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NEW TAX REPORTING REQUIREMENT FOR CLOSING ATTORNEYS

by Lynda L. Butler

The Tax Reform Act of 1986 imposes a significant new requirement on attorneys conducting real estate closings. Under the 1986 legislation, any person qualifying as a "real estate broker" must file an information return and statement with respect to the real estate transaction. The Tax Reform Act of 1986: Conference Committee Bill, [Bull. 41 Extra] Fed. Taxes (P-H) ¶ 59,714, at I-698 (to be codified at I.R.C. § 6045(e)(1)). The legislation defines a "real estate broker" as

any of the following persons involved in a real estate transaction in the following order:

- (A) the person (including any attorney or title company) responsible for closing the transaction,
- (B) the mortgage lender,
- (C) the seller's broker,
- (D) the buyer's broker, or
- (E) such other person designated in regulations prescribed by the Secretary.

Id. (to be codified at I.R.C. § 6045(e)(2)).

As the definition indicates, the person "responsible for closing the transaction" bears the primary responsibility for filing the information return. The conference agreement accompanying the new amendment explains that "[t]his is generally the person conducting the settlement." The Tax Reform Act of 1986: Conference Committee Report, [Bull. 41 Extra] Fed. Taxes (P-H) ¶ 59,715, at II-787. The agreement also indicates that Treasury may have to issue regulations specifying the person responsible for the closing in situations where several persons are involved. Id. If there is no person responsible for closing the transaction, then the reporting must be done by one of the other identified parties in the order provided by the section.

The person responsible for filing the information return must report details regarding gross proceeds of the transaction and such other information as the Secretary may require. See I.R.C. § 6045(a) (West Supp. 1986). Information reporting, however, "is not required on refinancings of real estate, unless the Secretary otherwise provides." The Tax Reform Act of 1986: Conference Committee Report, [Bull. 41 Extra] Fed. Taxes (P-H) ¶ 59,715, at II-787. The Secretary also may decide to exclude from the information reporting requirements "certain types of real estate transactions where information reporting on those transactions would not be useful." Id. Guidance as to the type of real estate transactions subject to the reporting requirement, the manner in which the reporting is to be accomplished, and the gross proceeds required to be reported is to be provided by the Secretary. Id.

All penalties governing reporting by general brokers would apply to the reporting requirements on real estate transactions. These include a fine for failing to file an information return. See id.; The Tax Reform Act of 1986: Conference Committee Bill, [Bull. 41 Extra] Fed. Taxes (P-H) ¶ 59,714, at I-683 to -684 (to be codified at I.R.C. § 6721).