



March 24, 2014

Internal Revenue Service
Associate Chief Counsel
Procedures and Administration
Attn: CC:PA:LPD:DRU
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Sir or Madam:

Universal Currency Clearing House Inc. requests a ruling on the proper information reporting treatment of barter transactions under section 6045 of the Internal Revenue Code.

A. STATEMENT OF FACTS

1. Taxpayer Information:

- (a) Universal Currency Clearing House, Inc.
524 Middle Street
Portsmouth, VA 23704-3708
- (b) Annual Accounting Period- Calendar Year End
Basis of Accounting – Cash Basis

2. Business Description:

Universal Currency Clearing House Inc. (hereinafter referred to as UC) is wholly owned by the International Reciprocal Trade Association (IRTA) www.irta.com which is dedicated to promoting just and equitable standards of reciprocal trade and raising the value of reciprocal trade to businesses and communities worldwide.

The purpose of UC is to provide a reliable and efficient marketplace in which barter company members can trade with members of other barter companies. Because trade (barter) exchanges use their own trade credit currency, IRTA sought to promote more efficient global trade by establishing a universally accepted trade credit among member exchanges - a true universal trade credit currency. The UC acts as a broker, clearinghouse and third party record keeper of barter transactions among its members.

The UC allows member trade companies to expand their own members' ability to sell into new markets and purchase goods and services that are not available within their own system, while eliminating the inconvenience and confusion of individual reciprocal accounting. In this way, the UC is a trade exchange for trade exchanges. It is the clearinghouse where trades are made.

In order to sell via UC, the barter exchange (known as a member of UC) must establish an account. A representative for UC works with the barter exchange to establish the account and arrange a one-on-one training on how to use the UC on-line trading system. Then the barter exchange is ready to post offerings onto the system to sell to UC barter companies. The UC

Broker promotes the barter exchange's offers through various means to the other barter companies and periodically contacts each barter company to inquire about a need that a UC barter company has that could be filled by another exchange.

If a barter company member sells an item or service on UC, the barter company will receive an authorization request e-mail from the UC system referencing the barter company wishing to buy from the other barter exchange member. The seller must accept this authorization request before the sale is complete and UC credits are transferred to the barter company's account.

When sufficient credit is established in a barter exchange member UC account, the barter exchange may buy items or services from another UC member. This is done on-line via authorization approvals which are required before a sale is considered complete and UC credits are debited from the buyer exchange's account.

Each barter exchange that participates as a member of The UC is responsible for maintaining accounting and financial records on its own books relative to sales and purchases that it affects via The UC on behalf of its clients/members. The UC does not receive, secure or maintain such records on behalf of The UC barter company members. The UC's role is to facilitate trade between barter exchanges. In its role as facilitator, UC receives an application fee, monthly fee and transaction fees based upon the sale between organization/members.

Members will offer its products and/or services at regular prevailing prices to other members of the UC in exchange for the UC trade dollars posted to Member's account pursuant to these Rules.

Members agree that trade dollars are not legal tender, securities or commodities, and that they cannot be redeemed for cash or currency. The UC dollars or the UC trade dollars is equivalent to one dollar in United States currency or the local U.S. dollar equivalent in the country where the transaction takes place. Ownership of trade dollars denotes the right to receive products or services available from other members of the UC.

Transaction fees collected in trade dollars are deposited into the UC General Operating Account. The UC General Operating Account revenue is used to fund UC operations and expenses and to promote the UC within the barter industry. Monthly fees and deficit fees taken in trade dollars are deposited into the UC Debt Reserve Fund. The UC operates on an established yearly budget prepared by its UC Committee and approved by the IRTA Board of Directors.

In accordance with the rules of UC, it is Members' responsibility to ensure that all applicable sales, value added, excise or other transfer taxes on transactions conducted through the UC are collected and paid in a timely manner to the appropriate state and/or national authority. It is also the responsibility of Member to file all applicable tax returns or reports relating to transactions conducted in the UC with the appropriate state and/or national authority.

