



## 3.8 IRS FORMS GENERAL PROVISIONS

For certain real estate transactions, WisDOT may be required to file Internal Revenue Service (IRS) Form 1099-S, Proceeds From Real Estate Transactions. This form will often be accompanied by IRS Form W-9, Request for Taxpayer Identification Number and Certification. Additionally, in transactions involving payments of gross proceeds to attorneys, WisDOT may be required to file Form 1099-MISC, Miscellaneous Income. This section has been developed to guide WisDOT's use of Form 1099-S, as well as Forms W-9 and 1099-MISC when accompanying Form 1099-S. WisDOT assumes no responsibility for the use of the suggested guidelines by any outside agency. It is the responsibility of the outside agency to ascertain and meet any current IRS requirements. Note: If there is a conflict between these guidelines and IRS regulations, the current IRS regulation is controlling. Users must be reminded to look for additional, updated and current tax year guidance, which is subject to change, at <http://www.irs.gov/>. For the latest information about developments related to Form 1099-S and its instructions, such as legislation enacted after they were published, go to <http://www.irs.gov/form1099s>. Real estate transaction reporting requirements are regulated by 26 CFR s. 1.6045-4 (May 28, 2009). This section assumes that WisDOT is the "party responsible for closing" per s. 1.6045-4(e)(3), and is therefore required to report the proceeds of certain real estate transactions to the IRS and to the seller. (e)(1); (m)(1). Note: Users must be reminded to look for additional, updated and current federal regulatory guidance, which is subject to change. Check for updates using the Electronic Code of Federal Regulations at [e-CFR](http://www.e-cfr.gov/), with the current information specific to the Internal Revenue Service, Department of the Treasury, income tax and real estate transaction reporting requirements under [Title 26](#) → [Chapter I](#) → [Subchapter A](#) → [Part 1](#) → [§1.6045-4](#).

### 3.8.1 Reportable Real Estate Transactions

As the reporting party, WisDOT is required to return information to the IRS and the seller for certain real estate transactions. Generally, reportable real estate transactions consist in whole or in part of the sale or exchange for money, indebtedness, property, or services of any present or future ownership interest, (b)(1), in any of the following:

1. Improved or unimproved land, including air space;
2. Permanent structures, such as residential, commercial or industrial buildings;
3. Condominium units and appurtenant fixtures and common elements, including land; and,
4. Stock in a cooperative housing corporation (defined in s. 216). s. 1.6045-4(b)(2).

A sale or exchange includes any transaction properly treated as a sale or exchange for federal income tax purposes, whether or not the transaction is currently taxable. (b)(1). Under the regulations, an ownership interest could include fee simple interests, life estates, reversions, remainders, and perpetual easements. (b)(2)(ii). Ownership interest also refers to rights of possession or use for all or part of any particular year with a remaining term of at least 30 years. *Id.* These temporary interests could include leaseholds, temporary easements, or timeshares. *Id.* For example, if the transaction concerns a 99-year lease with 35 years remaining, it is a reportable transaction. However, if the same lease has only 10 years remaining, the transaction is not reportable because there is insufficient ownership interest. *Id.* Generally, a condemnation proceeding resulting in the sale of real estate is a reportable transaction. Go to

IRS web site for current instructions, by appropriate tax year, for Form 1099-S, Proceeds From Real Estate Transactions.

### 3.8.1.1 Agent's Advice to Property Owner

Per IRS requirements, if compensation for an acquisition is \$600.00 or over, the agent must advise the property owner that IRS regulations require that the transaction be reported to the IRS through the use of IRS Form 1099-S, Proceeds From Real Estate Transactions. The agent must also advise the property owner that in order for WisDOT to comply with IRS regulations, the property owner must complete IRS Form W-9, Request for Taxpayer Identification Number and Certification, and inform the owner of the obligation to fulfill these IRS requirements. The property owner faces potential civil and criminal penalties for failing to comply with this requirement. The agent should attempt to have Form W-9 completed at the first negotiation meeting. If negotiations are by mail, appropriate written notification must be made. In the event a property owner refuses to provide the required W-9 information, the negotiation agent must document the refusal in the negotiation diary.

## 3.8.2 Exceptions

Section 1.6045-4 provides exceptions in paragraphs (c) and (d) for certain transactions and for certain sellers (transferors). Even though exempted, WisDOT may elect to report these transactions. (a). If so, reporting must still be done in accordance with s. 1.6045-4.

