Form 1099-Q, "*Payments From Qualified Education Programs (Under Sections 529 and 530)*"; Form 1099-R, "*Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*"; and Form 5498, "*IRA Contribution Information*."

This notice also provides that, if a customer has an account with a securities broker for which a Form 1099-B would be required to be furnished under section 6045 if a sale had occurred during the year, the additional time permitted by this notice applies to other items the broker must report to the customer based on the broker-to-customer relationship regardless of whether the customer's transactional history for 2009 triggered an obligation to furnish Form 1099-B to that customer, provided that the statement reporting the other items is furnished on the same date as the date on which the Form 1099-B would have been furnished.

This notice modifies the 2009 General Instructions for Forms 1099, 1098, 3921, 3922, 5498, and W-2G and applies to the reporting of items from calendar year 2009 only.

EXAMPLE

This notice is illustrated by the following example:

Broker, a securities broker, customarily furnishes an annual composite form recipient statement (as described in Section 4.2 of Rev. Proc. 2008-36, 2008-33 I.R.B. 340) to its customers in order to report dividends as required by section 6042(c) and the gross proceeds of the sale of securities and other items as required by section 6045(b). To report interest or original issue discount as required by section 6049(c), Broker customarily furnishes separate Form 1099-INT and Form 1099-OID statements to its customers instead of reporting these items on the composite form recipient statement.

For calendar year 2009, Broker furnished annual composite form recipient statements on February 11, 2010, to all customers with taxable accounts that received reportable dividends or sold securities or other items in 2009. Because only 80 percent of the customers receiving these composite form recipient statements sold securities or other items in 2009, only 80 percent of the annual composite form recipient statements contained information that section 6045(b) requires to be reported, whereas the remaining 20 percent of the annual composite form recipient statements contained only dividend information required to be reported by section 6042(c).

Broker also furnished Form 1099-INT and Form 1099-OID statements on February 11, 2010, to all customers with taxable accounts with interest or original issue

discount required to be reported under section 6049(c). To certain customers, Broker furnished only Form 1099-INT or Form 1099-OID or both and did not furnish a composite form recipient statement because these customers did not receive reportable dividends and did not sell securities or other items in 2009.

As set forth in this notice, the IRS will treat Broker as having met its reporting deadline requirements under sections 6042(c) and 6049(c) for items from calendar year 2009 because: (1) sections 6042(c) and 6049(c) otherwise require Broker to furnish statements for these items on or before February 1, 2010; (2) Broker reported these items on a statement furnished on or before February 16, 2010; (3) Broker reported these items on a statement furnished to each customer on the same date that Broker either: (a) furnished to the customer a statement reporting items required by section 6045, or (b) would have furnished Form 1099-B to the customer if the customer had sold securities during the year; and (4) Broker was required to report these items to the customer as a result of the same broker-to-customer relationship as its obligation under section 6045. The IRS will therefore not assess any penalties under section 6722 based on the date that Broker furnished the statements reporting the items required under sections 6042(c) and 6049(c) even though some customers received a composite form recipient statement that reported no sales and other customers received no composite form recipient statement.

EFFECT ON OTHER DOCUMENTS

Notice 2009–11 is amplified.

DRAFTING INFORMATION

The principal author of this notice is Stephen Schaeffer of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, please contact Stephen Schaeffer at (202) 622-4910 (not a toll-free call).