3. Facts Relating to Transaction:

UC brings trade and barter organizations together so their members' may trade with one another efficiently and effectively. In return, UC receives various fees including application, monthly and transactions (paid by seller barter organization and purchaser barter organization).

The ultimate sellers of goods and services are not members of UC but rather of the *UC Members* barter trade or exchange organization. It is agreed and common practice within the industry that the barter trade or exchange organization, in which the seller is a member, bears the responsibility for issuing its seller the appropriate 1099-B annually.

Example:

Parties to the Transaction

(U) Taxpayer

(A) Barter company that is a member of (U)

(x) Contractor who is a member of (A) but not of (U) or (B)

(B) 2nd Barter company member of (U)

(y) Manufacturer who is a member of (B) but not of (U) or (A)

Barter Company (A) and Barter Company (B) are members of a clearinghouse (U). (B) Has a client (x) that wishes to use his barter dollars to buy widgets (\$1M) that is not available within Barter Company (A)'s exchange. Barter Company (A) is however, a member of an organization (U) that has several barter exchange company members. One of the barter exchange company members, Barter Company (B) has a member (y) that sells (\$1M) widgets that Barter Company (A)'s client (x) wants to purchase. Organization (U) facilitates the transaction between the two barter companies (A) and (B) on behalf of clients (x) and (y), respectively. At the end of the calendar year, barter company (B) issues a 1099-B to (y), the seller, for the gross proceeds (y) earned on the sale.

4. **Prior/Current Audit**: Neither this issue or a similar issue is or has been under the jurisdiction of field examination or appeals.
5. **Deletion Statement** – Kindly redact the names, address, EIN for purposes of IRC 6110(c).

B. RULING REQUESTED

Universal Currency Clearing House, Inc. does not have a reporting requirement under IRC Section 6045 with respect to transactions in which it is acting in its capacity as the facilitator/clearinghouse between two barter trade exchanges on behalf of their respective member's. In this situation Universal Currency Clearing House Inc. is providing its members with a forum where barter exchanges can expand their trades beyond their organization without entering into direct reciprocal arrangements with another barter company. In these situations, it is the barter trade exchange organization in which the ultimate seller of goods or services is a member, who is responsible for the reporting requirements set forth in IRC Section 6045 and the accompanying Treasury Regulations.

C. STATEMENT OF LAW

Internal Revenue Code (IRC) Section 6045(a) provides that *in general*, every person doing business as a broker shall, when required by the Secretary, make a return, in accordance with such regulations as the Secretary may prescribe, showing the name and address of each customer, with such details ...as the Secretary may by forms or regulations require with respect to such business.

Under IRC 6045(b) the written statement required under the preceding sentence shall be furnished to the customer on or before February 15 of the year following the calendar year for which the return under subsection (a) was required to be made.

IRC 6045(c)(1) states the term “broker” includes—

(A) a dealer,

(B) a *barter exchange*, and

(C) *any other person who (for a consideration) regularly acts as a middleman with respect to property or services.*

Treas. Reg. 1.6045-1(a)(4) defines the term “barter exchange” as any person with members or clients that contract either with each other or with such person to trade or barter property or services either directly or through such person. See Example 4 Treas. Reg. 1.6045-1(a)(13)(b). This is the example that is on point that describes the typical barter exchange where members within the organization trade within the organization where the barter exchange maintains trade accounts for exchanges. This is the activity that 1099-B information is geared towards.

Provided the barter exchange has at least 100 exchanges during the calendar year, said exchange is required to issue 1099-Bs to members/clients they effected sales on behalf of.

IRC 6045(c)(3) provides that the term “barter exchange” means any organization of members providing property or services who jointly contract to trade or barter such property or services.

For further clarification on the intent of Congress in promulgating laws to require information return reporting by barter exchanges Sec. 311 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, 96 Stat. 324, 600-601, we turn to the TEFRA Joint Committee on Taxation Explanation of section 311 of the Act and section 6045 of the code.

