

Section 5.12

GUAM TERRITORIAL INCOME TAX SERVICE REPORTING REQUIREMENTS

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Section 5.12

GUAM TERRITORIAL INCOME TAX SERVICE REPORTING REQUIREMENTS

PURPOSE

The purpose of this section is to establish the process the Guam Department of Public Works (Department) must follow to comply with Guam Territorial Income Tax Service reporting requirements for right of way acquisitions.

AUTHORITY

26 CFR, Section 1.6045

Internal Revenue Code of 1954

The Organic Act of Guam and Related Federal Laws Affecting the Government Structure of Guam, 1421i, Income Tax
11 GCA § 24101 - § 24913 Real Property Tax Law

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition functions and the Office of the Attorney General.

REFERENCES

26 CFR, Section 1.6045 4(d)(3)

Section 5.5, Legal Documents and Land Acquisition Closing

Section 7701(a)(18) of the Internal Revenue Code

FORMS

Guam Territorial Income Tax (Internal Revenue Service) **Form 1099-S**

5.2-7 Closing Statement

5.6-3 Request for Taxpayer Identification Number

DEFINITIONS

The following definitions are to be used only in the context of the **Guam Territorial Income Tax Service (GTITS)** reporting requirements in this section.

Date of Closing: The date of closing set forth on **Form No. 5.2-7, Closing Statement**, for a negotiated purchase, the date of entry of a Final Judgment by the court for parcels acquired by Declaration of Taking, or the date of deposit for parcels acquired through stipulated order of taking/final judgments.

De Minimis Acquisition: An acquisition for which the total consideration, including money and/or property, to be paid is less than \$600 in value, exclusive of fees and costs. The \$600 limitation applies to the total consideration for the parcel, not separately to each grantor/property interest holder.

Excluded Acquisitions: Excluded acquisitions include de minimis acquisitions and acquisitions from exempt transferors.

Exempt Transferor (Grantor): Exempt transferors include corporations, Federal or Territorial governmental entities, foreign governments or political subdivisions thereof, international organizations as defined in **Section 7701 (a)(18), Internal Revenue Code**, and exempt volume transferors.

Exempt Volume Transferor: An exempt volume transferor is a person or entity who has provided the Department a **Certification of Exempt Status** as required by **26, Code of Federal Regulations, Section 1.6045-4(d)(3)**.

Gross Proceeds: Cash received by a fee owner/parcel interest holder for his/her ownership interest in land, improvements and real estate damages. In cases of multiple ownerships, the gross proceeds may be a proportionate part of the total consideration for the transaction.

Ownership Interest: Fee simple interests, life estates, reversions, easements and leaseholds. Leasehold interests or easements must have a remaining term of at least 30 years at the time of conveyance in order to be considered an ownership interest.

5.12.1 Reporting Requirement

The Department is required to report all non-excluded real property acquisitions to the **GTITS** annually. The annual report could be generated by the Department. The Department should be responsible to obtain, verify and accurately enter taxpayer information. Comprehensive information gathering and accurate entry of data will be essential. **GTITS** could impose a penalty against the Department for each improperly reported grantor/parcel interest holder.

5.12.2 Obtaining and Verifying Taxpayer Information

5.12.2.1 The Department shall request taxpayer information from each grantor/parcel interest holder of an ownership interest for all non-excluded acquisitions. **Form No. 5.6-7, Request for Taxpayer Identification Number**, shall be used to request taxpayer information. The request shall be delivered at or before the initiation of negotiations. Documentation that taxpayer information has been requested and received shall be maintained in the Department's official parcel file.

5.12.2.2 For non-excluded parcels acquired through eminent domain, prior to entry of a final judgment for land, improvements, or damages, the Office of the Attorney General (OAG) attorney shall determine if all fee owners/parcel interest holders for the parcel being acquired have previously provided taxpayer information. If taxpayer information has not been received, the OAG attorney shall provide that **Form No. 5.6-7, Request for Taxpayer Identification Number**, is delivered to all non-exempt owners of the parcel or to their attorney. Documentation that taxpayer information has been requested and received shall be maintained in the Department's official parcel file.

5.12.2.3 Individuals who were husband and wife at the time of closing are to be treated as a single owner. **Form No. 5.6-7, Request for Taxpayer Identification Number**, may be provided to either husband or wife. When acquiring non-excluded tenant-owned realty, **Request for Taxpayer Identification Number**, must be provided to the tenant and to the fee owner(s) of the land.

5.12.2.4 Upon receipt of taxpayer information, the Department shall review the information received and identify obvious omissions, errors or inconsistencies such as missing or incomplete Taxpayer Identification Number (TIN), illegible information, improper allocations, etc. Obvious problems should be reviewed with the fee owner/parcel interest holder and corrected to the extent possible.

