

**§ 1.6044-4**

**26 CFR Ch. I (4-1-08 Edition)**

notices of allocation as defined in section 1388(d)); and

(ii) Amounts described in section 1382(b)(2) (relating to redemption of nonqualified written notices of allocation previously paid as patronage dividends) paid in money or property (except written notices of allocation); and

(2) Payments by farmers' cooperatives exempt from tax under section 521 of:

(i) Amounts described in section 1382(c)(2)(A) (relating to distributions with respect to earnings derived from sources other than patronage) paid in money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation); and

(ii) Amounts described in section 1382(c)(2)(B) (relating to redemption of nonqualified written notices of allocation previously paid as distributions with respect to earnings derived from sources other than patronage) paid in money or other property (except written notices of allocation).

(b) *Special rules.* (1) If an organization makes a distribution consisting in whole or in part of a written notice of allocation and a qualified check and, at the time it files its return under § 1.6044-2, is unable to determine whether such written notice of allocation and such check constitute nonqualified written notices of allocation, such organization shall for purposes of such return treat such written notice of allocation as a qualified written notice of allocation and such qualified check as a payment in money.

(2) An amount described in paragraph (a) of this section is subject to reporting even though the organization paying such amount is allowed no deduction for it because it was not paid within the time prescribed in section 1382. Thus, a patronage dividend of \$25 paid by a marketing cooperative must be reported even though it is paid after the end of the payment period (see section 1382(d)) for the organization's taxable year in which the patronage occurred.

(c) *Exceptions.* An amount described in paragraph (a) of this section does not include—

(1) Any amount described in § 1.6042-3(b); or

(2) With respect to amounts paid or credited after December 31, 1982, any amount paid or credited to any person described in § 1.6049-4(c)(1)(ii).

(d) *Determination of amount paid.* For purposes of § 1.6044-2 and this section, in determining the amount of any payment subject to reporting under paragraph (a) of this section:

(1) Property (other than a qualified written notice of allocation) shall be taken into account at its fair market value, and

(2) A qualified written notice of allocation shall be taken into account at its stated dollar amount.

[T.D. 6628, 27 FR 12798, Dec. 28, 1962, as amended by T.D. 8734, 62 FR 53476, Oct. 14, 1997]

**§ 1.6044-4 Exemption for certain consumer cooperatives.**

(a) *In general—*(1) *Determination of exemption.* Exemption from the reporting requirements of § 1.6044-2 shall, upon application therefor, be granted by the district director to any cooperative which he determines is primarily engaged in selling at retail goods or services of a type which is generally for personal, living, or family use. A cooperative is not exempt from the reporting requirements merely because it is an organization of a type to which section 6044(c) and this section relate. In order for the exemption from reporting to apply, it is necessary that the cooperative file an application in accordance with this section and obtain a determination of exemption.

(2) *Basis for exemption.* For a cooperative to qualify for the exemption from reporting provided by section 6044(c) and this section 85 percent of its gross receipts for the preceding taxable year, or 85 percent of its aggregate gross receipts for the preceding three taxable years, must have been derived from the sale at retail of goods or services of a type which is generally for personal, living, or family use. In determining whether an item is of a type that is generally for personal, living, or family use, an item which may be purchased either for such use or for business use and which when acquired for business purposes is generally purchased at wholesale will, when sold by a cooperative at retail, be treated as goods or

services of a type generally for personal, living, or family use.

(3) *Period of exemption.* A determination of exemption from reporting shall apply beginning with the payments made during the calendar year in which the determination is made and shall automatically cease to be effective beginning with payments made after the close of the first taxable year of the cooperative in which less than 70 percent of its gross receipts is derived from the sale at retail of goods or services of a type which is generally for personal, living, or family use.

(b) *Application for exemption.* Application for exemption from the reporting requirements of section 6044 shall be made on Form 3491, and shall be filed with the district director for the internal revenue district in which the cooperative has its principal place of business.

[T.D. 6628, 27 FR 12799, Dec. 28, 1962]

#### § 1.6044-5 Statements to recipients of patronage dividends.

(a) *Requirement.* A person required to make an information return under section 6044(a)(1) and § 1.6044-2 must furnish a statement to each recipient whose identifying number is required to be shown on the related information return for patronage dividends paid.

(b) *Form, manner, and time for providing statements to recipients.* The statement required by paragraph (a) of this section must be either the official Form 1099 prescribed by the Internal Revenue Service for the respective calendar year or an acceptable substitute statement. The rules under § 1.6042-4 (relating to statements with respect to dividends) apply comparably in determining the form of an acceptable substitute statement permitted by this section. Those rules also apply for purposes of determining the manner of and time for providing the Form 1099 or its acceptable substitute to a recipient under this section. However, each Form 1099 or acceptable substitute statement required by this section must be furnished on or before January 31 of the following year, but no statement may be furnished before the final payment has been made for the calendar year.

(c) *Cross-reference to penalty.* For provisions relating to the penalty provided for failure to furnish timely a correct payee statement required under section 6044(e), see § 301.6722-1 of this chapter (Procedure and Administration Regulations). See § 301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(d) *Effective date.* This section is effective for payee statements due after December 31, 1995, without regard to extensions. For the substantially similar statement mailing requirements that apply with respect to forms required to be filed after October 22, 1986, and before January 1, 1996, see Rev. Proc. 84-70 (1984-2 C.B. 716) (or successor revenue procedures). See § 601.601(d)(2) of this chapter.

[T.D. 8637, 60 FR 66111, Dec. 21, 1995, as amended by T.D. 8734, 62 FR 53476, Oct. 14, 1997]

#### § 1.6045-1 Returns of information of brokers and barter exchanges.

(a) *Definitions.* The following definitions apply for purposes of this section and § 1.6045-2:

(1) The term *broker* means any person (other than a person who is required to report a transaction under section 6043), U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. A broker includes an obligor that regularly issues and retires its own debt obligations or a corporation that regularly redeems its own stock. However, with respect to a sale (including a redemption or retirement) effected at an office outside the United States, a broker includes only a person described as a U.S. payor or U.S. middleman in § 1.6049-5(c)(5). In addition, a broker does not include an international organization described in § 1.6049-4(c)(1)(ii)(G) that redeems or retires an obligation of which it is the issuer.

(2) The term *customer* means, with respect to a sale effected by a broker, the person (other than such broker) that makes the sale, if the broker acts as:

- (i) An agent for such person in the sale;
- (ii) A principal in the sale; or