

IRS released revised draft Form 1099-B for cost basis reporting on March 10, 2011.

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The revised form deletes Box 7 while retaining a blank box in its place on the Form. The related instructions to holders included as part of the draft form deletes any reference to Box 7. Thus, brokers will not be required to provide total gain/loss that would be reported by holder/investor on Schedule D on the revised draft Form 1099-B for 1099s that would be issued next year in February 2012 relating to the first year the cost basis reporting rule applies (for sales of stock during 2011 that was acquired by the investor in 2011). Note that the broker must still designate whether any gain or loss would be short-term or long-term in the check boxes set forth in Box 8 on the revised draft Form 1099-B and the broker must still report the amount of any wash sales losses that the investor cannot recognize in Box 5. Brokers may want to provide their customers with the reported gain or loss amount in a customer statement that is not considered part of the Form 1099-B as a customer service to assist customers in their gain/loss and reporting calculations, particularly given that brokers must still report wash sales and whether gain or loss is long-term or short-term.

The deletion of Box 7 on the draft Form 1099-B appears to have occurred for two possible reasons. First, the cost basis reporting law does not explicitly require brokers to report the amount of gain and loss. The law does require brokers to report adjusted cost basis, to take into account any wash sales losses that result in disallowed losses and to indicate whether a gain or loss is long-term or short-term. These explicit requirements would explain why Boxes 5 and 8 were retained while Box 7 was deleted. Second, reporting a gain or loss on the Form created two concerns. For one thing, for certain corporate actions and cases where a noncash consideration is received, the amount that might have been reported in Box 7 could have been wrong if it was simply based on the difference between the proceeds reported in Box 2 and the basis reported in Box 3 on the Form (adjusted for any wash sales reported in Box 5). This concern resulted in explicit instructions to brokers to leave Box 7 blank in the draft Instructions for Form 1099-B that were released in February 2011 if the amount that would have been reported in Box 7 was incorrect. Additionally, there are other tax rules that investors must take into account in preparing their tax returns that brokers do not need to account for in computing cost basis. A reported gain or loss amount in Box 7 might have given holders or the IRS a false impression that the reported gain or loss was correct even though the individual investor may have been required to take into account other tax rules in computing the gain or loss on his or her tax return.



For brokers, note that the revision to Form 1099-B and the deletion of Box 7 necessarily mandates the revision to the Instructions for Form 1099-B that brokers must follow to delete the included instructions for completing Box 7. Draft Instructions for Form 1099-B were released by the IRS on February 23, 2011. Thus, the IRS will need to release revised instructions reflecting the new draft Form 1099-B released on March 10th. It is not clear when revised instructions for brokers will be released. Brokers will need to monitor for the pending revised instructions and consider whether other changes are included in the instructions that could impact their preparations for the upcoming 1099 cost basis reporting season.

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