Under prior law, every person doing business as a broker had to make a return, when required by regulations issued by the Secretary, showing the customers’ names and such details as the Secretary prescribed. There were however, no regulations in effect so Congress once again stepped in.

The initial focus of Congress was on security transactions. According to the Committee, the reason for the change¹ was non-compliance. The Internal Revenue Service (IRS) estimated that the compliance rate for capital gains reporting was well below 60%. Congress determined that compliance in this area could be substantially improved by requiring that transactions carried out through brokers and other middlemen be reported to the IRS. At the same time Congress recognized the need to balance carefully the cost of reporting by brokers against the

¹ General Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982 (H.R. 4961, 97th Congress; Public Law 97-248) prepared by the Staff of the Joint Committee on Taxation December 31, 1982.

incremental improvement in compliance. Congress believed that barter exchanges should be treated as brokers for purposes of this reporting requirement, and the third party summons rules.

As set forth in the “Explanation of Provision” the Act modified the prior law rules relating to reporting by brokers in three respects, (1) permits Secretary to require reporting of gross proceeds, (2), requires persons making returns to IRS as brokers to furnish a statement to their customers and (3), “the Act clarifies the term broker to include persons such as dealers, barter exchanges, and others who (for consideration) regularly act as middlemen with respect to property or services. For this purpose, a barter exchange is any organization of members providing property or services who jointly contract to trade or barter such property or services.

Turning to the Treasury Regulations that were proposed and finalized post 1982 legislative changes, the service considered feedback from interested parties relative to the transactional reporting, as opposed to aggregate, but found that the transactional was necessary. Moreover, with respect to barter exchanges, only barter exchanges that have at least 100 exchanges in the calendar year are required to file returns of information on exchanges of property or services through the barter exchange. This shows that the IRS is cognizant of the record keeping burden.

IRC 6045(c)(2) provides that the term “customer” means any person for whom the broker has transacted any business.

Under IRC Section 1.6045-1 Returns of Information of Brokers and Barter Exchanges (a)

(1) the term “broker” means a person (other than a person who is required to report a transaction under 6043), US 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.

(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 (iii) *the participant in the sale responsible for paying to such person or crediting to such person’s account the gross proceeds on the sale. [Emphasis added].*

In the transaction at issue for UC, the customers engaging in the actual buy/sell transaction are not the UC members but rather the members within their respective barter exchanges. And as is customary within the barter industry, the barter trade exchange in which the seller is a member will issue a 1099-B to its participant in the sale since it is that organization that is ultimately responsible for crediting such person’s account with the gross proceeds on the sale.

Treas. Reg. 1.6045-1(a)(13)(b) Example 2, provides that the following persons generally are **not** brokers within the meaning of paragraph (1)(a) in the absence of additional facts that indicate the person is a broker.

(vii) A clearing organization

UC is in a unique position that is tantamount to the exchange on which stocks and bonds are traded on behalf of broker clients. Just as a clearing organization is not required to report the sale of these transactions, UC should be exempt from filing 1099-B for transactions that it is facilitating on behalf of barter companies.

Treas. Reg. 1.6045-1(e) entitled "Reporting of barter exchanges" (2) provides except as provided in Para. (e)(2)(ii) [fewer than 100 exchanges during year], (f)(2)(ii) [property or service with fair market value of less than \$1.00], (g) [exempt foreign persons], and (p)(2) [periods prior to 1/1/84], a barter exchange shall make a return of information with respect to exchanges of personal property and services through the barter exchange during the calendar year among its members or clients or between such persons and the barter exchange. For this purpose, property or services are exchanged through a barter exchange if payment for property or services is made by means of a credit on the books of the barter exchange or scrip issued by the barter exchange or if the barter exchange arranges a direct exchange of property or services among its members or clients or exchanges property or services with a member or client.

Treas. Reg. 1.6045-1(f) sets forth the information to be reported on form 1096 via transactional reporting and the exception for corporate members or clients.