### 3.8.2.1 By Transaction

These transactions are not reportable:

1. The sale or exchange of a primary residence, including stock in a cooperative housing corporation, for \$250,000 or less (or \$500,000 or less for a married couple filing a joint return). See *generally* s. 1.121-1. This exception only applies where the seller provides WisDOT with acceptable written certification. Additional guidance for certification statements for primary residences was published in an IRS bulletin published on January 22, 2007, and may still be found online in Revenue Procedure, dated 2007-12, 2007-4 I.R.B. 354, available at [www.irs.gov/irb/2007-04\\_IRB/ar09.html](http://www.irs.gov/irb/2007-04_IRB/ar09.html). Caution: Rev. Proc. 2007-12 does not reflect certain changes and updates made. See current tax year 1099-S instructions for details. If the home is jointly owned (i.e., there are multiple sellers), each seller must submit a separate certification to be exempt. s. 16045-4(f)(1).
2. A real estate sale or exchange of less than \$600. (c)(1)(iii). This is known as a "de minimis" transfer. *Id.*
3. A transfer that is not a sale or exchange. (c)(1)(i). For example, gifts and bequests are not reportable transactions. *Id.*

Some other transactions are also exempt from reporting requirements but are not likely to be encountered in WisDOT real estate transactions. These include a transfer to satisfy indebtedness (foreclosure transfers), (c)(1)(ii); the sale of mineral rights and crops (except standing timber), (c)(2)(i); the sale of a burial plot or vault, (c)(2)(ii); and the sale of a mobile home prior to it being affixed to a foundation, (c)(2)(iii). Note: Users are reminded go to IRS web site to review current instructions, by appropriate tax year, for Form 1099-S, Proceeds From Real Estate Transactions; and, check for any updates of Internal Revenue Service,

Department of the Treasury, income tax and real estate transaction reporting requirements by going to the Electronic Code of Federal Regulations at *e-CFR*.

### 3.8.2.2 By Transferor

Certain sellers (transferors) are exempt and thus no reporting is required. (d)(1). However, if a transaction involves exempt and non-exempt transferors, WisDOT is required to report with respect to the non-exempt transferor(s). (d)(1)[para. 2]. These transferors are exempt:

1. Corporations. This includes companies incorporated under s. 7701(a)(3). A company may also be presumed to be a corporation, absent actual knowledge to the contrary.
  - s. 1.6045-4(d)(2). A seller may be treated as a corporation if the:
    - a. seller uses an unambiguous term in its name (such as “Inc.” – but not “Co.”), (d)(2)(i)(A);
    - b. seller’s name includes “insurance,” “reinsurance” or “assurance” company, (d)(2)(i)(B);  
or
    - c. transfer documents clearly indicate the corporate status of the seller. (d)(2)(i)(C).
2. Government Units. This includes federal, state and local governments, as well as their agencies. (d)(2)(ii)(A). Foreign governments and international organizations, as defined in s. 7701(a)(18), are also exempt sellers. s. 1.6045-4(d)(2)(ii)(B). Even though foreign governments are exempt, foreign individuals are not. See current tax year Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities for more information.
3. Volume Transferors. In order to be exempt, a volume transferor must have completed 25 or more reportable real estate transactions (see sub-section 3.8.1) with at least 25 different buyers within the past two years. (d)(3)(i)(C). A volume transferor is only exempt if WisDOT receives certification from the transferor of his or her exempt status. (d)(2)(iii). The exemption certification must meet the requirements of paragraph (d)(3).

### 3.8.2.3 Certifications for Exceptions

As noted above, two situations require certification in order to be exempt from reporting requirements: (1) transactions involving the primary residence of the seller; and (2) transactions with volume transferors. Primary residence exemption certifications must be received by February 15<sup>th</sup> of the year after closing. Volume transferor exemption certifications must be received by closing. (d)(3)(ii)(B). Certifications must be retained by WisDOT for four years. (d)(3)(iii). WisDOT is not required to obtain or accept either type of certification, but if no certification is obtained or WisDOT chooses not to accept certification, WisDOT must report the transaction. (d)(3)(iii). Further guidance for certification statements for primary residences was last found in Revenue Procedure 2007-12, 2007-4 I.R.B. 354, and may still be available at [www.irs.gov/irb/2007-04\\_IRB/ar09.html](http://www.irs.gov/irb/2007-04_IRB/ar09.html). Requirements for certifying volume transferors were found in s. 1.6045-4(d)(3). Note: Users are reminded go to IRS web site to review current instructions, by appropriate tax year, for Form 1099-S, Proceeds From Real Estate Transactions; and, check for any updates of Internal Revenue Service, Department of the Treasury, income tax and real estate transaction reporting requirements by going to the Electronic Code of Federal Regulations at *e-CFR*.