5.12.3 Allocating Gross Proceeds

5.12.3.1 Each owner/parcel interest holder of an ownership interest being conveyed is required to indicate the percentage of ownership that he/she holds in the ownership interest. For multiple owners/parcels interest holders, the Department shall allocate gross proceeds based on the reported percentages as follows:

- (A) If non-conflicting responses are received from all fee owners/parcel interest holders and the sum of the reported percentages equal 100%, gross proceeds shall be allocated in accordance with the responses received.
- (B) If non-conflicting responses are received from some but not all fee owners/parcel interest holders and the sum of the reported percentages equal 100%, gross proceeds shall be allocated in accordance with the responses received.
- (C) If no allocation is provided, there are conflicting responses, or the sum of the reported percentages do not equal 100%, the entire consideration for land, improvements and severance shall be reported as gross proceeds for each fee owner/parcel interest holder.

5.12.4 Reporting a Non-Monetary Benefit

5.12.4.1 For those parcels affected by a non-monetary benefit determined by the court, or identified and quantified in a settlement, the Department's duty to report the benefit is limited to indicating that property or services were received by the fee owner/parcel interest holder. There is no requirement to quantify the non-monetary benefit and there is no provision to do so on **Form 1099-S**.

5.12.4.2 If the non-monetary benefit is not determined until a fee and cost hearing occurs subsequent to the Final Judgment for which the Department has previously filed a **Form 1099-S** report, the Department must amend/correct its information and provide a new **Form 1099-S** to the parcel interest holder in accordance with **Section 5.12.10**, as soon as possible.

5.12.5 Reporting an Exchange

For parcels acquired via a like kind exchange (no cash in the transaction), the gross proceeds will be zero. If the acquisition involves a combination of cash and exchanged property, enter the cash payment amount as gross proceeds; in the "Property or Services Received" field.

5.12.6 Distribution of Form 1099-S

5.12.6.1 For parcels acquired through negotiated settlements, a copy of the completed **Form 1099-S** shall be presented to the transferor pursuant to **Section 5.5, Legal Documents and Land Acquisition Closing**.

5.12.6.2 For parcels acquired by Final Judgment, a copy of the completed **Form 1099-S** shall be mailed to the transferor once the deposit has been made into the court registry or upon entry of the Final Judgment if no additional deposit is required.

5.12.6.3 Regardless of the method of acquisition, all transferors must receive copies of **Form 1099-S** for their parcel no later than **December 31** of the calendar year in which the closing or Final Judgment occurred.

5.12.7 Reporting Information

All non-exempt real estate acquisitions shall be reported to the **GTITS** regardless of whether taxpayer information is obtained. Prior to submitting final data to the **GTITS**, the Department of Public Works Right of Way Supervisor (DPWRS) or designee shall review and make final adjustments of data as necessary. Once adjustments have been made the Director Department

of Public Works (DDPW) or designee will compile the Department wide information and electronically transmit the information to the **GTITS** in **March** of each year.

5.12.8 Data Changes

Information, when available, could be changed or modified as necessary prior to submittal to the **GTITS**. If a change is made, a new **Form 1099-S** reflecting the current information must be delivered to the property owner.

5.12.9 Corrected Returns

Changes or additions made to the **1099-S** data, after DDPW or designee has compiled and submitted the Department wide information to the **GTITS**, should be retained in the Department's permanent parcel file and identified as a "Corrected 1099." Each parcel interest holder affected by a corrected 1099 must be provided a new **Form 1099-S** indicating the current information. In May of each year, DDPW or designee will compile and transmit to **GTITS** a Department wide report of corrected **1099-S** forms. Returns may only be corrected for the calendar year being reported.

5.12.10 Mobile Homes

5.12.10.1 Mobile homes are generally considered to be personal property. Purchase of a mobile home as personal property would not be a reportable real estate transaction. However, where a mobile home is purchased as an improvement to real property, the purchase price of the mobile home should be included with the purchase price of the land when reporting gross proceeds on **Form 1099-S**. The **Board of Equalization** tax rolls can be used as a guide to determine whether the mobile home is personal property or real property.

5.12.11 Exempt Volume Transferors

Exempt volume transferors must provide the Department with a **Certification of Exempt Status** as required by **26, Code of Federal Regulations, Section 1.6045-4(d)(3)**, to validate their exempt status. Once the Department receives a **Certification of Exempt Status**, the transaction will be handled as an excluded transaction. The Certification must be maintained in the Department's official parcel file.

HISTORY

Original Issue Date: 2009