D. ANALYSIS

Returning to our example, Barter Company A (> 100 trades) is required to issue 1099-B to each of its clients that sells goods and services not only within Company A but also any sales that are made through U. Barter Company B (> 100 trades) is also required to issue 1099-B to (y) and all of the other clients that sell goods and services within B's exchange and through U.

The intent of Congress, to insure that all barter sales of goods and services are includible on an information return is fully satisfied by each of the Company's A and B properly meeting their tax reporting obligations. If Company A and/or B were to issue 1099-Bs to U for sales that U helped to facilitate, or U were to issue 1099-B for sales its clearing house facilitated, duplicate 1099-B reporting results.

In turning to guidance from the Internal Revenue Service, instructions for Form 1099-B (2013) page 5, Barter Exchanges, with respect to "*Member Information*" the directions provide,

"In the recipient area of Form 1099-B, enter information about the *member or client that provided the property or services in the exchange.*"

At page 8, Box 7, Bartering

"Enter the gross amounts received by a member or client of a barter exchange." This includes cash received, the fair market value of any property or services received, and the fair market value of any trade credits or scrip credited to the member's or client's account. However, do not include amounts received by a member or client in a subsequent exchange of credit or scrip.

Issuing 1099-Bs to UC and UC filing of 1099-Bs is an additional administrative burden that does not foster tax compliance as intended by 97th Congress which was concerned with underreporting of income. Instead, such a requirement duplicates reporting, increases administrative costs, and will likely cause taxpayers and the service to go through unnecessary and unproductive 1099-B matching correspondence. The latter of course, creating additional financial burden for the taxpayer.

For instance, let's assume that a taxpayer such as UC's gross receipts before inclusion of gross proceeds from barter transactions by its barter company members is equal to \$100,000. Further, let's assume that the taxpayer facilitated sales of \$500,000 during the calendar year. If the taxpayer receives 1099-Bs for all, or a portion of the \$500,000, the taxpayer is placed in a precarious position at year end now that the 1099-Bs insinuate that it has gross receipts far in excess of its true gross income. If it reports its own gross receipts, in accordance with IRC section 61, the taxpayer can expect an inquiry from the IRS upon matching 1099-Bs since its accurate gross receipts of \$100,000 will be lower than the \$500,000 reported on the 1099-Bs erroneously issued to the taxpayer as its "proceeds". So in spite of accurately filing a federal income tax return, the taxpayer can expect to address a correspondence audit inquiry. Conversely, the taxpayer can include an explanation attached to the return stating that it received 1099-B but is not required to report the amount in income. Generally, these returns do not get reviewed by the 1099 compliance group, so the explanation is ineffective. By virtue of the erroneous 1099s additional time and cost for professional fees will be expended to bring about a no-change correspondence audit. Lastly, the taxpayer can overstate its gross receipts significantly to the tune of \$500,000, with an offsetting cost of sales in the hopes that a matching audit will be averted. In doing so though, the tax return does not properly reflect gross income. You might ask what the harm is and that is that many taxpayers maintain their books and records on the tax basis. Either their books have to overstate income or they continually are placed in a position with their lenders to have to explain the discrepancy between the records. Further, the books no longer reflect gross income properly.

E. CONCLUSION

Based upon the aforementioned, we respectfully request a private letter ruling stating that the taxpayer is not required to report such transactions to its barter company members with 1099-B. Further, other taxpayers are not required to issue 1099-Bs to the taxpayer for such transactions.

Under penalties of perjury, I declare that I have examined the information provided for this private letter ruling and to the best of my knowledge and belief, this private letter ruling contains all the relevant facts relating to the request, and such facts are true, correct and complete.

Sincerely,

Cynthia A. Vassilowitch, CPA, EA, MST
Power of Attorney

Penalty Declaration of Taxpayer, Universal Currency Clearing Inc.:

Under penalties of perjury, I declare that I have examined the information provided for this private letter ruling and to the best of my knowledge and belief, this private letter ruling contains all the relevant facts relating to the request, and such facts are true, correct and complete.

Annette Riggs, President
Universal Currency Clearing House Inc.