### 3.8.3 Special Rules for Multiple Transferors

#### 3.8.3.1 In General

Where there are multiple transferors, a separate Form 1099-S must be filed for each owner. (f)(1). The form should reflect each transferor's allocation of the gross proceeds of the sale. (i)(5). WisDOT must request an allocation of the gross proceeds at or before the time of closing. Though WisDOT must request that the transferors provide such an allocation, but such a request does not need to be in writing. *Id.* Furthermore, WisDOT need only make a reasonable effort to determine the final allocation and only is required to contact each transferor that WisDOT actually knows is party to the sale. *Id.* In fact, WisDOT may rely on the unchallenged response of any transferor and does not need to make additional efforts to contact all transferors after at least one complete allocation is received. *Id.* If the transferors are unable to provide an unchallenged and complete allocation, WisDOT reports the entire gross proceeds on each transferor's form. *Id.* It is the total amount of the real estate transaction that determines whether or not a Form 1099-S needs to be filed, not the amount allocated to each of the individual transferors. (c)(1)(iii).

#### 3.8.3.2 Husband and Wife

If the transferors are husband and wife at the time of closing and hold the real estate as tenants in common, joint tenants, tenants by the entirety, or community property, they may be treated as a single transferor. (f)(2). The married couple may be treated as separate transferors if they submit an uncontested allocation of gross proceeds between them. *Id.*

#### 3.8.3.3 Partnerships

If the property is transferred by a partnership, only one Form 1099-S needs to be filed, not separate forms for each partner. Note: Users are reminded go to IRS web site to review current instructions, by appropriate tax year, for Form 1099-S, Proceeds From Real Estate Transactions.

### 3.8.4 Form W-9: Taxpayer Identification Numbers (TINs)

Comprehensive and current information on Tax Identification Numbers (TINs) may be found on the IRS website. The following is a brief overview of the three pertinent types of TINs:

1. Social Security Numbers (SSN) - Format: 000-00-0000. SSNs are used by an individual as his or her TIN if eligible for a SSN.
2. Individual Taxpayer Identification Number (ITIN) - Format: 900-00-0000 (first numeral is always 9; middle two digits range from 70-88 and 90-92.). ITINs are used by an individual who is required to furnish a TIN, but is not eligible to get a SSN.
3. Employer Identification Number (EIN) - Format: 00-0000000. EINs are used by any "person" other than an individual who is required to provide a TIN. EINs are used by persons, whether U.S. citizens or foreign nationals, who are employers or who are sole proprietors in a trade or business.

As the reporting party, WisDOT must request the transferor's TIN no later than the time of closing. s. 1.6045-4(l)(1)(i). While the request may be made in person or by mailing, the request must be in writing, (l)(1)(i-ii), and include the certification and identification requirements

listed in (l)(1)(ii). The TIN request may be made by using Form W-9, Request for Taxpayer Identification Number and Certification. Use Form W-8 for foreign transferors. Additional and updated guidance, by appropriate tax year, for Forms W-9 and W-8 may be found at <http://www.irs.gov/>. If the transferor does not provide a TIN, WisDOT will not be penalized as long as a good faith effort has been made to request the transferor's TIN. (l)(2). A Form W-9 TIN request must be retained for 4 years. (l)(1)(iii).

### 3.8.5 Form 1099-MISC: Attorney's Fees Paid from Gross Proceeds

If any of the gross proceeds are paid to an attorney or jointly to the transferor and attorney, Form 1099-MISC must be filed and sent to the attorney for the gross amount. If payment is made to the attorney for defined legal fees, the amount is reportable on Form 1099-MISC in Box 7 as non-employee compensation. If both the transferor and attorney are named on the payment check, the total amount is reported on Form 1099-MISC in Box 13, followed by the letter "A." If payment is made directly and only to the transferor, Form 1099-MISC is not needed. Additional and updated guidance, by appropriate tax year, for Form 1099-MISC may be found at <http://www.irs.gov/>.

### 3.8.6 Filing Requirements

Form 1099-S must be filed with the IRS after December 31st of the year of closing and on or before February 28th of the following year. (j). If an agency has more than 250 reportable transactions per year, the transactions must be reported to the IRS using magnetic media. (k)(1)(ii) If filed electronically, the forms may be filed as late as March 31st of the year following closing. (j). Form 1099-S must also be provided to the transferor on or after the date of closing and before February 1st of the following year.

### 3.8.7 Retention Requirements Compiled

Retention requirements for various forms and information are discussed above. This Subsection is a recapitulation provided for quick reference:

- Form 1099-S: [WisDOT policy]
- Form 1099-MISC: [WisDOT policy]
- Form W-9 (TIN Request): 4 years.
- Exemption Certification (for primary residence transactions and volume transferors): 4 years.

### 3.8.8 Specific Instructions for Completing Form 1099-S

This sub-section originated from *IRS instructions*, but in a summary format. For specific and detailed guidance, according to the appropriate tax year, go to the IRS web site at <http://www.irs.gov/> to access and review current information. In summation, to file Form 1099-S, Proceeds From Real Estate Transactions, to report the sale or exchange of real estate:

- *[Filer's Name, Address, and Telephone Number Box]* - Enter the name, address, and telephone number of the person who is filing Form 1099-S. The name and address must be the same as the filer information reported on Form 1096.

- *[Transferor's Name and Address Box]* - Enter the name and address of the seller or other transferor of the real estate. If spouses are joint sellers, it is only necessary to enter one name and the TIN for that person on the form.
- *[Account Number]* - The account number is required if you have multiple accounts for a recipient for whom you are filing more than one Form 1099-S. Additionally, the IRS encourages you to designate an account number for all Forms 1099-S that you file. See part L in the General Instructions for Certain Information Returns.
- *[Box 1. Date of Closing]* - Enter the closing date. On a HUD-1, the closing date is the settlement date. If a HUD-1 is not used, the closing date is the earlier of the date title transfers or the date the economic burdens and benefits of ownership shift to the transferee.
- *[Box 2. Gross Proceeds]* - Enter the gross proceeds from the sale or exchange of real estate. Gross proceeds means any cash received or to be received for the real property by or on behalf of the transferor, including the stated principal amount of a note payable to or for the benefit of the transferor and including a note or mortgage paid off at settlement. If the transferee assumes a liability of the transferor or takes the property subject to a liability, such liability is treated as cash and is includible as part of gross proceeds. For a contingent payment transaction, include the maximum determinable proceeds. Also see Multiple Assets Sold, earlier. If you are reporting a like-kind exchange of property for which no gross proceeds are reportable, enter 0 (zero) in box 2 and enter an "X" in the checkbox in box 4. Gross proceeds do not include the value of property or services received or to be received by, or on behalf of, the transferor or separately stated cash received for personal property, such as draperies, rugs, or a washer and dryer. Do not reduce gross proceeds by any expenses paid by the transferor, such as sales commissions, deed preparation, advertising, and legal expenses. If a HUD-1 is used for a transfer of real estate for cash and notes only, gross proceeds generally will be the contract sales price shown on that statement. If other property or services were exchanged, see the box 4 instructions, later.

Contingent payment transaction - A contingent payment transaction is one in which the receipt, by or on behalf of the transferor, is subject to a contingency. The maximum determinable proceeds mean the greatest amount of gross proceeds possible if all the contingencies are satisfied. If the maximum amount of gross proceeds cannot be determined with certainty, the maximum determinable proceeds are the greatest amount that can be determined with certainty.

- *[Box 3. Address or Legal Description]* - Enter the address of the property, including the city, state, and zip code. If the address does not sufficiently identify the property, also enter a legal description, such as section, lot, and block. For timber royalties, enter "Timber royalties." For lump-sum timber payments, enter "Lump-sum timber payment."
- *[Box 4. Check Here if the Transferor Received or Will Receive Property or Services as Part of the Consideration]* - If the transferor received or will receive property (other than cash and consideration treated as cash in computing gross proceeds) or services as part of the consideration for the property, enter an "X" in the checkbox in box 4.
- *[Box 5. Buyer's Part of Real Estate Tax]* - For a real estate transaction involving a residence, enter the real estate tax paid in advance that is allocable to the buyer. You do not have to report an amount as allocable to the buyer for real estate taxes paid in arrears. You may use the appropriate information included on the HUD-1, or comparable form, provided at closing. For example, a residence is sold in a county where the real estate tax is paid annually in advance. The seller paid real estate taxes of \$1,200 for the year in which the sale took place. The sale occurred at the end of the 9th month of the real estate tax year. Therefore, \$300 of the tax paid in advance is allocated to the buyer, by reference to the amount of real estate tax shown on the HUD-1 as paid by the seller in advance, and is reported in box 5. See Notice 93-4, 1993-1 C.B. 295.

### 3.8.9 Summary and Cautionary Statement

Federal tax law begins with the Internal Revenue Code (IRC), enacted by Congress in Title 26 of the United States Code (26 U.S.C.). Treasury regulations (26 C.F.R.)--commonly referred to as *Federal tax regulations*-- pick up where the Internal Revenue Code (IRC) leaves off by providing the official interpretation of the IRC by the U.S. Department of the Treasury. Much of this guide makes direct reference to this code and these regulations. Other information is presented in an overview format. Users of this information must be reminded that if there is a conflict between this guide and IRS regulations, the current IRS regulation is controlling. Additional, updated and current tax year guidance, which is subject to change, should be reviewed and is available from the IRS web site at <http://www.irs.gov/>. Also check for any updates of tax code and regulations, according to the current year, and watch for clarifications, tips and special guidance as may be published by the Internal Revenue Service, Department of the Treasury. Look for specific rulings and/or written determinations that may be issued, as well as various technical resources to tax regulations that could provide additional, current and updated information. WisDOT is required to return information to the IRS and the seller for certain real estate transactions. For general questions, WisDOT's Bureau of Technical Services, statewide acquisition coordinator may be contacted, and if necessary, we will seek further guidance from our Office of General Counsel (OGC).